

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13918 of 2014

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Mrs. Meira Kumar, wife of Mr. Manjul Kumar and Daughter of Late Smt. Indrani Devi and Late Hon'ble Jagjivan Ram, Former Deputy Prime Minister of India, Government of India. Presently residing at D-1029 New Friend's Colony, P.O. and P.S. New Friend's Colony, New Delhi-110 025.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Director Land Acquisition, Bihar, Patna, Collectariat, Patna.
4. The District Magistrate, Patna, Collectorate, Patna
5. The Land Acquisition Officer, Patna, Collectariat, Patna

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Sarvendra Kumar Verma, Advocate Mr. Jai Vardhan Narayan, Advocate
For the Respondent	:	Mr. Vinay Kirti Singh, G.A.-3

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 21-12-2023

The present writ application has been filed by the petitioner for payment of compensation amount as per the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Settlement Act, 2013 (for short “new Act of 2013”) for the land situated at Mauja-Mainpura, Khata No.769, Plot No.1220, Thana - Phulwari, P.S.-Shashtri Nagar, District-Patna area 18 Khatas and 10 dhurs, which has been acquired by the State Government vide Land Acquisition Case No.50 of



1975-76 in the year 1976 for construction of nala and road in the year of 1976 itself as all the constructions have been made but till date no compensation has been given either to the mother of the petitioner, who died on 14.04.2002 or to the petitioner.

2. The case of the petitioner is that ex-landlord settled the land in question along with other lands in the year 1941 to one Sri Gauri Charan Singh, whose name was also recorded in Register-II and subsequently the mutation was done. On his death, his two sons namely Raj Nath Singh and Deena Nath Singh came in actual physical possession of the land in question and their names were also recorded in the Register-II and mutation was done for the same. Later on, they transferred the land in question to one Satyadeo Prasad after executing a registered sale deed in favour of him on 20.02.1963. Therefore, the name of Satyadeo Prasad was also mutated and entries were made in Register-II in the year 1965. Subsequently, said Satyadeo Prasad sold the land to Smt. Indrani Devi, mother of the present petitioner by executing a registered sale deed for total area measuring 4.5 Bighas of land. Accordingly, the name of the mother of the petitioner was also mutated in Register-II of the Patna Sadar Anchal and Jamabandi No.1789 was created. Since then she has been paying rent to the State of Bihar.



3. It is also the case of the petitioner that on 07.05.1985, the then Collector, Patna cancelled the Jamabandi of Smt. Indrani Devi and 14 other persons in an off suit proceeding of Land Acquisition Case No.50/1975-76 bearing RM Case no. 06/1982-83 on the ground that the land in question have been recorded as “*gair mazarua aam*” in the khatiyan and records of the Government. The order of cancellation of Jamabandi was challenged by Smt. Indrani Devi (mother of the petitioner) in C.W.J.C No. 4071 of 1986. This Court vide order dated 18.11.1994 allowed the writ petition and cancelled the order of the Collector, by which Jamabandi created in the name of Smt Indrani Devi was cancelled on the ground that long standing Jamabandi can only be cancelled after initiation of a proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950. The aforesaid order dated 18.11.1994 has not been challenged till date. In pursuance of aforesaid order dated 18.11.1994, the Jamabandi of all the affected persons were restored and rent receipt were issued in their names.

4. After the death of Smt. Indrani Devi, the name of the petitioner was mutated in the leftover lands on the basis of Registered Will executed by Smt. Indrani Devi and rent receipts were also issued in her name. However, on 02.02.2013,



the D.C.L.R., Patna Sada issued a Notice under section 4(h) of the Act to the petitioner and other persons mentioning therein that the proceeding vide Jamabandi Case No.01 of 2011-12 has been initiated in the Office of Circle Circle Officer, Patna Sadar. One Raj Thakur, Power of Attorney Holder of Harendra Kumar, had filed a contempt petition viz. M.J.C. No.994 of 2023 before this Court challenging the initiation of proceeding under Section 49(h) of the Bihar Land Reforms Act, 1950. In the said contempt petition, this Court directed the State Government to file its show-cause but instead of filing a show-cause, the Collector, Patna, cancelled the Jamabandi of said Harendra Kumar. This Court vide order 27.11.2013 directed the Collector, Patna, to file a show-cause as to why he be not held guilty of contempt of Court for violating the order of this Court. However, the Collector, Patna recalled his order and this Court vide order dated 18.12.2013 disposed of the contempt petition with a liberty to the Collector, Patna, to proceed with the aforesaid 4(h) proceeding in accordance with law and also directed him that while dealing with the said proceeding, he shall keep in mind the contention of the petitioner that he has purchased the land in question, for which Jamabandi is sought to be cancelled vide sale deed of the year 1961 from the settlee,



who obtained settlement possession of the land in question in the year 1943 and in light of the aforesaid fact the aforesaid proceeding under Section 4(h) of the Act is not maintainable. The petitioner also filed a contempt petition vide M.J.C. No. 2265 of 2013 and the same was also disposed of vide order dated 02.01.2014 in the light of the order dated 18.12.2013 passed in M.J.C. No.994 of 2013. Thereafter, the petitioner wrote a letter dated 13.06.2014 to the District Land Acquisition Officer, Patna, in Land Acquisition Case no. 50 of 1975-76 for payment of compensation along with admissible interest but the petitioner has not been paid the compensation and therefore, the petitioner has filed this writ petition.

5. During the pendency of this writ petition, the Collector, Patna again issued Notice under section 4(h) of the Bihar Land Reforms Act, 1950 on 03.02.2015 to the petitioner along with 33 other persons through paper publication in Jamabandi Case no.1 of 2012-13, which is annexed as Annexure -8 to the supplementary affidavit. A notice was also issued to Harendra Kumar on 04.02.2015 through paper publication only citing about the Jamabandi Case No.01 of 2011-12. After notice dated 03.02.2015 under section 4(h) of Bihar Land Reforms Act, 1950 was received, the petitioner filed Contempt Application



bearing M.J.C. No. 383 of 2015 and this Court vide order dated 11.03.2015 directed the State Counsel to ascertain from Collector, Patna, the date on which settlement in question was made in favour of petitioner's first vendor. Thereafter, the Collector, Patna constituted a Three Men Committee to ascertain the date on which the settlement has been made and withdrew the notice dated 03.02.2015. After this action, this Court vide order dated 25.03.2015 directed the Collector, Patna to appear personally in Court as in the opinion of the Court, the aforesaid act of the Collector amounts to overreaching the orders passed by this Court. Against the order dated 25.03.2015 passed in M.J.C. No.601 of 2015, the Collector, Patna filed an appeal bearing L.P.A No.601 of 2015. The Division Bench of this Court vide order dated 22.04.2015 allowed the appeal and set aside the order dated 25.03.2015 passed by the learned Single Judge in M.J.C. No.383 of 2015 and permitted the Collector to continue with the proceeding under section 4(h) depending upon the stage thereof. The three-Men Committee submitted its report dated 11.08.2016. In paragraph no.11 of the report, it has been stated as under:-

“यहाँ उल्लेखनीय है कि प्रश्नगत भूमि के जमाबंदियों को रद्द करने हेतु माननीय उच्च न्यायालय का सी0डब्लू0जे0सी0 [सं0-4685 / 1985](#)



एवं [4071/1986](#) में दिनांक-18.11.1994 को पारित किया गया आदेश कि प्रासंगिक मामले में भूमि की जमाबंदी भूमि सुधार अधिनियम के धारा-4(एच) अन्तर्गत रद्द किया जाय, के लिए कोई गुंजाईश ही नहीं रहता है, क्योंकि तथाकथित पट्टा दिनांक-01.01.1946 से पूर्व का है और महाधिवक्ता, बिहार का भी परामर्श पर अग्रेतर कार्रवाई की कोई गुंजाईश ही नहीं रहती है।”

6. In paragraph no.14 of the aforesaid report, it has been stated that the authority concerned can initiate a proceeding under section 9 of the Bihar Mutation Act, 2011 for cancelling the Jamabandi of the land in question and prior to taking the aforesaid step the authority concerned should challenge the order dated 18.11.1994 passed in C.W.J.C. No.4685 of 1985 and before that they should seek guidelines from the Revenue and Land Reforms Department, Government of Bihar.

7. Learned counsel for the petitioner has submitted that in the facts of the case, the proceeding under section 4(h) of the Bihar Land Reforms Act, 1950 is not attracted since the settlement of the land in question by the erstwhile landlord is of the year 1941 and this fact has also been duly certified and established by the Three Member Committee constituted by the Collector, Patna.



8. Learned counsel for the petitioner further submits that there is no provision available to cancel the Jamabandi in the Bihar Land Reforms Act save and except initiation of proceeding under section 4(h) of the Act, which cannot be initiated in the present case in view of the finding of the Three Men Committee.

9. On the point that the petitioner is entitled for compensation as per the new Act of 2013 for her land which has been acquired by the State Government, learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court rendered in the case of *Indore Development Authority vs. Manoharlal & Ors.* reported as *(2020) 8 SCC 129* and has submitted that the aforesaid judgment is fully applicable to the facts of the present case.

10. Learned counsel for the petitioner further submits that Section 24(2) of the new Act of 2013 is fully applicable in the case of the petitioner for grant of compensation under the new Act of 2013.

11. The contention of the State is that the land in question was acquired for construction of storm drainage system after following the due process of law vide L.A Case no. 50/1975-76 and the award was declared for the same on



31.03.1981. The said land was mentioned as “*Gair Mazarua Aam*” in the survey Khatian. The land owners namely Darbari Singh, Smt. Indrani Devi and Harendra Kumar had submitted their claim for payment of compensation amount before the Additional District Land Acquisition Officer, who after hearing the parties, rejected their claim for compensation at that time. After which, the award amount was deposited with the Government Treasury vide Challan dated 04.04.1981. Since the compensation amount has been paid to the awardees well within 5 years of time and the compensation has been paid to the awardees before the expiry of 5 year period, the petitioner is not entitled for compensation under the new Act of 2013.

12. Further contention of the State is that the Collector, Patna had cancelled the Jamabandi created in favour of the mother of petitioner vide order dated 07.05.1985 but the same was restored after the order dated 18.11.1994 passed by this Court in CWJC No. 4071 of 1986 and in the said order this Court has only held that the Jamabandi can only be cancelled after following the due process prescribed under section 4(h) of the Bihar Land Reforms Act, 1950 and not otherwise.

13. Considered the submissions of learned counsel for the parties and perused the materials on record.



14. From the record, it appears that the land in question has been settled by the ex-landlord in the year 1941 to one Gouri Charan Singh. After his death, by virtue of succession and inheritance, namely, Dinanath Singh and Rajnath Singh continued in actual physical possession of the land in question. Their names were also mutated in the revenue records. Later on, they transferred the land in question to one Satyadeo Prasad Singh, who in turn sold the land in question to the mother of the petitioner in the year 1965. Accordingly, mother of the petitioner came in physical possession of the land, her name was also mutated in Register-II and Jamabandi No.1789 was also created. However, suddenly in the year 1985 the Collector annulled the Jamabandi just for the purpose of disturbing the actual physical possession over the land in question. The order of the Collector cancelling the longstanding Jamabandi of the petitioner was quashed by this Court by holding that Jamabandi once created can be cancelled only after initiation of a proceeding under Section 4(h) of the Act. Thereafter, the D.C.L.R., issued a Notice under section 4(h) of the Act to the petitioner and other persons. One Raj Thakur, Power of Attorney Holder of Harendra Kumar, had filed a contempt petition, which was disposed of by this Court with a liberty to the Collector, to proceed with the



aforesaid 4(h) proceeding in accordance with law. Thereafter, the present writ petition was filed. During the pendency of this writ petition, the Collector, Patna again issued Notice under section 4(h) of the Bihar Land Reforms Act, 1950 to the petitioner along with 33 other persons. The petitioner filed again filed a Contempt Application bearing M.J.C. No. 383/2015 and this Court vide order dated 11.03.2015 directed the State Counsel to ascertain from Collector, Patna, the date on which settlement in question was made in favour of petitioner's first vendor. Thereafter, the Collector, Patna constituted a Three Men Committee to ascertain the date on which the settlement has been made. Thereafter, the Three Men Committee submitted its report stating therein that the land in question had been settled earlier to 01.01.1946 i.e. in the year 1943 and the respondents cannot initiate proceeding under section 4(h) of the Bihar Land Reforms Act, 1950 over the land in question.

15. In the opinion of this Court, if one refers to Section 4(h) of the Bihar Land Reforms Act, the Collector has to enquire into the bonafides of transfers made after 01.01.1946. If a Jamabandi had been wrongly created and has existed and on that basis, a person has been in possession for over 50 years then under these assumed jurisdiction under Section 4(h) of the Act,



the Collector can neither cancel the Jamabadni nor order his eviction. This Court has consistently held that long standing Jamabandi created in favour of a person cannot be cancelled in a summary proceeding and the title of the petitioner cannot be doubted in a summary proceeding. If the State is aggrieved, the only lawful authority is that of the competent Civil Court. The State must move the Civil Court for necessary relief. In the present case, the Three Men Committee constituted by the Collector, Patna, in its report has clearly stated that the land in question had been settled prior to 01.01.1946 and therefore, they cannot initiate proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950.

16. Considering the aforesaid facts, this Court is of the opinion that section 4(h) of the Bihar Land Reforms Act, 1950 is not at all attracted in the present case since the settlement of the land in question by the erstwhile landlord is of the year 1941 and this fact has also been duly certified and establishment by the report of the Thee Men Committee.

17. Now, the question would arise whether the petitioner is entitled for compensation for her land, which has been acquired by the State, as per new Act of 2013 or not. For deciding this question, it will be relevant to quote paragraph



no.366 of the decision rendered in the case of **Indore**

Development Authority (supra), which reads as under:-

“366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1) (b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression ‘paid’ in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is



provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1) (b).

366.7. The mode of taking possession under the 1894 Act and as contemplated



under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

18. I am of the opinion that the petitioner is entitled to payment of compensation under the new Act of 2013 in view of the law laid down by the Hon’ble Supreme Court in



the case of *Indore Development Authority (supra)* as the expression “paid” in Section 24(2) of the new Act of 2013 does not include a deposit of compensation in Court and as per Section 24(2) of the new Act of 2013, the consequence of non-deposit as on the date of the notification for land acquisition under Section 4 of the Land Acquisition Act, 1894 (for short “Old Act of 1894”) is that the land holder shall be entitled for compensation according to the provisions of the new Act of 2013. Non-deposit of compensation in Court does not result in the lapse of the land acquisition proceeding. In case of non-deposit with respect to the majority of the holdings for five years or more, the compensation under the new Act of 2013 has to be paid to the landowners on the date of notification for land acquisition under Section 4 of the old Act of 1894. Once three Men Committee had submitted the report in favour of the petitioner, the petitioner cannot be denied her legal rights as discussed above.

19. In view of the aforesaid discussions, this writ petition is allowed. The petitioner should be paid compensation under the provisions of the new Act of 2013 in accordance with law for the land of the petitioner which has been acquired by the respondents.



20. Let the records of Land Acquisition Case
No.50 of 1975-76 be remitted to the concerned Court.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A.
Uploading Date	21.12.2023
Transmission Date	

