

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1703 of 2019

In
Civil Writ Jurisdiction Case No.14797 of 2017

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1. The State of Bihar.
 2. The District Magistrate, Madhubani.
 3. The Special Land acquisition Officer, Koshi Project Darbhanga.
 4. The Public Redressal Grievance Officer of Complaint Vell Madhubani.
 5. The Executive Engineer, West Koshi Project Division, Sakri, Madhubani.
 6. The Assistant Engineer West Koshi Project Division Sakri, Madhubani.
 7. The Anchal Officer of Kaluahi, Anchal of Madhubani District.

... .. Appellant/s

Versus

Sanjay Chandra Thakur Son of Late Basant Thakur Resident of Village-
Haripur Maltola, P.S. Kaluahi, District-Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG-4
		Mr. Deepak Sahay Jamuar, AC to AAG-4
For the Respondent/s	:	Mr. Sanjeev Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-01-2023

Heard Mr. Anjani Kumar, learned Additional
Advocate General No. 4 and Mr. Sanjeev Kumar Jha for
the respondent.

The respondent had approached this Court for
payment for 0.09 decimals of land belonging to him in
Khata No. 1511, Plot No. 10047 which was used in the



construction of the canal, in addition to the land which was acquired for the purpose in the year 2011.

On such complaint by the writ petitioner/respondent, an inquiry was made and the local *Kanungo* reported on 11.05.2016 that from the spot verification, it appear to him that some mud from the contiguous land had been used in the construction of the canal. Based on that report, the Special Land Acquisition Officer *vide* his letter dated 16.06.2016 informed the Executive Engineer that since more than the acquired land was subsumed, for which the landowner was demanding payment, it be verified at his end and in case it is found that the claim of the landholder is genuine, necessary requisition shall be made.

On these set of facts, it was directed by the learned Single Judge that the respondents would be obligated to initiate a proceeding for acquisition of land of the petitioner which had been utilized beyond the area



which had been acquired, within one month of the date of passing of the order.

The learned Single Judge, on finding that from 2016, when such letter was issued by the Special Land Acquisition Officer to the Executive Engineer, nothing had been done, cost of Rs. 20,000/- was imposed on the State to be paid to the writ petitioner.

The aforesaid cost has already been paid.

Mr. Anjani Kumar has pointed out that the report of the *Kanungo* clearly indicated that not any parcel of land but only mud was subsumed in the construction of the canal. He submits that the aforementioned report of the *Kanungo* was misunderstood by the Special Land Acquisition Officer to mean that extra land than what was acquired was used. He further submits that the order of the learned Single Judge is fallacious on one count that a mandamus was issued for initiating proceedings for acquisition of land of the petitioner which according to the report was found to have been used and that parcel of land



was beyond the land which had been acquired for the purpose, without getting such facts ascertained after a due inquiry.

The learned counsel for the respondent/landholder however submits that it would not be in the mouth of the State to raise such issue when in the counter affidavit in the writ petition, it was contended that no sooner the Executive Engineer would report back, necessary process for issuing a requisition for acquiring the said land shall be issued.

Thus, even if the Special Land Acquisition Officer had over-read the report of the *Kanungo*, the state had accepted it and had asked for a further inquiry in the matter by the Executive Engineer.

Mr. Jha, the learned counsel for the land owner, therefore submits that the report of the *Kanungo* and the consequent letter of the Land Acquisition Officer would have been tested and verified, had such inquiry been conducted by the Executive Engineer. The landholder



would not require any money from the government if his land has not been used.

The issue could have been clinched only on an inquiry by the Executive Engineer which was promised by the State before the learned Single Judge in the counter affidavit. In fact, the averment in the writ petition with respect to usage and consumption of the extra land of the writ petitioner was never rebutted and therefore, the doctrine of non-traverse would apply, notwithstanding the rebuttal at the stage of appeal.

Be that as it may, we find that when the learned Single Judge had directed for initiation of an acquisition proceeding, he only meant that it was to be initiated after the report from the Executive Engineer was received with respect to consumption of extra land for which the landholder was not paid hitherto.

The tenor of the order also signifies that based on the disclosure made by the State in the counter affidavit that the matter is being inquired by the Executive Engineer



and no sooner would his report be forthcoming, necessary action shall be taken on such report, that such an order was passed.

Thus, we find that the order passed by the learned Single Judge is not fit to be interfered with except for a minor clarification that such process of acquisition shall be initiated only in case it is found by the Executive Engineer that extra land than what has been acquired has been consumed in the construction of the canal.

Mr. Anjani Kumar submits that this acquisition had taken place sometimes in the year 2011 and now it would be rather difficult to ascertain as to what area of land, if at all, was consumed for which the landholder has not been paid.

This objection cannot be entertained at this stage when there was a communication to the Executive Engineer to undertake an inquiry way back in the year 2016 which hung fire for all this while. This only betokens



that the rights of an individual was not treated with the sensitivity that it deserved.

Precisely for this reason, the learned Single Judge had slapped a fine of Rs. 20,000/- on the State to be paid to the landholder as a minor palliative to him for the delay in the decision-making with respect to fresh acquisition and payment. With respect to no such inquiry having been taken forward, Mr. Anjani Kumar takes refuge of the order passed by a co-ordinate Bench earlier, staying the operation of the order of the learned Single Judge on 02.03.2020.

Thus, we dispose of this appeal with a direction that necessary inquiry by the concerned Executive Engineer shall be conducted without any delay and a report be sent to the Special Land Acquisition Officer for him to either drop the proceedings or initiate further proceeding for issuing requisition for such acquisition and making payment to the landholder.



We make it clear however that in case it is found that no extra land was consumed, the directions given by the learned Single Judge or by this Court shall not be carried out.

The order impugned is thus modified/clarified to the extent indicated above.

The appeal is disposed of accordingly.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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CAV DATE	NA
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Transmission Date	

