

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1809 of 2018**

In

Civil Writ Jurisdiction Case No.1650 of 2016

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Sri Dharmbir Singh S/o Late Naresh Prasad Singh Resident of Village-Tungi,P.S. Deep Nagar,Dist.Nalanda,Special Power of Attorney Holder of Vijay Shankar Gupta,Om Prakash Gupta,Ajay Shankar Gupta and Vishal Prasad Gupta

... .. Petitioner

Versus

1. The District Magistrate, Patna
2. District Land Acquisition Officer, Patna
3. Sri Anil Kumar S/o Late Saryug Prasad Resident of Mohalla Mithapur,P.S. Jakkanpur, Dist.Patna

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Dronacharya, Advocate Mr. R. K. Sinha, Advocate Mr. Anjani Kumar, Advocate Mr. Abhishek Kumar Srivastava, Advocate Mr. Ravi Raj, Advocate Mr. Shreyash Goyal, Advocate Ms. Sweta Raj, Advocate Mr. Yash Roshan, Advocate Mr. Abhay Nath, Advocate
For the Respondent No. 1&2:	:	Mr. Patanjali Rishi, Advocate
For the Respondent No.3	:	Mr. Bishwa Nath Chaudhary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 26-02-2024

Heard the learned counsels for the parties on the point of admission and I intend to dispose of this petition at the stage of admission itself.

02. The present Civil Misc. Petition has been filed under Article 227 of the Constitution of India for quashing the order dated 23.11.2015 passed by the learned Sub. Judge-I, Patna in Land Acquisition Case No. 47 of 2015, whereby and



whereunder the learned Sub Judge-I, Patna allowed the petition dated 27.10.2015 filed by the respondent no. 3 and directed the Land Acquisition Officer, Patna, respondent no.2 herein, to pay the compensation amount to the respondent no.3 with respect to his claim.

03. Shorn off unnecessary details, the brief facts of the case are that the petitioner and respondent no. 3 both claimed their title over a piece of land which was acquired by the Government for construction of a National Highway and the question arose to whom the compensation would be paid.

04. Learned counsel for the petitioner submits that the petitioner is a power of attorney holder of the owners of the land in dispute situated at *Mauza-Bishunpur Pakari, P.S.-Phulwari Sharif, District-Patna bearing Tauzi No. 5343, Thana No.31, Khata Nos. 115 and 129, Survey Plot Nos. 166 and 167 area 1 katha 10 dhur*. The aforesaid land was acquired by the District Land Acquisition Officer, Patna, respondent no. 2 herein, for the purpose of widening of NH-38-84 Patna-Buxar Four Lane Road. The claim of the petitioner is based on the purchase of disputed land by ancestors of principal of power of attorney holder through different auction sale from the year 1931-39, whereas the respondent no. 3 claimed to be the person who



acquired the land in question from persons claiming to be settlee of the land in dispute though such persons were declared to be *farzidars* of the ancestors of the petitioner. When the dispute arose on title of the disputed plots of land, which was acquired, the same was referred to the Principal Civil Court wherein the parties appeared and pleaded their respective cases. Learned counsel for the petitioner further submits that the court of learned Sub. Judge-I, Patna in Land Acquisition Case No. 47 of 2015 allowed the petition filed by respondent no. 3 for payment of compensation amount without consideration of documents filed on behalf of the petitioner, on the ground that the said documents were not clear and the same were photocopies. Learned counsel further submits that the learned Sub. Judge was supposed to decide the title of the parties on the disputed plot of land and thereafter the compensation amount could be paid under Section 3H of the National Highways Act. But, without going into the merits of the case and without deciding the objections and issues involved, the learned Sub. Judge-I, Patna directed to District Land Acquisition Officer, Patna to disburse the compensation amount in favour of respondent no. 3. Learned counsel for the petitioner relies on a decision of the Hon'ble Supreme Court in the case of *State of U.P. and Ors.*



Vs. Ram Sukhi Devi, reported in *(2005) 9 SCC 733* wherein it has been held that the final relief sought for should not be granted at an interim stage. On this aspect, learned counsel further relies on the decision of Hon'ble Apex Court in the case of *Bharat Sanchar Nigam Ltd and Ors. v. Prem Chand Premi and Anr.*, reported in *(2005) 13 SCC 505*. Learned counsel further submits that Hon'ble Apex Court has time and again deprecated the tendency of grant of interim orders, practically giving the principal relief sought in the petition for no better reason than that of a *prima facie* case has been made out. One such decision is in the case of *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors.*, reported in *AIR 1985 SC 330*. Learned counsel further submits that the impugned order is not correct in the sense that it has been passed against the specific provisions of sub-section (4) of Section 3H and Section 3I of the National Highways Act, 1956. The Principal Civil Court has got the power only to decide the person who is eligible to receive the payment of compensation and it cannot direct the Land Acquisition Officer to make the payment. On this account, the impugned order is illegal.

05. On the contrary, learned counsel for the



respondent no. 3 submits that the present petition has become infructuous as in terms of the order dated 23.11.2015 passed by the learned Sub. Judge-I, Patna, the compensation amount has been released in favour of respondent no. 3. Learned counsel further submits that the learned Sub. Judge-I, Patna after due consideration of the matter passed the impugned order and the same does not suffer with any infirmity. Learned counsel further submits that the respondent no. 3 was in possession of the suit property and the document of mutation are in his favour and on these grounds, his claim was *prima facie* upheld and the payment was ordered in his favour.

06. Learned counsel appearing on behalf of respondent nos. 1 and 2 contends that the State Authority went with the order of the learned Sub. Judge-I, Patna basically on the ground that for making payment, a *prima facie* case was found in favour of respondent no. 3 based on the document of possession. The dispute over title could be adjudicated by the competent court but for the purposes of disbursal of compensation under National Highways Act, Section 67 of the Land Acquisition Act, 2013 will also have application since it provides that scope of the enquiry in every such proceeding shall be restricted to a consideration of the interest of the



persons affected by the objection. So, the State Authority went on this premise and disbursed the amount in favour of respondent no.3. Learned counsel further submits that so far as the claim of the petitioner over the right, title and interest on the dispute land is concerned, the same is already before the learned Sub. Judge-I, Patna and whatever would be the final order, the authority would comply the same.

07. I have given my thoughtful consideration to the rival submission made on behalf of the parties. Having regard to the submission, I find merit in the contention of learned counsel for the petitioner that the learned trial court exceeded its jurisdiction when it passed order for making payment to respondent no.3. Under the mandate of law, especially Section 3H of the National Highways Act, learned Sub-Judge was required to decide the right and title of parties with respect to the disputed land and the learned court issuing directions to award the compensation to a particular person was simply beyond its mandate. It is also not clear from the impugned order that how the learned Sub-Judge-I, Patna considered the material before it to arrive at a finding that the respondent no. 3 was entitled. If the documents of petitioner were faint or not readable, the learned court below could have given opportunity



to the petitioner to substitute those documents instead of rejecting the same *in limine*. Merely saying that the documents of respondent no. 3 are all relevant and proves the title, is simply without substance. The learned court below was supposed to discuss the documents and then record its specific finding about the *prima facie* case and also with regard to balance of convenience and thereafter it could have opined about the *prima facie* entitlement of respondent no. 3, to begin with. Certainly, the order of the learned Sub-Judge-I, Patna is clearly erroneous on this point. However, as it has been submitted, that the compensation amount has already been disbursed in favour of the respondent no.3, this Court would not like to discuss the merits of the case and directs the learned Sub-Judge-I, Patna to proceed with the matter uninfluenced by any observation.

08. However, the learned Sub-Judge-I, Patna, the Principal Civil Court, under sub-section (4) of Section 3H of the National Highways Act, is to abide by the mandate of law and has to act strictly in accordance with it and the Principal Civil Court will keep this fact in the back of mind while deciding these issues. Since, it is the matter of 2015, the learned Principal Civil Court, Patna is directed to dispose of the matter within



three months from the date of receipt/production of a copy of this order.

09. Since title over disputed land is yet to be decided, needless to say, the payment of compensation to eligible person will be subject to the final outcome of Land Acquisition Case No. 47 of 2015.

10. As the payment to respondent no. 3 has already been made, the matter has become infructuous, accordingly, it stands disposed of as such.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.02.2024
Transmission Date	NA

