

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1214 of 2017

Prakash Kumar Jha son of Late Banmali Jha Resident of Village - Hridayganj,
P.O. - Katihar Civil Court Campus, P.S. Sahayak, District - Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Special Land Acquisition Officer, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jibendra Mishra, Advocate
For the Respondent/s : Mr. Sumant Kumar Singh, AC to GA-2

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 09-05-2024

Heard learned counsel for the petitioner as well as learned counsel for the respondent no. 2 and I intend to dispose of the present petition at the stage of admission itself.

02. The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 02.06.2017 passed by the learned Sub Judge-I-cum-L.A. Judge, Katihar in Land Acquisition Execution Case No. 01 of 2011, whereby and whereunder the petition filed by the petitioner/decreed-holder claiming an amount of Rs. 1,25,989/- has been rejected.

03. Learned counsel for the petitioner submits that in L.A. Case No. 06 of 1988, the petitioner, who was the plaintiff, was allowed compensation of Rs. 13,04,333/- with interest at the



rate of 15% per *annum* till the date of realization of the amount in favour of the petitioner. Thereafter execution case No. 01 of 2011 was filed for execution of the decree of LA Case No. 06 of 1988. In the said case, a cheque bearing no. 1109808958 for an amount of Rs. 9,64,076/- was issued by the Special Land Acquisition Officer, Koshi, Saharsa in the name of learned Sub Judge-I, Katihar and same was deposited in the court. The learned Sub Judge-I, Katihar directed the petitioner/decreed-holder to furnish his bank account details and the said amount was transferred to the account of decree-holder through *chalan*. After that the balance amount was paid through another cheque bearing no. 0150299 to the tune of Rs. 3,00,400/-, which was again issued by the Special Land Acquisition Officer, Saharsa in the name of learned Sub Judge-I, Katihar and the same was deposited in the court of learned Sub Judge-cum-L.A. Judge, Katihar on 01.11.2012. However, this time the said cheque was handed over to the petitioner, but the said cheque could not be encashed by the petitioner as the same was in the name of Sub Judge-I, Katihar. In these circumstances, the said cheque was returned to the court of Sub Judge-I, Katihar by the petitioner and on orders of the learned executing court, Special Land Acquisition Officer, Saharsa issued a fresh cheque in favour of the petitioner/decreed-holder vide cheque no. 069354 for an



amount of Rs. 3,00,400/- which was duly credited in the account of the petitioner on 16.11.2013. In these circumstances, the petitioner claimed an amount of Rs. 1,25,898/- as interest for the delayed payment of his compensation amount in terms of the judgment and decree dated 12.08.2009 passed in LA Case No. 06 of 1988. Thereafter, the petitioner filed a petition in LA Execution Case No. 01 of 2011 for payment of the said amount of Rs. 1,25,898/- on 08.04.2016 claiming interest on non-payment amount at the rate of 15% from 01.03.2012 to 16.11.2013. A rejoinder to said application was filed and the learned Executing Court after hearing the parties rejected the claim of the petitioner as made in the petition dated 08.04.2016.

04. Learned counsel for the petitioner submits that the learned trial court committed error in holding that delay in payment was due to laches on the part of the petitioner but the said fact is not correct and it is an error of record. The said cheque no. 069354 for Rs. 3,00,400/- was issued in the name of learned Sub Judge-I, Katihar and for this reason the said cheque could not be encashed by the petitioner and which was returned to respondent no. 2 for issuance of the same in the name of petitioner. Therefore, the delay was caused due to action of the respondent no. 2 in not issuing the cheque in the name of the petitioner. The learned executing court has held that earlier a



cheque was also issued in the name of learned Sub Judge-I, Katihar but the same was encashed by the petitioner, so the petitioner has wrongly claimed that as the cheque was issued in the name of learned Sub Judge-I, Katihar, the same would not be encashed. But the learned executing court has not considered the fact that though the cheque for an amount of Rs. 9,64,076/- was issued in the name of learned Sub Judge-I, Katihar but the same was deposited in the court and the said amount was transferred to the account of decree-holder through *chalan* for which the bank account details of the petitioner was sought by the court itself. Therefore, the reasoning of the learned executing court that earlier cheque was issued in the name of learned Sub Judge-I, Katihar and same was encashed by the petitioner is not correct. Learned counsel further submits that the learned trial court itself adopted two methods for payment in dealing with two cheques. In the first cheque, the amount of was deposited in the account of petitioner through *chalan*, whereas for the second cheque, it was straightway handed over to the petitioner, which could not be credited in the account of the petitioner as the same was issued in the name of learned Sub Judge-I, Katihar. Learned counsel further submits that there is no delay or laches on the part of the petitioner, who accepted the second cheque as soon as it was deposited by the Special Land Acquisition Officer, Saharsa



to the court of learned Sub Judge-I, Katihar as the said cheque was deposited on 06.11.2013 and the same was received by the petitioner only on next date, i.e., on 07.11.2013, so there is no delay on the part of the petitioner. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside and respondent authority be asked to make the payment of interest amount to the petitioner, which the petitioner is rightfully entitled.

05. Learned counsel appearing on behalf of the respondent-State vehemently contends that there is no merit in the submission of the learned counsel for the petitioner. The authority timely issued the cheque. Out of the total decretal amount of Rs. 13,04,333/-, a cheque for an amount of Rs. 9,64,076/- was issued and was duly deposited in the account of the petitioner. The State authority again deposited Rs. 3,00,400/- vide cheque no. 0150299 dated 31.10.2012. Learned counsel further submits that the said cheque was not encashed within time due to fault and laches on the part of the decree-holder/petitioner. However, the learned Sub Judge-I-cum-L.A. Judge, Katihar, directed the Special Land Acquisition Officer, Koshi, Saharsa for issuance of fresh cheque vide letter no. 70 dated 07.09.2013. The directions were complied and Special Land Acquisition Officer, Koshi, Saharsa issued another cheque



bearing cheque no. 069354 dated 29.10.2013 for Rs. 3,00,400/- which was duly received and encashed by the decree-holder/petitioner. Learned counsel further submits that there is no delay or laches on the part of the State authorities rather it is on the part of the petitioner.

06. Having regarding to the submission made on behalf of the parties and also taking into consideration the material available on record, I think the learned Sub Judge-I-cum-L.A. Judge, Katihar erred when he made an observation that the cheque for amount of Rs. 9,64,076/- was though in the name of learned Sub Judge itself was encashed and deposited by the petitioner. The petitioner has explained the circumstances under which the said cheque was credited in his account. There is no dispute on the fact that the amount of said cheque was deposited in the account of decree-holder/petitioner through chalan in his account on orders of the court. So far as issuance of second cheque bearing no. 0150299 dated 31.10.2012 is concerned, either the Special Land Acquisition Officer, Saharsa should have issued the cheque straightway in the name of the decree-holder/petitioner or the concerned court should have adopted the same procedure for depositing the same in the account of decree-holder/petitioner, which was earlier adopted. For such laches, the petitioner could not be held liable. It is also



a fact that as soon as the second cheque bearing no. 069354 was issued, it was duly received by the petitioner within a day and deposited and encashed by him. So, there is no deliberate or laches apparent on part of the petitioner.

07. In the aforesaid facts and circumstances, I think the learned executing court passed the impugned order without proper consideration of the fact. Hence, the order dated 02.06.2017 passed by the learned Sub Judge-I-cum-L.A. Judge, Katihar in Land Acquisition Execution Case No. 01 of 2011 is set aside. In the result, the petition dated 08.04.2016 filed by the petitioner with regard to claim of Rs. 1,25,998/- is allowed.

Accordingly, the present civil misc. petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-05-2024
Transmission Date	NA

