

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10974 of 2019

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Sur Bihari Mandal S/o Late Kaushiki Mandal Vill.- Hariyari, Phulparas, P.s.-
Phulparas, Distt.- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
2. The Special Land Acquisition Officer Western Koshi Canal at Darbhanga
3. The Executive Engineer Western Koshi Canal Division, Jhanjharpur, Distt.- Madhubani
4. The Assistant Engineer Western Koshi Canal Division, Jhanjharpur, Distt.- Madhubani
5. The Junior Engineer Western Koshi Canal Division, Jhanjharpur, Distt.- Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Kumar Verma, Sr. Advocate with Mr. Rohan Verma and Mr. Prashant Sinha, Advocates
For the Respondent/s	:	Mr. Sajid Salim Khan, SC 25 with Ms. Prakritita Sharma, AC to SC 25

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 13-08-2024

Heard Mr. Rajiv Kumar Verma, learned Senior
Advocate representing the petitioner and Mr. Sajid Salim Khan,
learned Standing Counsel for the State.

2. During the pendency of the writ petition, the sole
petitioner, Sur Bihari Mandal died on 24.10.2023 leaving behind
two sons and three grandsons, out of which one grandson



namely, Aditya Kumar is substituted with consent of rest of the legal heirs *vide* order dated 25.07.2024.

3. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution seeking a direction to hold and declare the acquisition of land of the petitioner appertaining to Khata No. 42, Khesra Nos. 888, 887, 886, 885 and 1010 situated in village Hariyari, Block and Sub Division- Phulparas, District Madhubani pursuant to Land Acquisition Case No. 309/06-07 in connection with Koshi Project, Darbhanga stood lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act 2013') on account of the fact that the petitioner has neither been paid compensation till date nor the actual physical possession of the land has been taken by the respondent authorities. The petitioner also sought a declaration to hold the petitioner entitled for payment of compensation in terms of the Act 2013.

4. In the year 2007, the Government of Bihar came up with a project in the name and style of "Goriyari Minor Canal". As per the plan, the project passes through the middle of Hariyari village, which is a densely populated area of the



village. Apprehending the dislocation from their house and chance to put in great loss due to cutting down of their mahogni and mango orchard resulting into damage to the environment, the petitioner along with others represented before various authorities, particularly the Special Land Acquisition Officer, Koshi Project, Darbhanga, District Magistrate, Madhubani as well as the Chief Minister requesting them that if the road of the project is slightly deviated, the Government will neither have to acquire any land nor to pay any compensation to any person, as the deviated road passes through the Government land and that will also protect the major population of village Hariyari from being dislocated and destroyed.

5. Despite pendency of the aforementioned representation for slight deviation of the project/road, the Special Land Acquisition Officer, Koshi Project, Darbhanga issued a notice dated 30.04.2010 under Section 12(2) of the Land Acquisition Act 1894 (hereinafter referred to as the 'Act 1894') informing the petitioner that a compensation of Rs.1,32,538/- is to be paid to the petitioner under award prepared under Section 11 of the Act 1894. The petitioner along with others being aggrieved by the inaction of the respondent authorities in not deviating the road of the project approached before this Court in CWJC No.



10485 of 2010 wherein notice dated 30.04.2010 was also questioned. The aforesaid writ petition came to be disposed of *vide* order dated 12.07.2010 with a direction to the Minor Irrigation Department and the Engineers to consider the viability of shifting the proposed canal. The objection filed by the petitioner was directed to be referred by the Land Acquisition Officer to the Department before he disposes the objection filed on behalf of the petitioner. The order also stipulates that without disposal of objection, no steps can be taken under Section 6 of the Land Acquisition Act.

6. The petitioner of the said writ petition having found no compliance of the order dated 12.07.2010 moved this Court by filing contempt application bearing MJC no. 1371 of 2015. The contempt proceeding was disposed of *vide* order dated 07.08.2018 with an observation that the notification under Section 6 of the Land Acquisition Act had already been published in the district gazette on 04.01.2008, i.e., much prior to filing of the writ petition and passing of an order upon the same by this Court on 12.07.2010. Accordingly, the contempt petition stood dismissed. A review petition bearing Civil Review No. 218 of 2016 was also filed which came to be disposed of after having found no requirement of interfering with the order



under review dated 12.07.2008.

7. Adverting to the aforesaid facts, Mr. Verma, learned Senior Advocate vigorously contended that during the pendency of the writ petition, the new Act, namely Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 came into force. Section 24(2) of the said Act provides that in case of land acquisition proceeding initiated under the Act 1894, wherein an award under Section 11 has been made five years or more prior to the commencement of this Act but physical possession of the land has not been taken or compensation has not been paid, the said proceeding shall be deemed to have lapsed and the appropriate government shall initiate the proceeding of land acquisition afresh in accordance with the Act 2013.

8. Learned Senior Advocate representing the petitioner contended with all vehemence that the petitioner is still in physical possession of the land in question and till date he has not been paid any compensation against the acquisition of his land, therefore, in such circumstances, the acquisition of the land in question *vide* L.A. Case No. 309/06-07 stood lapsed in terms of Section 24(2) of the Act 2013.

9. The matter was earlier taken up on 21.06.2019,



when this Court having found the writ petition requires interpretation of Section 24(2) of the Act 2013 in light of the order of the Hon'ble Supreme Court reported in the case of ***State of Haryana v. G.D. Goenka Tourism Corporation Ltd., (2018) 3 SCC 585*** has directed to place the matter after final decision of the Larger Bench of the Supreme Court.

10. Two Interlocutory Applications have been filed; I.A. No. 1 of 2024 is for substitution of the legal heirs of the sole petitioner and another application bearing I.A. No. 2 of 2024 for stay of acquisition proceeding in terms of the order dated 21.06.2019. Adverting to the averments made in I.A. No. 2 of 2024, learned Senior Advocate further contended that after a lapse of five years of the order passed by this Court dated 21.06.2019 and 16 years of the notification dated 04.01.2008, the acquisition proceeding has once again commenced despite the fact that the entire land acquisition proceeding has already been lapsed in terms of Section 24(2) of the Act 2013, inasmuch as neither the possession was taken nor the compensation was paid. Learned Senior Advocate also urged that the proceeding of the land acquisition was initiated way back in the year 2006-07 which was duly objected by the villagers including the petitioner that the same is not viable or in fact against the



interest of villagers. Even a slight deviation of the alignment will not only save the major population of the village Hariyari and its ecology from being dislocated and destroyed but will also save the public exchequer. However, till date no decision in this regard has been taken. Once the very purpose of the land acquisition has been defeated after a lapse of 18-19 years, the authorities once again commenced the execution of the project without payment of compensation or taking over of possession knowing very well that land acquisition proceeding has already stood lapsed. The learned Senior Advocate drew the attention of this Court to Section 24(2) of the Act 2013 and also placed the relevant paragraphs of the judgment rendered by the Five Judges Bench of the Apex Court in the case of ***Indore Development Authority vs. Manoharlal, (2020) 8 SCC 129.***

11. *Per contra*, learned Advocate for the State countering the submissions advanced on behalf of the petitioner contended that primarily the writ petition suffers from gross delay in challenging the validity of acquisition proceeding, hence it does not require any interference. To buttress the aforesaid submission, reliance has been placed on a judgment rendered by the Hon'ble Supreme Court in the case of ***Andhra Pradesh Industrial Infrastructure Corporation Limited vs.***



Chinthamaneni Narasimha Rao, (2012) 12 SCC 797.

Referring thereto, learned Government Advocate contended that in the aforementioned case the Hon'ble Court taking note of the admitted fact that the declaration under Section 6 of the Act was made on 07.08.1996 and the award was made on 07.01.1998. A petition challenging the validity of declaration under Section 6 of the Act on the ground that it was declared beyond the period specified under Section 6 of the Act was filed in November, 1998. The Hon'ble Supreme Court looking to the facts of the case and in the light of the settled law held that the objection filed by the land owners was at a belated stage as the validity of declaration under Section 6 was challenged two years after its issuance and after possession of the land had been taken, is barred by gross delay. The Hon'ble Supreme Court also observed that if the land owners are aggrieved by the acquisition proceeding they must challenge the same at least before an award is made and possession of the land is taken by the Government authorities.

12. Learned Government Advocate further contended that admittedly in the case in hand the notification under Section 6 of the Land Acquisition Act, 1894 had been published in the district gazette on 04.01.2008 and award has been declared



on 17.04.2010. Further the land ownership of the acquired land has been handed over/delivered to the requisitioning officer *vide* certificate of possession dated 08.05.2010 and all the more it is the case of the petitioner that a notice under Section 12(2) of the land Acquisition Act, 1894 was served upon the petitioner that a compensation to the tune of Rs.1,32,538/- was assessed to be paid to the petitioner under award prepared under Section 11 of the Act 1894. In the aforesaid premise, the learned Advocate thus submitted that once the possession has already been handed over to the requisitioning officer, the twin requirement as contemplated under Section 24(2) of the Act, 2013 is not fulfilled. The Deemed lapse of proceeding initiated under 1894, Act is occasioned only when two conditions specify in Section 24(2) are cumulatively satisfied i.e., (A) possession of the acquired land has not been taken, and (B) compensation has not been paid. Even if one of the condition is not satisfied, the acquisition proceeding shall not lapse is the mandate of Five Judges Bench of the Hon'ble Supreme Court in the case of ***Indore Development Authority*** (*supra*); is the contention of the learned Advocate for the State. Learned Government Advocate has further taken this Court to paragraph No. 246 of the aforenoted decision and contended that when the State has



acquired land and an award has been passed, land vest free from all encumbrances in the State Government. The act of vesting of the land in the State is with possession, any person retaining possession, thereafter has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

13. This Court has anxiously heard the learned Advocate for the respective parties and also carefully perused the materials available on record. So far the plea of the petitioner with regard to shifting of the alignment of the project is concerned, the same does not find any merit consideration as it is the Project Engineers who are professionally managed having expertise in the field of development and maintenance of canals, roads and other infrastructures, the Courts are not equipped to decide viability and feasibility of particular project and whether particular alignment would subserve larger public interest. In an identical matter in the case of *Union of India vs. Kushala Shetty reported in (2011) 12 SCC 69* where number of land owners filed objections claiming higher compensation by asserting that after acquisition, his/her remaining land will become useless and will not be able to carry out any improvement. Apart from some of the landowners filed further



objection and pleaded that their land/property may not be acquired and the government land lying just opposite the land proposed to be acquired may be used for widening the national highways. Some others claiming that they had constructed shops, etc. and same can be saved if alignment of the highway was slightly changed. The Hon'ble Supreme Court in its penultimate paragraph no. 28 has held as follows:

“28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under



challenge cannot be sustained.”

14. Now coming to the merits of this case, this Court also finds that some dates and events are admitted. The land acquisition proceeding was initiated pursuant to Land Acquisition Case No. 309/06-07. The notification under Section 6 of the Land Acquisition Act was published in the district gazette on 04.01.2008, even prior to filing of the first writ petition i.e., CWJC No. 10485 of 2010. After publication of the notification under Section 6, an award has also been declared under Section 11 of the Act 1894 on 17.04.2010 and thereafter possession of the acquired land has been handed over/delivered to the requisitioning officer *vide* certificate of possession dated 08.05.2010. The factum of issuance of notice under Section 12(2) of the Act, 1894 is admitted by the petitioner in paragraph no. 7 of the writ petition. Thus, once the aforementioned facts reveal that the possession of the land has been handed over to the requisitioning officer; two conditions in Section 24(2) which are required to be satisfied cumulatively in order to hold and declare deemed lapse of proceeding does not arise.

15. The Five-Judges Bench of the Hon'ble Supreme Court in the case of ***Indore Development Authority*** (*supra*) has held in uncertain terms that the deemed lapse of the land



acquisition proceeding under Section 24(2) of the Act, 2013 takes place where due to inaction of the authorities for five years or more prior to the commencement of the said Act, the possession of the land has not been taken nor compensation has been paid. In case possession has been taken, compensation has not been paid, then there is no lapse. Similarly, if the compensation has been been paid, possession has not been taken then there is no lapse.

16. In case in hand the record clearly suggests that the possession has already been handed over to the requisitioning officer which fact has also been taken note of by this Court in the earlier round of litigation in MJC No. 1371 of 2015 and Civil Review No. 218 of 2016. The afore noted orders have been marked as Annexures-5 and 6 to the writ petition. The Five Judges Bench in the case of *Indore Development Authority (supra)* while dealing with the issue of mode of taking possession under the 1894 Act has also made it clear that when the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to



retain it and starts cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceeding for obtaining possession thereof. Further retaining of the land or any re-entry is made on the land or someone start cultivation on the open land or starts residing in the out side, is deemed to be trespasser on land which is in possession of the State. The possession of trespasser always enures for the benefit of the real owner that is the State Government in the case.

17. Now coming to the issue with regard to the writ petition being barred by delay and laches, this Court finds substance in the submission of the learned Advocate for the State. The cause of action, if any, has arisen in favour of the petitioner the date on which the new Act, 2013 came into force. The entire case of the petitioner is based on the provisions of deemed lapse of proceeding under Section 24(2) of the Act which clearly says that it is occasioned only where the award under Section 11 of the 1894 Act, has been made five years or more prior to the date of commencement of the 2013 Act and the two conditions specify in Section 24(2) are cumulatively satisfied i.e., (A) possession of the acquired land has not been



taken, and (B) compensation has not been paid. Even if one of the condition is not satisfied, acquisition proceeding shall not lapse. However, the writ petition has been filed after a delay of five years of coming into force of the new Act, 2013 and nine years after the formalities of acquisition has been completed.

18. In view of the discussions made hereinabove and the decision rendered by the Five Judges Bench of the Hon’ble Supreme Court in the case *Indore Development Authority* (*supra*), on all the counts, this Court does not find any merit in the writ petition and accordingly the same stands dismissed.

19. There shall be no order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.08.2024
Transmission Date	

