

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10309 of 2022

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Amarjeet Kumar S/o Sri Ghanshyam Chandra resident of Village-
Madhusudan Nagar (Gurudhan), P.S.-Bounsi, District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. Collector-cum-District Magistrate, Banka
 3. District Land Acquisition Officer, Banka
 4. Sub Divisional Magistrate, Banka
 5. Circle Officer, Banka
 6. Chief Engineer, Rural Works Department, Bhagalpur
 7. Superintending Engineer, Rural Works Department, Bhagalpur
 8. Executive Engineer, Rural Works Department, Works Division, Banka-2
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Kumar Singh, Advocate
		Mrs. Chhaya Mishra, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 18-11-2024

Heard learned counsel for the petitioner and learned SC-
25 for the State.

2. The Collector, Banka in compliance of the order
dated 14.11.2024 is present in the Court.

3. The Collector, Banka, at the outset, submits that the
land in dispute belongs to the petitioner but then he is not entitled
for compensation for the reason that the land in dispute for a pretty
long time even prior to 1986 was being used by the villagers as
rural road.



4. The said submission of the Collector has been recorded at the outset as it would have bearing on adjudication of the instant writ application.

5. Learned counsel for the petitioner submits that land pertaining to Khata No. 36, Khesra No. 1955, area 80 decimal (in dispute 20 decimal), Thana No. 386, Mauza Bagdumba was purchased by the mother of the petitioner Late Shobha Ghose from Arvind Kumar Rai by a registered sale deed dated 20.02.1986.

6. It is further submitted that the respondent authorities constructed Bhagalpur-Dumka Road to Bagdumba under Chief Minister Rural Land Anurakshan Programme in which 20 decimal of the land in question was used without acquiring the same under Section 4(i) of the Land Acquisition Act, 1894 and without consent of the land owner, as such, no compensation was paid to the land owner. It is next submitted that the mother of the petitioner after purchasing the land got the same mutated and Jamabandi No. 1675 was created. The Circle Officer, Baunsi also issued Land Possession Certificate (Annexure-2) in the name of the mother of the petitioner, thereafter the rent of the land has been paid up-to-date up till 2022-23 (Annexure-3). Learned counsel next submits that subsequently even the Circle Officer issued Land Possession Certificate on 20.06.2024 when the dispute had arisen (Annexure-



P-10 of the supplementary affidavit on behalf of the petitioner). It is also submitted that the Circle Officer even accepted rent up-till 2025.

7. It is further submitted that the mother of the petitioner died on 26.04.2021 but prior to her death she had objected the construction of the road without acquiring the land. It is next submitted that from perusal of Annexure-4, it would manifest that the road was constructed under Chief Minister Rural Land Anurakshan Programme.

8. It is further submitted that since no action was taken on the objection of the mother of the petitioner, hence, the petitioner made a representation dated 07.06.2022 (Annexure-5) before the District Magistrate, Banka raising his grievance and the copy of the representation was also sent to other respondents.

9. It is submitted that since representation of the petitioner was not acted upon, as such, the instant writ application has been filed seeking a direction upon the authorities to pay compensation of 20 decimal of land utilized for construction of the aforesaid road without acquiring the land.

10. It is further submitted that a counter affidavit on behalf of the Collector (respondent no. 2) and District Land Acquisition Officer (respondent no. 3) was filed on 10.02.2023



wherein it was pleaded that the road in question was constructed by the Rural Works Department, Bhagalpur represented by the respondent no. 6 and 8 in the year 2012. Further, the road was constructed under PMGSY bearing Package No. BR-03-043 pursuant to the scheme 2008-09, in pursuance whereof an agreement was executed in between respondent no. 8 and the contractor. The road, accordingly, was constructed in the year 2012 and the maintenance of the road was fixed from 01.10.2012 to 30.09.2017. The writ petition has been filed in the year 2022 i.e. 10 years after the construction of the road when NIT was invited for maintenance of the road from 23.09.2021 to 22.09.2026, thus it is contended that had the road been built on the land of the petitioner in that event the writ petition would not have been filed after such a delay.

11. At this stage, learned counsel for the petitioner submits that though the Collector and the respondent no. 3 in their counter affidavit filed on 10.02.2023 have taken a stand that had the land belonged to the petitioner in that event the writ petition would not have been filed after such a delay but then today when the case was taken up, at the outset, the Collector accepted this fact that the land belongs to the petitioner.



12. It is further submitted that the petitioner filed his reply to the counter affidavit of respondent no. 2 and 3 on 28.02.2023 wherein it was pleaded that since objection of the mother of the petitioner was not acted upon, hence, after the death of his mother, the petitioner took up the cause. Further, from perusal of Annexure-4, it would manifest that the same does not record that the road was constructed under PMGSY scheme.

13. Learned counsel for the petitioner next submits that the counter affidavit filed on behalf of the respondent no. 2 and 3 on 10.02.2023 was based on the counter affidavit filed on behalf of the respondent no. 8 on 24.08.2022 as the pleading if not akin were similar. It is further submitted that after the counter affidavit dated 10.02.2023 on behalf of the respondent no. 2 and 3 was filed the case was taken up by this Court on 24.03.2023 and the Court recorded that petitioner at para 9 of the writ petition has specifically stated that the road has been constructed on his land and the counter affidavit while replying para 9 of the writ petition states that it is a matter of record, hence, in effect, the respondents agreed that construction of road took place on the land of the petitioner without acquisition, hence, the Collector along with the DLAO (respondent no. 3) and the Executive Engineer (respondent



no. 8) were directed to file further counter affidavit as the Court was not satisfied by the counter affidavit dated 10.02.2023.

14. Learned counsel for the petitioner next submits that this Court while recording its order dated 24.03.2023 had passed the order based on the principle of doctrine of non-traverse as the Collector and the DLAO in their counter affidavit filed on 10.02.2023 had not replied the specific averment made by the petitioner in the writ application at para 9 but then in the counter affidavit very conveniently, it was pleaded that had the land belonged to the petitioner in that event the writ application would not have been filed after such a delay.

15. Learned counsel for the petitioner next submits that a supplementary counter affidavit dated 23.05.2023 was filed on behalf of the respondent no. 2 and 3 duly sworn by the DCLR wherein it was pleaded that respondent no. 8 vide his letter no. 609 dated 26.04.2023 had requested the Circle Officer, Bounsi to measure the land in question and to submit a report to show whether the land in question used for construction of the road was raiyati land of the petitioner or not. The Circle Officer, accordingly, after getting the land measured by the Amin submitted his report vide letter no. 371 dated 27.04.2023 (Annexure-A series to the supplementary counter affidavit) along



with the trace map. Further, the respondent no. 8 vide his letter dated 28.04.2023 (Annexure-B to the supplementary counter affidavit) informed the Collector with regard to the valuation of raiyati land of the petitioner used for construction of the road, after the Circle Officer submitted his report dated 27.04.2023. The letter dated 28.04.2023 clarified that 20 decimal of land of the petitioner was used for construction of the road.

16. Learned counsel for the petitioner submits that when counter affidavit on behalf of the respondent no. 2 and 3 was filed on 10.02.2023, in that counter affidavit a stand was taken that perhaps the land does not belong to the petitioner, but when the supplementary counter affidavit dated 23.05.2023 was filed on behalf of the respondent no. 2 and 3 in that counter affidavit, after measurement of the land by the Circle Officer, the Collector accepted that the land in dispute belongs to the petitioner and 20 decimal of land of petitioner was used for construction of the road. It is further submitted that respondent no. 3 in pursuance of letter dated 28.04.2023 of the respondent no. 8 also issued letter no. 87 dated 28.04.2023 (Annexure-C to the supplementary counter affidavit) addressed to the respondent no. 8 submitting valuation report of the land under perpetual lease policy amounting to Rs.40 lakhs. The letter dated 28.04.2023 of the respondent no. 3 also



recorded that in view of letter no. 450 dated 12.04.2017 of the Revenue Department, a Six Member Committee would be constituted to ascertain the nature of the land in pursuance whereof the compensation can increase or decrease.

17. It is next submitted that supplementary counter affidavit filed on behalf of the respondent no. 2 and 3 on 23.05.2023, after recording the aforesaid facts also recorded that the writ petition thus has become infructuous and is fit to be dismissed.

18. Learned counsel submits that had this Court believed the supplementary counter affidavit filed on behalf of the Collector and DLAO perhaps the writ petition would have been permitted to be withdrawn considering that the grievance of the petitioner stands redressed.

19. Learned counsel for the petitioner further submits that a supplementary counter affidavit was also filed on behalf of the respondent no. 8 on 04.05.2023 in compliance of the order dated 17.04.2023 of this Court wherein it was pleaded that after measurement of the land by the Circle Officer and valuation report of the DLAO, the grievance of the petitioner stands redressed.

20. It is submitted that from the supplementary counter affidavit filed on behalf of the respondent no. 2 and 3 and the



supplementary counter affidavit filed on behalf of the respondent no. 8 one thing which was common was that all the three authorities had taken a similar plea that grievance of the petitioner stands redressed.

21. Learned counsel for the petitioner next submits that from perusal of the supplementary counter affidavit filed on behalf of the respondent no. 2, 3 and 8, it would manifest that the authorities had taken a conscious decision to compensate the petitioner with regard to 20 decimal of land which was used for the construction of the road. Further, it is an admitted fact that the land in dispute is raiyati land of the petitioner and apart from the petitioner there are no claimants.

22. It is submitted that all of a sudden, a second supplementary counter affidavit was filed on behalf of the respondent no. 2 and 3 dated 05.02.2024 which was sworn by the respondent no. 3.

23. Learned counsel submits that the averments made in the second supplementary counter affidavit was in complete breach of the stand taken by the Collector and the DLAO earlier in their counter affidavit which was filed on their behalf as recorded hereinabove. It is submitted that in the second supplementary counter affidavit it has been pleaded that respondent no. 8



provided the proposal after consulting the land holder under perpetual lease policy on 03.01.2024 (Annexure-E series to the respondent no. 3). The respondent no. 3 finding deficiencies in the proposal vide his letter no. 05 dated 03.01.2024 (Annexure-F series) returned proposal to respondent no. 8 to rectify the deficiencies. Since the deficiencies were not rectified and time was lapsing as such a reminder was sent when the respondent no. 2 (the Collector) vide his memo no. 37 dated 27.01.2024 (Annexure-G series) constituted a Three Member Committee of respondent no. 3, DCLR and respondent no. 5 to inquire and submit a report.

24. It is submitted that the Three Men Committee examined the sale deed of the mother of the petitioner and found that there is a road in the sale deed on the south side of the purchased land boundary. Further, mother of the petitioner had sold the portion of the land in question on 24.07.2013, 28.02.2013 and 27.01.2014 by three sale deeds. Further, mother of the petitioner on 01.03.2013 (Annexure-H series) sold the land to different purchasers through sale deeds in which the mother of the petitioner has been shown in north side of the rural road. It appears that mother of the petitioner has already sold the land and petitioner now is illegally claiming the land. Further, the Three Men Committee also got the land measured by Anchal Amin and it



was found that the rasta shown in the south side of the boundary of the land is not found on the spot as such it could not be measured. Further, Three Men Committee also made spot verification and examined the villagers who gave in writing that they are using the purchased land of the mother of the petitioner as rural road since 1986. Accordingly, the Three Men Committee which was constituted on 27.01.2024 submitted its report to the respondent no. 2 vide their letter no. 41 dated 31.01.2024 (Annexure-J series).

25. Learned counsel for the petitioner submits that it absolutely does not stand to reason that if the land has already been sold by the mother of the petitioner then why no claimants are there. It is further submitted that it is the petitioner alone who is litigating and claiming the compensation of his raiyati land on which the aforesaid road was constructed and even Land Possession Certificate was issued vide Annexure-3 and subsequently in the year 2024 and the rent receipt has been accepted up till the year 2025. Further, the Collector at the outset had accepted that the land is raiyati land of the petitioner.

26. Learned counsel for the petitioner next submits that even if it is presumed though not admitted that what has been stated in the second supplementary counter affidavit filed on behalf of the Collector is correct in that event the assertion in the



second supplementary counter affidavit is that the villagers were examined who disclosed to the Three Men Committee that they are using the road since before 1986 which was purchased by the mother of the petitioner. It is submitted that if petitioner or his mother were not objecting the villagers from using the road in question whether that gives an authority to the District Authorities to use the land for the proposes of constructing the road without acquiring and giving compensation when the Collector at the outset had admitted that he does not dispute that the land does not belong to the petitioner but the compensation is being disputed on the ground that the land was being used by the public from much before and also that the sale deed by which the mother of the petitioner had purchased the land had recorded the boundary of the land in question and in the south road was shown but when she sold the land to different purchasers the boundary of the land changed and in the north the road was shown. It is next submitted that it absolutely defies all logic, wisdom and reasonable administrative behaviour that when the Circle Officer on direction of his superior authorities earlier got the land in question measured and found that 20 decimal of land of the petitioner was utilized for construction of the aforesaid road and thereafter again issued a Land Possession Certificate but then the same authority when he



became a Member of the Three Men Committee resiled from his earlier findings which amply demonstrates that he was working under the dictates of his superior.

27. Learned counsel for the petitioner at the cost of repetition submits that had this Court believing the respondent authorities had allowed the writ application to be withdrawn on the ground that grievance of the petitioner stands redressed in that case what would have happened, the second round of litigation would have started.

28. Learned counsel for the State submits that the Collector has fairly at the outset submitted that the land in dispute belongs to the petitioner but then the land was used as road by the villagers. It is further submitted that if the petitioner wants the District Administration is ready to return the 20 decimal of land on which the aforesaid road was constructed on which learned counsel appearing on behalf of the petitioner submits that since a road has been constructed on his raiyati land and the same is being used by the public at large including the vehicles and if the District Administration now will return the land in that event the villagers may get enraged and some untoward occurrence may take place.

29. After hearing learned counsel for the parties and the Collector, Banka the Court is in complete agreement with the



submissions made by the learned counsel appearing on behalf the petitioner and since petitioner is not willing to take his land back as offered by the learned counsel for the State on instruction of the Collector, hence, the Court directs the Collector, Banka to ensure that the compensation of the land in question be paid within a period of four months from the date of receipt/production of a copy of this order.

30. It is made clear that the Court has not expressed any opinion with regard to the amount of compensation, the same would be decided by the Collector, Banka in accordance with law.

31. Accordingly, the writ application is disposed of.

32. The personal appearance of the Collector-cum-District Magistrate, Banka is dispensed with.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	20.11.2024
Transmission Date	

