

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1106 of 2023

In

Civil Writ Jurisdiction Case No.9409 of 2022

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S.M Ehteshamul Hasan Rehmani, Son of S.M. Fazle Hasan, Resident of Mohalla - Pakki Sarai Road, In front of Urdu Girls High School, Chandwara, P.S. - Town and District - Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar through its Principal Secretary, Water Resources Department, Govt. of Bihar.
2. The District Magistrate-cum-Collector, Muzaffarpur.
3. The Sub-Divisional Officer, Muzaffarpur.
4. The Tirhut Gandak Canal Project Officer, Division Motipur, Camp-Muzaffarpur, District- Muzaffarpur.
5. The Block Development Officer, Block and District- Muzaffarpur.
6. The Circle Officer, Pusa Circle and District- Samastipur.

... .. Respondent/s

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with

Letters Patent Appeal No. 1108 of 2023

In

Civil Writ Jurisdiction Case No.10637 of 2021

- =====
1. Ashish Kumar Son of Late Krishna Deo Thakur, Resident of Village and P.O.- Dubaha Bujurg, P.S- Sakra, District- Muzaffarpur.
 2. Jay Narayan Thakur Son of Late Balroop Thakur, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.
 3. Hari Shankar Sharma Son of Gauri Thakur Sharma, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.
 4. Ranjan Kumar Sharma, Son of Sri Jagarnath Sharma, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.
 5. Sushil Kumar Jha, Son of Late Baidyanath Jha, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.
 6. Amit Kumar, Son of Lalan Prasad Sharma, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.
 7. Rishikesh Kumar Son of Maheshwar Thakur, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.
 8. Shatrudhan Thakur Son of Kishori Thakur, Resident of Village and P.O.- Dubaha Bujurg, P.S.- Sakra, District- Muzaffarpur.

... .. Appellant/s

Versus



- 1. The State of Bihar Through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
- 2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
- 3. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
- 4. The Director, Consolidation Directorate under Revenue and Land Reforms Department, IVth Floor, Land Development Bank, Budh Marg, Patna.
- 5. The Engineer-in-Chief, Sinchai Srijan, Water Resources Department, Bihar, Patna.
- 6. The Superintending Engineer, Planning and Monitoring, Circle-2, Water Resources Department, Patna.
- 7. The Superintending Engineer, Tirhut Irrigation Circle, Ratwara, Muzaffarpur.
- 8. The Chief Engineer, Sinchai Srijan, Water Resources Department, Motihari.
- 9. The Executive Engineer, Tirhut Canal Division, Motipur Camp Muzaffarpur.
- 10. The District Magistrate, Muzaffarpur.
- 11. The Superintendent of Police, Muzaffarpur.
- 12. The Sub Divisional Magistrate, East- Muzaffarpur.
- 13. The Circle Officer, Moraul, Muzaffarpur.
- 14. The Circle Officer, Sakra Muzaffarpur.
- 15. The Station House Officer, Sakra, Muzaffarpur.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1106 of 2023)

For the Appellant/s : Mr. Mohammad Abu Shajar

For the Respondent/s : Mr. Anjani Kumar, AAG- 4

(In Letters Patent Appeal No. 1108 of 2023)

For the Appellant/s : Mr. Mohammad Abu Shajar

For the Respondent/s : Mr. Md. Khurshid Alam, AAG- 12

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 10-05-2024

Heard learned counsel for the parties.

2. Both the Letters Patent Appeals arise out of



common judgment/order dated 04.09.2023 passed by the learned Single Judge of this Court in C.W.J.C. No. 10637 of 2021 and C.W.J.C. No. 9409 of 2022 and as such with the consent of the parties, the same are being heard together and disposed of by this common judgment.

3. Initially two writ petitions were filed, one being C.W.J.C. No. 10637 of 2021 seeking a direction to restrain the respondents from forcibly dispossessing the petitioners from their Chak lands/holdings as fully detailed in Annexure-P/2, situated in Mauza Dubaha Bujurg without following the procedure established by law. Another writ petition being C.W.J.C. No. 9409 of 2022 has been filed for restraining the respondents in the work of construction of Canal over the land of the petitioners in the light of the land acquisition proceeding held in the year 1974.

4. Challenging the orders/judgment of the learned Single Judge, the learned counsel for the appellants have put forth manifold of submissions. It is contended that the land acquisition proceedings were initiated in the year 1972-73, but the actual physical possession had not been taken of the lands of the petitioners and others of the village Dubaha Bujurg. They continued in actual physical possession of their *raiyati* lands.



This fact also fortified for the simple reason that the Government of Bihar accepted the rent of the lands in question and issued a rent receipt in lieu thereof. The appellants also rely on the Scheme of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Consolidation Act, 1956'). The consolidation operation was conducted, which was closed after publication of the notification under Section 26A of the Consolidation Act, 1956 in the year 1979. Thus, there is a serious dispute with regard to the identity of the land because so called acquisition of the land of the appellants in the year 1973-74 having their identity after issuance of the fresh maps and preparation of records, which caused change in configuration of the land.

5. Learned counsel for the appellants further contended that irrespective of the fact that the respondent State has come out with records showing land acquisition was done in the year 1972-73, but no payment or any kind of award has been made to the *raiyats* on the basis of consolidation map *khatian*. The appellants have in possession, certificate of transfer in Form 15, under Section 14 of the Consolidation Act, 1956, which is the conclusive proof of the title and possession of the appellants in respect of the land. It has also been urged that some of the



affected persons of the area in question were also transferred their lands through valid registered sale deeds. They are also in possession of the Land Possession Certificate and land receipts for the new plots were also issued is the contention of the appellants.

6. It was also the contention of the appellants that the writ petitioners-appellants herein and their forefathers continued in peaceful possession of the land in question for the last 50 years. Even assuming the lands were acquired and possession were taken by the State Government, it was only a paper work, since the State Government by conducting the operation of Consolidation under the Consolidation Act on the land in question by issuance of rent receipts, the State has waived all their rights and admitted the title and possession of the appellants. In the aforesaid facts, the land acquisition proceeding itself lapse under 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'). Moreover, the very object of the land acquisition itself is defeated when the Gandak Project for construction of the canal was found not viable and it was abandoned in the midst of the construction work long back.



7. Mr. Abbu Haider, learned counsel for the appellants referring to the judgment under appeal has vigorously contended that the findings of the learned Single Judge of this Court are beyond the record that all the raiyats were paid full compensation and some of them have received enhanced compensation in view of the order passed by the competent court when the matter was referred under Section 18 of the Land Acquisition Act, 1894. Learned Single Judge failed to appreciate that once the State admitted that the appellants are encroachers and have to be evicted by a proceeding under the Bihar Public Land Encroachment Act, 1956, but at no point of time any proceeding as such has been initiated. In any view of the matter, the State themselves admitted that the Land Acquisition Proceeding of 1973-74 was closed in the year 1985 and after that nothing was done, the appellants since then, have been in continuous and uninterrupted possession over the land in question, was the contention of the appellants.

8. On the other hand, learned Advocate General representing the State of Bihar countering the contentions of the appellants highlighted the importance of the project, namely, Tirhut Canal Project/Gandak Project. The project has the irrigation potential of 1.46 lakhs hectares of the land and the



project will cover the residual CCA of 1.22 lakhs hectares. The project is of public importance for which the notification for acquisition was issued under the provision of the Land Acquisition Act, 1894 by virtue of notification no. 115 dated 31.01.1973. Declaration of notification bearing no. 1141 dated 04.09.1973 was published in Bihar Gazette dated 05.12.1973 and the awards were prepared on 13.07.1974. Almost all the raiyats were paid full compensation amount in the month of July-August, 1974. The possession of the acquired land was taken on 13.08.1974 under Form 17 of the Land Acquisition Act, 1894, the copies of which have been placed on record by filing counter affidavit in the writ petition. The payment vouchers and land possession certificates are also produced as Annexures-A and B of the counter affidavit in C.W.J.C. No. 9409 of 2022.

9. Learned Advocate General further contended that ancestors of the appellants and in some cases, the appellants had already received compensation for acquisition of their respective lands. The ancestors of the appellants and affected persons, whose lands were acquired, have never raised any grievance. After 50 years of acquisition of the land in question, the writ petitions are filed for oblique reasons. It is also



contended that some of the persons with identical grievance have approached this Court with a prayer to reopen the land acquisition proceeding in C.W.J.C. No. 77 of 2014. Similar prayer was made that the possession of the land has never been taken by the Government and in terms of Section 24(2) of the Act, 2013 the proceeding would lapse and the land acquired having never been put to use till date, there was no necessity for acquisition and as such the land must be restored to the appellants. The learned Single Judge have considered all the aspects, negated the claim of the petitioners of the said case.

10. In another case, some of the persons approached this Court in C.W.J.C. No. 4075 of 2017, raising similar issue, which also came to be dismissed by a learned Single Judge holding that once the acquisition proceeding is completed after taking over of possession, by the competent authority and payment of compensation to the land owner, the acquired land vests in the State in view of the provisions of Section 16 of the old Act.

11. Countering the submission of the learned counsel for the appellants it is argued that due to consolidation proceedings, the lands in question have been consolidated as a new Chak khata, which proceeding came to an end in the year



1979, after the land acquisition proceeding. Thereafter at no point of time possession of the land was taken. Learned Advocate General finally asserted that even as per the submission, land acquisition has been completed much before the final publication of the consolidation proceeding, it will have no bar on the acquisition already made, particularly, when the possession taken, award published and award amount was received by most of the land owners. Moreover, no objections was raised by the appellants or their ancestors about the acquisition proceedings. After lapse of 47-48 years, the writ petitioners-appellants herein are raising questions with malafide intention with a view to unsettle the settled acquisition proceeding.

12. Learned Advocate General in order to demolish the contention of the appellants placed reliance on the decisions of the Hon'ble Supreme Court in the case of **Santosh Sharma & Ors. Vs. Union of India & Ors., (2013) 15 SCC 563, Andhra Pradesh Industrial Infrastructure Corporation Limited Vs. Chinthamaneni Narsimha Rao, (2012) 12 SCC 797**, and further on a judgment rendered by a Constitution Bench of the Hon'ble Supreme Court in the case of **Indore Development Authority Vs. Manoharlal & Ors., (2020) 8**



SCC 129.

13. We have heard the learned counsel for the respective parties and also perused the materials available on record.

14. The question posed before this Court is as to whether the petitioners are entitled to continue possession over the lands, which have already been acquired many years back, on the contention that actual physical possession has not been taken. This Court finds that admittedly the land acquisition proceeding was initiated in the year 1972-73 vide different land acquisition cases. The learned Single Judge after careful perusal of the records concluded that the declaration of notification was published in Bihar Gazette on 05.12.1973 and awards were prepared on 13.07.1974. All the raiyats were paid full compensation amount in the year 1974 itself. Some of them have accorded enhanced compensation in terms of Section 18 of the Land Acquisition Act, 1894.

15. The possession of the acquired land was taken on 13.08.1974 under Form 17 of the Land Acquisition Act, 1894, which forms part of the counter affidavit in C.W.J.C. No. 10637 of 2021, as contained in Annexure-A Series. The payment vouchers and land possession certificate are also annexed as



annexures -A & B of the counter affidavit in C.W.J.C. No. 9409 of 2022. The finding of the learned Single Judge is based on documentary evidence, which cannot be refuted by the writ petitioners-appellants herein in such a casual and cavalier manner.

16. In the aforementioned factual position, the contention of the appellants of deemed lapse of proceeding initiated under Land Acquisition Act, 1894 does not arise. The issue has been set at rest by the Constitution Bench of the Hon'ble Supreme Court in the case of **Indore Development Authority** (supra) where the Hon'ble Court held that deemed lapse of proceedings initiated under Land Acquisition Proceeding Act, 1894 is occasioned only when award under Section 11 of the 1894 Act has been made five years or more prior to the commencement of the Act, 2013 and the two conditions of possession of the acquired land having not been taken and compensation having not been paid is cumulatively satisfied. If one of these conditions are not satisfied, the acquisition proceeding under the 1894 Act shall not lapse.

17. There would not be any difficulty in holding that the mode of taking possession under the 1894 Act is as contemplated under Section 24(2), by drawing of inquest



report/memorandum. Once the award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in the State. There is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken, there is no lapse under Section 24(2) of the Act, 1894, has already been held by the Hon'ble Supreme Court in the case of **Government of NCT of Delhi & Anr. Vs. Dayanand & Anr. (2023) 5 SCC 581.**

18. The contention of the appellants regarding non-viability of the project and its abandonment has no legs to stand in view of the contention of the State of Bihar that having taken note of the importance of the project, the construction work of the Canal has already commenced for which the Government of Bihar has already entered into an agreement with the concessionaire on 23.09.2020 and the same is going on. Even otherwise, once public interest is accepted as the superior equity, it would override individual equity.

19. It is well settled that acceptance of rent by the State Government or issuing rent receipt does not create a title over the land. Thus, the claim of the appellants based on rent receipts does not make the case of the appellants better. Moreover, there is no estoppel against law. The State is not



bound by the acts of its officers, if the same has been done by them outside their authority or power of the public authority to make it. Any action done unauthorizedly and without jurisdiction does not bind the State Government, is well settled law.

20. This Court is also not oblivious of the fact that similar issues have been agitated by different set of persons, identically situated, before this Court, in different writ petitions, which came to be rejected and that judgment/order has not been questioned.

21. The decisions relied on by the learned Advocate General bring forth the principle that a time barred claim does not reopen concluded proceedings nor allow land owners to question the legality of the mode of taking possession to reopen proceedings already concluded.

22. In similar situation, the Hon'ble Supreme Court in the case of **Santosh Sharma** (supra) has held that there was no justification for entertaining a challenge against the acquisition proceedings after 35 years of acquisition. Further in the case of **Andhra Pradesh Industrial Infrastructure Corporation Limited** (supra) it was held that once an award has been passed and possession has been taken, the land vests in



the State and there is no lapse under Section 24(2) of the Act, 2013.

23. The contention of the appellants that some of the owners have sold their lands after the land acquisition proceeding through valid registered sale deeds and the Land Possession Certificate and rent receipts for new plots were also issued to them is of no merit, in the opinion of this Court which has rightly been rejected by the learned Single Judge in view of the mandate of the Hon'ble Supreme Court in the case of **Shivkumar & Anr. Vs. The Union of India & Ors., (2019) 10 SCC 229, reaffirmed in the case of C.S. Gopalakrishnan etc. Vs. The State of T.N. and Others, (2023) 7 SCR 939.** Therein the Hon'ble Supreme Court categorically held that a sale transaction effected after the Notification under Section 4 of the old Land Acquisition Act, is void and would be ineffective to transfer the land and such a sale would not clothe the subsequent purchasers with title, whereby they could claim to be in possession. It was observed that it would be profoundly unfair and unjust and against the policy of law to permit such a purchaser to claim resettlement or claim the land back, as envisaged under the new Land Acquisition Act.

24. The impugned judgment and order passed by



the learned Single Judge does not suffer from any infirmity, illegality and impropriety.

25. The prayer of the writ petitioners-appellants herein for prohibiting the respondents from forcibly dispossessing them from their Chak lands/holdings and return the lands or to pay compensation under the 2013 Act, prima facie, in the opinion of this Court is a move to unsettle the settled position of the land and to get unjust enrichment, not permissible under the law.

26. In view of the above reasoning, both the Letters Patent Appeals fail and, accordingly, stand dismissed. The parties shall bear their own costs.

(Harish Kumar, J)

K. Vinod Chandran, CJ: I agree

(K. Vinod Chandran, CJ)

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AFR/NAFR	AFR
CAV DATE	16.04.2024
Uploading Date	11.05.2024
Transmission Date	NA

