

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1331 of 2019

In

Civil Writ Jurisdiction Case No.15730 of 2019

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Ram Pravesh Pandey Son of Ram Awatar Pandey Resident of Village-
Gangauli, Police Station - Simri, District- Buxar.

... .. Appellant/s

Versus

1. The State of Bihar Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar,
Patna.
3. The Principal Secretary, Land and Revenue Department, Government of
Bihar, Old Secretariat, Patna, Bihar.
4. The Collector, Buxar.
5. The Sub-Division Officer, Buxar, Collectorate, Buxar.
6. The Competent Authority cum District Land Acquisition Officer, Buxar.
7. The Circle Officer, Simri, Buxar.
8. The Project Director, National Highway Authority Pariyojna Office Unit,
National Highway No.- 84, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.J.S. Arora, Advocate
		Mr.Manoj Kumar, Advocate
For the Respondent/s	:	Mr.Anshay Bahadur Mathur, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-10-2024

The appellant is aggrieved by the judgment of the
learned Single Judge which refused to consider the claim for
compensation under the Right to Fair Compensation and
Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013.



2. Learned Senior Counsel, Mr. J.S. Arora appearing for the appellant would contend that earlier the land was entered in the revenue register as a '*Anabad Bihar Sarkar*' land; in which the appellant and his siblings had a rightful claim as valid *raiyats*. In fact, the Deputy Director, Consolidation on the application made by the appellant and his siblings directed correction of '*jamabandi*' records and entered the name of the appellant and his siblings, after expunging the name of the State of Bihar.

3. In the above circumstances, the appellant was entitled to compensation and in any event the application for compensation was rejected only on the ground of the revenue records noticing the land as owned by the Bihar Government while the records were corrected by the order of the Deputy Director, Consolidation showing the children of one Ram Awatar Pandey as the *raiyats*.

4. The learned Government Advocate, on the other hand submitted that the Deputy Director, Consolidation could have only made correction of clerical or arithmetical errors and there could not have been a correction of the *jamabandi* in the revenue records. *Jamabandi* which is a word akin to mutation also does not confer any title on the persons whose name is



entered therein. The correction was also made long after the acquisition was carried out; which acquisition was not at all objected to by the appellant or the other alleged title holders. The land possession certificate issued by the Circle Officer was evidently fraudulent; since as on the date of the said certificate, the lands were already handed over to the National Highway Authority of India. The correction of *jamabandi* based on this fraudulent certificate, is vitiated for that reason also.

5. The learned Single Judge found from Section 33A that there could be only correction of clerical or arithmetical errors and the order of the Deputy Director, Consolidation which interfered with the very title of the land could not have been sustained. It was also noticed that admittedly, the land was acquired way back in 2010 for widening of N.H.-84 upon a declaration under Section 3D of the National Highways Act, 1956 (for brevity 'N.H. Act') while the possession certificate of the land issued by the Circle Officer in the names of the four sons of late Ram Awatar Pandey was dated 11.08.2018, after the acquisition. It was noticed that the appellant or the other purported legal heirs of late Ram Awatar Pandey had not raised any objection at the time of acquisition or any time thereafter.



6. The acquisition was admittedly in the year 2010 and the notification under Section 3A of the N.H. Act was published on 04.11.2009. The declaration of acquisition of the land under Section 3D of the N.H. Act was made on 13.05.2010, as is evident from the counter affidavit filed on behalf of the District Land Acquisition Officer, Buxar. In this context, we have to notice Section 3B and 3C of the N.H. Act. Section 3B confers power to any person authorized by the Central Government, to enter any land, after issuance of a notification, *inter alia* to make any inspection, survey, measurement, valuation or enquiry and set out boundaries and intended lines of work. Section 3C also speaks of hearing of objections raised by any person interested in the land within 21 days from the date of publication of the notification under sub-section (1) of Section 3A; which objection is with respect to the use of the land for the purpose or purposes mentioned in Section 3A as declared in the notification.

7. We specifically noticed these provisions since the appellants contention was that his father obtained the land on purchase from a *raiyat* and was holding the same with valid possession. There was no objection made by any one , at the time of acquisition; as being in possession of the land.



8. We notice here the claim of the writ petitioner, with respect to the rights on the land, as re-produced by the learned Single Judge. It was the contention of the appellant that one Ram Jatan Roy had succeeded on the basis of a registered sale-deed against one alleged *sikmidar* in a proceeding under the Bihar Tenancy Act, 1885, in which the State of Bihar was also a party. Ram Jatan Roy executed a will in favour of one Ram Cheej Singh, who had perfected his right under the will and subsequently executed a registered sale-deed dated 10.05.1968 in favour of the petitioner's father; who applied for mutation on the basis of the registered sale-deed dated 10.05.1968. This is the claim made before the Deputy Director, Consolidation for the purpose of correction of *jamabandi*.

9. Despite the claim raised before the Deputy Director, Consolidation, it is admitted in the writ application that in the Revisional Survey Khatian published on 11.06.1971 C.S. Khata No. 899, R.S. Plot No. 4694, ad-measuring 2.80 acres was carved out from C.S. Khata No. 496, CS Plot No. 12452 and in the *raiyat* column, it was recorded as '*Anabad Bihar Sarkar*'; which was earlier contended to be wrongly so recorded. The appellant's father also made an application before the Consolidation Officer, Simri who had admittedly recorded



mere possession of the petitioner's father by order dated 08.11.1977. Hence, even at that point of time, the Consolidation Officer had not accepted the claim of the petitioner's father as the *raiyat* of the land. There was no further challenge made to the order of the Consolidation Officer dated 08.11.1977. Even according to the appellant, it was after the death of Ram Awatar Pandey, his children as legal heirs, filed Consolidation Case No. 2 of 2018, which was disposed of on 26.03.2018 directing correction of *jamabandi* records; much after the acquisition.

10. We pause here to notice that, if as submitted by the appellant, the father of the appellant or any of his children were in possession, necessarily the notification under Section 3A and the further proceedings taken under Section 3B under the N.H. Act, would have been noticed by the person in possession. Necessarily, the person in possession had a right to file an objection under Section 3C, which was not done.

11. It was long after the acquisition itself that the claim was made under Section 33A of the Consolidation Act, which only empowers clerical or arithmetical errors to be corrected. The earlier order of the Consolidation Officer dated 08.11.1977 only recorded the possession of the father of the appellant; which possession also was non-existent at the time of



the acquisition, as we found. It was 41 years after the order of the Consolidation Officer dated 08.11.1977, that an application under Section 33A was filed for correction of *jamabandi*, which power does not lie with the Consolidation Officer or the Assistant Director of Consolidation under Section 33A. The land which existed as '*Anabad Bihar Sarkar*' in the revenue records could not have been converted in the name of *raiya*s in the year 2018, since the very land had been acquired for the purpose of national highway; in which acquisition proceedings no objection was raised by the alleged title holders, whom we have found did not even have possession at that point of time.

12. We find absolutely no reason to interfere with the orders passed by the learned Single Judge. The learned Senior Counsel persisted with the contention that it is not on these grounds, the impugned order was passed. The impugned order merely rejected the claim for compensation on the ground that the revenue records showed the land to be existing as '*Anabad Bihar Sarkar*'; which is not correct since as on the date of application for compensation, the land showed the appellant and his siblings as *raiya*s. We cannot, but observe that the appellant had approached this Court under Article 226 of the Constitution of India, an extraordinary remedy which is also



discretionary in nature. The fundamental principle in considering a claim under Article 226 of the Constitution of India is that merely because there is a right; there cannot be a relief granted. In the present case, the learned Single Judge has found from the records itself that the writ petitioner cannot even claim any right over the property. The property was acquired in the year 2010 for the purpose of national highway and none had raised an objection with respect to the property, as a title holder or even as a person in possession under Section 3C of the N.H. Act. At the time of acquisition, the land was admittedly shown as '*Anabad Bihar Sarkar*' in the revenue records. The order of the Consolidation Officer in the year 1977, on the application made by the predecessor in interest, the father of the appellant also indicated only his possession; which also was non-existent at the time of acquisition. Long after the acquisition, it was in the year 2018 that the appellant and his siblings filed an application before the Consolidation Officer for correction of *jamabandi* under a provision which does not empower or enable such correction. The correction was also made on a clearly fraudulent certificate of possession issued by the Circle Officer in the year 2018; of a land taken possession of, for the purpose of national highway, far back in 2010. The learned Single Judge



was perfectly right in having declined the extraordinary discretionary jurisdiction based on the records available, which put to naught the claim raised by the writ petitioner.

13. We find absolutely no reason to interfere with the impugned judgment.

14. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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