

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1390 of 2023
In
Civil Writ Jurisdiction Case No.7245 of 2012

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1. The Bihar State Electricity Board through its Secretary, Vidyut Bhawan Bailey Road Patna.
 2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
 3. The Chief Engineer, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
 4. The Executive Engineer, Bihar State Electricity Board, Khagaria.

... .. Appellant/s

Versus

1. Chandra Kala Singh W/o Late Kamal Deo Narayan Singh Resident of village and P.O. and P.S.- Parbatta, District - Khagaria.
2. Rakesh Narayan Singh, Son of Late Kamal Deo Narayan Singh Resident of village and P.O. and P.S.-Parbatta, District - Khagaria.
3. Anita Singh, Daughter of Late Kamal Deo Narayan Singh Resident of village and P.O. and P.S.-Parbatta, District - Khagaria.
4. The State of Bihar.
5. The Principal Secretary, Disaster Management, Govt. of Bihar, Patna.
6. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
7. The Director, Land Acquisition Department, Govt. of Bihar, Patna.
8. The District Magistrate, Khagaria.
9. District Land Acquisition Officer, Khagaria.
10. The Circle Officer, Parbatta, Khagaria.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Priya Ranjan, Addl. S.C. with Mr. Sandeep Kumar, Mr. Vibhuti Kumar, Advocates
For the State	:	Mr. Additional Advocate General 12
For the Pvt. Respondents:		Mr. Rakesh Narayan Singh (In Person)



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 16-02-2024

The appeal impugn the directions of the learned Single Judge to award compensation for the land of the petitioners acquired by the respondents; in accordance with law under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act'); which exercise was directed to be carried out within six months from the date of receipt of the order.

2. The learned counsel for the appellants argued that no writ petition is maintainable under Article 226 of the Constitution of India, since there are disputed questions of fact arising in the above case. There is no proper identity of the land and admittedly, there was a gift made by the relatives of the petitioners. The original petitioner, the husband and the father of the present petitioners, filed the writ petition on the ground that he was forced to surrender the land to the appellant-Board and he did so, on the promise made of compensation being awarded; which is disputed by the Board. Even, according to the predecessor in interest of the petitioners, the land was taken



over in 2009, he was aware of the construction having commenced and the boundary wall having been built in the year 2009, and the writ petition was filed in the year-2012, as an afterthought.

3. The second petitioner, an Advocate, practicing in this Court, appeared in person and argued the matter. The second petitioner is the son of the original writ petitioner and it is pointed out that possession of the subject land was taken over on a purported gift made by the second respondent, which was neither in stamp paper nor duly registered. It is asserted on behalf of the party respondents, that the land was acquired on the promise of compensation being paid, which promise was not fulfilled. The second petitioner, specifically took us through the Land Acquisition Act, 1894 to contend that in the instant case there is neither a notification under Section 4 nor a declaration under Section 6 nor an award passed under Section 11 of the Act. Since, admittedly the land was taken over, it is only proper, that compensation is paid and the petition under Article 226 of the Constitution of India is maintainable, since there are no disputed questions of fact. The second respondent also took us to Article 300A of the Constitution of India to emphasize that without compensation, no property can be taken over by the



State.

4. The writ petition was filed in the year 2012, by the husband of the first respondent and the father of respondent nos. 2 and 3. The specific contention taken was that he was the owner of the land situated in Thana No. 364, Mauza Karna, Khata No. 17, Plot No. 221, having an area of 68 decimals under Parbatta Anchal of Khagaria district. It was also claimed that the petitioner is making regular payment of rent to the State Government, and that in the year 2009-10, the respondents approached the petitioner, to provide land for the purpose of construction of a sub-station. It is also stated that the petitioners insisted for compensation and there was a promise made that it would be paid. But it was also asserted that the possession was taken forcibly, after an assurance to provide compensation. It is admitted that there was a foundation stone laid upon the land on 08.12.2009.

5. We have perused the records of the writ petition, and we find that the writ petition was filed without any substantiation of the title claimed by the writ petitioner. What was annexed to the writ petition is Annexure-1, a photograph of the foundation stone, laid on 08.12.2009 and two representations made, produced as Annexure-2 and 2/A.



6. A counter affidavit was filed by the respondent nos. 8 to 11, the appellants herein. It has been averred that one Sri Samrendra Narayan Singh s/o Late Yogendra Narayan Singh and Shri Dhirendra Narayan Singh s/o Devendra Narayan Singh, by a registered deed of gift dated 13.10.2009 (Annexure-A), transferred a land of 1 Bigha (81 Decimals) in village Karna Khata No. 117 and Plot No. 221. It is stated that the petitioner has merely raised a contention of 15 Kathas of land coming to 68 decimals having been occupied by the Board. The land on which the construction made, after the gift as per Annexure-A was on Khata No. 117, while the claim of the petitioner was with respect to his land in Khata No. 17, as seen from the writ petition.

7. It is also submitted in the counter affidavit that the Board had constructed boundary wall on the land and there was no land taken of the original writ petitioner, one Kamal Deo Narayan Singh.

8. In the rejoinder filed, the original writ petitioner contended that the khata number was wrongly typed as 17 in the writ petition, which was actually 117. It was also admitted that the land belonged to the father of the original writ petitioner and the gift was made by the son and grandson of two brothers of



the original writ petitioner. The original writ petitioner, in the rejoinder, also relied on Annexure-4, partition deed said to have been executed on 27.12.2010. It cannot but be noticed that even according to the original writ petitioner, the possession taken and even the gift made by his relatives, was in the year 2009, even before the partition. If that be so and the petitioner had no separate possession of the land as on 2009, prior to the partition deed, there is no question of a promise having been given by the Board for compensation to be paid on the acquired property.

9. We also see that there was a Commission taken out in the writ petition and the report is produced as Annexure-C in the supplementary counter affidavit, filed by the respondents on 07.01.2016. We specifically extract relevant part of the report of the Commissioner: -

“On the basis of the details mentioned in the proceeding and perusal of documents it is evident that the area in question bounded by a 11 feet high brick wall having an iron gate on the front in the eastern side. The gate was under the lock and key of the Board officials. Thus it is evident that the Board enjoyed the possession of entire area bounded by the boundary wall.

However, the land within the boundary could not be measured by an independent government Amin, Further, the Board officials did not agree to the measurement by a private Amin. The private Amin of petitioner measured the land from outside



the boundary wall of the land and presented a trace map to me. The trace map shows that an area of 14 (Fourteen) Katha 11 (Eleven) Dhur in excess has been included inside the bounded portion. According to his report, this measurement claim to be stands corroborated by an earlier measurement report.

The gift deed donating 20 katha of land to the Bihar State Electricity Board has not been disputed by any parties. However, the other documents tendered by different parties can not be accepted at their face value by me in view of limitation implicit in the work of an advocate commissioner. A spot verification alone may not conclusively settle the issue involved.

Thus, in the absence of measurement by an expert government amin and by physical verification alone I am not in position to conclusively state that the possession of the land of the petitioner has been taken over by the Bihar State Electricity Board.”

10. The Commission report is also not conclusive and there is nothing to show that the petitioners’ land had been acquired by the appellant-Board or that it is still occupied by the Board. There is no identity of the property, substantiation of the title or proof of forceful possession and promise made of compensation. We find absolutely no reason to sustain the judgment of the learned Single Judge, and we set aside the same. We find the writ petition to be an experimental one and



not at all maintainable.

11. We allow the appeal and set aside the judgment of
the learned Single Judge and reject the writ petition.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.24
Transmission Date	NA

