

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15328 of 2024

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1. Santosh Kumar Bhuwania Son of Late Bishwanath Bhuwania, Resident of 3A, Raja Santosh Road, P.O. - Alipur, District - 24 Pargana (Kolkata).
 2. Om Prakash Bhuwania, Son of Late Bishwanath Bhuwania, Resident of South City Residence, Tower 1, Flat 33K, 375 Prince Anwar Sah road, P.O. - Lake Gardens, P.S.- Jadavpur, District - 24 Pargana (Kolkata).

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Collector-cum-District Magistrate, Madhepura.
3. The Additional Collector, Madhepura.
4. The District Land Acquisition Officer, Madhepura.
5. The Deputy Collector, Land Reforms, Madhepura.
6. The Circle Officer, Udakishunganj, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Sr. Adv Ms. Sushmita Sharma, Adv Mr. Yogesh Kumar, Adv Mr. Shivika, Advocate Mr. Ashutosh Upadhyay, Adv
For the Respondent/s	:	AC to SC-23

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 04-02-2025 1. Heard learned senior counsel for the petitioners,

Shri. Satyabir Bharti and learned AC to SC-23.

2. The learned senior counsel for the petitioners submits that the land pertaining to Khata No. 197, Plot No. 1493, 1494 and 1495 measuring 23.22 acres at Mauza - Udakishunganj, District-Madhepura is the ancestral property of the petitioners.

3. It is next submitted that in the year 1973-74, the Additional Collector Madhepura, initiated Land Ceiling Proceeding Case No. 45/1973-74 and declared the land in



question to be surplus and the draft statement was consequently prepared. The Karta of the family, namely, Rameshwar Lal Bhuwania, being aggrieved by the draft statement preferred appeal before the Collector, Madhepura, being Appeal No. 53/1983-84, which was rejected by the Collector by an order dated 7-3-1984.

4. Being aggrieved by the order dated 7-3-1984 in Appeal No. 53/1983-84, passed by the Collector, revision was filed before the Member Board of Revenue, which also came to be rejected by an order dated 11-4-1984, thereafter CWJC No. 2087 of 1985 was filed against the order dated 11-4-1984 passed by the Board of Revenue.

5. The learned senior counsel for the petitioners submits that during pendency of CWJC No. 2087 of 1985, the State Government came out with a notification contained in Memo No. 85-2 dated 22-8-1989 for acquisition of total 34.50 acres of land, which included the land in question measuring 23.22 acres.

6. The learned senior counsel next submits that it is the case of the respondents that an award for 34.50 acres of land was prepared, but then it is submitted that since the land, when it was acquired, was declared surplus in the land ceiling



proceedings, hence compensation of the land in question was determined under Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act 1961 (hereinafter referred as "Land Ceiling Act 1961"). It is submitted that there is no provision in the Land Ceiling Act, 1961 for preparing an award. It is also submitted that even under the Land Ceiling Act, 1961, no notice was ever served on the petitioners prior to acquiring the land.

7. It is further submitted that CWJC No. 2087 of 1985 was disposed of by this court by an order dated 25-9-1996 (Annexure-1) and the matter was remanded back to the Collector for fresh consideration.

8. It is submitted that in pursuance of the order dated 25-9-1996 in CWJC No. 2087 of 1985, Ceiling Case No. 53 of 1996 was initiated and vide order dated 5-2-2001 (Annexure-2), the land in question was released from the ceiling case and final notification was published in the District Gazette Notice dated 22-7-2002. The learned senior counsel submits that the fact, which stands admitted, is that the land in dispute in the instant writ application was declared surplus in a land ceiling case, but subsequent to remand by this Court, as recorded hereinabove, Ceiling Case No. 53 of 1996 was initiated leading to release of



the land in question from the ceiling case.

9. It is submitted that once a land in dispute was released from the ceiling proceeding, the respondent was required to re-determine the compensation under the Land Acquisition Act 1894 (hereinafter referred as “L.A Act 1894”), but the authorities never bothered to determine the compensation nor any award was prepared under the L.A. Act 1894, as such the provisions of Sections 9, 10 and 11 of the L.A. Act 1894 was not complied with.

10. It is submitted that the petitioners thus approached the Collector, Madhepura in 2004 after the land was released from the ceiling proceeding in the year 2002, when they were informed that an award had been prepared in the year 1992 and if they are not satisfied with the award, they may resort to Section-18 of the L.A Act 1894. The learned senior counsel for the petitioners next submits that it absolutely does not stand to reason that on what basis the authorities informed the petitioners that an award has been prepared in the year 1992, when the land was acquired for public purpose after being declared surplus in the ceiling proceeding as there is no provision in the Land Ceiling Act 1961 of making an award, rather Sections 23 and 24 of the Land Ceiling Act 1961 are the only provisions which deals



with determination of compensation for land acquired by the State Government, it is submitted that neither Section 23 nor Section 24 of the Land Ceiling Act 1961 incorporates any provision for preparing an award with respect to acquisition.

11. It is next submitted that petitioners, under wrong legal advice, filed Land Acquisition Case No. 4 of 2004 before the Collector, Madhepura, which was referred by the Collector, Madhepura under Section-18 of the L.A. Act 1894 after four years vide order dated 26-7-2007 before the learned Sub-Judge, Udakishunganj, where the same was registered as Land Acquisition Case No. 1 of 2008, which is still pending adjudication.

12. The learned senior counsel for the petitioners submits that the Collector could not have referred the case before the learned Sub-Judge, Udakishunganj under Section-18 of the L.A Act 1894 for the reason that no award was prepared under the L.A. Act 1894 rather based on the acquisition of the land in dispute only compensation was calculated by the authorities for payment to the petitioners in terms of Sections 23 and 24 of the Bihar Land Ceiling Act 1961. It is submitted that reference under Section 18 of the L.A. Act 1894 is made for the determination of compensation under the L.A. Act 1894 only, as such the



reference by the Collector of the case, i.e., Land Acquisition Case No. 4 of 2004 under Section-18 of the L.A. Act 1894 was a nullity, hence the Land Acquisition Case No. 1 of 2008 pending adjudication before the learned Sub-Judge, Udakishunganj is non-est in eyes of law, rather the Land Acquisition Case No. 1/2008 pending adjudication before the learned Sub-Judge, Udakishunganj is *coram non-judice*.

13. The learned senior counsel for the petitioners, at this stage, submits that he has instruction from the petitioners that petitioners will not pursue Land Acquisition Case No. 1 of 2008 pending before the learned Sub-Judge, Udakishunganj rather shall withdraw the same.

14. The learned senior counsel next submits that the compensation of the acquired land prepared in the year 1992 was rightly prepared under the Land Ceiling Act 1961, but the moment the land in question was released from the ceiling proceeding, the authority was required to determine the compensation afresh and award ought to have been prepared in terms of Section 11 of the L.A Act 1894 and the compensation was to be determined in terms of Section 23 of the L.A Act 1894, but then no such determination was made nor any award was prepared under the L.A Act 1894.



15. It is submitted that the petitioners being aggrieved by the action of the Collector filed CWJC No. 3993 of 2018, the CWJC No. 3993 of 2018 was disposed of with a direction to the petitioners to file representation before the Collector by an order dated 23-11-2023 (Annexure-4), accordingly petitioners filed a representation dated 4-12-2023 before the Collector in compliance of the order dated 23-11-2023 in CWJC No. 3993 of 2018.

16. The learned State counsel, at this stage, draws the attention of the Court to para-6 of the order dated 23-11-2023 in CWJC No. 3993 of 2018, which reads as follows:-

"6. It is not in dispute, nor it can be disputed, that on the applications filed by the petitioner, Collector Madhepura, referred the matter of compensation before the Competent Court of the Civil Court, Madhepura, under Section 18 of the L.A Act, 1894, which is still pending. If a party is actively pursuing alternative remedies, relief under Article 226 must be refused as the petitioner cannot be allowed to pursue two parallel proceedings. It is settled law that, pursuance of multiple remedies for the same relief before different fora renders the petition non-



maintainable under Article 226 of the Constitution."

17. The learned State counsel thus submits that since petitioner was pursuing his remedy before the learned Sub-Judge as such the said plea was raised in the aforesaid writ application, on which the learned senior counsel appearing on behalf of the petitioners submits that based on the said plea the writ court had not dismissed the writ application rather the writ application was disposed of with liberty to the petitioner to file a detailed representation before the District Collector, Madhepura with all the relevant documents in support of the claim, it is next submitted that as recorded hereinabove a specific statement has been made by the petitioners that they will not pursue Land Acquisition Case No. 1 of 2008 pending before the learned Sub-Judge, Udakishunganj.

18. Learned senior counsel for the petitioners next submits that in view of the representation dated 4-12-2023 filed by petitioners, Miscellaneous (Land Acquisition) Case No. 4/2023 was initiated, thereafter the case in between 12-1-2024 to 5-7-2024 was listed nine times as detailed at para 23 of the writ petition. It is submitted that on six days, the Collector did not hold court.

19. It is further submitted that while Miscellaneous



(Land Acquisition) Case No. 4/2023 was pending adjudication, the time fixed by this Court in CWJC No. 3993 of 2018 for disposing of the representation expired on 6-6-2024, as such the Collector, Madhepura got perturbed and when the Miscellaneous (Land Acquisition) Case No. 4/2023 was taken up on 5-7-2024, the next date fixed was 30-7-2024, on the said date, i.e., 30-7-2024, the learned counsel for the petitioner was in personal difficulty being a Tuesday, hence prayed that the case be fixed on any Friday which was not palatable to the Collector, hence it is alleged in the writ petition that the learned lawyer was humiliated by the Collector. Accordingly, the learned counsel for the petitioner on facing humiliation sent a complaint to the competent authority vide registered post dated 11-7-2024, recording therein about the misbehavior meted out to him by the Collector.

20. The learned senior counsel submits that thereafter the learned counsel for the petitioner on his WhatsApp received a notice dated 6-7-2024 from the court of Collector on 26-7-2024 directing him to file a show cause, as to why a contempt proceeding be not initiated against him under Section-12 of the Contempt of Court Act.

21. The learned counsel for the petitioner accordingly



filed CWJC No.11334 of 2024, against the notice dated 6-7-2024 and the same was stayed by this Court by an order dated 30-7-2024 and the Chief Secretary, Government of Bihar was directed to hold an inquiry.

22. It is submitted that the Chief Secretary, Government of Bihar after holding an inquiry filed his counter-affidavit in CWJC No. 11334 of 2024 along with letter No. 826 dated 13-8-2024 (Annexure-7) of the Collector, wherein it was stated that Miscellaneous (Land Acquisition) Case No. 4/2023 has been disposed of by an order dated 13-8-2024.

23. The learned senior counsel next submits that the order dated 13-8-2024 of the Collector was not brought on record in the aforesaid writ application in the counter-affidavit of the Chief Secretary, as such the petitioners filed *Chirkut* for obtaining the certified copy of the order dated 13-8-2024 passed in Miscellaneous (Land Acquisition) Case No. 4 of 2023, but when the order was not being supplied, the instant writ application came to be filed.

24. It is submitted that during pendency of the instant writ application, the copy of the order dated 13-8-2024 passed by the Collector was supplied to the petitioners, which led to filing of I.A No. 1 of 2024 for challenging the order dated 13-8-2024



in Miscellaneous (Land Acquisition) Case No. 4 of 2023. It is next submitted that the I.A. No. 1 of 2024 was allowed for consideration by an order dated 14-11-2024.

25. The learned senior counsel next submits that the Collector while disposing of Miscellaneous (Land Acquisition) Case No. 4 of 2023 by his order dated 13-8-2024 observed that Land Acquisition Case No. 1 of 2008 is pending adjudication, as such no order could be passed by him in terms of Land Acquisition (Bihar Amendment) Act 1979, until the said application is withdrawn.

26. The learned senior counsel for the petitioners next submits that what is not disputed rather stands admitted is that the land of the petitioners stands acquired by the State of Bihar in the year 1989, when the land was under ceiling proceeding, but subsequently the land was released from the ceiling proceeding in the year 2002 and from 2002 till 2008 no action was taken by the authorities to determine the compensation of the land in accordance with law, rather the case was referred to the learned Sub-Judge, Udakishunganj under Section 18 of the L.A. Act 1894 without preparing the award afresh, in complete breach of law, as recorded hereinabove, as such the petitioners were entitled to receive compensation of their acquired land as



the same became *rayati* in terms of the L.A Act 1894, but then the authorities sat over the matter and the claim of compensation of the petitioners got stuck in legal wrangles.

27. It is next submitted that a counter-affidavit and a supplementary counter-affidavit on behalf of the respondent Collector has been filed. It is further submitted that the case earlier was taken up on 19-12-2024, when the learned State counsel had fairly submitted that since the land of the petitioners was released from the ceiling proceedings as such the petitioners became entitled for compensation in terms of the L.A Act, 1894.

28. At this stage learned state counsel draws the attention of the Court to the counter-affidavit filed on behalf of the Respondent Nos. 2 to 6 and submits that at para-20, it has been pleaded that petitioners have received compensation amount of Rs. 1,92,803/- on 6-5-2003 on the basis of calculation of compensation for the acquired land at the rate of compensation determined under the Bihar Land Reforms (Fixation of Ceiling area and Acquisition of Surplus Land) Act, 1961, as the land is affected by that ceiling Act, on which the learned senior counsel appearing on behalf of the petitioners submits that the said averment made in the counter affidavit has been replied in the rejoinder filed by the petitioners at para-12



wherein it has been specifically pleaded that the said statement is a bald statement supported by no evidence or legal precedence, in fact the averment made under the said paragraph supports the case of the petitioners, it is the case of the petitioners that compensation determined in the year 1992 was determined under the Land Ceiling Act, 1961, but after the release of the land in question from the ceiling proceeding the fresh determination of compensation ought to have been made under Section 23 of the L.A Act 1894, but no such determination was made, nor any award was prepared under the L.A Act 1894.

29. The learned senior counsel for the petitioners submits that no doubt in terms of the counter-affidavit, the authorities had agreed that petitioners were entitled for compensation in terms of L.A Act 1894, but since L.A Case No. 1 of 2008 was pending adjudication, as such the same was coming in the way of the petitioners for not being paid the compensation until and unless the said case was adjudicated. It is submitted that no doubt L.A. Case No. 1 of 2008 was instituted based on an application made by the petitioners which was referred by the Collector under Section 18 of the L.A. Act 1894, but then the issue is that if petitioners had filed an application seeking reference in breach of the law, whether the Collector



could have referred the case under Section 18 of the L.A. Act 1894, when the compensation of the land in question was determined under the Land Ceiling Act, 1961. It is also submitted drawing the attention of the Court to Para-55 and Para-55(c) of the counter-affidavit that at para-55 of the counter-affidavit, it has been pleaded that – petitioners can pursue relief in Land Acquisition Case No. 01 of 2008 pending in the Court of learned Sub-Judge, Udakishunganj or upon withdrawal of the same, are entitled for compensation under the Land Acquisition (Bihar Amendment) Act, 1979 at the rate specified at the time of the acquisition, further at para-55(C) of the counter-affidavit, it has been pleaded that – after the land was released from the ceiling proceedings, the nature of land becomes raiyati and in the event of acquisition the compensation can be granted under the L.A Act, 1894 and not under the Land Ceiling Act 1961, thereafter the learned senior counsel for the petitioners draws the attention of the Court to Section 23(3) of the L.A Act 1894 and submits that Section 23(3) incorporates – Notwithstanding anything contained in sub-Section (1) and (2), where the land is the subject-matter of a proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land), Act, 1961 (Bihar Act XII



of 1962), the amount in lieu of compensation shall be determined in accordance with the provisions of the said Act, thereafter submits that Section 23(4) of the L.A Act 1894 incorporates – Where the land is subsequently released from the proceedings under the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962): the compensation payable will be determined in accordance with sub- Section (1) and (2).

Provided that from the amount so determined such sum be deducted as may have been paid under Section 24 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962).

30. Learned senior counsel for the petitioners thus submits that even presuming what has been stated at para-20 of the counter-affidavit filed on behalf of Respondent Nos. 2 to 6 to be true without admitting in that event also the petitioners are entitled for compensation in terms of Section 23(1), (2) of the L.A Act 1894 and the amount, if any, paid in terms of the compensation decided under the Land Ceiling Act 1961 shall be deducted.

31. The learned senior counsel for the petitioners further submits that since the petitioners have undertaken to



withdraw the L.A. Case No. 1 of 2008 from the court of learned Sub-Judge, Udakishunganj, as such now no obstacle remains to be removed.

32. The learned senior counsel next submits that petitioners since 1989 have been running from pillar to post for seeking compensation of their acquired land, but even after passage of more than 35 years, the petitioners are still litigating and no award in terms of Section 11 of the L.A Act 1894 was prepared when the same ought to have been prepared in the year 2002 itself when the land was excluded from the ceiling proceeding, without waiting for the petitioners to approach the authorities. It is next submitted that since the amount of compensation in accordance with law was not being paid to the petitioners, as such the petitioners approached the Collector by filing Land Acquisition Case No. 4 of 2004 for payment of compensation, but the Collector in complete breach of the law referred the said Land Acquisition Case No. 4 of 2004 under Section 18 of the L.A. Act 1894 vide his order dated 26-7-2007 before the learned Sub-Judge, Udakishunganj, where Land Acquisition Case No. 1 of 2008 was instituted. It is submitted that the Collector instead of referring the matter to the learned Sub-Judge, Udakishunganj ought to have prepared a fresh award



in terms of the L.A. Act 1894, but then the same not having been done, the matter remained pending on the pretext that the Land Acquisition Case No. 1 of 2008 is pending adjudication when the reference of the case under Section-18 of the L.A. Act 1894 itself was bad.

33. The learned senior counsel next submits that since petitioners have undertaken before this Court that they will not pursue L.A. Case No. 1 of 2008 pending before the learned Sub-Judge, Udakishunganj and shall withdraw the same, as such the order of the Collector dated 13-8-2024 in Miscellaneous (Land Acquisition) Case No. 4 of 2023 becomes vulnerable as the Collector has rejected the Miscellaneous (Land Acquisition) Case No. 4 of 2023 on the ground that the Land Acquisition Case No. 1 of 2008 is pending consideration before the learned Sub-Judge, Udakishunganj, without realising that the Land Acquisition Case No. 1 of 2008 is no way related to the issue involved in the present case as the said land acquisition case was referred by the Collector to the learned Sub-Judge, Udakishunganj in gross violation of the amendment brought to the L.A Act 1894 vide Land Acquisition (Bihar Amendment) Act 1979, and also on the ground that the reference by the Collector under Section 18 of the L.A Act 1894 was bad for the reason that



neither fresh award nor compensation of the acquired land in terms of Section 23 of the L.A. Act 1894 was made as such the learned senior counsel appearing on behalf of the petitioners submits that that order dated 13-8-2024 passed by the Collector in Miscellaneous (Land Acquisition) Case No. 4 of 2023 be quashed.

34. The learned counsel appearing on behalf of the State though does not dispute the factual submission made by the learned senior counsel appearing on behalf of the petitioners, but then submits that petitioners had moved this Court earlier also claiming the same relief by filing CWJC No. 3993 of 2018, but then the plea which is being raised in the instant writ application was not raised then, as such, the present submission would be barred by constructive *res judicata*, on which the learned senior counsel appearing on behalf of the petitioners submits that such submission of the learned counsel appearing on behalf of the State is misconceived for the reason that CWJC No. 3993 of 2018 was disposed of with a liberty to the petitioner to file representation before the Collector raising his grievance and the Collector was directed to adjudicate the *lis*, as such it is submitted that the issues were opened. It is also submitted that whether petitioners would be entitled for compensation in terms



of the L.A Act 1894 or Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 is an issue of law and not of fact and said issue was also raised in the previous round of litigation fought in CWJC No. 3993 of 2018.

35. The learned senior counsel draws the attention of the Court to the order dated 29-8-2024 in LPA No. 997 of 2019 (*Panchwarti Devi & Ors. vs. the State of Bihar & Ors.*) and submits that in the said LPA, the land was acquired in the year 1977 and the award was not prepared and the matter travelled up to the Hon'ble Supreme Court and on remand, the Hon'ble Division Bench decided the case, wherein it was recorded at Para-7 – In the present case, admittedly there is no award made or rather; there is nothing produced on record to indicate an award having been made on the acquisition. In the above circumstances, the matter will have to be considered under Section 24(1)(a) and compensation will have to be determined under the provisions of the Act of 2013 and accordingly the District Collector, Samastipur was directed to initiate proceeding under the Act of 2013 within a period of one month from the date of order and determine the amount of compensation and if the appellants are satisfied, it will be disbursed, further



proceeding, if the appellants are not satisfied with the award, can also be taken under the Act of 2013. We make it clear that we have not observed anything about the title of the appellants with the appellants/legal heirs of the original owner will have to establish before the competent authority with those observations the LPA was disposed of.

36. The learned senior counsel thus submits that in the instant case also no doubt compensation was prepared for acquisition of the land when it was under ceiling proceeding under the Bihar Land Ceiling Act 1961 but then the said compensation lost its relevance when the land was released from the ceiling proceeding in the year 2002, as such a fresh award in terms of the L.A Act 1894 ought to have been prepared but then the same was not done and litigation started, when the petitioners were entitled for compensation in terms of Section 23 (3) and (4) of the L.A. Act 1894. It is submitted that since no award was prepared in terms of the L.A. Act 1894, hence the petitioners are entitled for compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013.

37. After hearing the learned counsel for the parties, the Court is in complete agreement with the submissions made by



the learned senior counsel appearing on behalf of the petitioners that the land in dispute was acquired by the State of Bihar for public purpose when the land was under ceiling proceeding and compensation was decided in terms of Land Ceiling Act 1961, but subsequently when the land was released in the year 2002 from the ceiling proceeding, a fresh award in terms of L.A Act 1894 ought to have been prepared but then the Collector, without due application of mind, referred the application of the petitioners before the learned Sub-Judge, Udakishunganj, under Section 18 of the L.A Act 1894 based on which L.A Case No. 1 of 2008-2009 came to be instituted but then the same was uncalled for as the reference itself was bad for the reason that the compensation with respect to the land in dispute was made under the Land Ceiling Act 1961 and thus could not have been referred under Section-18 of the L.A Act 1894.

38. After considering the submissions made by the learned senior counsel appearing on behalf of the petitioners and also taking note of the submissions made by the learned State counsel, the Court finds merit in the writ application and accordingly the order dated 13-8-2024 in Miscellaneous (Land Acquisition) Case No. 4 of 2023 passed by the Collector is hereby quashed and the writ application is disposed of with a



direction to the Collector, Madhepura to adjudicate the claim of the petitioners afresh in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 within a period of four months from the date of the receipt/production of a copy of this order and the payment of compensation arrived at in accordance with law shall be paid to the petitioners within a period of one month thereafter.

39. At this stage, the learned counsel appearing on behalf of the petitioners further makes it clear that there is no dispute with regard to the title of the land measuring 23.22 acres at Mauza- Udakishunganj, District- Madhepura for the reason that the land was acquired under the ceiling proceeding based on the fact that the petitioners were having land in surplus to their entitlement, but subsequently the land was released, which amply demonstrates that the petitioners were not having surplus land and their land was raiyati.

(Satyavrat Verma, J)

SUMIT/-

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