

(2023) 07 PAT CK 0085

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1007 Of 2021

Dhan Jee Pandey @ Gauri Shankar Pandey

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 21

National Highways Act, 1956 — Section 3G, 3H

Citation : (2023) 07 PAT CK 0085

Hon'ble Judges : Sandeep Kumar, J

Bench : Single Bench

Advocate : Nikhil Kumar Agrawal, Dr. N.K.Singh, Sajid Salim Khan, S.N. Pathak, Saurav Nikunj

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner has prayed for the following reliefs:-

"(i) To issue an appropriate writ/order/direction in the nature of certiorari quashing the order dated 23.09.2020 (Annex-3) passed by Respondent No.5 whereby and whereunder the respondents are seeking to recover from the petitioner the amount of compensation paid to the brother of the petitioner in the year 2014;

(ii) To issue an appropriate writ/order/direction in the nature of mandamus declaring that the amount of compensation determined in terms of the circle rate prevalent in the year 2014 considering the land to be residential is proper and legal;

(iii) To issue an appropriate writ/order/direction in the nature of mandamus commanding the Respondents not to recover the amount of compensation paid in the year 2014 to the brother of the petitioner.

(iv) To stay the order dated 23.09.2020 passed by Respondent No.6 during the

pendency of this writ application;

2. The facts of this case are that for the purpose of four-laning of N.H.-84 in the district of Buxar, the National Highways Authority of India (NHAI) had issued notifications in the official Gazettee for acquisition of land. Accordingly, the land of the petitioner's father bearing Mauza-Churampur, Thana-353, Plot No.1395, area-0.046 hectare was acquired. Since at that time, the father of the petitioner died the elder brother of the petitioner namely, late Rama Shankar Pandey, completed all the formalities and received the entire compensation amount of Rs.14,29,655/-. The said amount was paid to the elder brother of the petitioner in the year 2014 itself vide award dated 14.02.2014 passed by the competent authority-cum-DCLR, Buxar (respondent No.5) in Compensation Case No. 19 of 2014. After completing all the formalities, the land of the petitioner was acquired. However, the respondent no.5 issued order dated 23.09.2020 directing the petitioner to refund the excess amount of Rs.8,42,946/-, which has been paid to the brother of the petitioner, which is under challenge in this writ petition.

3. Learned counsel for the petitioner submits that the action of the respondents is beyond the power granted to them under the relevant provisions of the NHAI Act. In fact, there is no provision in the Act which authorizes them to recover the compensation once paid by changing the nature of land. He further submits that the fresh compensation has been determined behind the back of the petitioner without giving any opportunity of hearing to the petitioner and therefore, the impugned order is ultra vires to Section 21 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He also submits that the respondents cannot recover the alleged excess amount of compensation from the petitioner as the same was never paid to him rather it was paid to his elder brother, who is now deceased.

4. Learned counsel for the petitioner further submits that neither the petitioner nor his deceased elder brother have ever played any fraud or misrepresented any facts before the authorities in order to obtain higher amount of compensation and at the time of Gazette publication, the nature of land was classified as "residential" by the respondents themselves and the compensation amount was paid and therefore, the respondents cannot unilaterally change the nature of the land after having paid the legitimate amount of compensation and after having taken possession of the land concerned. He further submits that the action of the respondents is contrary to the specific findings of the Six Men Committee.

5. Learned counsel for the petitioner also submits that the amount is recoverable as per the procedure provided under the Bihar & Orrisa Public Demand Recovery Act, 1914. He further submits that the respondents cannot recover the excess amount by adopting a summary procedure when no such power has been granted under Section 3G and 3H of the National Highways Act.

6. Learned counsel for the State submits that the petitioner was the co-sharer of the said land and is liable to pay the excess amount received by him through his

elder brother as he had also share in the compensation amount. He further submits that the liability to return excess amount lies against the legal heirs of late Rama Shankar Pandey, who had received the amount on behalf of entire family as well as against the petitioner since he had given consent that he has no objection if his brother received his share of compensation on his behalf and therefore the excess amount paid to the beneficiary is recoverable by the respondents under the provisions of Bihar and Orissa Public Demand Recovery Act. The petitioner along with his late elder brother while receiving the compensation amount had filed an Indemnity Bond before the respondent authority stating therein that if in future it is found that the compensation amount has been wrongly paid/excess compensation amount paid etc. then he would return the said amount on demand.

7. Learned counsel for the State further submits that the report of the Six Men Committee dated 25.08.2016 which had classified the land as 'residential land' had never been acted upon because only one member of the said Committee i.e. DCLR had signed report in the year 2017 and prior to communication to said report, Circular No.450 dated 12.04.2017 was issued with respect to constitution of Six Men Committee and as per aforementioned Circular another Six Men Committee held a meeting on 29.02.2020 and submitted a report with respect to classification of land as 'agricultural land' and therefore, the action of respondents to recover the excess amount from the petitioner is absolutely justified, legal because no constitutional right to provide any safeguard to any person to misuse the public money, intentionally/unintentionally received by the beneficiaries against any scheme policies/law.

8. Learned counsel for the State further submits that the competent authority has the jurisdiction to register the Certificate Case for recovery of the same because the award paid to the petitioner is public money that is recoverable. No statutory right has been violated by revising the award as per provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Circular No.150 dated 15.02.2018 also read with Circular No. 450 dated 12.04.2017. As per the respondents, the petitioner is the legal heir of his brother, is duty bound to pay back the entire amount received by them for the acquired land.

9. In support of his submissions, learned counsel for the State relies upon the order dated 31.07.2018 passed by in C.W.J.C. No. 1091 of 2018 and order dated 13.03.2018 passed in C.W.J.C. No. 311 of 2014.

10. I have heard learned counsel for the petitioner and learned counsel for the respondents including the National Highways Authority of India. The challenge is to the order dated 23.09.2020 passed by the competent authority-cum-DCLR, Buxar. From the record, it appears that earlier the compensation was calculated treating the land of the petitioner as 'residential land' and accordingly, an amount of Rs.14,29,655/- has been disbursed in favour of the petitioner and his brother vide award dated 14.02.2014. Thereafter, two Six Men Committees were

constituted and the first Six Men Committee had again found the land to be fall under the category of 'residential land' but that report was signed by only one member of the Six Men Committee but the second Six Men Committee had declared the land to be 'agricultural land' and accordingly, the petitioner was directed to refund the excess amount vide impugned order dated 23.09.2020 i.e. after six years of receiving compensation.

11. I find substance in the argument of learned counsel for the petitioner that the impugned order dated 23.09.2020 which has been passed for recovery of the excess amount is illegal as fresh compensation has been determined without giving any opportunity of hearing to the affected party i.e. the petitioner and the same is violative of Section 21 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 and also violative of the principle of nature justice. Once the compensation was decided by the authorities and has been given to the brother of the petitioner in the year 2014, before passing the order for refund of the excess amount and before changing the nature of the land from 'residential land' to 'agricultural land' the petitioner ought to have been given a notice and should have been heard as before passing any order prejudicial to the petitioner right of hearing is a must and the petitioner cannot be denied the right of hearing.

12. The decisions relied upon by learned counsel for the State are not applicable to the facts of the present case.

13. Since this Court has come to a finding that in the present case, the impugned order dated 23.09.2020 has been passed without hearing to the petitioner, the same is hereby quashed in the interest of justice.

14. Accordingly, this writ petition stands allowed.