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**(2019) 12 JH CK 0010**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (c) No. 1655 of 2013**

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| Dhaneshwar Nayak And Ors   | Vs | APPELLANT  |
| State of Jharkhand And Ors |    | RESPONDENT |

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**Date of Decision :** 06-12-2019

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2019) 12 JH CK 0010

**Hon'ble Judges :** Sujit Narayan Prasad, J

**Bench :** Single Bench

**Advocate :** Sandeep Verma, Anil Kumar

**Final Decision :** Disposed Of

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## Judgement

This writ petition is under Article 226 of the Constitution of India whereby and whereunder order dated 10.12.2012 passed by District Land Acquisition Officer, Bokaro has been assailed by which the claim of the petitioners about the title over the land pertaining to Plot No. 5 appertaining to Khata No. 47/29 situated at village Kodwa Tand, P.S. Gomia, at present Mahua Tand, District Bokaro, has been denied.

It is the case of the petitioners that they, by virtue of inheritance right, have now become entitled to get the compensation in lieu of acquisition of the land in question was acquired at the life time of their grandfather for which a proceeding has been initiated under the Land Acquisition Act, 1984 being L.A. Case No. 18/83-84 and L.A. Case No. 3/82-83. The respondents have not paid the amount against the compensation in lieu of acquisition, therefore, the petitioners had approached this Court by filing a writ petition being W.P.(C) No. 2854 of 2012 which was disposed of vide order dated 01.10.2012 by directing the District Land Acquisition Officer, Bokaro to consider the petitioners' claim and pass appropriate order in accordance with law within two months from the date of receipt of the copy of the order.

The petitioners, in terms of the said order, have filed a detailed representation as has been annexed as Annexure-7 to the writ petition which was decided by passing an order on 10.12.2012 rejecting the claim of the petitioners against which the present writ petition has been filed.

Mr. Sandeep Verma, learned counsel appearing for the petitioners has submitted that the predecessor-in-interest of the petitioners were having absolute title over the land in question which is evident from the documents available at page 30 to the brief which is the order pertaining to Compensation Case No. 88/60-61 and 87/60-61 wherein the details about the land as also fixation of rent has been reflected. The predecessor-in-interest, thereafter, is in full occupation of the said landed property. Subsequent to the vesting, the name has also been entered in the rent register i.e. Register-II. The petitioners have paid rent and in lieu thereof, rent receipt has also been issued. The petitioners have also relied upon the record of land acquisition case which is at Annexure-5 wherein also reference of the land along with plot number and khata number finds mentioned.

The grievance of the petitioners is that in pursuance to the order passed by this Court in W.P.(C) No. 2854 of 2012, the District Land Acquisition Officer, Bokaro has initiated a proceeding by maintaining order-sheet which is evident from Annexure-8.

Learned counsel for the petitioners, while referring to the said order-sheet, has submitted that while initiating a proceeding for adjudication of the issue, report was called for from the Circle Officer, as would be evident from the order dated 19.10.2012 and in pursuance thereto, the Circle Officer, Gomia has submitted its report which has been taken on record, as would be evident from the order dated 25.11.2012.

Further submission has been made after perusing the report submitted by the Circle Officer, notice has been issued upon the petitioners, as would be evident from the order dated 29.11.2012 but without its service the final decision has been taken. The fact about notice having not been served upon the petitioners, which is evident from the order dated 08.12.2012 since there is no reference of notice validly been served upon the petitioners and unilaterally it has been recorded in the said order that no documentary evidence has been produced by the petitioners.

It has been submitted by the learned counsel for the petitioners that since the authorities have once issued the notice, it was incumbent upon him to wait for the service of notice so that the petitioners would be able to put forth with their defence by producing the relevant documents.

It has further been submitted that as would be evident from the impugned order that the notice has been issued vide letter dated 29.11.2012 and after expiry of only ten days, the order has been passed which also does suggest that the authorities have passed the order in haste.

Mr. Anil Kumar, learned A.C. to S.C.(Mines)-II, appearing for the respondent State of Jharkhand, by putting reliance upon the counter affidavit filed on behalf of Respondent Nos. 2 and 3, has submitted by defending the order impugned by taking the stand inter alia taken therein that the petitioners have failed to show his title over the land in question. The authorities have examined the documents wherefrom they came to conclusive finding that certain entries have been made by overwriting which creates doubt about the title of the petitioners over the land in question. There is no reference of any Plot Number save and except Khata No. which is 47/29 which also creates doubt about the title of the petitioners over the land in question.

The further reason has been assigned in the impugned order that the land of the petitioners is outside the purview of L.A. Case No. 18/83-84 and 3/82-83.

In view of such, the stand has been taken also in the counter affidavit that the petitioners have failed to make out a case by substantiating their title over the land in question to get the compensation in lieu of acquisition of the aforesaid land.

The Court, after having heard learned counsel for the parties and on appreciation of the rival submissions, has found from the record the undisputed facts in this case about filing of the writ petition seeking a direction for compensation being W.P.(C) No.2854 of 2012 which was disposed of vide order dated 01.10.2012 whereby and whereunder this Court had directed the Land Acquisition Officer, Bokaro to consider the petitioners' claim/representation and pass appropriate order in accordance with law within a stipulated period of two months.

The petitioners have filed representation as would be evident from Annexure-7, taking the ground for establishing the title over the land in question along with genealogical table.

It is evident from the part of Annexure-8 that the District Land Acquisition Officer, Bokaro, in pursuance to the order passed by this Court, has initiated a proceeding by calling upon a report with respect to the claim of the petitioner from the Circle Officer, Gomia by submitting point wise report with respect to Khata-Khesra-Rakba to decide the claim of the petitioner. The Circle Officer has submitted the report on 25.11.2012 and in pursuance to the said report, notice was issued to the petitioners, as would be evident from the order dated 29.11.2012. The next date was fixed on 08.12.2012. The order dated 08.12.2012 reflects that there is no reference of service of notice upon the petitioners as directed to have been issued in the order dated 29.11.2012.

There is no dispute about the fact that if any order-sheet is being maintained either by the administrative authority or quasi-judicial authority and a notice is being issued to secure the appearance of a party, it is incumbent upon the authority to get the service report about its service as to whether it has validly been served or not. In any case, i.e. in case of service or non-service, the same is to be reflected in the order-sheet but nowhere it is being reflected about said

aspect of the matter. The impugned order reflects about reference of the letter being Letter No. 134 dated 29.11.2012 which is the letter issued in terms of the order dated 29.11.2012 whereby it was directed to issue notice upon the petitioners, on the same day notice has been issued by aforesaid letter. As has been referred hereinabove that there is no reflection in the order-sheet about service of notice upon the petitioners but even then in the impugned order it has been observed by the District Land Acquisition Officer that in spite of notice having been issued, the documents have not been produced by the petitioners and thereby putting reliance upon the enquiry report submitted by the Circle Officer, order has been passed holding the petitioners having no title over the land in question.

The question herein is that when this Court has directed to decide the representation and in pursuance thereof notice has been issued to the petitioners, the concerned authority ought to have provided an opportunity. Opportunity means adequate and sufficient opportunity and not mere a formality. Once notice has been issued, adequate and sufficient opportunity to put for his defence would be given and even after acceptance of notice the party will not put his appearance before the authority, in that circumstances it is incumbent upon the authority to proceed in accordance with law but that situation is not available and has not been gathered by going through the order maintained by the District Land Acquisition Officer as annexed at Page-44-45 to the paper book.

Learned counsel for the petitioners has vehemently argued by putting reliance upon the document pertaining to Compensation Case Nos. 88/60-61 and 87/60-61 as also the record of rights but as has been narrated hereinabove that since the notice has not been served upon the petitioners, therefore, they have not been able to put forth their defence by putting the relevant documents for its consideration.

Although this Court has directed the District Land Acquisition Officer to decide the claim and in pursuance thereto representation has been filed but when this Court has directed to decide the claim by taking into consideration the relevant documents and for that purpose the District Land Acquisition Officer, Bokaro has issued notice but without its service, the order has been passed.

Admittedly, the land has been acquired but whether it belongs to the petitioners or not that is the question to be adjudicated by the authority.

In case of any dispute over the title, the best course is to decide the title from the competent court of civil jurisdiction but according to this Court, that occasion has not come, it is for the reason that certain documents have not been considered by the authorities and if at this stage petitioners will be directed to approach before the competent court of civil jurisdiction, it would be very harsh.

This Court, keeping the facts into consideration as also on the basis of the facts detailed hereinabove, is of the view that the claim of the petitioners is required consideration afresh.

In view thereof, the order passed by the District Land Acquisition Officer, Bokaro dated 10.12.2012 is quashed. In consequence thereof, the matter is remitted before the District Land Acquisition Officer, Bokaro to decide the claim afresh.

The petitioners are directed to appear before the District Land Acquisition Officer, Bokaro along with all the relevant documents within three weeks from the date of receipt of copy of this order.

The District Land Acquisition Officer, Bokaro will fix a date in order to provide an opportunity of hearing to the petitioners and within eight weeks thereafter, shall take decision in accordance with law.

This writ petition is, accordingly, disposed of.