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**(2014) 12 PAT CK 0032**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case Nos. 15839 and 17101 of 2013

Dinesh Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 08-12-2014

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 5A, 6, 9

**Citation :** (2015) 2 PLJR 653

**Hon'ble Judges :** V.N. Sinha, J;Aditya Kumar Trivedi, J

**Bench :** Division Bench

**Advocate :** Binod Kumar Singh, Sumit Kumar and Karandeep Kumar, Advocate for the Appellant; Lalan Kumar, A.C. to G.P. 23 and Manikant Mishra, G.P. 25, Advocate for the Respondent

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## Judgement

V.N. Sinha, J.

1. Petitioners claim themselves to be the resident of Nalanda Medical College & Hospital Road, Agam Kuan, Patna. Petitioners of C.W.J.C. No. 17101 of 2013 have filed writ petition for quashing the order dated 05.07.2013, 09/11.05.2013, passed by Additional Collector, Patna, Circle Officer, Sadar, Patna, Respondent Nos. 3, 5 in Land Encroachment Appeal Case No. 06/2013-14 and Encroachment Case No. 28/2012-13 (Annexure-8, 3 respectively), whereunder petitioners have been directed to remove their encroachment/house from Municipal Survey Plot No. 1689 within a period of two weeks from the date of notice which was received by the petitioners on 17.05.2013, as is evident from the receipt granted in the margin of the order-sheet dated 11.05.2013, passed by Circle Officer, Patna Sadar. A Division Bench of this Court under orders dated 25.06.2014, 04.07.2014 passed in the present writ petition directed that the writ petition be heard along with C.W.J.C. No. 6684 of 2010. In the light of the aforesaid two orders, present writ petition as also the connected C.W.J.C. No. 15839 of 2013 were heard together along with C.W.J.C. No. 6684 of 2010 on 01.12.2014. Having heard the three writ petitions this Court after concluding the arguments

reserved its judgment in the present writ petition and C.W.J.C. No. 15839 of 2013 but vacated the interim order dated 19.08.2013 passed in C.W.J.C. No. 15839 of 2013 and directed that C.W.J.C. No. 6684 of 2010 be put up on 11.12.2014 maintaining its position to enable the District Magistrate, Patna to inform the Bench that encroachment from P.M.C.H., N.M.C.H., Patna has been removed and the area secured by raising boundary wall. In the light of the said order, we are proceeding to dispose of the present and the connected writ petition.

2. The ground of challenge raised in the writ petition, other pleadings is that petitioners are purchaser of part of Municipal Survey Plot No. 1689 of Village-Sadikpur Sangram from the recorded tenant Dwarika Mahto vide registered sale-deed dated 09.05.1967 (Annexure-1), the land having not been acquired for any public purpose much less for the purpose of raising Nalanda Medical College & Hospital over the same, the direction of the authorities to remove the house raised by the petitioners from the part of Municipal Survey Plot No. 1689 is wholly without jurisdiction, is required to be quashed by this Court. In this connection reference has been made to the Gazette Notification dated 18th September, 1958, whereunder for public purpose i.e. raising of Medical Institution in Village Sandalpur No. 11, (at Page 76 of the brief), Ward No. 20 of Patna Municipal Corporation 70.592 acres of land in Block "B" bounded in south by Municipal Survey Plot No. 1698 and other plots including Plot No. 1689, 1688 was proposed to be acquired with liberty to the land holders to file their objection to the proposed acquisition, if any within 30 days of the date of Notification. Further reference is made to the Declaration dated 18th August 1960, wherefrom it appears that in Village Sadikpur Sangram No. 17 and Rashidachak No. 16, in Ward No. 20, Patna Municipal Corporation, 11.945 acres of land bounded in the south by Survey Plot No. 1688p and other plots but not Plot No. 1689 was acquired for the public purpose i.e. location of Medical Institution in the said villages.

3. With reference to the Declaration dated 18.08.1960 it is submitted that Municipal Survey Plot No. 1689 was excluded from the aforesaid acquisition. The raiyat of the said plot Dwarika Mahto having sold part of the plot to Krishna Prasad, son of Kalyan Singh by virtue of registered Sale Deed dated 09.05.1967, Petitioner Nos. 1 to 3 along with sons of Krishna Prasad, Petitioner Nos. 4 to 6 have raised their residential house over the lands-in-question and it is arbitrary on the part of the authorities to record a finding in a summary proceeding initiated under Public Land Encroachment Act that Plot No. 1689 of Ward No. 20 has also been acquired for raising Medical Institution over the same.

4. Learned counsel for the petitioners further submitted that the authorities having failed to produce the Award by which the land holders including the raiyat of Survey Plot No. 1689 were paid compensation for acquisition of 11.945 acres of land for raising Medical Institution, it is wholly arbitrary on the part of the Circle Officer, Sadar, Patna and Additional Collector, Patna to hold that the land

bearing Municipal Survey Plot No. 1689 was also acquired along with other lands for raising Medical Institution. In this connection reference was also made to the last paragraph of the Declaration dated 18th August, 1960 (at Page 87 of the brief), whereunder it has been subsequently observed that plan of the lands acquired may be inspected in the office of the Land Acquisition Officer, Patna but the said plan of the lands acquired was never produced though directed by this Court under orders dated 15, 17.07.2014 and for failure of the authorities to produce the plan of the lands acquired, referred to in the Declaration dated 18th August, 1960, this Court may conclude that Plot No. 1689 was never acquired for the purpose of raising Nalanda Medical College & Hospital in Land Acquisition Case No. 78/1960-61.

5. Learned counsel for the petitioners further referred to Letter No. 7 dated 05.01.1988 (Annexure-4), issued by District Land Acquisition Officer, Patna, addressed to Deputy Collector, Incharge Urban Land Ceiling, Patna in connection with Urban Land Ceiling Case No. 27/4/86 whereunder information was given to the addressee that Survey Plot No. 1689 was subject matter of Land Acquisition Case No. 78/60-61 but was excluded from the proceedings under order dated 18.05.1969. He also referred to order dated 30.08.1991 passed in Encroachment Case No. 3/90 (Annexure-5) whereunder Land Encroachment Case for removal of encroachment by M/s Yadunandan Prasad, Krishna Prasad from plot-in-question vide Encroachment Case No. 7/89-90 was held not maintainable with reference to the contents of aforesaid letter dated 05.01.1988 (Annexure-4), land revenue, municipal receipt. Further reliance in this connection has also been placed on the order-sheet of Land Acquisition Case No. 78/60-61 (Annexure-10) and with reference to the said order-sheet it is submitted that the proposal to acquire Survey Plot No. 1689 for raising Medical Institution was withdrawn and as the proceeding for acquisition of Municipal Survey Plot No. 1689 was never taken to its logical conclusion, the finding recorded by the Circle Officer and the Additional Collector in the impugned orders that the lands of Plot No. 1689 was also acquired for the purpose of raising Nalanda Medical College & Hospital is wholly contrary to records and fit to be set aside by this Court.

6. Learned counsel for the petitioners finally submitted that proceeding for acquisition of Municipal Survey Plot No. 1689 having not been completed, the petitioners who are the bona fide purchaser of the said plot vide registered sale-deed dated 09.05.1967 are entitled to compensation in terms of the provisions of the Land Acquisition Act, 2013 as any proceeding initiated under Land Acquisition Act, 1894 if not concluded until the repeal of the old Act, the land holder is required to be compensated in terms of the provisions of the new Act. Reference in this connection is made to Section 24 of the New Act and reliance placed on the following judgment of the Supreme Court:

Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , Union of India (UOI) and Others Vs. Shiv Raj and Others, , Bharat Kumar Vs. State of Haryana and Another, , Bimla Devi Vs. State of Haryana, ,

7. Learned State Counsel has opposed the submission with reference to Section 4 Notification dated 18th September, 1958 (page 76 of the brief), whereunder 70.592 acres of land in Block "B" bounded in south by Municipal Survey Plot No. 1688 and other plots including Survey Plot Nos. 1689, 1698 was proposed to be acquired and the Declaration dated 18th August, 1960 (page 87 of the brief), whereunder 11.945 acres of land in the same Ward No. 20 of Patna Municipal Corporation bounded in the south by Survey Plot No. 1688 and other plots but not 1689 was acquired and submitted with reference to the trace map of the area that Plot No. 1689 being within the boundary as shown in the Declaration dated 18.08.1960 it is wholly inappropriate for the petitioners to contend that the said plot was never acquired for raising Nalanda Medical College & Hospital. He also referred to the petition filed on behalf of Dwarika Mahto, son of Kalicharan Mahto, resident of Mohalla-Tulsimandi, P.S.-Alamganj, District-Patna, the vendor of the petitioners (Annexure-H) whereunder information was given to the Land Acquisition Officer, Patna on his behalf that Dwarika Mahto has received notice under Section 9 of the Land Acquisition Act, 1894 for the aforesaid Plot No. 1689 Sheet No. 159, Ward No. 20, Holding No. 65/A, area 0.222 acres situate within Mauza-Sadikpur Sangram and Rashidachak, Patna and that the quality of the soil of the said plot is best for growing potato, onion and green vegetable and that income from the said land is Rs. 200/- per Katha and the compensation amount should be more than Rs. 1500/- per Katha. Vendor of the petitioners having admitted receipt of notice under Section 9 of the 1894 Act, there cannot be any difficulty in concluding that Plot No. 1689 is within the boundary of the lands acquired and was acquired for the purpose of raising Nalanda Medical College & Hospital and that he desired enhancement of the compensation amount taking into account soil of the plot.

8. In the light of the rival pleadings made by the parties, we have considered the submissions raised. It appears 70.592 acres of land in Village Sandalpur No. 11, Ward No. 20 of Patna Municipal Corporation bounded in the south by Plot No. 1688, 1689 and other plots was proposed to be acquired vide Notification dated 18th September, 1958 (page 76 of the brief), which is not the subject matter of the present writ petition as petitioners on their own are claiming title over Plot No. 1689 of Village Sadikpur Sangram No. 17 and not Village-Sandalpur No. 11. From the Declaration dated 18th August, 1960 (page 87 of the brief) it, however, appears that 11.945 acres of land in Village Sadikpur Sangram No. 17, Rashidachak No. 16 of Ward No. 20 Patna Municipal Corporation bounded in the south by Survey Plot No. 1688p and other plots was acquired. From the sketch-map (Annexure-A/1, 9) it is quite evident that Plot No. 1689 is within the aforesaid boundary and part of 11.945 acres of land which was acquired for raising Nalanda Medical College & Hospital. Had Plot No. 1689 of Village-Sadikpur Sangram No. 17 not acquired for raising Nalanda Medical College & Hospital vide Declaration dated 18.08.1960 (page 87 of the brief), there was no occasion for Dwarika Mahto, vendor of Krishna Prasad, father of Petitioner Nos. 4 to 6 to file

application (Annexure-H) admitting that he has received notice under Section 9 of the 1894 Act with respect to Plot No. 1689, Sheet No. 159 Ward No. 20, Holding No. 65/A, area 0.222 acres of Village-Sadikpur Sangram and Rashidachak, Patna and to request the authorities to take into account the quality of the soil of the said plot for enhancing the compensation amount.

9. We would also like to consider the submission of the counsel for the petitioners that lands of Plot No. 1689 was excluded from the Land Acquisition Proceeding vide Land Acquisition Case No. 78/60-61, as such, the claim of the State-respondents that the same was acquired for raising Nalanda Medical College & Hospital is misconceived. In this connection, we would refer to order dated 10.11.1966 passed in L.A. Case No. 78/60-61, wherefrom it will appear that a requisition was received from Secretary, Health Department under his Letter No. 14519 dated 04.05.1960 for acquisition of 12.591 acres of land in Village-Rashidachak No. 16 and Sadikpur Sangram No. 17. The requisition was split up into two parts, one of 11.945 acres comprising of vacant and arable lands and the other of 0.646 acres of orchard and homestead lands and for this acquisition two land acquisition proceedings under emergent and ordinary procedure under Land Acquisition Case No. 27/1960-61 and Land Acquisition Case No. 40 of 1960-61 respectively were initiated. Subsequent to the above requisition the Executive Engineer, Public Health Engineering Department sent another requisition for acquisition of lands in Village-Rashidachak No. 16 which overlapped some lands of the requisition of the Health Department mentioned above. The matter was referred to the Health Department and they allowed the acquisition of lands proposed by the Executive Engineer, Public Health Engineering Department to proceed on, so the lands as requisitioned by the Executive Engineer and some other lands had to be withdrawn from acquisition. In order to proceed with the acquisition the Land Acquisition Officer prepared notice to be submitted to the Collector in this connection explaining things by means of maps, draft withdrawal but the officer could not fill in the area in the draft withdrawal notification as the area copy and the original Khesra containing area of part plots has been lost by one of the Amins engaged in the field work which was filled in some time later by hand with reference to notice under Section 9 of the 1894 Act, as is evident from Page 144 of the brief. Perusal of the order-sheet dated 10.11.1966 (Annexure-10) will indicate that thereunder also reliance has been placed on Section 9 notice referred to by vendor of the petitioners in Petition (Annexure-H) that after publication of declaration he received notice under Section 9 of the Act for Plot No. 1689 and thereafter requested the authorities to take into account the quality of the soil of the land and to enhance the compensation to Rs. 1,000/- per Katha. Aforesaid admission is indicative of the fact that he never opposed acquisition of Plot No. 1689 rather he wanted enhancement of compensation and once it is concluded that the vendor of Krishna Prasad, father of Petitioner Nos. 4 to 6 was only interested in enhancement of compensation for the acquisition of the lands-in-question, the relief prayed for in the writ petitions is wholly misconceived. Infeasible conduct of

petitioners has been perceived with regard to relevant Survey Plot Number claiming the land to be their's on the basis of sale-deed followed by possession, as neither his vendor nor the petitioners have claimed that the Survey Plot No. 1689 does not fall within the boundary, so demarcated while acquiring big chunk of land, duly identified by the boundary; petitioners neither argued nor pleaded that Survey Plot No. 1689 was not within the boundary of the lands acquired and on account thereof, it could be established clearly that on account of lapses on the part of respondents to preserve the relevant documents concerning acquisition the petitioners have raised their plea.

10. In view of the aforesaid Declaration dated 18.08.1960 (page 87 of the brief), the petition filed on behalf of the vendor of father of Petitioner Nos. 4 to 6 (Annexure-H), the sketch map (Annexure-A/1, 9) there is no difficulty for us to conclude that the lands-in-question was acquired for raising Nalanda Medical College & Hospital and is within the boundary of the lands acquired for the said purpose vide Declaration dated 18.08.1960. Reliance placed on behalf of the petitioners over order dated 30.09.1991 passed by Sub-Divisional Magistrate, Patna City in Encroachment Case No. 3/90 is also misconceived as while closing the said encroachment case in favour of Yadunandan Prasad, Krishna Prasad the Sub-Divisional Magistrate, Patna City had no occasion to examine the effect of declaration under Section 6 of the 1894 Act dated 18.08.1960 (page 87 of the brief) and the contents of petition (Annexure-H) filed on behalf of Dwarika Mahto, vendor of Krishna Prasad in Land Acquisition proceeding admitting receipt of notice under Section 9 of the 1894 Act with respect to the lands-in-question requesting the authorities to take into account the nature of the soil for enhancing its compensation. In view of discussion above, the authorities, in our opinion, under the impugned orders dated 05.07.2013, 09/11.05.2013 have rightly concluded that the land over which petitioners have raised their house(s) was the subject matter of the acquisition proceedings taken for acquisition of lands for raising Nalanda Medical College & Hospital and the submissions made in the writ petition is wholly devoid of merit.

11. Petitioners being the encroachers of the Public Land bearing Municipal Survey Plot No. 1689 acquired for raising of Nalanda Medical College & Hospital, which is within the boundary of the lands so acquired vide Declaration dated 18th August, 1960, as is also evident from the sketch map of the area (Annexure-A/1, 9) and vendor of Krishna Prasad having already accepted notice under Section 9 of the 1894 Act and thereafter requested the authorities to enhance compensation for the lands acquired, the prayer made in the writ petition to quash the impugned orders is wholly misconceived and is dismissed. Stay order passed in the connected writ case having already been vacated under orders dated 01.12.2014, authorities are directed to proceed with the demolition of the encroachment made by the petitioners and others over the lands acquired for Nalanda Medical College & Hospital.

12. In the connected writ petition (C.W.J.C. No. 15839 of 2013) petitioners have

assailed order dated 05.07.2013 passed by Additional Collector, Patna in Land Encroachment Case No. 07/2013-14 (Annexure-3), whereunder he has affirmed the order dated 09.05.2013 passed by Circle Officer, Patna Sadar in Land Encroachment Case No. 25/2012-13 (Annexure-2) directing the petitioners to remove their houses from Municipal Survey Plot No. 1309 in Ward No. 20 of Patna Municipal Corporation which was acquired for raising Nalanda Medical College & Hospital but the petitioners have forcibly raised their house over the same by encroaching the land on the plea that in the light of the objection of the land holder in terms of opportunity granted by filing objection under Section 5A of the Land Acquisition Act, the proposal to acquire the land of Plot No. 1309 was withdrawn. In this connection, respondents have relied on the averments made in the counter affidavit paragraphs 11, 12 whereunder it has been stated that the option given to the land holders to file objection under Section 5A in the notification dated 18.09.1958 (Annexure-C) was withdrawn under erratum dated 06.11.1958 published in Bihar Gazette dated 26.11.1958 (Annexure-D), whereunder the last paragraph of notification dated 18.09.1958 inviting objection under Section 5A of the Act has been deleted. In Paragraph 13 of the counter affidavit reference has been made to Declaration dated 01.12.1959 issued under Section 6 of the 1894 Act (Annexure-E) from which it will appear that Plot No. 1309 is within the boundary of the lands acquired as would appear from the sketch map (Annexure-F) and the revised site plan of Medical Project. After going through the pleading as well as hearing the petitioners, whatever we collected that they have not pleaded that the land does not fall within the boundary by which acquisition was identified, rather contended that the land is beyond the acquisition which is fitment of their imagination. In the circumstances, there is no difficulty in concluding that Plot No. 1309 of Village-Sandalpur within Ward No. 20 of Patna Municipal Corporation was also acquired for raising Nalanda Medical College & Hospital and the prayer made in the writ petition to set aside order dated 05.07.2013 passed by Additional Collector, Patna in Land Encroachment Case No. 07/2013-14 (Annexure-3) holding the said fact is wholly misconceived and the writ petition is dismissed.

Aditya Kumar Trivedi, J.

I agree.