
(2011) 03 JH CK 0108

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4680 of 2003

Dinesh Prasad Daga

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 12A, 9

Citation : (2011) 2 JCR 580

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—In the year 2001, a preliminary notification was issued for acquisition of 9.94 acres of land including 33 acres of the land, bearing plot No. 577, situated at mouza Isri, Giridih for the purpose of construction of National Highway. Subsequently, a notice was issued u/s 9 of the Land Acquisition Act calling upon the persons interested in land to come forward to claim compensation. Pursuant to that notice, an application was filed stating therein that the land measuring 33 acres of plot No. 577 bearing khata No. 7 belonging to one late Laxmi Narayan Daga was partitioned through family arrangement by which Mahesh Prasad Daga and this Petitioner, both sons of late Laxmi Narayan Daga got share in the land.

2. Subsequently, it appears from the statement made in the counter affidavit that Kheshra Panji was prepared by Amin and Kanungo of District Land Acquisition Office, Giridih in which 33 acres of land was shown as homestead land and on that basis, award was prepared whereby the Petitioner was paid a sum of Rs. 3,30,330/- being half of the awarded amount.

3. The State has come with further case that after the award was paid, when inspection was carried out, it was detected that award has been prepared taking 33 acres of land as homestead land whereas, in fact, it was a tand land and on

that account, a notice was issued purported to be u/s 12A of the Act as contained in Annexure 5 wherein it was intimated that a sum of Rs. 3,30,330/- which was awarded as compensation amount was wrongly paid and therefore in exercise of power u/s 12A of the Act, the same has been corrected whereby it has been found that a sum of Rs. 1,39,210/- was paid in excess which is to be recovered from the Petitioner and the Petitioner was directed to deposit the same.

4. That notice as contained in Annexure 5 has been sought to be quashed on the ground that the order as contained in the notice has been passed without affording any opportunity to the Petitioner and as such, the same is violative of the principle of natural justice

5. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that it is the statement in the counter affidavit that earlier award was prepared on the basis of Kheshra Panji prepared by Amin and Kanungo wherein the land belonging to the Petitioner and his brother measuring 33 acres was shown as homestead land (Bari) but subsequently, it was found that, in fact, it was tand land. Under this situation, if the award is varied, it should have been varied after hearing the interested parties.

6. Admittedly, no show cause was given before issuance of the notice as contained in Annexure 5 and hence, that is violative of the principle of natural justice. Accordingly, the notice as contained in Annexure 5 is quashed. However, the Collector, Giridih would be at liberty to take decision in this matter afresh after giving due opportunity to the Petitioner to have his say in the matter. The said process be completed within two months from the date of receipt/production of a copy of this order.

7. Accordingly, this application is allowed.