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**(2018) 06 JH CK 0085**  
**In the Jharkhand High Court**  
**Case No : Writ Petition © No. 6352 of 2013**

Dinu Manjhi

APPELLANT

Vs

Raj Kumar Sao

RESPONDENT

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**Date of Decision :** 25-06-2018

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2018) 06 JH CK 0085

**Hon'ble Judges :** ANUBHA RAWAT CHOUDHARY, J

**Bench :** Single Bench

**Advocate :** Bhanu Kumar, Bharti Kumari, A.K. Das, Manjul Prasad, Jitesh Kumar

**Final Decision :** Allowed

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## Judgement

1. Heard Mr. Bhanu Kumar, counsel appearing on behalf of the petitioners assisted by Ms. Bharti Kumari, Advocate.Â Â
2. Heard Mr. Amit Kumar Das, counsel appearing on behalf of the respondent-C.C.L.
3. Heard Mr. Manjul Prasad, Senior Advocate, appearing on behalf of the private respondent assisted by Mr. Jitesh Kumar, Advocate.Â
4. Counsel for the private respondents have raised preliminary objection to the amended writ petition filed by the petitioners and have submitted that the same is not in consonance with the amendment which has been allowed vide order dated 20.09.2017. The counsel for the private respondent has objection with particular reference to the name of the father of the respective petitioners as mentioned in the amended writ petition and he submits that the name of the father of the respective petitioners are different from what has been mentioned in the original writ petition and he further submits that no such prayer for correction of fathersâ?? name of the petitioners was

made in the petition for amendment filed by the petitioners.Â

5. Counsel for the petitioners at the outset submits that in the amended writ petition, the cause title which has been mentioned by the petitioners is

different from the cause title of the original writ petition. He submits that in the amended writ petition, the fatherâ??s name of the petitioners has

been changed, as the petitioners at a later stage informed the counsel for the petitioners that name of father of the petitioners in the original writ

petition was wrongly mentioned. However, counsel fairly states that no petition for amendment in connection with the name of the father of the

petitioners was filed by the writ petitioners and accordingly he submits that the name of father of the petitioners which has been mentioned in the

original writ petition may be directed to be retained in the amended writ petition and may be mentioned in the final order also. He seeks permission to

make necessary corrections with regards to the fatherâ??s name of the petitioners in the cause title of the amended writ petition, so as to bring the

same in consonance with the original writ petition.Â However counsel for the petitioners submits that the petitioners should be at liberty to establish

their fathersâ?? name before the learned Tribunal if the matter is remanded back to the Tribunal for fresh consideration because the fathersâ??

name of the petitioners which has been mentioned in the amended writ petition areÂ the correct names.Â

6. Counsel for the petitioners submits that the writ petition has been filed for the following reliefs:-Â

(i) For quashing and setting aside the award and order dated 21.08.2014 passed in Reference Case No. 124/93 (Rajkumar Sao Vrs. Union of India

and Others) passed by the learned Presiding Officer Sri M.C. Verma, Addl. Judicial Commissioner-1, Ranchi, by which inter-alia payment of

compensation of an amount of Rs. 6,58,974.82 (Rupees six lakhs fifty eight thousand nine hundred seventy four and eighty two paise)Â has been

given to Raj Kumar Sao is not legally entitled to receive the aforesaid amount of compensation as he was not the descendant of the original Raiyat and

because the entire land acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957 belongs to members of the schedule tribe

i.e. the petitioners.Â

(ii) For setting aside the order dated 20.05.2013 passed in Reference Case No.

124/1993 by Learned Additional Judicial Commissioner-I cum

Presiding Officer, Tribunal under Coal Bearing Areas (Acquisition and Development) Act, 1957 whereby and whereunder the said learned Court has

erroneously held that the prayer of the petitioners is not maintainable being time barred and has rejected the objection petition dated 25.09.2010 filed

by the petitioners (as contained in Annexure-6 to this amended writ petition).Â

(iii) For holding and declaring that the petitioners being descendants of recorded tenants are necessary parties to be impleaded in Reference Case No.

124/1993 and are entitled to lead evidences on their behalf for proper adjudication of the said case.Â

7. He submits that the property in question was acquired vide Notification no. S.O. 3687 dated 13.09.83 underÂ Coal Bearing Areas (Acquisition and

Development) Act, 1957 and the entire land vested with the Central coalfields limitedÂ free from all encumbrances.

8. He further submits that after the acquisition of the land, a sale deed was executed and registered in favour of the private RespondentÂ vide sale

deed dated 05.07.1984 executed by one Kanak Kumar Sikdar holding power of attorney on behalf of one Golak Nath Banerjee. He submits that

Kanak Kumar Sikdar as well as Golak Nath Banerjee are strangers and are not at all related to the petitioners or their predecessors in interest who

are the recorded raiyats of the property involved in this case.

9. Counsel for the petitioners submits that the transfer of land by way of registered sale deed dated 05.07.1984 after the acquisition of land was itself

illegal, and no compensation could have been awarded by the learned Tribunal to the private respondent in reference case no. 124/1993 on the basis of

said sale deed executed subsequent to acquisition of land.Â

10. Counsel for the petitioners submits that earlier these writ petitioners had filed application for intervention in Reference Case No. 124/1993 by way

of objection, on 22.09.95 against the claim of private respondent, which was not pressed by their counsel till 19.07.2005 and hence the same was

dismissed and it was made clear that all the claimants shall prove their claim by concerned documentary evidence and their title documents and

relevant documents shall be taken into consideration.Â Thereafter as soon as the petitioners came to know about the said order dated 19.07.2005, the

petitioners had filed petition for recall of the said order dated 19.07.2005 vide

petition dated 25.09.2010 which was rejected vide impugned order dated 20.05.2013 which has been impugned in the original writ petition. The counsel submits that however while dismissing the petition for recall vide order dated 20.05.2013, the following observations were made :-

It is also important to note here that at the time of rejection of prayer on 19.07.2005 it has been made clear that all the claimants shall prove their claim by concerned documentary evidence and they have been directed to produce title deeds and all other relevant papers in respect to acquired land and said order has been passed keeping the principle of natural justice. In the interest of justice said order was passed. In this way interest of these strangers/claimants has also been saved by above mentioned conditions imposed in the order.

11. He submits that thereafter during the pendency of this writ petition, award dated 21.08.2014 was passed which has been impugned by way of amendment.

12. Counsel for the petitioner by referring to the impugned award dated 21.08.2014 submits that the compensation in connection with the land has been directed to be given to the private respondent herein, but there is no discussion in the impugned award as to how the private respondent herein became entitled to receive compensation.

13. He submits that as per the case of the private respondent itself, the private respondent purchased the property by virtue of sale deed dated 05.07.1984 which was admittedly subsequent of acquisition of land, and he submits that, this aspect of the matter has not been mentioned in the impugned order and accordingly has not been considered and further there is no finding as to whether the private respondent is the owner of the property or not.

14. He further submits that the private respondent has purchased the property from the persons who are totally unconnected to these petitioners and the petitioners are the descendants of the recorded tenant of the property.

15. Counsel for the petitioners submits that on account of non consideration of material and fundamental fact while deciding the matter of compensation and the aforesaid facts having not been taken care of, the impugned award dated 21.08.2014 is perverse and fit to be set

aside.

16. He submits that the entire facts would have been placed before the authority if the petition filed on 25.09.2010 for recall of order dated 19.07.2005

would have been allowed.

17. He further submits that the learned tribunal while passing the impugned award dated 21.08.2014 has not followed its own order dated 19.07.2005

as well as order dated 20.5.2013 wherein it had observed that the award would be passed after considering the title documents and other papers and

the accordingly the interest of the present petitioners will remain saved.Â

18. Counsel for the petitioners relied upon the judgment passed by the Honâ??ble Supreme Court reported in (2016) 11 SCC 378 paragraph 6.

Paragraph no. 6 of the said judgment is quoted hereinbelow for ready reference:-  
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â??It is clear from the findings recorded by the High Court that the transfer of title of land, covered by the notification for acquisition, in favour of a

builder, who sought release of land for setting up of a colony, was clearly to defeat the law and the notified purpose of acquisition. It was observed

that on this undisputed factual position, the plea of alternative remedy of seeking annulment of sale deed by a suit could not be entertained. Relief of

setting aside of sale transaction was incidental and consequential to the finding of illegal exercise of power to release the land covered by acquisition

proceedings to the builder who was not the original owner. It became necessary to undo the illegality and systematic fraud. It was undisputed that the

builder did not own an inch of land prior to acquisition and it was only the land acquisition proceedings coupled with the capacity of the builder to seek

licences for colonisation of land covered by acquisition which enabled it to acquire title. Contrary to the legal mandate of requirement of a coloniser

owning of its own land, ownership of land could not be allowed to be acquired by the sword of acquisition on the head of the original owners.â??Â

19. The counsel for the petitioners submits that the claim of the private respondent is based solely on the sale deed executed after acquisition of land

and the respondent Central coal fields limited also did not bring this fact to the notice of the learned Tribunal which has resulted in passing of the

impugned award in favour of the private respondent. He submits that it is in the interest of justice to undo the illegality remit the matter for fresh

consideration after hearing the parties as well as the petitioners.Â

20. Counsel for the respondent-C.C.L.(Central Coalfields Limited) submits by referring to the counter affidavit that the fact regarding acquisition of

the property and its vesting with the respondents C.C.L. vide notification being S.O. No. 3687 dated 13.09.83 is admitted fact by the C.C.L. He

submits that by virtue of this notification the entire land vested with C.C.L. free from all encumbrances. He refers to paragraph nos. 15,16 and 17 of

the counter affidavit and submits that the sale deed datedÂ 05.07.1984 was executed after the acquisition of land. He submits that there was a

dispute as to who would be entitled for compensation and therefore the C.C.L. had deposited the compensation amount before the Court so that

appropriate order may be passed in accordance with law. However he could not dispute that in the impugned award there is no mention of any right,

title and interest of the awardee over the acquired property and there is no mention of the sale deed dated 05.07.1984 on the basis of which the private

respondent herein had claimed the compensation.Â

21. Counsel for the private respondent submits that the private respondent had purchased the property by virtue of registered sale deed dated

05.07.1984 and submits that the sale deed establishes right of the private party in connection with the property and accordingly the award has been

rightly passed in their favourÂ and the compensation has been rightly given to them. Counsel for the private respondent also submitted that the

petitioners or their predecessors in interest are not the recorded tenant and accordingly, the petitioners have no locus in the matter. He also submits

that application for intervention which was filed by the petitioners was dismissed. The petitioners were totally negligent in conducting their case and

later on a petition for recalling the order rejecting the petitionersâ?? intervention was dismissed by the court below. He submits that considering the

conduct of the petitioners and negligence by which the petitioners had conducted the case before the court below, the impugned order dated

20.05.2013, has been rightly passed.Â

22. Counsel for the private respondent also submits that impugned award dated 21.08.2014 is an appealable order and therefore this court cannot enter

into deciding the legality and validity of the order dated 21.08.2014 and the petitioners may avail their remedy in accordance with law.Â

23. After hearing the parties and upon going through the records of this case, this court finds that the private respondent has rightly raised objection in connection with the father's name of the petitioners in the cause title of the amended writ petition which is different from that of the original writ petition, although no such prayer for amendment of cause title was made in the petition for amendment. In such circumstances, the petitioners could not have suo moto changed the father's name of the writ petitioners and incorporate it in the amended writ petition. Accordingly, the counsel for the petitioners as per his submissions mentioned above is permitted to make necessary corrections in the cause title with regards to the father's name of the petitioners so as to bring the same in consonance with the original writ petition. As this court is inclined to remit the matter back to the Tribunal for fresh consideration, this issue with regard to the father's name of the petitioners is kept open and the writ petitioners before the Tribunal will be entitled to establish their identity including their father's name.

24. Further, this court is inclined to allow this writ petition and remit the matter back to the learned tribunal for fresh considering on account of following facts and reasons:-

a. Admittedly the petitioners as of now are not party to the reference case and accordingly this court is not inclined to dismiss the writ petition on the ground of alternative remedy of appeal against the final award as the appeal itself may not be maintainable at the instance of the writ petitioners whose matter in connection with intervention has been rejected by the order which is also impugned in this writ petition and the final award was passed only during the pendency of this writ petition and for which the writ petition was amended.

b. The petitioners are claiming to be descendants of the recorded tenant of the property involved in this case and private respondent herein is claiming the property through the persons, who, as per the petitioners, are totally stranger to the petitioners. However the private respondent is disputing this contention of the petitioners.

c. Therefore in the interest of justice it would be necessary that the petitioners should also be heard by the court below so that the court below may come to the exact finding as to who is the owner of the property involved in this case which has been acquired by the C.C.L.

d. This court further finds that while passing the impugned order dated 20.05.2013, the prayer of the petitioners to recall the order dated 19.07.2005

was although rejected, but the learned court below while passing the order had observed that all the claimants shall prove their claim by concerned

documentary evidence and they have been directed to produce their title deeds and all relevant papers in respect to acquired land considering the

principles of natural justice. In the said order it was also observed that the interest of all the persons including that of the present petitioners was also

saved in view of the aforesaid procedure being adopted.

e. However, this court finds that while passing the final award the learned tribunal has omitted to follow its own earlier order dated 19.07.2005

read with order dated 20.05.2013. This court finds that while passing the impugned award dated 21.08.2014, the learned Tribunal while deciding

the entitlement of compensation has only referred to identity of the private respondent and has not made any deliberation as to whether the private

respondent was entitled to compensation or not. Even the sale deed dated 05.07.1984 on the basis of which private respondent is claiming

compensation does not find mention in the impugned award dated 21.08.2014. The total non consideration regarding the basis of entitlement of

compensation in the impugned award dated 21.08.2014 reflects complete non application of judicial mind by the learned Tribunal and accordingly

this court is inclined to entertain this writ petition under Article 226 of the Constitution of India.

f. Considering the aforesaid aspect of the matter the impugned award dated 21.08.2014 passed in Reference Case No. 124/93 (Rajkumar Sao Vrs.

Union of India and Others) passed by the learned Presiding Officer Sri M.C. Verma, Addl. Judicial Commissioner-1, Ranchi is hereby set-aside and

the matter is remitted back to the said Authority for fresh consideration.

g. Considering the fact that there is serious dispute regarding right, title and interest on the property between the petitioners and private respondent

herein, it would meet the ends of justice if the petitioners are also heard while passing the fresh order by the tribunal pursuant to this order.

Accordingly, order dated 20.05.2013 refusing to recall order dated 19.07.2005 is also set aside and it is directed that the petitioners be made parties in

the reference case No. 124/93 and further the petitioners as well as private

respondent herein and the respondent Central Coalfields Limited should be granted opportunity to place their case/claim in connection with the property before the learned tribunal while passing the fresh order.

Accordingly, this court directs that the Tribunal to pass fresh reasoned order pursuant to this order in accordance with law within a period of six

months from the date of receipt of a copy of this order.

25. This writ petition is accordingly allowed with aforesaid observations and direction.

26. It is made clear that this court has not entered in the merit of the claim of the rival parties.