

(2020) 07 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17144 Of 2008

Dr. Rash Lal Yadav And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Land Acquisition Act, 1994 — Section 9, 11, 12(2), 18, 30

Citation : (2020) 07 PAT CK 0047

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Bishnu Kant Dubey, Praveen Kumar, Lalit Kishore, Binita Singh

Final Decision : Dismissed

Judgement

1. The Court cannot remain a silent spectator to fraud and blatant abuse of process of law perpetrated by a party trying to re- agitate and re-litigate the issue which already stands tried and decided against him. Fraud would vitiate all proceedings is what stands held by the Hon'ble Apex Court in Satluj Jal Vidyut Nigam Versus Raj Kumar Rajinder Singh (Dead) through legal representatives and others (2019) 14 SCC 449.

2. Incidentally, this Court is called upon to adjudicate the instant lis covering the very same issue.

3. To the Court's consideration, petitioners have not only filed the instant petition agitating the issue, already decided in an earlier round of litigation, but have also misled this Court in passing an interim order, resulting into a considerable delay of execution of a public work of immense importance. Not only that, petitioners have also taken a self-contradictory and mutually destructive plea and stand. Even, they have attempted to illegally claim compensation of a higher amount with the change of position in law.

4. For the construction of the western Kosi Sakari-Jhanjharpur Canal popularly known as 'Dumariyahi Sub Distributory', the land was acquired by the State in

different revenue estates including Village- Phulwariya and Village-Basuwa.

5. According to the State, petitioners' land falling within the revenue estate Basuwa, was acquired vide Award dated 07.02.1989, Case No.86 of 1985-1986, possession of which stood taken over on 28.02.1989. Petitioners' land falling within the revenue estate Phulwariya was acquired vide Award dated 07.07.1988, Case No.90/1985-86, possession of which stood taken over on 12.08.1988. Since petitioner no.1 failed to accept monetary compensation, the same stood deposited with the appropriate authority under the provisions of the Land Acquisition Act, 1894 (as amended to the State of Bihar). The record reveals that Notification intending to acquire the land was issued, to which effect documents are on record (Annexure-B series to the counter affidavit filed on behalf of Respondent Nos.2, 4 and 6 on 24.07.2009, Page-110 and 111 of the brief).

6. It is a matter of record that several landowners filed several petitions challenging the acquisition proceedings, and not one of them stood accepted by this Court. In fact, in one such petition, being CWJC No.2944 of 2001 titled as Ashok Kumar Jha Versus the State of Bihar & others, this Court, while dismissing similar petition directed the State to complete the project without any delay (page-131 of the brief). Petitioners have placed on record orders passed concerning other petition being CWJC No.3430 of 2001 titled as Ram Rup Paswan Versus State of Bihar & Ors.

7. It has come on record that petitioner no.1 Dr. Rash Lal Yadav was the recorded owner of the land in question. His sons, petitioner no.2 namely Robins@ Rahul, petitioner no.3 namely Rohit Kumar @ Rohit and his wife petitioner no.4 namely Lalita Yadav were not the recorded owners of the land. As such, they filed an application seeking correction of the revenue record (Annexure-A to the counter affidavit filed on behalf of respondent nos.2, 4 and 6 on 24.07.2009, page 104 of the brief). It was much after the passing of the Award under the Act. It is, for this reason, that information furnished by an officer under the provision of the Right to Information Act does not reflect the portion of the acquisition of land. Can information provided under a Right to Information Act be the basis to set up a claim or title. In our considered view, not so. Petitioners have to establish their right, title and interest in the land. Then only they would have locus or cause of action to seek appropriate relief.

8. It is a matter of record that petitioner no.1 namely Dr. Rash Lal Yadav had filed a petition being CWJC No.3876 of 2008 titled as Dr. Rash Lal Yadav Versus The State of Bihar & Ors, in which claim set out was only concerning inadequate payment of compensation, with a limited prayer for the adjudication of reference petition under Sections 18 and 30 of the Act. The said order stands reproduced in toto as under: -

"2. 5.3.08 Heard counsel for the parties.

In this writ application the petitioner seeks for a direction for making a reference to the civil Court in terms of Section 18 and 30 of the Bihar Land Acquisition Act,

1994 with respect to the Award made by the Collector-cum-District Magistrate in Land Acquisition Case No.86/85-86.

The petitioner has claimed that he has repeatedly approached the District Magistrate, Madhubani for referring his case for payment of appointment of the amount of compensation in terms of sections 18 and 30 of the Bihar Land Acquisition Act but no order till date has been passed on such representations of the petitioners which were filed by him on 8.3.2006, 9.8.1006 and 24.11.2006 respectively.

From the materials on records it appears that the petitioner has made such a request for making a reference in terms of section 18 of the Land Acquisition Act after 20 years of making of the Award under section 11 of the Act. This Court, therefore, cannot issue any direction to the Collector for making reference in view of the self imposed restrictions under section 18 read with section 12(2) of the Land Acquisition Act but as the Collector of Madhubani District has been approached by the petitioner he may examine the matter and if he finds that the petitioner fulfils the requirement for making such reference as laid down either under section 18 or section 30 of the Land Acquisition Act he will pass such an order in accordance with law within a period of three months from the date of receipt/production of a copy of this order. It is, however, made clear that this Court has not expressed any opinion on the merit of the case of the petitioner and therefore it is always open to the Collector of the District to examine the claim of the petitioner and pass an appropriate order in accordance with law.

This application is accordingly disposed of."

9. Significantly, under that, petitioner no.1 namely Dr. Rash Lal Yadav sought reference under Sections 18 and 30 of the Act by moving an application before the Collector of the District Madhubani wherein he categorically referred to the particulars of the land situated in both the Villages/Mauza- i.e. Basuwa and Phulwariya. This request was turned down by the Collector vide order dated 03.11.2008 (Annexure-9 to the writ petition, page 49 of the brief) for the reason that the reference sought was beyond the period of limitation.

10. Relentlessly, petitioners pursued the litigation and filed the instant petition praying for the following reliefs: -

"That this is an application for issuance of a writ in the nature of certiorari to quash the order containing Memo No.110, dated 06.11.2008, issued under the signature of District Magistrate, Madhubani, whereby the representation filed by the petitioner no.1 for compliance of the order of this Hon'ble Court has been rejected on non est ground and/or for issuance of a writ in the nature of mandamus directing and commanding the respondents to not proceed further in so called Land Acquisition Case No.86/85-86, relating to acquisition of the land of the petitioners under revenue village Basuwa as also under revenue village Phulwariya for the construction of Dumariyahi Sub Distributory under western KoshiSakari-Jhanjharpur Canal and not to acquire the land of the petitioners

since the procedure/law relating to the acquisition of land has not been properly followed and in alternative for a direction to the respondent no.4 to make reference to Court under Section 18 and 30 of the Bihar Land Acquisition Act 1894 with respect to the so-called award granted by the respondent no.4 in land acquisition case no.86/85-86 for which petition was filed as also to enhance the rate of compensation as per local market value/ at least value fixed by the State Government and make payment of interest on the compensation amount, and/or for issuance of a writ/order/direction for which the petitioners may be found legally entitled to under the facts and circumstances stated hereinunder."

11. Reading of the writ petition does an interesting reading.

12. Most significantly, petitioners admit passing of the order acquiring the land. They explicitly do not lay any challenge to the same. Their primary claim is for enhancement of compensation. In para -4 of the petition, they categorically admit that lands stood acquired vide Land Acquisition Case No.86/1985-86. In para-5, they have given a detailed reference of the land situate in Village Basuwa, which is identical to the one mentioned in the land reference petition filed before the Collector (Annexure-8 to the writ petition, page-42 of the brief). In para 5 of the petition, they admit that the land stood acquired and the compensation deposited. Similarly, in para-6, they have furnished details of lands situate in Village- Phulwariya which are identical to the one referred to in the reference petition. In para-16 of the petition, petitioners admit having learnt of the acquisition, with the issuance of Notification under Section 9 of the Act.

13. Based on pleadings of the parties it can be safely inferred that petitioner no.1 was fully aware of land acquisition proceedings and preparation of Award and no reasonable explanation is forthcoming for not applying section 18 of the Act before the Collector to refer the matter to Civil Court for enhancement of compensation amount. It is an admitted fact that claim under Section 18 of the Act was set up by petitioner after more than 20 years of preparation of Award in his name when it was hopelessly time-barred. Section 18 proviso (a) & (b) permits a maximum period of six months from the date of Award for filing of an application under Section 18 of the Act.

14. The Collector, Madhubani has averred of directions issued to him by this Court vide order dated 05.03.2008 passed in CWCJ No. 3876 of 2006 to dispose of petitions dated 08.03.2006, 09.08.2006 and 24.11.2006 filed by the petitioner. Leaving all issues on merit open, this Court only directed the authority to decide as per the law. No direction was given by this Court to consider any fresh claim or fresh petition of petitioner. In all three petitions, the claim was for higher compensation or to refer the matter under section 18 of the Act to Civil Court for enhancement of compensation amount.

15. This Time limit of six months prescribed under the Act was not adhered to, and a hopelessly time-barred petition was filed after a period of twenty years from the preparation of the Award. The petitioner being an awardee of the land,

the proceedings were drawn in his name, in which he participated and accordingly, the Award was prepared in his name.

16. Section 18 of the Act reads as follows:-

"18. Reference to Court.

(1) Any person interested who has not accepted the Award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

2) The application shall state the grounds on which objection to the Award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his Award, within six weeks from the date of the Collector's Award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's Award, whichever period shall first expire."

17. Section 30 of the Act deals with apportionment of the amount of compensation of which there is a dispute.

18. Section 30 of the Act reads as follows:-

"30. Dispute as to apportionment. - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court."

19. Hence, despite admitting everything parties filed the instant petition.

20. The real reason for petitioner no.1 not having accepted the compensation is non-recording of names of petitioners no.2, 3 and 4 in the Revenue Record. Before this Court, they suppressed the details of having moved an application seeking correction of the Revenue Record. All this prompted the Court to pass interim orders of status quo dated 16.12.2008 and 08.09.2015, which now stand vacated vide order dated 26.06.2020. Vide interim order dated 23.06.2020, no objection of the petitioners for the hearing of the matter on merits by a Division Bench stands recorded. Not only that, petitioners also had the audacity of filing an interlocutory application being I.A. No.2243 of 2015 seeking compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013, wherein petitioners took up the plea of elapsing of the acquisition proceedings. Thus, petitioners have

taken mutually contradictory and self-destructive stands:

- (i) No land of the petitioners was ever acquired;
- (ii) No land of any of the petitioners in Village-Phulwariya was ever acquired;
- (iii) Compensation awarded was not just, fair or reasonable;
- (iv) The acquisition proceedings initiated in the year 1985-86 stood elapsed.

21. Hence, the instant petition is nothing but a gross abuse of process of law.

22. This Court way back in the year 2008 had recorded petitioner no.1's endeavour of seeking higher compensation to be delayed by more than twenty years. Yet, he tried to re-litigate and re-agitate issues which stood adjudicated in an earlier round of litigation. There is nothing illegal or perverse in the order dated 03.11.2008 (Annexure-9) passed by the appropriate authority, and the petition only merits dismissal.

23. It is only on account of pendency of the present petition that public work has suffered, and the canal not constructed for more than 35 years.

24. It is in these facts and circumstances, and we find no merit in the present petition, which is dismissed with costs quantified at Rupees one lakh, recoverable as arrears of land revenue, for which the Collector shall take appropriate action as per law.