

(2018) 09 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4075 of 2017

Gonu Prasad

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Citation : (2018) 09 PAT CK 0004

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Vivekanand Prasad Singh, Sajid Salim Khan

Final Decision : Dismissed

Judgement

1. The present writ application has been filed for a direction to the respondent-authorities to initiate fresh proceeding under the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of the land of the petitioner which was

subject matter of notification under Section 4 of the Land Acquisition Act, 1894 for the reason that acquisition proceeding did not get finality as

physical possession of the land was never taken over by the respondent-authorities.

2. Undisputed fact of this case is that the State Government acquired certain land including land of the petitioner in village Sadikpur Muraul, Police

Station Sakra, district Muzaffarpur for its public project known as Tirhut Canal Project/Gandak Project. The notifications bearing no. 9920 and 9921,

dated 12.05.1973 were issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as the "Old Act"). It is stated that pursuant

to the acquisition proceedings, award was prepared and award money was of

Rs.15,000/-(fifteen thousand) for total area of 3.35 acres was paid to the grandfather of the petitioner in the year 1974. However, claim of the petitioner is that possession of the land is still with the petitioner. Even after payment of award in the year 1974, the State Government did not take physical possession of the land which is still with the petitioner vide statement in para 8 and 9 of the writ application.

3. In the counter affidavit filed on behalf of respondent no. 6, it is specifically stated that besides land of the petitioner's grandfather, other lands of

the same village were also acquired in the same acquisition proceeding and compensation to the land owners was paid in the year 1974 itself.

Thereafter possession of the acquired land was made over to the Executive Engineer of the concerned department vide letter no. 738, dated

13.06.1974 at Annexure-R6/1 to the counter affidavit. The entire compensation amount was paid to the landholders, as such, the acquisition

proceeding completed under the Old Act itself.

4. Submission of learned counsel for the petitioner is that though acquisition proceeding was initiated by the respondents in the year 1973, however,

possession of the land acquired was never taken for the reason that the project for completion whereof the land was acquired was not initiated or

initiated after lapse of years. According to the petitioner, the possession of the land always remained with the petitioner. Next submission is that

though compensation of Rs.15,000/- was paid to the grandfather of the petitioner for the acquired land of the petitioner, however, the same was

received by the grandfather on protest. As such, the acquisition proceeding never got finality and if the respondents still desire to have the said land

acquired fresh acquisition proceeding as mandated under Section 24 of the New Act should be indicated.

5. Contention of the respondents is that in different phases, the 'Gandak Project' was completed due to paucity of funds coupled with delayed

administrative sanction. Learned counsel for the respondents contends that no evidence has been brought on the record to substantiate that

grandfather of the petitioner had received compensation amount under protest. However, it is not disputed that compensation amount was received by

the grandfather of the petitioner. Contention is that in view of the provisions of Section 16 of the Land Acquisition Act, 1894, when the Collector made

an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all

encumbrances. In the present case, the possession was taken as per Annexure-R6/1 and, as such, the land vested in the State. If the State would

have no requirement of the acquired land or any portion thereof the only course should have been to issue notification to that effect as required by

Section 48 of the Old Act. His contention is that having taken possession of such a huge portion of land, it is not possible for the State to segregate the

acquired portion and guard it. The original raiyat might have re-entered or continued in possession but that would not deter and it cannot be said that

possession was not taken for the simple reason that when the acquisition proceeding completed, the land bona fide vested in the State in exercise of

power eminent domain. The property has been vested absolutely in the State and if subsequently the State is unable to proceed with the project, it

can always utilize the acquired land for any other public purpose. In the present case, the land was used for the same public purpose, though

construction of canal was made in different phases after lapse of few years as and when the fund was made available.

6. There is nothing on the record to substantiate that compensation was received by the grandfather of the petitioner for the acquired land on protest

nor there is any reason stated in the writ application for receiving the amount on protest. Annexure R6/1 would show that possession of the land was

taken by the competent authority and handed over to the Executive Engineer of Tirhut Canal Project/Gandak Project. Once the acquisition proceeding

completed after taking over possession by the competent authority and payment of compensation to the land owner, the acquired land vested in the

State in view of the provisions of Section 16 of the Old Act. As such, the State is free to utilize the said land after removing the unauthorized person

from the possession of the same, if needed.

7. On careful consideration of the material available on the record and the pleadings of the parties as referred above, in my view, the acquisition of

land of the petitioner was already completed under the Old Act in all respects including payment of compensation and taking over of possession of the

land. Hence, there is no question of allowing the prayer of the petitioner to initiate fresh acquisition proceeding under the New Act.

8. Accordingly, this writ application is dismissed as devoid of any merit.