
(2009) 07 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 6689 of 2009

Kamaldeo Narayan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Bihar Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2009) 4 PLJR 381

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Ashutosh Ranjan Pandey, Anshuman Ranjan Pandey, Rakesh Narayan Singh, Ramanuj Tiwary, Abdul Wadood and Jai Shankar, for the Appellant; Lalit Kishore for the State, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Certain lands were sought to be acquired by the State Government in the year 1974. Finally, the land acquisition proceeding was initiated in the year 1981-82 and the award was prepared on 26.3.2008 with respect to Land Acquisition Case No. 79 of 1981-82. The petitioner received the compensation amount on 29.4.2008 under protest. Since the matter remained pending for a long time, the petitioner approached this Court vide CWJC No. 14185 of 2004. By the order dated 25.4.2006 passed in the aforesaid writ application, this Court granted two months time to the State of Bihar to pay the entire compensation amount alongwith solatium and interest at the statutory rate. Predictably, the order of this Court was not complied with and, therefore, the petitioner filed contempt application being MJC No. 2032 of 2006. In the contempt application, this Court imposed a cost of Rs. 10,000/- to the respondents and further directed as follows:- "So far as award of compensation and payment to the petitioner with regard to 6.93 acres of land is concerned, the petitioner will be at liberty to dispute the fixation of the value of the land and quantum of solatium, interest etc. in accordance with law before an appropriate

forum."

The order in the contempt application is dated 12.11.2008. The award was prepared on 26.3.2008 and the petitioner received the compensation amount on 29.4.2008 under protest and filed an objection on 5.5.2008 within the statutory period as provided u/s 18 of the Bihar Land Acquisition Act (hereinafter referred to as "the Act"). This objection application was sent by registered post to the Collector, the receipt is part of the record of this writ application.

2. I may point out that the payment of the compensation amount and the objection was filed during the pendency of the contempt application. On final disposal of the contempt application, the petitioner filed a fresh application objecting to the amount fixed on behalf of the State Government as liberty, had been granted by this Court to file such an application. However, despite the fact that the petitioner, also filed a protest with respect to the fixation of the amount on 5.5.2008 and despite the fact that this Court had granted liberty to file an objection for fixation of the compensation amount, the Collector has filed counter affidavit taking an objection that the application u/s 18 of the Act is not maintainable on the ground that it is beyond the statutory period. Section 18 of the Act provides that "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 measure of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested should be made within a period of six weeks". Admittedly, the petitioner had made his objection within the period of six weeks on 5.5.2008 and again by the liberty of this Court on 13.12.2008 after obtaining the order passed in the contempt application, despite which the Collector has taken an objection which according to this Court is unacceptable. In my view, the Collector ought to have entertained both the applications and referred the matter to the Land Acquisition Judge, Khagaria for adjudication with respect to the fixation of the compensation amount in accordance with the value of the lands.

3. Apart from what has been stated aforesaid, learned Counsel has also drawn this Court's attention to Annexure-4 and 5 of the writ application. Annexure-4 is dated 14.8.2006 and is signed by the Circle Officer, Circle Inspector and Halka Karamchari of Parbatta Circle which indicates the nature of the land against the plots mentioned therein. The petitioner does not dispute that the petitioner's land appertaining to plot Nos. 658 to 687 described as basgit land situated in Mouza Temthakarari by the said authorities mentioned above. This classification is the basis on which documents are registered in the State of Bihar with respect to sale or any other matter. Similarly, Annexure-5 is the value of the lands situated in different mouzas. Again, the lands appertaining to Temthakarari have been shown to be at the value of Rs. 9,500/- per decimal. This chart is also utilized by the State Government for the purposes of fixing the registration fee for transfer of lands in the areas concerned.

4. I, therefore, leave it open to the Collector to either refer the matter to the Land Acquisition Judge, Khagaria or to accept Annexures-4 and 5 after verifying the same from his own office where the records should be available or in the alternative to send for the records from the Office of the Registrar to cut short the matter considering the fact that the land acquisition proceeding was initiated as far back as in the year 2006 and the petitioner is suffering for the past several years on account of non-payment of his dues and had to move this Court on several occasions in order to get his right adjudicated by this Court.

5. Learned Counsel also submits that after the notification u/s 4(1) of the Act, he has not filed any objection with respect to the acquisition of his land rather his only objection has been for making payment of the compensation amount. Referring to Annexure-B, learned Counsel for the petitioner submits that there is a decision by the State Government vide memo No. 395 dated 19.2.2007 wherein it has been stated in Clause t.2 that the State Government has decided that it would give 60 per cent solatium to such person who were willing for the acquisition proceedings of their lands which has been reiterated by memo No. 1455 dated 21.6.2007. In the memo dated 21.6.2007, it has been stated that an affidavit ought to have been filed by the land holder after the notification under Sections 4 and 6 of the Act stating that they are willing to handover their lands. In this context, this Court finds that the steps were taken by the State Government to take over of possession of the lands, some time in the year 1974-78. The petitioner did not make a protest. Finally, the petitioner came to this Court when notification u/s 4(1) of the Act was issued on 16.10.2006 for payment of compensation and during the pendency of the contempt application, the award was prepared and payments were made to the petitioner. At no stage of the proceeding i.e. from the year 1974 right up to the year 2008 when the award was prepared had the petitioner filed any protest against the actual acquisition of the lands and in fact his only grievance has been that State Government was not paying the compensation amount. It is, therefore, submitted on behalf of the petitioner that he should be granted 60 per cent solatium in view of the fact that the petitioner admittedly had never raised any protest against the acquisition of his land.

6. Learned Counsel for the State submits that he ought to have filed an affidavit as required by memo Nos. 395 and 1455 dated 19.2.2007 and 26.6.2007 respectively. Learned Counsel for the petitioner on the other hand submits that the entire proceedings was initiated and concluded while the matter was pending before this Court either at the stage when the writ application was filed or when the contempt application was being heard and therefore, the petitioner could not have any opportunity in fact to file an affidavit regarding this aspect of the matter. Besides which, the earlier letters which are policy decisions cannot be said to be mandatory in nature which require that such an affidavit ought to be filed within a particular time mentioned in the aforesaid letters.

7. In the special circumstances of this particular case, it would be proper for the

State Government to accept the if any filed by the petitioner within a period of one month from today so that the petitioner may be paid 60 per cent solatium in view of the fact that he was willing for the acquisition of his lands. This writ application is thus allowed with the aforesaid observations and directions.