

(2014) 03 PAT CK 0069

In the Patna High Court

Case No : C.W.J.C. Nos. 12895 of 2013 and 20737 of 2010

Krishna Prasad Tiwary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 11-A, 17(1), 17(4)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2015) 1 PLJR 614

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Rakesh Kr. No. 1, Advocates for the Appellant; Ajay Kr. Sharma, Advocates for the Respondent

Judgement

Navaniti Prasad Singh, J.—In these two writ petitions, the petitioners, who are close family members, seek return of their land and/or compensation as now provided under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Counter affidavit and rejoinder are there. With consent of parties, the writ petition has been heard for its disposal at this stage itself.

2. It appears that in 1975, State Government sought to acquire, under emergency procedure, land for public purposes. It was to be acquired for establishing a factory by Indian Drugs and Pharmaceutical Limited (IDPL), a Government of India Enterprise. Notifications, accordingly, were issued and awards were prepared. Pursuant to awards being prepared, as there was some delay, apparently IDPL became disinterested. Accordingly, State Government took a decision to hand over the said land to the Bihar Industrial Area Development Authority (BIADA). Notice of award was issued. From the pleadings, it is not disputed that out of about 192 awardees, 186 received payment. Six members of the petitioners' family refused to accept the payment and, as such, payments were deposited in Government account after due notice

to them. Subsequently, possession was taken and handed over to BIADA. It is not disputed that now BIADA has even constructed a boundary wall enclosing the land but as the land is lying unutilized, petitioners and their family members have reentered upon it and continued to carry on agricultural operations therein. In view of aforesaid, it is submitted that the land being unutilized for the purposes of acquisition and possession not having been taken, compensation not having been paid, the proceedings for acquisition would be deemed to have lapsed. Alternatively, it is submitted that in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force with effect from 1.1.2014, the proceedings would be deemed to have lapsed and if the State wants to retain the land, they must pay compensation in accordance with this new Act.

3. On the other hand, learned counsels for the State submit that the acquisition proceedings were taken up with the aid of Section 17(4) of the Land Acquisition Act in the year 1975-1976, awards having been made and notified, possession was taken but could not be zealously guarded because of large track of land involved. That gave opportunity for some people to get back on their land and resumed their possession. The compensation of persons, who have not accepted the same, has been deposited in Government account. It is further pointed out that out of 192 awardees, 186 have already accepted the compensation long back. It is only family members of one family who are now contesting the matter. It is submitted that in terms of Section 17(1) of the Land Acquisition Act, 1894, once acquisition was completed under emergent proceedings, award made and possession taken, the property absolutely vested in the State. Neither its disuser nor resumption of possession by the original landholder could undo this vesting. State is free to utilize the said land and petitioners of the two writ petitions are free to go and claim their compensation which is long deposited. It is pointed out that some of the close relations including brother of the petitioners have long since received the compensation. It is, thus, submitted on behalf of the State that challenge to the acquisition proceedings, which had taken place almost 40 years back, should not be entertained.

4. Having considered the matter, in my view, the contentions put forward by the State have to be accepted. It is not in dispute that the acquisition proceedings under the emergency proceedings were taken up in the year, 1975-1976. Award having been made and notified, 186 awardees out of 192 awardees already received the compensation. Only a few family members of the petitioners refused to accept it. The land was bounded by boundary wall bit (sic--built?) by BIADA to whom the land was ultimately transferred by the State. These facts clearly show that proceedings had long since been completed in all respects and the land absolutely vested in the State.

5. So far as Section 11-A is concerned, even though it has no application as the acquisition proceedings were taken out in the year 1975-1976. They would have no application even otherwise as acquisition was pursuant to emergent

proceedings and the Apex Court has held in the cases of Satendra Prasad Jain and Others Vs. State of U.P. and Others, and Awadh Bihari Yadav and Others Vs. State of Bihar and Others, that in such cases, the property having vested in the State through emergent proceedings, Section 11-A has no application.

6. Thus, the proceedings cannot be said to have lapsed. They stood concluded much prior to the new Act having come into force. In that view of the matter, in my view, the writ petitions do not merit any consideration and they are dismissed accordingly.