

(2012) 09 JH CK 0113
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2497 of 2006

Rajani Koiri @ Koiry

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Income Tax Act, 1922 — Section 66(1)
Land Acquisition Act, 1894 — Section 12(2), 30, 9

Citation : (2012) 09 JH CK 0113

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : H.K. Mahto, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the petitioner as well as learned counsel for the State. It appears that service of notice was treated to have been validly served upon the respondent No. 6, despite thereof no one appeared on behalf of the respondent No. 6 to contest the writ petition.

2. The writ petitioner has moved this Court being aggrieved by the decision of the respondent No. 3, the Special Land Acquisition Officer as in spite of objection raised by the petitioner and other co-sharers, the amount of compensation, in lieu of acquisition of land in Land Acquisition Case No. 38 of 2001-02 appertaining to khata No. 117 of plot Nos. 578 and 622 having an area of 1.38 acres of Mouja Tiruldih for construction of Swarna Rekha Multipurpose Project, totaling Rs. 1,91,298/- was paid to the said respondent No. 6.

3. It is submitted on behalf of the counsel for the petitioner, by referring to the averment made in the writ petition and other affidavits brought on record that pursuant to the order of the Special Land Acquisition Officer dated 31st March, 2006, Annexure A to the supplementary counter affidavit of the respondent-

State, the entire amount of compensation, in lieu of acquisition of the aforesaid piece of land, has been paid to the respondent No. 6, vide cheque No. 0089504 dated 31st March, 2006, issued in the name of respondent No. 6 to be honoured by the Union Bank of India, Chandil. It is the contention of the petitioner that a notification for acquisition of the said land was issued in connection with Swarna Rekha Multipurpose Project, Chandil and the petitioner along with his two brothers, respondent No. 6 and another Durga Charan Koiri, who were in possession of the aforesaid land in question in equal share, made their objection. It is further submitted, by referring to Annexure 1 to the writ petition that the petitioner was served notice u/s 9 of the Act along with other co-sharers who filed objection as contained in Annexures 2 and 2/1 clearly stating, that his father Doman Koiri died leaving behind five sons, out of which one son Purna Chandra died issueless and Gauri Nath died leaving behind his son Shanti Koiri, who is respondent No. 6 and other son Mukund died leaving behind his only daughter Sonu, who had never made any claim over the property of her grandfather. The genealogy of the petitioner's family was also furnished in the objection.

4. Learned counsel for the petitioner further submits that despite the fact that the acquired land was in joint possession between the parties, as would also appear from the valuation statements annexed as Annexure 4 to the I.A. No. 2454/2012, the entire amount in respect of compensation for acquired land was supposed to be apportioned in the name of the petitioner and other co-sharers totaling Rs. 1,91,298/-, however, the respondent, Special Land Acquisition Officer by order dated 31st March, 2006, Annexure A to the supplementary counter affidavit, despite of the categorical objection of the petitioner duly supported by facts, rejected the claim of the petitioner and directed payment of the awarded amount of Rs. 1,91,298/- in favour of Shanti Koiri, who is respondent No. 6 herein.

5. Learned counsel for the petitioner further submits that a notice u/s 12(2) of the Act was served upon the petitioner after publication of the award in the name of petitioner and other co-sharers as contained in Annexure 3 to the said I.A. Learned counsel for the petitioner also submits that the petitioner made an objection for reference of the claim to the reference court u/s 30 of the Land Acquisition Act, 1894, Annexure 2/1, however, the respondent-Special Land Acquisition Officer failed to refer the matter to the reference court, thereafter the petitioner was compelled to move this Court. On the first date when the matter was taken up, this Court directed the respondent No. 5, the Branch Manager. Union Bank of India not to permit the respondent No. 6 to withdraw the entire amount of compensation except upto 1/3rd of the amount awarded. However, it is submitted on behalf of the petitioner that the bank in their counter affidavit have stated that by that time the awarded amount through the cheque in question was honoured in favour of the private respondent

6. Learned counsel for the respondent State, on the other hand, has supported

the disbursement of the amount under award in Favour of the respondent No. 6 by referring to the order dated 31st march, 2006 as contained in Annexure A to the supplementary counter affidavit stating that the petitioner could not produce the cogent evidence in support of his claim for compensation, as a result of which his objection was rejected and the amount was ordered to be paid in favour of the respondent No. 6. It is further stated that several opportunities were given to the petitioner but he failed to produce enough material to substantiate his claim of compensation in respect of the acquired land in question.

7. I have heard learned counsel for the parties. It appears that the Land Acquisition Officer has rejected the claim of the petitioner vide Annexure A, the order dated 31st March, 2006, on the ground that the petitioner has failed to produce enough evidence and has proceeded to issue notice u/s 12(2) of the Act, which is mandatory requirement under the provisions of the Land Acquisition Act, 1894. The petitioner had submitted his petition for reference u/s 30 of the Land Acquisition Act in connection with Land Acquisition Case No. 38 of 2001-02 but the Special Land Acquisition Officer has failed to make any reference to the same despite the said claim for reference of the dispute made by the petitioner after issuance of notice u/s 12(2) of the Act of 1894.

8. From the aforesaid fact, it appears that the requirement of law as laid down under the Land Acquisition Act, 1894 has not been followed by the Special Land Acquisition Officer. The Land Acquisition Act, 1894 itself provides for consideration of the claim of the parties affected by acquisition of the land undertaken by the said Act.

9. Admittedly, the petitioner had made an objection in respect of acquisition of land claiming himself to be a co-sharer giving his genealogy etc. but at the relevant point of time the amount in question has been awarded in favour of the respondent No. 6. The petition for reference made by the petitioner u/s 30 of the Land Acquisition Act, 1894 ought to have been referred by the District Land Acquisition to the Reference Court for adjudication of the dispute relating to apportionment of the claim for compensation or any part thereof.

10. In the aforesaid facts and circumstances, therefore, the Special Land Acquisition Officer is directed to refer the dispute of the claim made by the petitioner u/s 30 of the Land Acquisition Act to The reference court forthwith on receipt of a copy of this order. However, it will be open to the petitioner to raise all valid grounds and legal questions in relation to the claim for compensation before the Reference Court and the Reference Court will thereafter proceed and decide the matter in accordance with law.

11. This writ petition is allowed in the aforesaid terms. I.A. No. 2454/2012 also stands disposed of.