

(2023) 12 PAT CK 0068

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13459 Of 2021

Ramji Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Citation : (2023) 12 PAT CK 0068

Hon'ble Judges : Prabhat Kumar Singh, J

Bench : Single Bench

Advocate : Alok Kumar Alok, Mohammad Abu Haidar, Mohammad Abu Shajas, Vivek Prasad, Sudhir Kumar Upadhyay

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and State.
2. This writ application has been filed on behalf of petitioners for restraining the respondents from the construction work of canal over the land of petitioners, in the light of Land Acquisition Project of 1974.
3. It is submitted on behalf of the petitioners that the land in question was acquired by the Land Acquisition Department, Government of Bihar under the Land Acquisition Project – 1974, but till date, they have not taken physical possession of the acquired land nor any compensation has been paid in lieu of acquired land to the petitioners and as such, it is settled law that if physical possession has not been taken or the compensation is not paid, then the acquisition proceeding is deemed to have lapsed. It is further submitted that without initiating fresh proceeding for acquisition of land in question, the government has started the construction work of canal over the land, which requires to be interfered with by this Hon'ble Court. It is further submitted that action of respondents in construction of canal under Tirhut Gandak Project is illegal and hence, for the ends of justice, the respondents are required to be restrained from construction of the canal over the land of petitioners. In this

regard, the petitioners have further submitted that even assuming that lands were acquired and possession was taken by the State Government /Water Resources Department, Bihar, then also it was merely on paper and it shall be assumed that the State has waived their all rights as they admitted the title and possession of the petitioners by conducting operation of Consolidation Act on the said land, by accepting rent, issuing rent receipt, establishing the relationship of landlord and tenants between the State Government and the petitioners. Accordingly, 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 initiated.

4. Per contra, Sri Vivek Prasad, learned Govt. Pleader – 7 , in reply to the pleadings of learned counsel for the petitioners, submits that the land in question was acquired in the year 1973-74 for a public project, known as 'Tirhut Canal Project / Gandak Irrigation and Power Project'.

5. By way of filing counter affidavit and supplementary counter affidavit, it is submitted by learned State counsel that the Gandak Irrigation and Power Project was formulated at the initiation of the ex- President of India, Dr. Rajendra Prasad, the then Minister in-Charge, Food and Agriculture Government of India. After getting all the statutory clearances, this mega Gandak Project got the approval of the Planning Commission in the year 1961 with the aim to provide irrigation to the plains of north Bihar, U.P., and some portion of Nepal. The project saw the light of the day during the second five year plan by Government of Bihar. The work was smoothly progressing till 1984-85. But under the advice of the Planning Commission, the estimate of the Gandak Project was closed by the Government of Bihar on 31st March, 1985. Thereafter, as per advice of the Planning Commission, the scheme for completion of residual work of Eastern Gandak Main Canal (Tirhut Main Canal) along with its distribution system under Gandak Phase II for Rs. 1799.50 crore at 2011-12 price level was put up before the Central Water Commission for consideration and the Commission found that presently the proposed command area is fully dependent on monsoon rainfall. Farmers are not able to take even one crop during Kharif season due to uncertainty of rainfall irrespective of highly fertile land thus resulting in famine like conditions in Vaishali, Samastipur and Muzaffarpur districts of Bihar. With completion of the Gandak Phase II, the farmers in the command would get assured water for their crops. The Commission found the scheme technically feasible and economically viable and hence recommended for consideration and acceptance of the Advisory Committee. Thereafter, the Advisory committee of Ministry of Water Resources, Govt. of India accepted the aforesaid recommendation and cleared the scheme.

6. It is further submitted by learned State counsel that though, the Eastern Gandak Canal System could not be completed in its first phase, yet the required land for the entire system had been acquired long back (in 1973-74) by the Special Land Acquisition Officer, Gandak Project, Muzaffarpur after making

payment of appropriate compensation to the concerned land owners/raiyyats under the provisions of the Land Acquisition Act, 1894. In that course 8.21 acre land in village- Madhusudanpur, P.S.- Sakra, District- Muzaffarpur including the land of the petitioner/their ancestors was acquired vide Land Acquisition Proceeding no. 120/1972-73 and most of the raiyyats were paid full compensation amount in the year 1974 itself. Their name appears at different serial numbers of the award which was prepared on 27.03.1974. A few raiyyats did not come to receive the award amount despite notice. Such amount was deposited in the Govt. 9 Treasury (R.D.). Thus, the said land acquisition proceeding attained finality and thereafter physical possession of the land was handed over to the concerned Executive Engineer of the Department on 30.04.1974. The concerned Circle Officer was requested to make the acquired land free from rent in accordance with the rules.

7. It is further submitted that similar claim of one Kripa Shankar Prasad Thakur and Gonu Prasad has already been rejected by this Hon'ble Court, vide order dated 25.03.2014 passed in CWJC no. 77/2014 and order dated 06.09.2018 passed in CWJC no. 4075/2017 respectively. Lastly, it is submitted that after discussing different judgments of the Hon'ble Supreme Court on the issue, a coordinate Bench of this Court has been pleased to hold in an identical case, i.e. the case of Chandreshwar Prasad Thakur and others vs. the State of Bihar and others (CWJC No. 10637/2021) that in view of the finding of the Constitution Bench judgment of the Hon'ble Apex Court in the case of Indore Development Authority and Santosh Sharma, there is no question for any right to be available to the petitioners.

8. Having gone through the record and rival submissions of the parties, it is not in dispute that the land in question was acquired in the year 1974 and compensation was duly paid, but merely on the ground that petitioners are in possession of the land in question, the construction of canal, which is of public and national importance, cannot be stopped by this Hon'ble Court on frivolous grounds in the eye of law.

9. Taking into consideration the entire facts, this Court is of the opinion that it is not proper on the part of the petitioners to challenge the acquisition proceeding or claim possession on the ground of adverse possession. Transfer of lands were taken from them in 1974 and after lapse of 50 years of acquisition, creating hurdles in an important project, which is of public importance, are not fit and proper.

10. Accordingly, this writ application is dismissed.