

(2019) 07 JH CK 0028
In the Jharkhand High Court
Case No : Writ petition (c) No. 880 Of 2017

Safiran Bibi @ Sabiran Bibi And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0028

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Niranjana Kumar, Ashwini Bhushan

Final Decision : Disposed Off

Judgement

1. This writ petition is under Article 226 of the Constitution of India, whereby and whereunder the order dated 31.10.2016 passed by the Land

Acquisition Officer, Deoghar has been assailed, by which, objection filed by the petitioners wherein questioning the disbursement of the amount of

compensation in lieu of acquisition of land, has been rejected on the ground that the petitioners have failed to produce any substantive evidence

establishing their nexus with the acquired land.

2. It is the case of the petitioners that they are the legal heirs of one of the co-sharer whose names are appearing in the Ganzers settlement operation

but the Government has come out with a proposal for acquisition of land for construction of bus stand, Madhupur, in the District of Deoghar, but no

such notice for the acknowledgement of the petitioners has been shared to them and in absence thereof, the acquisition proceeding has been

concluded as resulted into non-payment of compensation. The petitioners, after claiming to know about the same, have made an objection before the

District Land Acquisition Officer by raising contention that they are also legal heirs, therefore, they are also entitled to get the share of quantum of amount of compensation equal to the value of the portion of the land to their share but the Land Acquisition Officer has rejected the said objection on the ground that no such document establishing any nexus about the title of either of the capacity has been produced.

3. Learned counsel for the petitioners has submitted that for establishing the said relationship the nexus with the land acquired, they have made an application for issuance of genealogical table basing upon which a certificate was issued being List Certificate No.92 of 2016 dated 05.11.2016 but before that the objection of the petitioners has been rejected vide order dated 31.10.2016 (impugned) and therefore, the instant writ petition has been filed.

Since the petitioners have filed an application for getting the genealogical table before the competent authority but there has been some delay, in the meanwhile, an objection has been filed, therefore, the matter may be remitted before the concerned authority who has passed the order for taking into consideration afresh, otherwise the interest of the petitioners will suffer even though petitioners have got perfect title over the land in question as would appear from the genealogical table as contained under Annexure-5.

4. Mr. Ashwini Bhushan, learned A.C. to Sr. S.C.-III appearing for the State of Jharkhand, on the strength of counter affidavit has submitted that it was the duty of the petitioners to come out with an objection by making an application along with relevant documents in order to substantiate their stand but having not done so the order cannot be said to suffer from any infirmity.

5. This Court vide order dated 31.07.2018 has issued notice upon the respondent No.5, in terms thereof the appearance has been made on behalf of respondent No.5 whose name is also appearing in the daily cause list.

6. This Court has proceeded and after hearing the learned counsel for the parties, has found the admitted fact that the land has been acquired for the construction of bus stand in the district of Deoghar, the petitioners claims to be legal heirs of one of the co-sharer but having not been noticed, the compensation amount has been disbursed in favour of the legal heirs of the recorded tenant which resulted into making an application before the

District Land Acquisition Officer, raising objection for disbursement of amount of compensation equal to the proportion of the share of the land but the

said objection has been rejected on the ground that the petitioners have not come out with any substantive document to establish their right.

The petitioners being aggrieved with the said order by way of instant writ petition, mainly on the ground that the document to establish their nexus with

the land in question as legal heirs with the co-sharer in genealogical table but since no notice has been issued to them, therefore, they could not be able

to make an application then how the proceeding was initiated, but after completion of the acquisition proceeding and when it came to the knowledge of

petitioners, they made an application before the concerned Circle Officer for issuance of genealogical table, upon which, the family list of genealogical

table has been issued on 15.11.2016 as would appear from Annexure-5, therefore, the contention of the petitioners is that the relevant document which

was not under the domain of the petitioners and therefore, they made an application but the same has not been supplied therefore, the petitioners

cannot made to suffer.

This Court sitting under Article 226 of the Constitution of India is of the view that the writ court is also a court of equity and merely on technicality,

right of the party cannot be said to be given go by rather the right for consideration of the party may not be improved.

Admittedly on the ground of rejection of the application, no such document has been produced by the petitioners, therefore, this Court also cannot

come to the conclusion that the District Land Acquisition Officer has committed an illegality by passing the said order, but simultaneously court of

equity is also to see with respect to the substantial justice and, therefore, keeping that fact into consideration, is of the view that the matter needs

consideration afresh, therefore, the matter is remitted before the concerned District land Acquisition Officer to pass fresh order with a direction upon

the petitioners to bring this order into the notice of the District Land Acquisition Officer along with the application supported by relevant documents in

order to substantiate the claim within a period of three weeks from the date of receipt of copy of the order.

7. The District Land Acquisition Officer on receipt of such application will call upon the respondent No.5 namely Bharuddin Mian as also the relevant

records, if required, after providing an opportunity of hearing to the petitioners as well as the respondent No.5 and other Government officials shall

take decision in accordance with law within a period of three months from the date of receipt of such application on its own merit.

8. In view thereof, this writ petition is accordingly, disposed of with the above directions and observations.