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**(2019) 08 JH CK 0148**

**In the Jharkhand High Court**

**Case No : Writ Petition (c) No.7529 Of 2016**

Shambhu Sardar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision : 08-08-2019**

**Acts Referred:**

Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2), 113, 114  
Land Acquisition Act, 1894 — Section 4, 5, 6, 11, 12  
General Clauses Act, 1897 — Section 6  
Constitution Of India, 1950 — Article 226

**Citation : (2019) 08 JH CK 0148**

**Hon'ble Judges : Sujit Narayan Prasad, J**

**Bench : Single Bench**

**Advocate : P.A.S. Pati, Prashant Pallav, Parth Jalan**

**Final Decision : Dismissed**

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## **Judgement**

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder direction has been sought for, for restraining the respondents from interfering with the peaceful physical possession of the petitioner over their respective land in question as the same is without authority of law, with a further direction to deal with the case of the petitioner in light of the provision of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (The Act, 2013), since according to the petitioner even accepting that the land has been acquired but the compensation has not yet been paid, therefore, the case of the petitioner will come under the fold of Section 24(2) of the Act, 2013.

2. It is the brief facts of the case of the petitioner as per the pleading made in the writ petition is that the petitioner being residents of village Asangi, District Seraikella-Kharsawan and the residents of the said village has been subjected to different land acquisition proceedings even though their lands are fit for agricultural purpose and the land was acquired for setting up industrial area

which is presently known as Adityapur Industrial Area. The land was acquired by the respondent authorities for setting up the Regional Institute of Technology which is at present known as National Institute of Technology at Adityapur.

The subject matter of the present case pertains to the land situated at Village Asangi, Thana Seraikella, Thana No.131, Khata No.184, Plot No.1512, 1513 & 1515 admeasuring of an area of 60, 65 & 65 decimals respectively, over which the respondent no.5 is seeking to take forceful possession with the assistance of the local District Administration.

It is the case of the petitioner that the aforesaid land was recorded in the name of Baijnath Sardar, Bihari Sardar, Mohan Sardar & Ranga Sardar as per the survey settlement done in the year 1961 as would evident of the extract of record of rights.

The land in question came under the possession of the petitioner due to the mutual family arrangement and therefore, the petitioner is in peaceful possession of the land in question and also making payment of rent receipts up date, but all of a sudden, the respondent State has started demarcation work in the locality including the village Asangi, which prompted the petitioner to file the petition for the issuance of the aforesaid direction as made in the writ petition.

3. Mr. Parth S.A. Swaroop Pati, learned counsel appearing for the petitioner, has submitted that the action taken by the respondent authorities for commencing the demarcation work about the land in question is nothing but an arbitrary exercise since they are in peaceful possession of the land and even if the land has been acquired since they are in possession and the amount of compensation has not been paid, therefore, after coming into effect of the Act, 2013 which contains the provision under Section 24(2) of the Act, 2013 for giving a declaration with respect to initiation of the proceeding under the provision of Land Acquisition Act, 1894, will be vitiated and a fresh proceeding under the Act, 2013 would be initiated but having not done so the demarcation work started by the respondent authorities de-hors the provision of the Act, 2013.

4. Mr. Prashant Pallav, learned G.P.-IV appearing for the State of Jharkhand, has submitted that the counter affidavit has been filed, placing reliance upon the same it has been submitted that there is no question of applicability of the provision of Section 24 (2) of the Act, 2013 since the acquisition said to have concluded in the year 1964 and the possession has also been taken by the State of Jharkhand, after conclusion of the aforesaid acquisition proceeding being L.A. Proceeding No.1/1963-64 and 4/1964-65 and as such the land acquisition proceeding initiated way back in the year 1964 cannot be reopened after lapse of about more than about 50 years.

He, however, has also referred that since the acquisition proceeding was initiated by the district of unified District in the name of Singhbhum but after its bifurcation the record pertaining to L.A. Proceeding Case No.1/1963-64 and 4/1964-65 has within the jurisdiction of the district of West Singhbhum

(Chaibasa) but if the counter affidavit has been filed on behalf of respondent nos.5 and 6 would be taken into consideration it would be evident from various paragraphs that the land has been acquired way back in the year 1964 and the amount of compensation was also paid and thereafter the possession of the land has been taken over by the Regional Institute, Jamshedpur now NIT, Jamshedpur by giving pillar by way of the demarcating of the entire land which has been transferred in favour of the R.I.T. but the petitioner has illegally occupied the land by demolishing the pillar installed by the National Institute of Technology, Jamshedpur and therefore, the specific stand pertaining to the payment of amount of compensation is there, hence the petitioner cannot be allowed to take aid of the provisions of Section 24(2) of the Act, 2013.

No response to the counter affidavit has been filed however, Mr. PAS Pati, learned counsel for the petitioner orally, in response has submitted that when the State authority is coming with the stand that they are not with the possession of the record of the Land Acquisition Proceeding, therefore, in absence of the said document no conclusion can be arrived at.

5. Having heard the learned counsel for the parties and after appreciating their rival submissions and going across the affidavits filed on their behalf, this Court before entering into the merit of the issues, deem it fit and proper to have a discussion about the provision of the Land Acquisition Act, 1894 as also the Act, 2013.

6. It is evident that the Land Acquisition Act, 1894 that the Act was enacted with the object that the land may be acquired for public purpose for which the Government comes to the proposal that the acquisition of land has been mandatory for the public purpose the requirement as per the Act, 1894, is to issue a publication by a notification to that effect which shall be published in the official gazette.

The original Act, provides that the notification was to be issued in the gazette notification but the legislature after taking into consideration that the official gazette will not within the public reach, therefore, has come out with an amendment by enacting the provision by insertion under Section 4 that apart from the public notification in the official gazette the said notification would be published in two daily newspapers circulating in that locality of which at least one shall be in regional language which has been inserted by the Act, 1894.

It is evident from the provision of Section 4 that if the Government has come out with a proposal of acquisition of a land for the public purpose, the notice in general is to be notified to apprise the people in general with respect to the intention of the State that there is a proposal for acquisition of land for the public purpose so that if any objection to that effect, it may be filed as contemplated under Section 5 for its consideration by taking fixation under Section 6 of the Act, 1894.

The insertion of the notification to be notified in the daily newspaper, further

clarifies that the official gazette since was not within the domain of the people in general, therefore, for their knowledge and wide publication if the legislature has come out with the decision that the said notification is to be published in two daily newspapers one of it is in the regional language so that the people in general may know and may not be deprived for making any objection.

Section 11 of the Act, 1984 contains the provision to pass an award by the Collector and therefore, the same would be notified and the award would be passed treating it to be finding after following the procedure as laid down under Section 12 of the Act, 1894.

7. The legislature thereafter has come out with a new enactment as enacted in the year 2013 i.e., the Act, 2013 with the repeal and saving clause as provided under Section 114 of the Act, 2013 whereby and whereunder it has been provided that the Land Acquisition Act, 1894 is hereby repealed while sub-section (2) thereof, provides save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals.

Section 6 of the General Clauses Act, 1897 speaks about the effect of repealment and its applicability, therefore, it is evident from the provision of Section 114 that the Act, 2013 the Act, 1894 has been repealed but with the saving clause as per the provision made under Section 6 to the General Clauses Act.

Section 24 is relevant to be referred herein since that is the issue which has been raised by the petitioner, and therefore, the same is being reflected hereinbelow which reads as:

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed. (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled

to compensation in accordance with the provisions of this Act.

It is evident from the provision of Section 24 (1) which contains the non-obstante clause with the stipulation made under sub-section 1(A) that if no award under Section 11 of the said Land Acquisition Act has been made, all provisions of this Act relating to the determination of compensation shall apply, admittedly, the case of the petitioner is not falling under the category of the sub-section 1(a).

The provision of sub-section 1(b) provides that where an award under Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed, meaning thereby, that if an award has been passed under the provision of the old Act of 1894 the further proceeding in pursuance to the said award will not be governed by the provision of the Act, 2013.

Sub-section (2) of Section 24 speaks about applicability of the new Act of the year 2013 that if an award under the said Section 11 has been made five years or more prior to the commencement of the Act of the year 2013 but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government if so choose shall initiate the proceeding of such land acquisition afresh in accordance with the provisions of the Act.

The provision of sub-section (2) to Section 24 speaks about applicability of the new Act of the year 2013 if the following conditions would be fulfilled, i.e., award if passed but is of five years or more prior to the commencement of the Act but the physical possession of the land has not been taken or the compensation has not been paid.

The interpretation/applicability of sub-section (2) of Section 24 fell for consideration before the Hon'ble Apex Court in the case of Pune Municipal Corporation & Anr. Vrs. Harakchand Misirimal Solanki & Ors. reported in (2014) 3 SCC 183 and Indore Development Authority Vrs. Shailendra (Dead) Through Legal Representative & Ors. reported in (2018) 3 SCC 412.

The Hon'ble Apex Court in the aforesaid judgment has come out with the finding about the applicability of sub-section (2) to Section 24 of the Act, 2013 but due to divergent opinion with respect to the definition of the word "paid" the matter has been referred before the larger Bench and now it is pending for its consideration therein.

8. In the light of the aforesaid legal provision, the factual aspect of the case in hand has been appreciated by this Court wherefrom it has been gathered that it is not a case of non-acquisition of the land rather the land has been acquired which is evident from the specific pleadings made by the petitioner at paragraphs 6 & 7 to the writ petition whereby and whereunder it has been stated that the residents of the said village have been subjected to different land acquisition

proceedings.

Further, it is evident from the second prayer of the petitioner wherein the prayer has been made that the petitioner's acquisition is to be dealt with afresh in view of the provision of Section 24 (2) of the Act, 2013 since the award has been passed which is prior to the period of more than five years and possession has not been taken as also the amount of compensation has not been paid, this specific prayer made in the writ petition does suggest and clarifies that the acquisition of land is being admitted by the petitioner.

9. The only question to be decided by this Court as to whether the provision of Section 24(2) of the Act, 2013 will be made applicable or not ?

10. This Court has already reflected hereinabove that the applicability of the Act, 2013 after repealment of the Act, 1894 with the saving clause as per the provision of Section 6 of the General Clauses Act, 1897 and further in view of the conditions stipulated under Section 24(2) of the Act, 2013, this Court has appreciated regarding availability of the conditions as stipulated therein in order to reach to the conclusion regarding applicability of Section 24(2) of the Act, 2013 and initiation of an acquisition proceeding afresh in pursuance to the Act, 2013.

11. The State has come out with the stand by making reference of land acquisition proceeding bearing No.01/1963-64 and 04/1964-65, however, has not come out with the relevant records since the acquisition proceeding was initiated in the year 1964-65 at the time when there was unified District in the name of Singhbhum (Chaibasa) but the acquisition remained within the jurisdiction of the West Singhbhum (Chaibasa) after bifurcation of the District of Singhbhum (Chaibasa) in two districts, i.e., East Singhbhum and West Singhbhum.

12. Mr. P.A.S. Pati, learned counsel for the petitioner has given emphasis that in absence of availability of relevant records pertaining to the land acquisition proceedings, the stand taken by the State cannot be said to have any relevance.

13. This Court, in order to examine this argument has gone across the counter affidavit filed on behalf of the respondent No.5 & 6 wherefrom it is evident that the land has been acquired in pursuance to the L.A. Proceeding Case No.1/1963-64 and 4/1964-65 i.e., in the year 1964 by the erstwhile State of Bihar.

The same was demarcated but no boundary wall could be raised due to paucity of funds (paragraphs 14 & 15 to the counter affidavit filed on behalf of respondent No.5 & 6).

Further it is evident from paragraph 14 thereof, that the petitioners/ancestors holding rights to the land were paid compensation long time back in 1964 by the erstwhile State of Bihar.

It is also admitted fact herein that the counter affidavit on behalf of respondent No.5 and 6 has been filed way back on 28.04.2017 by serving a copy of the same upon the learned counsel for the petitioner on 28.04.2017 but no reply in response to the statement made at paragraph 14 and other paragraphs have been made, therefore, the statement made in the said counter affidavit would be treated to be admitted and therefore, the stand taken by the State authority with respect to the possession having been taken over of the land in question by making payment of the amount of compensation cannot be said to be in any dispute.

It further appears that the land has been acquired but when in pursuance to the order passed by the Division Bench of this Court in Writ Petition (PIL) No.2606 of 2011 (Annexure-E) to the counter affidavit filed on behalf of respondent No.5 & 6) when the authority of the institute has visited the site for giving the boundary wall, hue and cry has been made by the people who are in occupation and when found to be in illegal occupation after the acquisition, steps have been taken for their removal from the land in question.

14. This Court, therefore, is of the view that since the award has been passed in the L.A. Proceeding Case No.1/1963-64 and 4/1964-65, the amount of compensation has been paid way back in the year 1964 and the physical possession has also been taken by giving pillar for demarcating the land in question, hence, none of the condition as stipulated under Section 24(2) of the Act, 2013 is available.

15. In that view of the matter, this Court is of the view that no positive order can be issued in favour of the petitioner, accordingly, the writ petition fails and is dismissed.