IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.136 of 2018
In
Civil Writ Jurisdiction Case No.9089 of 2014

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1. Sihasan Prasad, son of Late Sukhdev Rai
2. Shiv Kumar, son of Late Sukhdeo Rai
3. Yogendra Rai, son of Late Chamaru Rai
4. Raj Ballam Rai, son of Late Baldeo Rai
5. Rajdev Rai, son of Late Baldeo Rai
6. Amar Nath Rai, son of Gangawari Rai
7. Jaynath Vishwakarma, son of Churavan Vishwakarma
8. Ram Parvesh Prasad @ Ram Pravesh Rai, son of Late Bladev Rai
9. Lalji Rai, son of Ramchandra Rai
10. Shiv Nath Singh, son of Late Satya Narayan Singh
11. Ram Naresh Singh, son of Late Raj Ballam Singh
12. Rajeshwar Rai, son of Late Paharu Rai
13. Kamala Prasad, son of Late Jagdish Rai

All are residents of Village- Gonawa, Post Office- Sadishopur, Police Station- Naubatpur, District- Patna

... ... Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Land Acquisition and Land Reforms Department, Government of Bihar, Patna
3. The Director, Land Acquisition and Land Reforms Department, Government of Bihar, Patna
4. The District Magistrate-cum-Collector, Patna
5. The Land Acquisition Officer, Patna
6. The Managing Director, Bihar State Road Construction Department, Government of Bihar, Mechanical Work Shop Campus, Near Air Port, Sheikhpura, Patna
7. Suba Rai, son of Ram Chandra Rai,
8. Ram Bhavan Rai, son of Late Ramchandra Rai
9. Jhali Devi, wife of Bhola Rai
10. Chaneshar Rai, son of Late Mahangu Rai
11. Ajay Kumar, son of Late Suresh Rai
12. Jagdev Rai, son of Late Minilal Rai
13. Baban Bihari Sharma, on of Harbansh narayan Singh, All, the respondent number 7 to respondent number 13 are respondents Residents of Village- Gonawa, Post Office- Sadishopur, Police Station- Naubatpur, District- Patna

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr.Gopal Govind Mishra, Advocate
For the Respondents	:	Mr. Lalit Kishore, Advocate General
		Md. Khurshid Alam, AAG-12
		Mr. Manish Dhari Singh, A.C. to A.G.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-04-2019

Re: I.A. No. 717 of 2018

Heard Shri Gopal Govind Mishra, learned counsel for the appellants and Shri Lalit Kishore, learned Advocate General for the State.

2. The appeal is reported to be delayed by 1 year and 7 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 717 of 2018 stands allowed accordingly.

Re: L.P.A. No. 136 of 2018

This appeal arises out of a dispute relating to acquisition of certain land that was acquired for the construction of Bihta Sarmera State Highway No. 78, the acquisition proceedings whereof were undertaken under the Land Acquisition Act, 1894.

2. The proceedings culminated with the issuance of the notifications, but it is the admitted case of the parties that in the present case, Award had not been declared in terms of Section 11 of the Land Acquisition Act, 1894 as on the date when the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force. It is not in dispute that the date of the enforcement of the said Act, as notified in the Gazette, is 1st of January, 2014.

3. In the present case, this is also not disputed that the Award was delivered on 13th of January, 2015.

4. The appellants filed the writ petition contending that no Award had been delivered and, therefore, the appellants are entitled to the benefits under the 2013 Act. A further mandamus was prayed for that a direction be issued to pay compensation to the appellants in terms of the 2013 Act.

5. It appears that a counter affidavit was filed by the State which was being considered as on the date of the judgment dated 21st December, 2016, but the said counter affidavit did not contain any copy of the Award dated 13th January, 2015.

6. The learned Single Judge in these circumstances

proceeded to dispose of the writ petition by issuing the following directions:-

> "In the present case, a counter-affidavit has been filed on behalf of the respondent nos. 4 and 5, wherein the facts regarding initiation of Land Acquisition Case No. 5 of 2011-12 and other connected land acquisition case for acquisition of the lands in question, besides other plots of lands, have not been disputed, but it has been averred that the matter is under consideration for fixing the amount of compensation by applying the provisions of the Act, 2013. **In the aforesaid counter-affidavit, the copy of award, if prepared under Section 11 of the Act, 1894, has not been brought on the record.** If the award has not been prepared under Section 11 of the Act, 1894, then under the mandate of Section 24(1)(a) of the Act, 2013, the Collector under the Act is obliged to apply the provisions of the Act, 2013 for determination of compensation payable to the land owners/interested persons.
>
> In above view of the matter, the **petitioners are directed to appear before the respondent no. 5-the District Land Acquisition Officer, Patna, with a fresh comprehensive representation and all** other relevant documents in support of their claims

over the lands in question within a period of one month from today and, whereafter, the respondent District Land Acquisition Officer, Patna shall consider their claims expeditiously and shall determine the amount of compensation payable to the interested persons/land owners by taking into consideration the provisions of the Act, 2013, since **admittedly, final award under Section 11 of the Act, 1894 has not been prepared till date.**

The writ petition stands finally disposed of with the observations and directions made above."

7. In compliance of the aforesaid directions, an order came to be passed on 14th of November, 2017 which has been signed by the District Land Acquisition Officer, Patna and the Additional District Land Acquisition Officer, Patna. The same forms part of the counter affidavit of the respondents and has been filed as Annexure-C. The order records that in compliance of the aforesaid directions of the learned Single Judge and in view of the letter issued by the Government on 4th December, 2015 as modified on 31st December, 2015 there is a clear direction that in matters where the Award had not been declared up to the said date, i.e. 31.12.2015, it is only in those

cases that the rates applicable as on 01.01.2014 would be applied. In effect, the order in compliance of the letter of the Government categorically holds that the rates under the 2013 Act that are to be applied with effect from 01.01.2014 would be applicable only in Awards that have been delivered after 31.12.2015 and not prior to that. It is by this indirect method that the claim of the appellant has been denied on the ground that the Award in the present case has been delivered on 13th January, 2015, which is prior to 31st December, 2015.

8. Accordingly, what the respondents have done is that after having calculated the amount on the basis of the rates prevalent at the time of the notification issued under Section 4 of the 1894 Act, twice the amount has been added together with solatium at 100 per cent as well as the relevant interest payable thereon and the Award was accordingly delivered.

9. The order dated 14.11.2017 has been questioned by the applicant through I.A. No. 717 of 2018 where a prayer for condoning the delay has also been made supplemented by I.A. No. 9375 of 2018.

10. The contention of the learned counsel for the appellants is that this approach of the State Government is patently erroneous, inasmuch as, once the rates have to be

applied in terms of the 2013 Act, to be determined thereunder where an award has not been pronounced uptil 01.01.2014, then it was not open for the State Government to have issued an administrative instruction, thereby shifting the date of consideration of applying rates under the 2013 Act in respect of Awards after 31.12.2015. It is urged that there is no rationale behind the same and consequently, the order dated 14.11.2017 as well as the said letter of the Government dated 31.12.2015 being contrary to the provisions of the 2013 Act deserve to be quashed and the respondents should be directed to re-calculate the amount and re-determine the rates applicable and then modify the Award accordingly.

11. The learned Advocate General contends that the issues that came to be considered by the Apex Court in matters of determination of compensation including the issue relating to lapse in the case of **Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others**, reported in **(2014) 3 SCC 183**, was again reconsidered and the correctness of the said decision was doubted by a two Judges' Bench in the case of **Yogesh Neema and others Vs. State of Madhya Pradesh and others**, reported in (**2016) 6 SCC 387** as also the judgment in the case of **Sree Balaji Nagar Residential**

Association Vs. State of Tamil Nadu, reported in **(2015) 3 SCC 353** and then the matter was referred vide order dated 7th December, 2017 in the case of I**ndore Development Authority Vs. Shailendra (dead) through Lrs. & Ors**., reported in **(2018) SCC Online SC 100**. This reference is now engaging the attention of a Five Judges' Bench of the Apex Court that has passed an order on 6th March, 2018 for hearing these matters in order to decide the correctness of the issues relating thereto. A copy of the order dated 6th March, 2018 has been placed before us by the learned Advocate General to urge that in view of the aforesaid issues having been raised before the Apex Court, the matter needs to be considered in the light of the aforesaid fact as the same may have a bearing on the present matter as well.

12. He further submits that once the Award has been delivered, the appellants have a right to file a statutory appeal questioning the correctness of the Award in terms of the 2013 Act and, therefore, no further orders are required in this appeal.

13. He further submits that the rates as applicable in terms of the new Act have been applied and hence in the background of the case, there is no reason as to entertain the claim of the appellants and the orders passed by the State

Government do not suffer from any such infirmity calling for any intervention by this Court.

14. Having heard the rival contentions, the legal position as exists today is that there is no dispute about the date of the applicability of the 2013 Act which stands enforced with effect from 1st of January, 2014. Further, Section 114 of the 2013 Act repeals the Land Acquisition Act, 1894. Then comes Section 24(1)(a), which is extracted hereinunder:-

> "24 (1)(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

15. A perusal thereof would leave no room for doubt that the said Section commences with a non-obstante clause reciting that in any case relating to acquisition proceedings under the 1894 Act where no Award under Section 11 of the said Act has been made, then all provisions of the 2013 Act relating to the determination of compensation shall apply. The determination of market value is provided for under Section 26 of the 2013 Act. This being the undisputed legal position, there is no doubt that the date for determination in respect of the rates applicable for payment of compensation has to be seen in

respect of all Awards that have been made after 1st of January, 2014.

16. It is in this backdrop, we may now examine the challenge raised to the order dated 14th November, 2017 which in turn relies on the letters of the Government dated 4th December, 2015, as clarified on 31st December, 2015. For this, we may extract the letter dated 31st December, 2015 in order to appreciate the controversy in correct perspective, which is as follows:

पत्रांक–14 / डी0एल0ए0– मार्गदर्शन–एल0ए0एक्ट भारत सरकार–238 / 2013–1501 / रा0

बिहार सरकार
राजस्व एवं भूमि सुधार विभाग
(भू–अर्जन निदेशालय)

प्रेषक,

शशि भूषण तिवारी,
निदेशक–सह–विशेष सचिव,
भू–अर्जन।

सेवा में,

सभी प्रमंडलीय आयुक्त /
सभी समाहर्त्ता,
बिहार।

विषयः– RFCTLARR Act-2013 की धारा– 24 (1)(a) के प्रावधानों पर विधि एवं न्याय मंत्रालय, भारत सरकार से प्राप्त परामर्श के आलोक में पुराने भू, अर्जन अधिनियम के तहत अर्जित / अर्जनाधीन भूमि के बाजार मूल्य हेतु तिथि निर्धारण के संबंध में।

प्रसंग– राजस्व विभागीय पत्रांक 1342 / रा0 दिनांक 4.12.2015

महाशय,

उपयुक्त विषयक प्रासंगिक राजस्व विभागीय पत्रांक– 1342 / रा0 दिनांक 4.12.2015 द्वारा यह निदेश संसूचित किया गया था कि पुराने भू–अर्जन अधिनियम 1894 यथा संशोधित 1984 के तहत प्रारंभ किये गये भू अर्जन के वैसे मामलों, **जिनमें**

अबतक पंचाट (Award) की घोषणा नहीं हुई है, में अर्जित/अर्जनाधीन भूमि के बाजार मूल्य (Market Value) का निर्धरण हेतु तिथि 01.01.2014 विनिश्चत माना जाय एवं तदनुसार प्राक्कलन प्रस्ताव गठित कर प्रावधानुसार मुआवजा भुगतान की कार्रवाई सुनिश्चित किया जाय।

निदेशानुसार उपरोक्त निर्गत पत्र के विषय–वस्तु में आंशिक संशोधन करते हुए संसूचित करना है कि पुराने भू–अर्जन अधिनियम 1894 यथा संशोधित 1984 के तहत प्रारंभ किये गये भू अर्जन के वैसे मामलों, जिनमें RECTLARR Act- 2013 की धारा– 24 (1)(a) के प्रावधानों के अतर्गत मुआवजा भुगतान हेतु अबतक सक्षम प्राधिकार के स्तर से प्रतिकर स्वीकृति यानी प्राक्कलन स्वीकृति (Estimate Approval) की कार्रवाई अथवा पंचाट (Award) की घोषणा नहीं हुई है, में अर्जित/अर्जनाधीन भूमि के बाजार मूल्य (Market Value) का निर्धारण हेतु तिथि 01.01.2014 विनिश्चत माना जाय एवं तदनुसार प्राक्कलन प्रस्ताव गठित कर प्रावधानुसार मुआवजा भुगतान की कार्रवाई सुनिश्चित की जाय।

कृपया कृत कार्रवाई से अधोहस्ताक्षरी को अवगत कराने की कृपा की जाय।

विश्वासभाजन

शशि भूषण तिवारी
निदेशक–सह–विशेष सचिव,
भू–अर्जन।

17. A perusal of the said communication from the Land Acquisition Directorate, Government of Bihar recites that in those cases where Awards have not been pronounced up to date (as on 31.12.2015), the rates as applicable would have to be as on 01.01.2014. This, therefore, categorically excludes such Awards that have been pronounced after 01.01.2014 and prior to 31.12.2015. In the present case, we are concerned with an Award dated 13.01.2015 which falls within these two dates.

18. Applying the aforesaid contents of the letter, the order dated 14.11.2017, impugned in the present

proceedings, has been passed in compliance of the directions issued by the learned Single Judge, the judgment whereof is under appeal before us. A perusal of the said order clearly demonstrates that the Land Acquisition Officer has declined to extend the benefit as applicable on 01.01.2014 on the ground that the Award is prior to 31.12.2015 as if 31.12.2015 is the cut off date for consideration of applicability of the rates that are available as on 01.01.2014.

19. We are unable to sustain the aforesaid reasoning in the order as well as the letter dated 31.12.2015 which virtually extends the date of applicability under the statute. This cannot be done by an executive fiat on some understanding of the Government which has neither any logic nor any reason to support. The applicability has to be the date as enumerated in the 2013 Act which would obviously be the date for enforcement of the Act i.e. 01.01.2014 and all Awards thereafter have to abide by the rates as applicable on 01.01.2014 and not after 31.12.2015. This artificial creation of another cut off date by the State Government being contrary to the intention of the Statute and having no other statutory force with no rational nexus cannot as an executive fiat impede the calculation or pronouncement of any Award contrary to the provisions of

the 2013 Act.

20. We accordingly declare that the letter dated 31st December, 2015 being contrary to the provisions of the 2013 Act cannot be enforced in relation to any Award after 01.01.2014. Consequently, for the aforesaid reason, the order dated 14.11.2017 cannot be sustained and is hereby quashed.

21. The Award dated 13th of January, 2015 admittedly not being in compliance with the rates as applicable on 1st of January, 2014 has to be revised by the Collector and, therefore, an error committed by the authorities in proceeding to deliver an Award contrary to the Statute on the strength of an executive fiat is, therefore, not legally sustainable. The Award, therefore, has to be modified in terms of the rates that are applicable as on 01.01.2014 in respect of the acquisition in the present proceedings. The Collector will, therefore, have to modify his Award accordingly and we issue a direction to the Collector to initiate an appropriate proceeding for the modification of the Award in accordance with the rates as would be applicable with effect from 01.01.2014 in terms of the provisions of Section 24(1)(a) read with Section 26 of the 2013 Act. The said exercise shall be completed within three months from today. In the event, a modified Award is delivered by the

Collector, as directed by us hereinabove, and the appellants are still aggrieved, they have the remedy of filing an appeal, if the appellants are dissatisfied with the Award of the quantum of compensation or otherwise. We make it clear that the very basis of calculation which appears to be the letter of the Government dated 31.12.2015 as disclosed in the order dated 14.11.2017 shall not be a criteria for making any calculation.

22. It shall be open to the appellants to raise their claim and objections with regard to the applicable rates before the Collector in this regard which shall be considered and decided in accordance with the provisions of the 2013 Act.

23. We further clarify that in the event it is found that the appellants are entitled to any further compensation, the Collector shall proceed forthwith to ensure that the re-calculated amount is delivered and paid to the appellants without any delay but not later than three months from the date of delivery of the modified Award together with all such consequential benefits that may ensue in this regard in accordance with the 2013 Act.

24. In our considered opinion, the impugned judgment of the learned Single Judge did proceed on an assumption of the non-existence of the Award which was not correct. To the contrary, the Award had come into existence, but

by virtue of said judicial intervention, the order dated 14.11.2017 came into existence.

25. We would have relegated the appellants for filing an appeal against the award dated 13.01.2015 but that would unnecessarily prolong this litigative pursuit that has its genesis on a totally wrong assumption of law, as is evident from the letter of the Government dated 31.12.2015 and the order of the District Land Acquisition Officer dated 14.11.2017. The learned Single Judge also could not have created a forum for deciding the matter through a representation when there are specific provisions in 2013 Act for settlement of dispute, but on account of this peculiar circumstance which has arisen, we have interfered in order to set right the legal position and then allowed the parties to invoke the statutory provision for delivering a correct award. It may also be placed on record that a Division Bench had entertained this appeal and had then connected with Letters Patent Appeal No. 1615 of 2017 wherein an interim order was passed directing the parties to maintain status quo, which is contained in the order sheet of Letters Patent Appeal No. 1615 of 2017. It is for this special reason that we have invoked the extraordinary jurisdiction in this appeal and we, accordingly, dispose of this appeal by setting aside the

impugned judgment dated 21.12.2016 subject to the modifications above.

26. The Letters Patent Appeal stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./Jagdish

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CAV DATE	
Uploading Date	04.04.2019
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