



2009:JHHC:20



acquisition of land and the original petitioner being aggrieved by non-receipt of either any compensation or any employment in lieu of the acquisition of the land, moved DR & RD Project, Kalgali, but without any final result.

5. It is contended that respondent no.5 has been illegally employed by the Company in lieu of compensation of land in the name of original petitioner. The said employment is contended to be collusive. Earlier W.P. (C) No.1883 of 2003 was allowed vide order dated 26.02.2009 with the following observation: -

“Considering the aforesaid facts and circumstance of the case, this writ petition is allowed. The appointment of respondent no.5 is quashed and respondent nos.1 – 4 are directed to pay the compensation and also give employment in accordance with the Land Loosers Scheme applicable since the acquisition was of more than two acres. The Chairman-cum-Managing Director is directed to depute the responsible officer to hold an enquiry and fix the responsibility against the officer involved in the illegality setting up respondent no.5 as a bogey to replace the genuine owner of the land whose land was acquired more so when it has been admitted.”

6. Order was assailed in L.P.A. No. 147 of 2009 with L.P.A. No. 197 of 2009 which was disposed of vide order dated 08.11.2017 by which it was remanded to the Single Judge for the reason that order which was earlier passed on 26.02.2009 by the Single Judge, but the original writ petitioner had died and order was passed without substitution. Since substitution petition had already been filed, but in the said substitution petition, there was no formal order, therefore, the Division Bench of this Court remanded the matter giving liberty to the counsel of the writ petitioner to substitute the legal heirs of original writ petitioner- Laxmi Sao.

7. After the said substitution, the matter has been assigned for final hearing and to dispose to this Court.

8. Stand of respondent nos.1 – 4 as taken in supplementary counter affidavit dated 07.10.2021 is that the petitioner is still in possession of the land in question and the Company had never come in its actual possession. With regard to employment given to respondent no.5, it has been stated in the counter affidavit filed on 12.01.2009 on behalf of respondent nos.1 – 4 that he was given employment in lieu of the acquisition of land in the name of Budhni Devi and Ganga Goswami and not of the land of this petitioner.



9. It is submitted by the learned counsel on behalf of respondent no.5 that a departmental enquiry was held regarding employment of respondent no.5- Laki Mahto, who was appointed as an Electrician, Category V in Govindpur Project vide order dated 15.07.2004 and it was found in Annexure C of the supplementary affidavit dated 12.01.2009 and there was no illegality in his employment.

10. It is argued by the learned counsel on behalf of the Petitioner, that delay cannot be attributed to this Petitioner, as earlier one Laki Mahto was said to have been given employment for the land acquired of the Petitioner. This plea has now been abandoned by the Respondent, as on departmental enquiry it has been found that there was no illegality in offering employment.

11. It is contended that once there is a notification of acquisition of land under Section 9 of the Act, 1957, the land absolutely vests in the name of Central Government in terms of Section 10 of the Act, 1957. The plea that the land was not utilized, and is not available to the Company.

ANALYSIS

12. Acquisition of land is not in dispute. It is also not in dispute that neither compensation nor employment has been offered to the land losers.

13. The matter for consideration before this Court is "Where the land owners have not been dispossessed from the acquired land and they continue over the land, though officially acquired about four decades ago are entitled to compensation?"

14. The wording of provision under Section 9 of the Act is express and emphatic leaving no doubt whatsoever. As per this provision after the acquisition of the land under Section 9, after notification in the official gazette, the land or the rights in and over the land as the case may be shall vest absolutely in Central Government free from all encumbrances. Where the rights under any lease, in terms of Section 10, the Central Government from the date of such vesting deemed to have become lessee of the State Government and if a mining lease under the mineral's rules had been granted by State Government to the Central Government. Section 14 further elaborates the method of determining compensation. Almost two decades



have elapsed, but despite the land having been acquired no compensation has been paid to the petitioner.

15. The plea that it was in cultivating possession of the petitioners is not sustainable as the land had been vested in the State and was deemed to be in possession of the company.

16. Further, a public notice was issued which is apparent from Annexure-6 by DR and RD Project, Kalgali directing the public at large to vacate the possession over the land acquired in favour of CCL failing which legal action was threatened to be initiated. Notification of acquisition divests the land owners of any right over the land in question, save and except for compensation and/or any benefit under the relevant statute. Land owner cannot transfer or exercise any right of ownership over the same. Thus, permitting the Petitioner to cultivate the land cannot be a ground to deny their legal entitlement to compensation. Respondent company cannot take advantage of its own default in taking possession to deny compensation to the land losers

17. In view of the fact that the compensations were not determined by 1st September, 2015, therefore, in view of the ratio laid down by the Hon'ble Apex Court in (2023) 16 SCC 11 **Mahanadi Coal Fields Ltd. & Anr. V. Mathias Oram & Ors** the same has to be determined in accordance with the provision of the first schedule to the Right to Fair Compensation and Rehabilitation Act, 2013.

18. Under the circumstance, the respondent no. 3 is directed to determine compensation to be paid to the present petitioners who are heirs and legal descendants of land loser-Laxmi Sao for the land acquired which was in his name vide S.O. No. 4269 dated 03.09.1985 in terms of the provisions of the Act, 2013. The determination and disbursement of the compensation amount shall be made within six months from the date of this order.

Writ petition accordingly allowed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)