

(2014) 11 JH CK 0036

Jharkhand High Court

Case No: Writ Petition (Civil) No. 5106 of 2010

Kanti Mahanty Rohini

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Nov. 7, 2014

Acts Referred:

- Land Acquisition Act, 1894 - Section 36, 48

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: V.P. Singh, Senior Advocate and A.R. Choudhary, Advocate for the Appellant; Jai Prakash, Additional Advocate-General, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.

The main issue involved in this writ petition is, "whether the petitioners can seek a direction for release of the land which was acquired under the Land Acquisition Act, 1894?"

2. Seeking a direction upon the respondent Nos. 2 and 3 to take proper step to complete the process of release of land in favour of the petitioners and for directing the respondent No. 6 to immediately return the original sale deed No. 2937/2932 dated 18.06.2007 and a direction to the respondents not to create third party right or transfer the land to a third party or to alter the records of right, the present writ petition has been filed.

3. The facts disclosed in the writ petition are that, the petitioner No. 1 is wife of one late Kanti Mahanti Kumar Swami and the petitioner No. 2 is the subsequent purchaser who purchased the land in question from petitioner No. 1 on 18.06.2007. On 03.10.2005, the petitioner No. 1 applied for release of land and the said application was duly processed. The Chief Engineer) Swarnrekha Multipurpose Project, Jamshedpur vide letter dated 13.09.2007 informed the Joint Secretary (Engineering), Water Resource Department that the land in question is no longer

required for the Swarnrekha Multipurpose Project, Jamshedpur and the Under Secretary, Water Resource Department, Government of Jharkhand vide letter dated 19.02.2008 directed the Chief Engineer to provide documents and other necessary papers. Thereafter, the Special Land Acquisition Officer, Swarnrekha Project wrote letter dated 20.04.2010 to Deputy Secretary, Water Resource Department stating that with respect to certain land, land owners have not received compensation and the amount of compensation has been deposited in the Treasury on 07.08.1985. With respect to the land in question it is stated that mutation has not taken place. In these facts, the petitioners claimed that the land belonging to petitioner No. 1 which was allegedly acquired for Swarnrekha Multipurpose Project, Jamshedpur was neither required for the said project nor required by any other department of the State Government and therefore, a direction may be issued to the respondent-State of Jharkhand to complete the process of release of land in question.

4. A counter-affidavit has been filed on behalf of respondent Nos. 2, 4 and 5 stating that requisition was made vide letter No. 947 dated 27.12.1979 by the Executive Engineer for the purpose of construction of office building, godown and residential colony. After the possession of the land was taken, the Government constructed building and the premises was covered by erecting boundary wall which is standing at present. However, correction in the record of rights could not be carried out. It is stated that the aforesaid land was acquired for the project in accordance with land acquisition proceeding and no claim petition was submitted by the petitioner in the year, 2005.

5. Heard the learned counsel appearing for the parties.

6. The learned Senior counsel appearing for the petitioners referring to the letters dated 13.09.2007, 02.07.2008, 20.04.2010 and 23.06.2014 contended that the State Government on the application dated 03.10.2005 of the petitioner No. 1 processed the matter in terms of Rule 154 of Chapter XV of the Executive Instructions and the authorities gave a positive recommendation for release of land in favour of the petitioners therefore, a direction may be issued to the respondent-State of Jharkhand to complete the process of release of land in favour of the petitioners. It is submitted that though the process and validity of the acquisition has not been challenged by the petitioners in the present proceeding as those are the matters under challenge in another writ petition being W.P. (C) No. 5204 of 2014, the petitioners have confined their prayer only to seek a direction upon the respondent-State of Jharkhand to complete the process of release of land. It is further submitted that with respect to other prayers, the allegations have been levelled against respondent No. 6 who inspite of notice issued by this Court has chosen not to appear before this Court and therefore, the statement made in the writ petition should be taken as admitted and the prayer with respect to release of the sale deed should be allowed.

7. Per contra, Mr. Jai Prakash, the learned Additional Advocate-General, submitted that the acquisition was completed following the due process of law and the possession of land was taken on 04.10.1985. Once the possession of land has been taken by the Government, any release or re-conveyance to the original land owners is not permissible in law. Every recommendation made by the one or other authorities of the Government cannot form basis for initiating process of release of land in favour of the land owners. Rule 154 of the Executive Instructions relates to relinquishment of surplus land and it does not talk of the release of land in favour of the original land owners. Referring to the decision of Hon"ble Supreme Court in [Mahadeo \(D\) through L.Rs. and Others Vs. State of U.P. and Others](#), and in [Swamy Devi Dayal Hospital and Dental College Vs. The Union of India \(UOI\) and Others](#), the learned Additional Advocate-General has submitted that once the possession of land has been taken, no application seeking release of land by the land owner is maintainable.

8. Replying to the contention of the learned Additional Advocate-General, the learned Senior counsel appearing for the petitioners has submitted that the issue cannot be pre-judged at this stage. The petitioners are seeking only a direction to complete the process of release the land and not a Mandamus to the Government to release the land in their favour. It is further submitted that the cause of action as described in paragraph No. 19 of the title Suit No. 25 of 2011 itself points to the fact that the Government itself has doubt with respect to the acquisition of the land belonging to the petitioner No. 1. The petitioners have categorically denied that the land in question belonging to the petitioner No. 1 was acquired by the Government or possession of said land has been taken by the Government.

9. I have carefully considered the submissions made on behalf of the parties and perused the documents on record.

10. Before referring to the rival contentions of the parties, the provision of Land Acquisition Act, 1894 may usefully be noticed. Section 48 of the Land Acquisition Act, 1894 provides that except in cases covered under Section 36, the Government shall be at liberty to withdraw from acquisition, any land of which possession has not been taken. A plain reading of section 48 of the Land Acquisition Act, 1894 demonstrates that an absolute discretion is vested in the State Government in so far as, the release of land from acquisition is concerned. Moreover, the exercise of discretion vested in Government is subject to the condition that the possession of the land in question has not been taken. In [Bangalore Development Authority and Others Vs. R. Hanumaiah and Others](#), it has been held that the Land Acquisition Act, 1894 is a complete code. It is well settled that a Writ of Mandamus would not lie directing the State Government or the State Authorities to take a decision contrary to the statutory provisions. Moreover, a petitioner seeking writ of "Mandamus" has to establish a legal right in himself and a corresponding legal duty in the respondents which the respondents have failed to perform. In view of Section 48 of

the Land Acquisition Act, 1894, I find that the land holders have no right to seek release of land except on the ground that the State Government discriminated with the applicants while taking a decision to release the land in favour of some of the land owners. [Hari Ram and Another Vs. State of Haryana and Others,](#) . In the present case, the petitioners have laid their claim on the basis of the communications dated 13.09.2007, 19.02.2008, 02.07.2008, 20.04.2014 and 23.06.2014. A perusal of these letters indicates that though some of the authorities have stated that the land belonging to the petitioner No. 1 is not required, vide letter dated 30.07.2008 and letter dated 23.06.2014 on which the petitioners have placed reliance, indicates that over the land in question, construction has been made and it can be usefully utilised by the Government. The petitioners have not disclosed any legal right in them for issuance of Writ of Mandamus.

11. The possession of the land was taken on 04.10.1985, though disputed by the petitioners in the present proceeding. The letter dated 03.10.2005 has not been brought on record and there is no reference of the said letter/application dated 03.10.2005 in any of the communications noticed above. The respondents have denied that the petitioner No. 1 filed any claim in the year, 2005. After more than 30 years, the petitioner No. 1 has disputed the possession of the land taken by the State Government on the ground that rent receipt for the land belonging to the petitioner No. 1 was issued as late as in the year, 2005. The dispute with respect to the possession in the present proceeding would not bring the case under the ambit of Section 48 of the Land Acquisition Act, 1894.

12. Referring to the prayer seeking return of sale-deed, I find that in the writ petition, petitioner No. 2 has made a bald statement in paragraph No. 40 of the writ petition. No other evidence has been led by the petitioners. Merely because something has been alleged and the person against whom such allegation has been made has not filed a counter-affidavit, a relief cannot be granted. The prayer with respect to release of sale deed is entirely different and totally unconnected from the main prayer. Moreover, the validity of sale deed is an issue in the pending Title Suit No. 25 of 2011. The respondent-State has categorically stated that though the land was acquired and the possession of the land was taken, the petitioner No. 1 has fraudulently executed sale deed in favour of the petitioner No. 2.

13. In view of the aforesaid discussion, I do not find any merit in the writ petition and accordingly, it is dismissed.