

न्यायालय - समाहर्ता, सहरसा।

भू-अर्जन विविध वाद संख्या-01/2014

कपिलेश्वर झा बनाम राज्य

-:: आदेश ::-

30.12.14
प्रस्तुत वाद माननीय उच्च न्यायालय के द्वारा सी0डब्लू0जे0सी0 नं0 395/2014 में दिनांक 18.11.2014 को कपिलेश्वर झा एवं अन्य बनाम बिहार सरकार एवं अन्य में पारित आदेश के आलोक में प्रारंभ किया गया है। माननीय उच्च न्यायालय द्वारा निम्नांकित आदेश पारित किया गया :-

"It appears that way back in 1980s for Tilabe-Canal water Discharge Project of the Koshi Project about 42.49 acres of land were sought to be acquired. This is apparent from the Gazette notification for land acquisition which is appended to the writ petition. The land was occupied by the State and irrigation canal was built up on it. Canal having been established, repeated proceedings were taken up for acquiring the said lands but they all lapsed for one reason or the other. This is what has brought the petitioner to this court.

By order dated 20.01.2014, this Court directed the State that the acquisition, in fact, having been completed by establishment of the Canal, what remained was payment of compensation in view of Section- 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (here in after referred to as 'New Act'), which has repealed the Land Acquisition Act. All proceedings under the Land Acquisition Act where compensation was not paid or award was not made, would lapse. The consequence would be that now compensation would have to be paid as provided under the New Act read with State Government Circulars issued in the regard.

In the counter affidavit various stands are taken. Basically, it is not in dispute that the land was intended to be acquired for which several acquisition proceedings were initiated but allowed to be lapsed. As such, now under the New Act fresh proceeding for acquisition is being started. It is thus stated that now the process would take about two years to be finalized, meaning thereby, petitioners having waited for 30 years have yet to wait for two years at least. It is stated in the counter affidavit that a requisition for fresh acquisition under the New Act is being made. The impact studies are to be made. All the procedures for New Act have to be followed before compensation to be paid.

It appears that authorities have not appreciated the earlier order of this Court. Impact study, rehabilitation and resettlement are all matters which have to be considered when a fresh proposal for acquisition has to be considered. Here, the Court has already noticed that acquisition is a fait accompli, as the State has already occupied the petitioner's land long back depriving the petitioners of its usage and constructed irrigation canal. All that is complete. Thus, what is left now is payment of compensation.

In that view of the matter, I dispose of the writ petition with the following directions. As the area of the land is not 41.49 acres as stated in correspondences annexed to the counter affidavit, rather a reference to the said Gazette notification would show that the correct area is 42.49 acres, the Collector, Saharsa under whose jurisdiction the lands lie, has now merely to calculate the present market value of land and then calculate the compensation payable as provided under New Act read with State Government circulars issued in that regards. This would be so far as compensation for compulsory acquisition of land is concerned, but petitioners are also entitled to compensation for temporary acquisition of land, i.e. deprivation of their land user right from 1980s up-to- date. Thus, the Collector, Saharsa would immediately calculate the compensation payable under both the heads, i.e. temporary acquisition and ultimate permanent acquisition. The valuation date for permanent acquisition would be as of date deeming that appropriate notification acquiring the land has already been

issued, acquisition being fait accompli, as noted above. The collector would seek representations/objections from the land holders even in matter of price fixation and finally decide the amount of compensation payable within a period of four months from today. He would then ensure payment of full compensation as per the New Act within two months thereafter. It shall be the sole responsibility of the Collector of the district to ensure full payment of compensation within the time frame as set by this Court and any failure to adhere to the time schedule may invite contempt proceedings.

With the aforesaid observations and directions, the writ petition stands disposed of."

विपक्षी विशेष भू-अर्जन पदाधिकारी, कोशी योजना, सहरसा उपस्थित होकर तिलावे धार जल निस्सरण परियोजना, ग्राम - पटुआहा, थाना- बनगांव, थाना सं०- 187, जिला-सहरसा का 42.49 एकड़ भूमि के स्थायी एवं अस्थायी अर्जन से संबंधित अनुमानित गणना तालिका दाखिल किये। अधियाची विभाग के कार्यपालक अभियंता, जल निस्सरण प्रमंडल, सहरसा के पत्रांक-330 दिनांक 10.07.14 एवं पत्रांक-353 दिनांक 22.07.14 से प्राप्त पत्र में माननीय उच्च न्यायालय, पटना द्वारा सी.डब्लू.जे.सी. नम्बर-395/2014 में दिनांक 10.02.14 को एकपक्षीय पारित आदेश के क्रम में मुख्य अभियंता जल संसाधन विभाग, पुर्णिया का पत्रांक-2/स्था०-02/120-02/2014 - 1252 दिनांक 07.07.2014 का पत्र एवं LPA दायर करने हेतु विभागीय पक्ष से संबंधित तथ्य विवरणी संलग्न किया गया। मुख्य अभियंता, जल संसाधन विभाग, पुर्णिया के द्वारा प्रेषित पत्र जो निदेशक, भू-अर्जन एवं पुनर्वास, जल संसाधन विभाग, पटना को प्रेषित है, में अंकित किया गया है कि तिलावे धार जल निकास योजना हेतु कार्यपालक अभियंता, जल निस्सरण प्रमंडल, सहरसा द्वारा विधिवत भू-अर्जन की अधियाचना नहीं की गई है एवं वर्तमान में इससे संबंधित कोई योजना स्वीकृत नहीं है। फलतः भू-अर्जन की आवश्यकता नहीं है।

आवेदक, विशेष भू-अर्जन पदाधिकारी, कोशी योजना, सहरसा तथा कार्यपालक अभियंता जल निस्सरण प्रमंडल, सहरसा की ओर से दाखिल कागजातों तथा माननीय उच्च न्यायालय, पटना के द्वारा सी.डब्लू.जे.सी. संख्या-395/2014 में पारित आदेश का अवलोकन किया। माननीय उच्च न्यायालय के न्यायादेश के आलोक में तिलावे धार जल निस्सरण परियोजना के अन्तर्गत मौजा-पटुआहा की कुल 42.49 एकड़ भूमि का स्थायी/अस्थायी अर्जन हेतु मुआवजा की कुल अनुमानित राशि 20,59,34,000=00 (बीस करोड़ उनसठ लाख चौतीस हजार रु०) मात्र की गणना नई भू-अर्जन अधिनियम, 2013 के अन्तर्गत की गई तथा भू-धारियों को दिनांक 25.11.2014 को स्वयं या अपने एजेंट के माध्यम से उपस्थित होकर आपत्ति दाखिल करने हेतु सूचना निर्गत किया गया। भू-धारी दिनांक 25.11.2014 को उपस्थित होकर उपरोक्त गणना तालिका को स्वीकार किये तथा मुआवजा राशि दिलाने के लिए अनुरोध किया।

अतः माननीय उच्च न्यायालय द्वारा सी०डब्लू०जे०सी० नं० 395/2014 में पारित न्यायादेश के आलोक में विशेष भू-अर्जन पदाधिकारी, कोशी योजना, सहरसा एवं कार्यपालक अभियंता, जल निस्सरण प्रमंडल, कोशी परियोजना, सहरसा को आदेश दिया जाता है कि उपरोक्त गणना तालिका के अनुसार भू-धारियों/आवेदकों को मुआवजा की राशि का नियमानुसार पूर्ण भुगतान दो महीने के अंदर करना सुनिश्चित करें। इस आदेश की प्रति के साथ स्थायी/अस्थायी मुआवजा राशि की गणना तालिका अलग से संलग्न है।

लेखापति एवं शुद्धिकृत।

समाहर्ता,
सहरसा।



20-12-2014
समाहर्ता,
सहरसा।