

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 227 of 2014**

1. State of Chhattisgarh, Through: The Secretary, Department of Revenue, D.K.Building, Raipur Chhattisgarh.
2. The Land Acquisition Officer, Raipur, Tehsil and District Raipur, Chhattisgarh.
3. The Chief Executive Officer, Irrigation, Raipur, Chhattisgarh.
4. The Collector, Raipur, District Raipur, Chhattisgarh.
5. Tehsildar Neora, Tehsil Neora, District Raipur, Chhattisgarh.
6. The Sub Divisional Officer, Irrigation Department, Raipur, Sub Division No. 2.

---- Appellants**Versus**

Durga Prasad Agrawal S/o Sadhu Lal Agrawal, aged about 58 years, R/o Neora, Tahsil Neora, District Raipur, Occupation Business.

---- Respondent

For Appellants	:	Shri B. Gopa Kumar, Deputy Advocate General.
For Respondent	:	Shri R.K.Tiwari, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****18/06/2015**

1. The present appeal arises from order dated 4.2.2014 in Writ Petition No. 2588 of 2001. The Learned Single Judge held that the Respondent was entitled to compensation for acquisition of his lands to the extent of 0.458 hectares (1.13 acres) comprised in Khasra Nos. 347/1, 348/1, 348/2, 348/3 and 348/5 situated in village Kota, Tehsil Tilda acquired without proper acquisition proceedings till formalisation of the same by the notification dated 12.8.2011 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for 0.065 acres only. The Tahsildar was directed to calculate the agricultural income which the Respondent would have derived from the date of occupation of his lands had he continued to perform agricultural activities and compensation was to be paid accordingly. The

Appellants were also directed to hold inquiry and fix responsibility for the initial illegal occupation of the lands of the Respondent.

2. Learned Counsel for the Appellants submitted that the lands of the Respondent were occupied in May 1991 only to the extent of 0.065 hectares for construction of an irrigation canal running through his lands. The lands of the Respondent to the extent urged were never acquired. The notification published on 12.8.2011 under Section 4 of the Act also mentioned 0.065 hectares of lands only in Khasra Nos. 347/1 and 348/1. The Respondent did not challenge the Section 4 notification as being contrary to the actual occupation of his lands by filing any amendment application in the writ petition. It is lastly submitted that in the facts of the case without prejudice to the rights of the Appellants that they have not occupied any area beyond 0.065 hectares of the Respondent, it is a disputed question of fact and this enquiry cannot be held in the writ jurisdiction.

3. Learned Counsel for the Respondent submitted that the Appellants without authority of law forcibly and wrongly occupied his lands in the aforesaid five Khasras to the extent of 1.13 acres. Therefore, the Respondent has asked for other lands in lieu thereof to the extent of 1.13 acres. Reliance was placed on the report of the Tahsildar dated 30.5.1991 in support of the submission as also dated 13.7.1992. The Respondent is therefore entitled to compensation for 1.13 acres for the period of wrongful occupation from 1991 till issuance of the Section 4 notification on 12.8.2011 and thereafter in accordance with law as determined by Award.

4. We have considered the submissions on behalf of the parties.

5. The Appellants occupied the lands of the Respondent for construction of an irrigation canal in May 1991. The writ petition itself pleads that Land Acquisition Case No. A/20/4/91-92 was registered. It suggests the initiation of a procedure in law for acquisition of the lands. It was the case of the Respondent itself from the inception that he was not interested in payment of

compensation but that he wanted alternate 1.13 acres of lands in exchange situated in Khasra No. 291/1 situate in village Newra. This clearly suggests that the Appellants had offered him compensation which he declined. But nonetheless the land acquisition proceedings do not appear to have culminated in an Award, a statutory obligation of the Appellant, notwithstanding whatever the Respondent may have contended. The writ petition was then filed by the Respondent more than ten years later on 7.12.2001. Fresh land acquisition proceeding was initiated during the pendency of the writ petition on 12.8.2011 culminating in an Award dated 29.6.2012 which has not been challenged by the Respondent. Neither did the respondent question the fresh Section 4 Notification with regard to 0.065 hectares as being contrary to the occupation of 1.13 acres of his lands by the Appellants.

6. The counter-affidavit to the writ petition is also silent with regard to further details of Land Acquisition Case No. A/20/4/91-92. The fact that the Appellants issued a fresh notification under Section 4 of the Act during pendency of the writ petition on 12.8.2011 leads to the only possible, reasonable and logical conclusion that the earlier land acquisition proceedings never attained finality. This lends credence to the fact that no final Award may have been prepared as distinct from the offer for compensation to the Respondent. The initial occupation of the lands of the Respondent by the Appellants therefore becomes contrary to law till the fresh proceedings initiated on 12.8.2011. Since now agricultural canal has been constructed and existed over years, in larger public interest the Learned Single Judge rightly did not interfere on this aspect and directed an enquiry into the matter.

7. The counter-affidavit to the writ petition does not demonstrate that notice of the Award dated 29.6.2012 was sent to the Respondent to receive compensation amount as required under Section 11 of the Act before publication of the Award. The Appellants appear sanguine that since the

Respondent on 25.5.1991 had stated that he was not interested in compensation amount, they were under no obligation to pay him. The respondent is undoubtedly entitled to compensation to the extent of acquisition/occupation of his lands.

8. The next question for determination is the extent to which the lands of the Respondent have been acquired by the Appellants. Whether it is 1.13 acres as claimed by the Respondent or 0.065 hectares as mentioned in the subsequent section 4 Notification. This is a question of fact, inquiry into which is not possible in the writ jurisdiction. None of the parties have brought on record the Section 4 notification pursuant to which Land Acquisition Case No. A/20/4/91-92 may have been registered. The Respondents contention that he had asked for 1.13 acres in exchange cannot be conclusive proof of his claim with regard to the extent of his lands acquired in view of the nature of documentary evidence available on record.

9. Learned Counsel for the Respondent invited our attention to the order sheet of the former aforesaid land acquisition proceedings, particularly order dated 25.7.1994 to submit that 0.458 hectares of his lands have been acquired and he is entitled to compensation for the same. Conversely, it is the case of the Appellants supported by the subsequent notification under Section 4 of the Act issued on 12.8.2011 that only 0.065 hectares have been acquired. There was no challenge to the fresh Section 4 notification that it was lesser in area than the lands actually acquired by filing any amendment application to the writ petition. In view of the stand taken by the Appellants, if they are in occupation of any lands of the Respondent beyond 0.065 hectares pertaining to Khasra Nos. 347/1 and 348/1 on their own showing it is wrongful and the Respondent would be at liberty to take possession of the same since this stand of the Appellants emanates from an affidavit filed in a judicial proceeding.

10. Pursuant to our orders in appeal, the Collector, Raipur has filed an affidavit that in village Kota, Tehsil Tilda the rate of un-irrigated land prevailing according to the Collector's guidelines was Rs. 25,000/- per hectare in 1991. We hold that the Respondent is entitled to compensation at the rate of Rs.25,000/- per hectare from 25.5.1991 till the date of issuance of fresh Section 4 notification on 12.8.2011 along with interest at the rate of 15% per annum as contained in proviso to Section 34 of the Act. The Respondent is further held entitled to the Award amount dated 29.6.2012 along with interest at the rate of 15% from the date of the award.

11. The interest would cease from today subject to the Appellants paying compensation in the manner aforesaid within a maximum period of six weeks from the date of receipt and or presentation of a copy of this order. If the compensation amount is not paid within six weeks, the interest component in both the segments shall continue to run till the date of payment.

12. The order under appeal is modified to the aforesaid extent only.

13. The appeal stands disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE