

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1892 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 7150 of 2014**

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Vidaya Sah, wife of Mahendra Prasad Sah, resident of Village- Simarahi Bazar,
P.S.- Raghapur, District- Supaul

.... Appellant/s

Versus

1. The Union of India through Secretary, N.H. Division Department, Government of India, New Delhi (N.H. 9)
2. The State of Bihar
3. The Collector, Supaul
4. The District Land Acquisition Officer, Supaul
5. The Arbitrator-cum-Additional Collector, Supaul District
6. The National Highways Authority of India through Project Director, Araria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mani Bhushan Kumar, Advocate.

For the Respondents : Mrs. Kanak Verma, C.G.C.

Mr. Anshay Bahadur Mathur, C.G.C.

Mr. Raj Kishore Roy, G.P. 18

Mr. Prabhu Narayan Sharma, A.C. to A.G.

Mrs. Nutan Sahay, A.C. to A.A.G. 12

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 22-11-2016

The present Letters Patent Appeal arises out of an order
passed by the learned Single Bench of this Court on 17th of August,
2016 in C.W.J.C. No. 7150 of 2014 whereby, the writ application was

dismissed as the matter was said to be sub-judice before the learned Sub-Judge-1st, Supaul.

2. The appellant has invoked the writ jurisdiction of this Court to claim compensation under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “2013 Act”). The appellant earlier filed C.W.J.C. No. 3099 of 2011 wherein, this Court directed the Arbitrator on 29th of March, 2011 to consider and decide the request of the appellant for determination of the compensation within 12 weeks. The appellant filed Contempt Petition which was decided on 29th of November, 2013 that an Award has been passed whereas enforcement of the Award has to be placed before the Civil Court of competent jurisdiction under the Arbitration Act. It is thereafter, the appellant has filed the present writ application claiming compensation under the 2013 Act.

3. A perusal of the record shows that the land of the appellant was acquired for the purposes of National Highway-57 for widening from 0.00 K.M. to 310 K.M. in Muzaffarpur-Purnea section vide Gazette notification dated 22nd of August, 2005. The appellant claims benefit of Bihar Land Acquisition Rehabilitation Policy, 2007 that if land owner voluntarily surrenders his land and building then in

that case the rate of compensation is at the higher level.

4. The learned Single Bench dismissed the writ application as in absence of the material facts with regard to initiation of land acquisition case and preparation of the award, the issues raised pertaining to land acquisition cannot be gone into in the proceedings filed under Article 226 of the Constitution of India.

5. We have heard learned counsel for the parties and find no merit in the present appeal.

6. The land of the appellant has been acquired for the purposes of National Highway under the National Highways Act, 1956. The said Act falls in Fourth Schedule and is thus exempt from the provisions of the 2013 Act in terms of Section 105 of the 2013 Act. Section 105 of the 2013 Act reads as under:-

“105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.- (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected

families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.”

7. Since the acquisition of land of the appellant was under the National Highways Act, 1956, therefore, the reliance of the appellant on the provisions of Section 24 of the 2013 Act is not tenable as such Act is not applicable to the acquisition of land under the National Highways Act, 1956.

8. The Arbitrator has announced an Award, therefore, the remedy of the appellant is to dispute such Award in appropriate proceedings. There is no challenge to the Award in the writ in question as even the copy of the said Award has not been attached with the writ application.

9. Consequently, we do not find any merit in the Letters

Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.11.2016
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