

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18151 of 2012

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Kamlapati Pandey S/O Late Ram Udar Pandey, resident of Village and Post Office
Naya Bhojpur, Police Station Dumraon, District Buxar.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Shipping Surface Transport and National Highway, New Delhi.
2. The National Highway Authority of India through its Chairman, New Delhi.
3. The District Magistrate, Buxar.
4. The Additional Collector-cum-Arbitrator under the Provisions of National Highway Act, Buxar.
5. The District Land Acquisition Officer-cum-Competent Authority under the provision of The National Highway Act, Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Advocate
Mr.Virendra Kumar, Advocate
For the Respondent Nos. 1 & 2 : Mr.S.N.Pathak, Sr.SCCG (NHAI)
For the Respondent Nos. 3 to 5: Mr.Krishna Chandra, AC to AG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 09-05-2016

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the Notification dated 10th December, 2009 issued under Section 3A (1) of The National Highways Act, 1956 (in short, “the Act”) for the purposes of acquisition of lands mentioned in that Notification for widening and construction of National Highway No.84 in the State of Bihar (Patna-Buxar section), as also the Notification dated 13th May, 2010, as contained in Annexure-9, issued under Section 3 D of the Act making a declaration that the lands mentioned therein including the lands in question belonging to the petitioner is required to be acquired for public purposes. The petitioner is also aggrieved by the order/notice dated 30.7.2012, as

contained in Annexure-5, issued by the competent authority-cum-District Land Acquisition Officer, Buxar Under Section 3E of the Act, whereby the petitioner was called upon to receive only a sum of Rs. 26,98,827.18 on the date mentioned in that notice as the amount of compensation determined by him.

3. It is not in dispute that the Notification dated 10th December, 2009 was issued under Section 3A (1) of the Act for acquisition of large area of lands including the lands in question belonging to the writ petitioner, fully detailed in paragraph 5 of the writ petition, for the purposes of widening and construction of National Highway No. 84. It is also not in dispute that the petitioner thereafter filed an objection under Section 3C of the Act mentioning therein that the description or the classification/category of the lands in question belonging to the writ petitioner was not correctly shown in the Notification issued under Section 3A(1) of the Act.

4. It is the case of the petitioner that the lands in question is of commercial nature, but the respondent competent authority (respondent no.5) has arbitrarily classified the lands in question as agricultural land and, therefore, inadequate amount of the compensation has been determined by him treating the lands in question as agricultural (Bhith II) land.

5. The learned counsel appearing on behalf of the petitioner, during course of argument of the case, submitted that in view of subsequent developments, the writ petitioner is no longer pressing his claim with respect to validity of the Notification dated 10.12.2009 issued under Section 3 A(1) of the Act. According to him, now the basic claim of the writ petitioner is that he must be paid adequate amount of compensation by treating the lands in question as commercial land.



6. This writ petition was heard on different dates and several orders were passed from time to time. Though separate counter affidavits were filed on behalf of the respondents, but all the relevant materials/orders were not brought on the record. In that view of the matter, the learned counsel appearing on behalf of the respondents vide order dated 26.02.2016 were directed to file their respective supplementary counter affidavit(s) bringing on record all the relevant materials/orders, which are necessary for effective disposal of the present writ petition. In compliance of the aforesaid order, a supplementary counter affidavit has been filed on behalf of the respondent nos. 3 to 5, but the order passed under Section 3G (1) of the Act determining the amount of compensation, payable to the petitioner by the competent authority, has not been brought on the record.

7. The learned counsel appearing on behalf of the respondent nos.1 and 2 as also the learned AC to AG, appearing on behalf of the respondent nos. 3 to 5, on the other hand, have contested the matter primarily on the ground that the petitioner has an alternative and equally efficacious remedy before the Arbitrator appointed by the Central Government, if the amount of compensation, so determined, is not acceptable to the petitioner on the ground that the same is inadequate. However, despite repeated queries made by this Court, and opportunities having been given to the respondents, the order passed by the competent authority in terms of Section 3G (1) of the Act has not been brought on the record. Merely, a plea has been taken by the respondents that the objections filed by the writ petitioner were considered by the competent authority and on the basis of the report submitted by Anchal Amin, final order was passed under Section 3G (1) of the Act determining the amount of

compensation payable to the petitioner.

8. It would be relevant to mention here that under the scheme of the Act, once a notification is issued by the Central Government in terms of Section 3A (1) of the Act for the purposes of acquisition of a plot land or several plots of lands, then substance of such Notification giving brief descriptions of the lands so proposed to be acquired is required to be published in two local news papers, one of which must be in vernacular language. On issuance of such notification, any person interested in the land is entitled to file an objection within 21 days from the date of its publication, in terms of Section 3C of the Act. The objections, so filed, are required to be decided by the competent authority, after giving an opportunity of hearing to such objectors, whereafter declaration in terms of Section 3D of the Act is required to be made once again by issuing a notification in the Official Gazette that the lands be acquired for the purposes mentioned in the notification issued under Section 3 A (1) of the Act. However, if no such declaration is made within a period of one year from the date of publication of such notification, then the notification issued under Section 3(A) (1) of the Act shall cease to have any effect. But, after making a declaration under Section 3D of the Act and after following other procedures prescribed therein, the determination of amount payable as compensation to the land owner (s) is required to be made in terms of Section 3G (1) of the Act. While making determination of amount of compensation payable to the land owner(s), the competent authority is obliged to give public notice published in two local news papers, one of which must be in a vernacular language, inviting claims from all persons interested in the land to be acquired. Section 3G (3) and (4) of the Act, mandate that opportunity of hearing must be given to all persons interested in

such land before making a determination of the amount of compensation under Section 3G (1) of the Act. However, in case, the amount determined by the competent authority under sub-section (1) or (2) of Section 3G of the Act is not acceptable, then at the instance of the owner of the land or the contesting party matter may be referred to the Arbitrator for determining the amount of compensation in terms of Section 3G(5) of the Act.

9. Now, coming to the present case, this Court finds that no order passed under Section 3G (1) of the Act has been brought on the record by the respondents. As noticed above, while making determination under Section 3 G(1) of the Act, the competent authority was required to follow the procedure prescribed under Sections 3G (3) and (4) of the Act, but due to non-production of ordersheet of the land acquisition case in question or the relevant materials by the respondents, this Court is left with no option but to hold that while making determination under Section 3G (1) of the Act, the procedure prescribed therein was not complied with by the competent authority.

10. At this stage, it is also relevant to mention here that earlier this writ petition as also CWJC No. 18918 of 2012 were heard together as both were listed side-by- side. In fact, from the ordersheet, this Court further finds that both the writ petitions were directed to be listed side-by-side on different dates by a co-ordinate Bench of this Court, but the learned counsel appearing on behalf of the petitioner pointed out that aforesaid CWJC No. 18918 of 2012 was separately taken up earlier by a co-ordinate Bench of this Court and by the judgment/order dated 15.05.2014 the aforesaid writ petition has already been disposed of and the order/adjudication made by the competent authority quantifying the amount of compensation has been



set aside and the matter has been remitted to the competent authority-cum-District Land Acquisition Officer, Buxar with a direction to pass a fresh order taking into consideration all the materials available on the record. It is also pointed out that the aforesaid judgment/order dated 15.05.2014 has, now, been reported in 2014 (4) **PLJR 281**. The learned counsel appearing on behalf of the petitioner submits that the petitioner is entitled to have similar relief and this matter also requires re-consideration and a fresh decision by the competent authority.

11. After having heard the parties at great length and on consideration of the materials available on the record, this Court is of the considered opinion that the present matter also requires re-consideration and a fresh decision from the stage of Section 3G (1) of the Act, as apparently the procedures prescribed therein under Sections 3 (G)(1) read with Section 3G (3) and (4) of the Act have not been complied with and no such order/notices have been brought on the record by the respondents, despite opportunity given to them.

12. For the reasons recorded above, the impugned notice/order dated 30.07.2012 (Annexure-5) issued by the competent authority-cum-District Land Acquisition Officer, Buxar is hereby set aside and quashed, and matter is remitted back to the competent authority-cum-District Land Acquisition Officer, Buxar with a direction to pass a fresh order and make fresh determination of amount of compensation payable to the petitioner in terms of Section 3 G(1) of the Act. It is clarified that while passing a fresh order, opportunity of hearing must be given to the petitioner and all other concerned persons including the respondents. The parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the lands in question, before the competent Authority.

13. In order to expedite the matter, the petitioner is hereby directed to appear before the Competent Authority-cum-District Land Acquisition Officer, Buxar within a period of one month from today with a certified copy of the present order, whereafter the matter shall be decided afresh, preferably within a period of three months, in the manner indicated above.

14. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	AFR
CAV DATE	No
Uploading Date	16.05.2016
Transmission Date	