

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1729 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 16871 of 2014

=====

Roshan Kumar, Son of Late Laxmi Devi & Late Bhagwan Lal Sahu, Resident of
Mohalla - Shimrahi Bazar, P.O. & 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) through Project Director, Araria, National Highway Authority of India
2. The Secretary, Union of India, Government of India, New Delhi
3. The State of Bihar
4. The Collector, Supaul
5. The District Land Acquisition Officer, Supaul
6. The Arbitrator - Cum - Additional Collector, Supaul District
7. The National Highways Authority of India through Project Director, Purnea
8. Pradeep Kumar
9. Amit Kumar
10. Lalan Kumar
11. Pramod Kumar, all are sons of Late Laxmi Devi, resident of Mohalla- Shimrahi Bazar, P.O. & P.S. Raghapur, District- Supaul

.... Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Mani Bhushan Kumar, Advocate.
For Respondent Nos. 1, 2 & 7	:	Mrs. Kanak Verma, C.G.C.
		Mr. Anshay Bahadur Mathur, C.G.C.
For the State	:	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

=====

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 is directed against an order passed by the learned Single Bench of this Court on 24th of August, 2016 in C.W.J.C. No. 16871 of 2014.

2. The appellant claimed a direction to the respondents to pay compensation for his acquired land in the district of Supaul as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “2013 Act”) or as per direction given in C.W.J.C. No. 17199 of 2011 (Roshan Kumar & Anr. Vs. The Union of India & Ors.) vide order dated 7th of January, 2014.

3. The aforesaid grievance arises out of acquisition of land by the National Highway Authority of India. The appellant alleges that he has been paid compensation of Rs. 2,53,968/- on 18th of August, 2011. Since part of the land required was omitted by the National Highway Authority of India from acquisition, the mother of the appellant was persuaded to sell the said land vide registered Sale Deed dated 18th of August, 2011. She was paid compensation of an amount of Rs. 2,53,968/-. It is pointed out that earlier, the appellant filed C.W.J.C. No. 17199 of 2011 wherein this Court directed on 7th



of January, 2014 the Collector-cum-District Magistrate, Supaul to enquire into the matter as to whether the old illiterate lady has been misled and deprived of her rightful compensation ignoring the sale-deed holding that the registration was wrongly done and directed the National Highway Authority of India to re-compute the compensation and pay her the just amount of balance, if any. Subsequently, the writ application was decided on 3rd of July, 2014 when it was ordered as under:-

“So far the award filed as Annexure-C to the counter affidavit of the State, it shows petitioner has not been paid any amount with regard to interest and counsel for the State is not in a position to point out that the petitioner has been paid any amount under the head ‘interest’.

This Court is directing the District Land Acquisition Officer-cum-competent authority to examine the case of petitioner Raushan Kumar only to the extent whether he has been paid any compensation with respect to the house acquired. He will also examine whether petitioner Raushan Kumar has been paid the interest amount along with other incidence. If he comes to the conclusion that petitioner has not been paid interest, it goes without saying that the petitioner should be given proper compensation, including the interest. While disposing of the matter, he will also pass a reasoned order either in favour of petitioner or otherwise within a period of six months from the date of receipt/production of copy of this order.

It goes without saying that if the petitioner will feel aggrieved, he will have liberty to challenge the order in the appropriate proceeding.”

4. It is in pursuance of the order dated 7th of January,

2014 the Collector passed an order on 7th of February, 2014 to pay a compensation of Rs. 3,29,670/- to Lakshmi Devi and a sum of Rs. 14,50,622/- to the appellant as per the decision of the Arbitrator on 27th of October, 2011. The appellant points out that compensation was assessed at the rate of 44,000/- per decimal whereas, the said valuation is less than the market value.

The appellant, however, relies upon Section 24 of the 2013 Act to contend that if the land which has been acquired, the possession of which has not been taken or compensation not paid, the said proceedings shall be deemed to have lapsed. The appellant has made grievance regarding non-payment of compensation of the super structure over the land.

5. The learned Single Bench passed an order on 24th of August, 2016 whereby, it was noticed that compensation of Rs. 8,29,516/- has been assessed but the payment could not be made on account of non-release of the adequate fund by the National Highways Authority of India. The learned Single Bench discharged the show-cause for non-compliance of the order dated 4th of July, 2016 and ordered that the matter shall be listed in usual course. It is such order, which is subject matter of challenge in the present appeal.

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

7. Firstly, the appeal is directed against an order whereby no further proceeding in respect of the show-cause notice for non-compliance of the order has been taken. It is, thus, an interlocutory order not deciding any *lis* between the parties but related to non-compliance of an earlier order which the Court finds that sufficient explanation has been given.

8. Still further, 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 of the said Act and is exempt from the provisions of the 2013 Act in terms of Section 105 of the 2013 Act, which 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.”

8. 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.

9. For inadequate compensation under the National Highways Act, 1956, the procedure to dispute the proper amount of compensation is contained in Section 3-G of the National Highways Act, 1956. The appellant has not resorted to the alternative statutory mode of determination of proper compensation after the Award was announced by an Arbitrator. Therefore, the writ application for determination of payment of compensation is not maintainable.

10. In view thereof, we do not find that the appellant can be granted any relief in the present Letters Patent Appeal. The same is, thus, dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	30.11.2016
Transmission Date	