

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 523 of 2016**

- Smt. Santosh Devi Agrawal W/o Shri Vimal Agrawal, Aged About 60 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur (Chhattisgarh)

--- Petitioner**Versus**

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R- 30), Raipur Dhamtari Section (By- Pass), District Raipur (Chhattisgarh)
3. State Of Chhattisgarh, Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
4. The Collector, Raipur, District Raipur (Chhattisgarh)
5. Competent Authority-Cum- Sub Divisional Officer, (Revenue And Land Acquisition Officer), Arang/ Abhanpur, District Raipur (Chhattisgarh)

---- Respondents**And****WPC No. 570 Of 2016**

1. Neeraj Agrawal S/o Shri Vimal Agrawal, Aged About 39 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur, (Chhattisgarh)
2. Nitin Agrawal, S/o Shri Vimal Agrawal, Aged About 35 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur, (Chhattisgarh)- **Petitioners**

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R.- 30), Raipur- Dhamtari Section (By Pass), District Raipur, (Chhattisgarh)
3. State Of Chhattisgarh, Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, (Chhattisgarh)
4. The Collector, Raipur, District Raipur, (Chhattisgarh)
5. Competent Authority-Cum- Sub Divisional Officer, (Revenue And Land

Acquisition Officer), Arang/ Abhanpur, District Raipur, (Chhattisgarh)

---- Respondents

And

WPC No. 569 Of 2016

1. Neeraj Agrawal S/o Shri Vimal Agrawal, Aged About 39 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur (Chhattisgarh)
2. Nitin Agrawal, S/o Shri Vimal Agrawal, Aged About 35 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur (Chhattisgarh) - **Petitioners**

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R- 30), Raipur Dhamtari Section (By- Pass), District Raipur (Chhattisgarh)
3. State Of Chhattisgarh, Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
4. The Collector, Raipur, District Raipur (Chhattisgarh)
5. Competent Authority-Cum- Sub Divisional Officer, (Revenue And Land Acquisition Officer), Arang/ Abhanpur, District Raipur (Chhattisgarh)

---- Respondents

And

WPC No. 565 Of 2016

- Vimal Agrawal S/o Late Manga Ram Agrawal, Aged About 65 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur, (Chhattisgarh)

---- Petitioner

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R.- 30), Raipur- Dhamtari Section (By Pass), District Raipur, (Chhattisgarh)
3. State Of Chhattisgarh, Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, (Chhattisgarh)
4. The Collector, Raipur, District Raipur, (Chhattisgarh)
5. Competent Authority-Cum- Sub Divisional Officer, (Revenue And Land

Acquisition Officer), Arang/ Abhanpur, District Raipur, (Chhattisgarh)

---- Respondents

And

WPC No. 567 Of 2016

- Nagendra Kumar Sinha S/o Shri Nirmal Kumar Sinha, Aged About 34 Years R/o Ahanpur Basti, Abhanpur, Basti, Abhanpur, Tehsil Abhanpur, District Raipur Chhattisgarh

---- Petitioner

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi,
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R.30), Raipur Dhamtari Section By Pass District Raipur Chhattisgarh
3. State Of Chhattisgarh Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur District Raipur Chhattisgarh
4. The Collector, Raipur, District Raipur Chhattisgarh
5. Competent Authority Cum Sub Divisional Officer, (Revenue And Land Acquisition Officer, Arang / Abhanpur, District Raipur Chhattisgarh

---- Respondents

And

WPC No. 578 Of 2016

1. Smt. Nidhi Agrawal W/o Shri Neeraj Agrawal, Aged About 36 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur, (Chhattisgarh)
2. Smt. Mansi Agrawal, W/o Shri Nitin Agrawal, Aged About 34 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur, (Chhattisgarh)

---- Petitioners

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways, Government Of India, New Delhi
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N. R. R.- 30), Raipur Dhamtari Section (By Pass), District Raipur (Chhattisgarh)
3. State Of Chhattisgarh, Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, (Chhattisgarh)
4. The Collector, Raipur, District Raipur, (Chhattisgarh)

5. Competent Authority Cum Sub Divisional Officer, (Revenue And Land Acquisition Officer), Arang/ Abhanpur, District Raipur, (Chhattisgarh)
---- Respondents

And

WPC No. 577 Of 2016

- Lekhan Sahu S/o Late Fulji Lal Sahu, Aged About 42 Years R/o Abanpur Basti, Abhanpur, Tehsil Abhanpur, District Raipur Chhattisgarh - **Petitioner**

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi,
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R.30), Raipur Dhamtari Section By Pass District Raipur Chhattisgarh
3. State Of Chhattisgarh Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur District Raipur Chhattisgarh
4. The Collector, Raipur, District Raipur Chhattisgarh
5. Competent Authority Cum Sub Divisional Officer, (Revenue And Land Acquisition Officer, Arang / Abhanpur, District Raipur Chhattisgarh

---- Respondents

And

WPC No. 558 Of 2016

1. Vimal Agrawal (H.U.F.) S/o Late Mange Ram Agrawal, Aged About 65 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur Chhattisgarh

---- Petitioner

Vs

1. Union Of India, Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi,
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R.30), Raipur Dhamtari Section By Pass District Raipur Chhattisgarh
3. State Of Chhattisgarh Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur District Raipur Chhattisgarh
4. The Collector, Raipur District Raipur Chhattisgarh
5. Competent Authority Cum Sub Divisional Officer, (Revenue And Land Acquisition Officer, Arang / Abhanpur, District Raipur Chhattisgarh

---- Respondents

And

WPC No. 568 Of 2016

1. Smt. Nidhi Agrawal W/o Shri Neeraj Agrawal, Aged About 36 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur Chhattisgarh
2. Smt. Mansi Agrawal, W/o Shri Nitin Agrawal, Aged About 34 Years R/o Village Urla, Abhanpur, Tehsil Abhanpur, District Raipur Chhattisgarh

---- Petitioners

Vs

1. Union Of India Through Secretary Of Ministry Of Road, Transport & Highways Government Of India, New Delhi,
2. National Highway Authority Of India, Through Its Project Director, National Highway No. 43 (N.R.R.30), Raipur Dhamtari Section By Pass District Raipur Chhattisgarh
3. State Of Chhattisgarh Through Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur District Raipur Chhattisgarh
4. The Collector, Raipur, District Raipur Chhattisgarh
5. Competent Authority Cum Sub Divisional Officer, (Revenue And Land Acquisition Officer, Arang / Abhanpur, District Raipur Chhattisgarh

---- Respondents

For Petitioners	:	Shri Ankur Agrawal and Shri Raza Ali, Advocates
For Respondent No.1	:	Shri Raj Kumar Gupta, Shri Bhupendra Singh, Shri Ramakant Pandey and Shri R.K.Kesharwani, Advocates
For Respondent No.2	:	Smt. Fouzia Mirza, Advocate
For Respondent No.3 to 5/State	:	Shri Ramakant Mishra, Deputy Advocate General

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

26/07/2016

Since all the petitions involve common question of law and common facts, they are being disposed of by this common order.

2. Petitioners are land holders whose lands have been notified for acquisition under Section 3A and 3D of the National Highways Act, 1956 (hereinafter referred to as the Highways Act) for widening and construction of by-pass including four laning of National Highway No.43 (new N.H.No.30) Raipur – Dhamtari section.

3. Assailing the notifications (Annexure P/5 and P/10), it is argued by the learned counsel for the petitioners that the said notification is not in conformity with the provisions contained in Section 3A of the Highways Act, therefore, it deserves to be quashed. It is vehemently urged that in the absence of details of part of the land belonging to the petitioners, which is sought to be acquired, they have been denied opportunity to raise objection, as provided under Section 3C of the Act and thus there has been violation of principles of natural justice, which has rendered the entire exercise illegal and arbitrary. Reliance is placed in the matter of ***Competent Authority vs. Barangore Jute Factory and others, (2005) 13 SCC 477.***

4. Learned counsel appearing for the National Highways Authority as well as learned counsel for Union of India and the State Government would argue that the notification itself mentions that the plan of the boundaries and the other details of the land covered under the notification is available in the Office of Competent Authority and the party interested can inspect the plan. It is also submitted that the petitioners have not raised any objection to the effect that the acquisition is not for any public purpose, therefore, the petitions must fail. Referring to the law laid down by the Supreme Court in the matter of ***Union of India v. Dr. Kushala Shetty & Ors., AIR 2011 SC 3210***, it is put forth that when the plan is made part of the notification by making a reference of the same and allowing inspection by the interested parties, the notification is in conformity with the provisions contained under Section 3A of the Act, therefore, no interference is called for.

5. Sections 3A and 3D of the Highways Act need reference which are reproduced hereunder:

“3A. Power to acquire land, etc.--- (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

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3D. Declaration of acquisition.--- (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A

is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.”

6. Section 3A(2) of the Highways Act provides that every notification under sub-section (1) shall give a brief description of the land. The expression “brief description” has not been defined in the Highways Act. Therefore, it is to be understood as per its ordinary meaning with reference to the Village, Taluq and the Khasra number or plot number and whether the land is agriculture or non-agriculture. Brief description of the land would not mean as to which part of the Khasra number is sought to be acquired. In a given case, if the plan is not made available for inspection, it may be argued that reference to that very part of the land, which is sought to be acquired, would be necessary, however, when the plan is made part of the notification and the affected persons have been allowed inspection, it is not permissible to argue that the notification lacks material particulars in terms of Section 3A (2) of the Highways Act. In the matter of **Competent Authority v. Barangore Jute Factory and others** (supra) relied upon by the petitioners, observations have been made about the non-mentioning of the particular area of the bigger chunk of the land which is sought to be acquired because in the said case no plan was available nor it was referred in the notification. To appreciate the fact and context of that case, reproduction of para 7 is necessary, which is as follows:

“7. The availability of a plan would have made all the difference. If there is a plan, the area under acquisition becomes identifiable immediately. The question whether the impugned notification meets the requirement of brief description of land under Section 3-A(2) goes to the root of the matter. The High Court rightly observed: “... It is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without preparation of a proper plan.” The appendix to the impugned notification shows that in many cases small parts of larger chunks of land have been notified for acquisition. This is not possible without preparing a plan. But where is the plan? The notification in question makes no reference to any plan. Our attention

was drawn to averments in pleadings by the writ petitioners and replies thereto of the acquiring authority. The writ petitioners have pleaded that there was no plan. Replies are vague and by way of rolled-up answers. There is no specific reply. It is obvious that there was no plan and, therefore, none was referred to in the pleadings nor anything was produced before the Court at the hearing. Learned counsel for the competent authority tried to submit before us that there was a plan at the time of issue of the notification and the writ petitioners ought to have inspected it, if they so desired. He further submitted that the plan was produced before the High Court. We find that both these submissions are not sustainable as they are not correct. A reference to the impugned notification shows that there is no mention of any plan. Without this how can anybody know that there was a plan which could be inspected and inspected where? We are inclined to accept that there was no plan accompanying the impugned notification. During the course of hearing we were shown a plan which we are unable to link with the impugned notification. This was a 1996 PWD plan. PWD is a department of the State Government. The impugned notification is by the Central Government. NHAI is established under a Central Act. The competent authority under Section 3 of the Act is appointed by the Central Government. Therefore, this State Government plan of 1996 (the impugned notification is of 1998) is of no assistance. The impugned judgment of the High Court emphasises the need for a plan. It is clear from the judgment of the High Court that no plan was produced before it. The absence of any reference to a plan in the impugned notification and in fact non-availability of any plan linked to the notification, fortifies the argument that the description of the land under acquisition in the impugned notification fails to meet the legal requirement of a brief description of the land which renders the notification invalid."

Thus, it is manifest that in the matter before the Supreme Court, the notification under Section 3A of the Highways Act was interfered because the plan was not made part of the notification, whereas in the instant case the plan has been made part of the notification, therefore, the facts are entirely different and the judgment relied upon by the petitioners is of no assistance to them.

7. In the matter of ***New Tea Company Ltd. & Anr. v. National Highways Authority of India & Ors.***, AIR 2007 Calcutta 60, the Division Bench of Calcutta High Court has taken similar view to hold that if the plan is made part of the notification, it satisfies prerequisites of a valid notification under Section 3-A even if the exact location of the land proposes to be acquired is not mentioned in the notification. The following has been held in para – 15 of the judgment.

“15. After going through the said notification, we find that the plot

numbers of the land sought to be acquired have been mentioned therein but the exact location of the land has not been indicated. In our view, Mr. Bhattacharya was quite justified in contending that the notice having further disclosed that the exact location of the land proposed to be acquired would be available from the office of the respondent and that it was open for the inspection by all the interested persons, there was no just ground for branding the notification as invalid for want of sufficient description. It appears that in the section itself, all that has been mentioned is that there must be a “brief description” of the land and not the detailed description. The notification having described the plot numbers of the land and having invited the interested persons to visit the office for inspection of the map, we are of the view that there was sufficient compliance of the formalities mentioned in the said section. In the case of *Competent Authority v. Barangore Jute Factory* (supra), relied upon by Mr. Mitra, there was even no reference of any map for inspection by the interested persons for the purpose of locating the land acquired and for the above reason, the Supreme Court declared that the notification was bad for its vagueness. In paragraph 7 of the judgment, the Supreme Court however, made the following observations :

The availability of a plan would have made all the differences. If there is a plan, the area under acquisition becomes identifiable immediately.”

8. In the matter of ***V. Nandkumar, V. Raji and V. Vinayagam vs. Union of India (UOI) & ors.***, reported in **(2010) 1 MLJ 901**, it is held that once after issuance of notification under Section 3A of the Act, the objections have been dealt with and disallowed and the final notification under Section 3D is published, the lands vest with the Central Government and once that happens, the petitioners will be entitled for only compensation.

9. In the matter of ***Dr. V.S. Shukla & Ors. v. National Highways Authority of India (Ministry of Road Transport & Highways) & Ors.***, AIR 2013 Karnataka 65, challenge to the acquisition notification under Section 3A of the National Highways Act has been rejected on the ground that when plan of the area under acquisition was already made part of notification, not giving all particulars of land proposed to be acquired would not vitiate the acquisition proceedings.

10. Yet again, the Madras High Court in the matter of ***The Clasic Farms (Chennai) Ltd. vs. The Union of India and ors.***, reported in **(2014) 2 MLJ 336**, held that when Section 3A of the Act notification clearly indicated that Authorities

had made cite plans and other details of the land covered under the notification which is available in the Office for inspection by the interested persons and the notification contained brief description of the land, the notification fulfills the requirement of Section 3A of the Act and it does not suffer from any legal defect.

11. The petitioners have already moved their objection which has been decided by the competent authority and thereafter notification under Section 3D of the Highways Act has been issued. Section 3D (2) provides that on the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. Thus, from the date of issuance of notification under Section 3D of the Highways Act, the land has already vested in the Central Government.

12. It is also argued that the order rejecting the petitioners' objection is not a speaking order nor the objection can be said to have been rejected by the said order, therefore, there is violation of the provisions contained in Section 3C read with Section 3D of the Highways Act.

13. Annexure P/9 in WPC No.523 of 2016 is the document whereby the objection has been dealt with. True it is that the order or the decision on the objection is not properly crafted like an order by a judicial or quasi-judicial authority, however, there appears application of mind while dealing with the objection. Column 4 of the order deals with the nature of the objection while column 5 would consider the report submitted by the Project Director and thereafter the nature of disposal of the objection has been mentioned in column 6. It is clearly mentioned in column 6 that the partition of Khasra numbers which are affected by the subject notification would be mentioned in the notification under Section 3D of the Highways Act, meaning thereby that as per the plan available in the Office, the appropriate partition or division of Khasra numbers would be mentioned in the notification under Section 3D of the Highways Act.

14. The law with regard to the requirement of notification under Section 3A(1) of the Highways Act has been settled by the Supreme Court in the matter of **Union of India v. Dr. Kushala Shetty** (supra), holding that such an objection is not sustainable when the plan is made part of the initial notification. Paras – 19 and 20 of the judgment can be profitably referred, which are as follows:

“19. In this case, notification dated 10.8.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three National Highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the Competent Authority. This is the reason why none of the land owners (including the respondents) made any grievance that the notification issued under Section 3A(1) of the 1956 Act was vague or that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3C(1). Of course, a grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non-adherence to the time schedule specified in Section 3C(1) of the 1956 Act.

20. The only reason assigned by the Division Bench of the High Court for upsetting the well considered order passed by the learned single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3D(1) was published even before communication of the decision taken by the Competent Authority in terms of Section 3C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections filed by the land owners had not been decided till the issue of declaration under Section 3D(1). However, the fact of the matter is that the Competent Authority had, after giving opportunity of personal hearing to the objectors, passed order dated 11.10.2005 and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the representations made by the respondents cannot be faulted only on that ground. The Competent Authority did advert to the substance of objections, the details of which have been incorporated in Annexure P-3 filed before this Court. The concerned officer rejected the same by observing that the land proposed for acquisition is necessary for widening the existing National Highways into four lanes. If the consideration made by the Competent Authority is judged in the backdrop of the fact that a Special Purpose Vehicle was incorporated with the name New Mangalore Port Road Company Limited for implementation of the project known as New Mangalore Port Road Connectivity Project from Surathkal to Nantoor and B.C. Road to Padil along with bypass from Nantoor to Padil, it is not possible to castigate the proved reasons recorded by the Competent Authority for rejecting the objections.”

15. For the foregoing, this Court is of the opinion that the notification under Section 3A or Section 3D does not suffer from any infirmity.

16. The acquisition being for a public purpose for widening of the road and the said declaration or decision in the notification having not been assailed, there is no substance in the writ petitions. Accordingly, all the writ petitions are dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

HEAD NOTE

Brief description of land mentioned and plan was made part of notification making it available for inspection; notification u/S 3A of NH Auth. Act fulfills requirement of law.