IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13917 of 2014

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1. Suresh Chandra Sharma son of late Kamleshwar Prasad Sharma
2. Ramakant Prasad son of Late Ram Lakhan Sharma
3. Jainandan Prasad son of Late Baleshwar Sharma
4. Basanti Devi wife of Ram Binod Sharma
5. Urmila Devi wife of Ram Lakhan Sharma
6. Nagendra Sharma son of Umeshwar Sharma
7. Arvind Kumar Sinha son of Late Ram Swarath Sharma
8. Bhagwat Prasad Sharma son of late Rampati Singh
9. Navlesh Sharma son of Late Ram Varath Sharma
10. Ram Pravesh Singh son of Late Pradeep Singh
11. Sita Devi D/o Bindeshwari Singh
12. Radha Devi W/o Haricharan Sao
13. Sanjay Kumar son of Late Madhav Ram
14. Shobha Devi W/o Shyam Bihari Sharma
15. Vijay Prasad Gupta son of Late Nandu Sao
16. Raghunath Sharma son of Late Janeshwar Sharma All resident of village- Khalkochak, Ward no. 13, Post Office- Makhdumpur, Police Station- Makhdumpur, District- Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Secretary, Land Acquisition & Rehabilitation Department, Bihar, Patna
3. The Collector, Jehanabad
4. The Land Acquisition Officer, Jehanabad
5. The Circle Officer, Makhdumpur Block, District- Jehanabad

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Dronacharaya
Mr. Binod Kumar
For the NHAI : Mr. S.N.Pathak
Mr. A.B. Mathur
For the State Mr. Vikash Kumar, AC to AG

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

03 14.09.2017 Heard learned counsel for the petitioner, learned counsel for NHAI as well as learned counsel for the State.

The lands of the petitioners were acquired for widening of the road and for that purpose, notification under

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section 3-A(i) was published in official gazette on 24.1.1997 inviting objections from the interested persons. Petitioners filed their objections but their claim is that opportunity of hearing was not given to them and without disposing of the aforesaid objections, award was prepared. However, at para 23 of the writ petition, it has been averred by the petitioners that after preparation of the award, again, objection was invited under section 3-G (5) of the National Highways Act, 1956 (in short 'NH Act') by getting notification published in daily newspaper 'Hindustan' on 26.6.2011. Again, petitioners filed their objections but they were not given any hearing on the aforesaid objections.

Petitioners' grievance is that their lands have been treated as agricultural lands, though nature of their lands is either commercial or residential.

Learned counsel for the petitioners submits that after publication of notification under section 3-A(i) of the N.H. Act, 1956, admittedly, petitioners filed objections but they were not heard by the officials and subsequently, when notification was published under section 3-D of the N.H. Act again, petitioners filed objections but again, they were not given opportunity of hearing and without giving any

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opportunity of hearing, the concerned authority prepared award. He, further, submits that section 3-J of the N.H. Act says that Land Acquisition Act, 1894 is not applicable in arbitration proceeding initiated under N.H. Act, 1956 but annexure 4 series goes to show that award has been prepared under section 12(2) of the Land Acquisition Act, 1894. Therefore, the aforesaid award is ab initio void.

On the other hand, learned counsel for the NHAI refutes the above stated submissions arguing that admittedly, after publication of notification under section 3-A(i) of the N.H. Act, opportunity of filing objection was given to the petitioners and thereafter, they filed their objections which were disposed of by the competent authority and again, after preparation of award, objections were invited and the petitioners filed their objections which were also disposed of and, therefore, there is no illegality or irregularity in preparation of the award. He, further, submits that moreover, if the petitioners are not satisfied with the award, they may raise their grievance before Arbitrator under section 3-G(5) of the N.H. Act.

It is admitted position that after publication of notification under section 3-A(i) of the N.H. Act and under

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section 3-D of the N.H. Act, opportunity for filing objections was given to the petitioners and they filed their objections. Respondents claim that objections were decided in accordance with rule whereas the petitioners claim that they were not given any opportunity of hearing on the aforesaid objections but, in my view, the above stated dispute is matter of enquiry which is not possible in this writ petition. However, petitioners are still at liberty to challenge the award before Arbitrator under section 3-G(5) of the N.H. Act.

Therefore, in the aforesaid circumstances, this petition stands disposed of giving opportunity to the petitioners to challenge the impugned award before Arbitrator in accordance with law within four weeks from today and if they do so, learned Arbitrator shall pass appropriate order on the objections of the petitioners after giving proper opportunity of hearing to the petitioners.

shahid (Hemant Kumar Srivastava,J)

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