

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20708 of 2013

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1. Jaleshwari Devi Wife of Abadh Bihari Ram
 2. Surja Deo Ram Son of Late Brahmeshwar Ram
 3. Rajendra Prasad Singh Son of Late Shankar Bhagwan Singh
 4. Shambhu Chaudhary Son of Late Gouri Shankar Chaudhary
 5. Shree Bhagwan Singh Son of Late Madhaw Singh
 6. Raj Kumar Chaudhary Son of Late Radha Kishun Chaudhary
 7. Ramchandra Singh Son of Radha Rai
 8. Shyam Sundar Prasad Keshari Son Of Ramdas Ram
 9. Jagbali Singh Son of Late Gangadhar Singh
 10. Prabhunath Singh Son of Late Chandradeo Prasad
 11. Shiwnath Singh Son of Late Rup Chanda Singh
 12. Ajit Singh Son of Chandradeep Singh
All resident of Village - Purana Bhojpur, P.S. - Dumraon, District - Bhojpur
 13. Shree Ram Singh Son of Late Ram Anup Singh
 14. Sukhdeo Koeri Son of Late Narayan Koeri
Both resident of Village - Kathar Khurd, P.O. - Chakiya, P.S. - Krishna Braham, District - Buxar
 15. Balmiki Singh Son of Late Shiv Balak Singh Resident of Village - Dharhara, P.O. - Tudiganj, P.S. - Krishna Braham, District - Buxar
 16. Amar Singh Son of Radha Krishna Singh
 17. Brahmeshwar Singh Son of Late Harishankar Singh
 18. Brahm Dayal Singh Son of Late Shivyogi Singh
 19. Malti Devi Wife of Ramji Singh
 20. Nardmuni Singh Son of Late Raghupati Singh
 21. Nirmala Devi Wife of Nardmuni Singh
 22. Yogendra Singh Son of Hiranman Singh
 23. Mokhtar Singh Son of Jitan Singh
 24. Deo Kumar Singh Son of Jitan Singh
 25. Brij Mohan Singh Son of Late Bhrigu Nath Singh
 26. Ishwar Chandra Vidyasagar Son of Late Gauri Shankar Ram
 27. Shiv Narayan Prasad Son of Late Daroga Ram
All resident of Village - Dharhara, P.O. - Chakiya, P.S. - Krishna Braham District - Buxar
 28. Suresh Singh Son of Late Rambilash Singh
 29. Sunaina Devi Wife of Suresh Singh
 30. Smt. Sunita Devi Wife of Shivji Singh
 31. Most. Basanti Devi Wife of Late Ram Pravesch Singh
 32. Ram Balak Singh Son of Late Ram Anup Singh
 33. Ras Bihari Singh
 34. Saryu Singh
 35. Ajay Singh All sons of Ram Balak Singh
 36. Akshya Lal Singh
 37. Hari Govind Singh
 38. Bindeshwari Singh
 39. Arun Singh
 40. Naradmuni Singh all sons of Late Mahendra Singh Resident Of Village - Kathar Khurd, P.O. - Choukiya, P.S. - Krishna Braham, District - Buxar
 41. Ram Ashray Rai Son of Late Saryu Rai



42. Ram Nath Rai Son of Late Mukteshwar Rai
 43. Sidh Nath Rai Son of Late Mukteshwar Rai
 44. Dina Nath Rai Son of Late Mukteshwar Rai
 45. Achhaibar Nath Rai Son of Late Mukteshwar Rai
 All resident Of Village - Darahpur, P.O. - Churamanpur, P.S.
 Industrial Area Buxar, District - Buxar
 46. Sidh Nath Rai Son of Late Ram Prasad Rai
 47. Surendra Rai Son of Late Ram Prasad Rai
 Both resident of Village + P.O. - Arjunpur, P.S. - Industrial Area-
 Buxar, District - Buxar
 48. Prahlad Rai Son of Late Ram Briksh Rai
 49. Jaikaran Rai Son of Late Ram Briksh Rai
 50. Akhauri Niraj Kumar Son of Late Akhauri Jaideo Narayan Sinha
 All resident of Village - Darahpur, P.O. - Churamanpur, P.S.
 Industrial Area Buxar, District - Buxar

.... Petitioner/s

Versus

1. The Union of India through the Secretary N.H.I. , New Delhi
2. The Secretary, Ministry of Road Transport and National Highway, New Delhi
3. The State of Bihar
4. The Collector, Buxar
5. The Additional Collector, Buxar
6. The District Land Acquisition Officer, Buxar –cum- Competent Authority
7. The Sub-Registrar, Registry Officer, Buxar
8. The Project Director, Patna N.H.I. New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Keshav Srivastava Mr. S.K. Sarkar
For the State	:	Mr. Krishna Chandra, AC to AG
For NHAI	:	Mr. S.N. Pathak

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 16-10-2017

1. Petitioners' lands have been acquired for widening and converting national high way no. 84 Patna-Buxar section into four lanes and compensation amount has been processed and computed treating their lands as agriculture as well as residential, though the petitioners



claim that nature of the acquired lands is commercial.

2. Petitioners have filed this writ petition under Article 226 of the Constitution of India for issuance of command to the respondents to declare the lands of the petitioners as commercial lands and also to accept their affidavits after redressal of their grievances so that they could surrender their lands and get higher rate of solatium.

3. Central Government felt to acquire some lands for widening and converting national high way no. 84 Patna Buxar section into four lanes and for that purpose a notification under section 3-A (1) of the National Highways Act, 1956 (in short "Act") was published in Hindi daily Hindustan on 6.12.2009 by Ministry of Road Transport and National Highways, New Delhi for acquisition of lands in Buxar district. Lands belonging to the petitioners situated at village Kudiganj were also sought to be acquired.

4. Another notification under section 3-A (1) of the National Highways Act, 1956 was published in Hindi daily Danik Jagran on 19.1.2010 by the above stated Ministry for acquisition of lands for the same purpose and



in that notification, lands belonging to the petitioners situated at village Bhojpur Kadim and village Darahpur were also sought to be acquired. The above stated fact is evident from perusal of annexures 1 and 2 respectively to this petition. Lands of petitioner nos.1 to 12 situated at mouza Bhojpur Kadim were shown as agricultural lands. Lands of petitioner nos.13 to 40 situated at mouza Tudiganj were shown as residential and similarly, some lands of petitioner nos.41 to 50 situated at village Darahpur were shown as agricultural lands whereas some lands of the above stated petitioners were shown as commercial. The concerned authority prepared award treating the aforesaid acquired lands as agricultural lands. Petitioners made representations to the District Magistrate, Buxar regarding wrong mentioning of nature of the lands in the notification on the basis that registry office has categorized the aforesaid lands as commercial lands after due and proper enquiry and stamp duty is levied on the lands of the aforesaid villages treating the lands as commercial lands at the time of registration. Moreover, in the meantime, State Government has taken a decision to resolve the controversy regarding nature of



the lands by constituting a committee and subsequently, Principal Secretary, Revenue Land Reforms department, Government of Bihar issued letter no. 1002 dated 10.10.2009 directing all the concerned officials to take decision regarding nature of acquired lands after making spot enquiry and not on the basis of revenue records but up till now, committee has not submitted its report in respect of lands of the petitioners.

5. Petitioners further state in their writ petition that they are ready to surrender their lands for widening and converting national high way no. 84 into four lanes but they are only raising objection in respect of method of computation of the award amount as lands of the petitioners have been shown as agricultural lands, though nature of the acquired lands has already been changed.

6. Counter affidavit has been filed on behalf of respondent nos.4 to 6 in which it has been averred that lands on which commercial activity were found have been declared as commercial lands and lands of both sides of national high way no. 84 is agriculture in nature and hence, those lands have been published as agriculture. It has further been averred that lands of the



petitioners have been acquired and compensation has been assessed as per National Highways Act. It has also been pleaded that if the petitioners are aggrieved with the order of the competent authorities, they may opt to file petition before Arbitrator according to the provision of National Highways Act. However, respondent nos.4 to 6 have admitted at para 9 of their counter affidavit that plot nos. 350, 358, 351, 352, 353 and 354 of mouza Darhpur have been shown as commercial in 3 D publication but inadvertently, compensation of those plots have been computed as treating the said lands as agriculture. Furthermore, it has been pleaded that six men committee headed by the District Collector of Buxar has already been constituted to resolve the dispute regarding nature of the lands and for computation of compensation of their acquired lands. Furthermore, it has been pleaded that the petitioners have not filed their affidavits within the stipulated period and, therefore, they are not entitled to file the same.

7. Separate counter affidavit has been filed on behalf of the National Highways Authority of India and its officials in which it has specifically been pleaded that



amount has already been determined under section 3 G of the National Highways Act, 1956 and if the petitioners have any grievances, they may raise their grievances before Arbitrator under section 3-G (5) of the Act and moreover, Division bench of this court in the decision reported in 2014(1) PLJR page 209 decided the aforesaid issue holding that any affected person may raise his grievance before Arbitrator under section 3G (5) of the Act. It has further been pleaded that moreover, nature of the land is decided on the basis of use of that land at the time of notification published under section 3-A (1) of the Act. In the present case, at the time of publication of the notification under section 3- A (1) of the Act, nature of the lands of the petitioner was found agriculture and residential as mentioned in the notification and on that basis, compensation amount was computed and award was prepared. NHAI also pleaded that the State Government has constituted six men committee to resolve the dispute and near about 156 petitions were filed before six men committee for determination of classification of lands. The District Magistrate has already ordered for verification of the lands under dispute by six men



committee.

8. Petitioners have filed rejoinder to the counter affidavit pleading therein that authorities have not complied with the mandatory provision of the National Highways Act, 1956 because no opportunity was given to the petitioners to raise objection before preparation of award under section 3-G of the Act.

9. Learned counsel appearing for the petitioners submitted that in the case of Divya Deep Singh & ors vs. Union of India and others (CWJC no. 18918/2012), a single bench of this court held that if authorities failed to comply with the mandatory provision of the National Highways Act, 1956, the entire acquisition proceeding shall be vitiated. He, further, submitted that the aforesaid case relates to national high way no. 84 Patna Buxar section and in that case also, the concerned authority prepared award under section 3-G of the Act without complying with mandatory provision of the Act and single bench of this court set aside the order of adjudication by the competent authority-cum- District Land Acquisition officer, Buxar and remanded the matter for fresh consideration taking all materials into account.



He, further, submitted that in the present case also, admittedly, respondents failed to comply with mandatory provision of section 3-G (3) of the Act as before proceeding to determine the amount, the competent authority failed to give public notice in two local newspapers and moreover, concerned competent authority did not give any opportunity to the petitioners to raise their grievances before preparation of award under section 3 G of the Act.

10. He, further, submitted that reports of district registry, district Buxar as well as the concerned C.O go to show that the acquired lands of the petitioners are commercial lands but even then the concerned authority treated the acquired lands of the petitioners as agriculture as well as residential. He, further, submitted that, no doubt, six men committee has been constituted to decide the nature of acquired lands after making spot inspection but up till now, nothing has been done and the aforesaid six men committee has not submitted its report and, therefore, there is no need to challenge the award before Arbitrator because the concerned authority illegally and arbitrarily prepared award under section 3 G of the Act.



11. On the other hand, learned counsel appearing for the NHAI submitted that admittedly, six men committee has been constituted and if the petitioners have any grievance regarding amount of compensation, they may raise their grievances before six men committee. He, further, submitted that Division bench of this court in LPA no. 1467/2013 in almost similar nature of case vide order dated 17.3.2017 refused to interfere with acquisition proceeding on the ground that applicants of the aforesaid case had alternate remedy to redress their grievances before the competent authorities.

12. Almost, similar argument has been raised by learned counsel appearing for the State.

13. Having heard contentions of both parties, I have gone through the record. It is admitted position that lands of the petitioners were acquired and nature of the aforesaid lands was either treated as agriculture or residential whereas petitioners claim that nature of acquired lands has already been changed as lands of the same vicinity are being used for commercial purpose. It is also an admitted position that the concerned authority determined the nature of the lands on the basis of entry



made in revenue records. It is not in dispute that revenue records were prepared more than four decades ago. It is also not in dispute that some lands of the vicinity are being used for commercial purposes. Petitioners have brought several documents on record to show that registry department charges stamp duty treating lands of vicinity as commercial lands at the time of registration of sale deeds of those lands.

14. It is also an admitted position that only notification under section 3A (1) of the Act was made and no notification under section 3G(3) of the Act was published. It is pertinent to note here that when this matter was taken up for hearing on 17.2.2017, learned counsel for the petitioners had pointed out that compliance of section 3 G of the Act has already been done and that was the reason NHAI was avoiding to file counter affidavit and on the basis of the aforesaid submissions of learned counsel for the petitioners, this court had directed the respondents to give specific reply on the aforesaid point but the respondents have not even whispered on the above stated issue rather accepted in their respective counter affidavits that award has already



been prepared under section 3G of the Act but they, nowhere, mentioned about compliance of mandatory provisions of the Act and they also failed to show that any publication giving public notice was made in two local daily newspapers before preparation of the award. Therefore, the aforesaid fact clearly goes to show that the concerned authority did not give any opportunity to the petitioners to raise their grievances regarding nature of the lands as well as determination of the compensation amount.

15. Scheme of the National Highways Act, 1956 goes to show that scheme is divided in two parts. First part relates to acquisition of lands and widening thereof which has been provided from section 3A to section 3F of the Act whereas second part relates with determination of compensation and other associated matters which has been provided from section 3 G to section 3 I of the Act. In section 3A of the Act, Central Government, having satisfied about requirement of the lands for public purpose, expressed its intention by publishing notification in the official gazette as well as two local newspapers and any interested person may, within twenty days from the



date of publication of notification, object to the use of the land for the purpose or purposes mentioned in that subsection and after that the competent authority shall decide all objections after giving opportunity of hearing to the objector. Furthermore, section 3 D of the Act says that after disposal of objection and after having receipt of report from the competent authority, Central Government again published in the official gazette regarding acquisition of lands for the purpose mentioned in previous notification and after that publication of lands shall vest absolutely in the Central Government free from all encumbrances. Thereafter, section 3 E of the Act gives power to the Central Government to take decision and similarly, section 3 F of the Act gives right to the Central Government to enter into the lands. Section 3 G of the Act deals with determination of amount payable as compensation and this section says that amount of compensation shall be determined by the competent authority but before determination of the amount, the competent authority shall give a public notice published in two local newspapers inviting claims from all persons interested in the lands to be acquired and if the amount



determined by the competent authority is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. Furthermore, section 3 G (7) of the Act says that the competent authority or the arbitrator while determining the amount, shall take into consideration the market value of the lands on the date of publication of the notification under section 3-A of the Act, the damage, if any, as well as other relevant things. Therefore, the aforesaid section clearly prescribes guideline for determination of compensation amount under section 3 G of the Act.

16. In the present case, admittedly, the competent authority determined the compensation amount on the basis of entry made in the revenue records but, in my view, that is not the intent of legislator for determination of compensation amount because section 3 G (7) of the Act clearly says that at the time of determination of compensation amount, market value of the lands shall be taken into consideration and furthermore, the aforesaid market value of the lands shall be on the date of publication of notification under section



3 G of the Act.

17. Admittedly, petitioners have brought some documents to show that nearby lands of acquired lands are being used for commercial purpose and nature of the acquired lands has already been changed as commercial lands.

18. In the present case, as I have already stated that the concerned authority failed to comply mandatory provision of section 3 G (3) of the Act and, therefore, any determination of compensation amount by the competent authority violating mandatory provision of section 3 G (3) of the Act is nothing but only an illegality which can not be ignored by this court.

19. However, it is admitted by both parties that six men committee have already been constituted by the State Government for resolving the dispute regarding the nature of the acquired lands and up till now, the aforesaid committee has not given its report. Therefore, in the aforesaid circumstances, I think it proper to dispose of this writ petition giving direction to the petitioners to raise their grievances before the District Magistrate-cum-Chairman of the aforesaid six men committee, Buxar



annexing copy of this order within 30 days from today and if the petitioners do so, the District Magistrate-cum-Chairman of the aforesaid six men committee, Buxar shall place the grievance of the petitioners before the concerned committee within two weeks from the date of presenting the grievances in writing and thereafter, the concerned committee shall enquire into matter and give its finding/report regarding nature of the lands in accordance with law within two weeks from the date of placing the grievances of the petitioners before the said committee. However, it is made clear that if any award in respect of acquired lands of the petitioners has been prepared earlier by the concerned authority, the same shall be deemed to be quashed.

Shahid

(Hemant Kumar Srivastava, J)

AFR	AFR
CAV DATE	11.4.2017
Uploading Date	17.10.2017
Transmission Date	NA

