

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 463 of 2016**

1. Ashutosh Agrawal S/o Late Shri Kumbhaj Lal Agrawal, Aged About 50 Years R/o : Simga, Patwari Halka No. 15, Tehsil- Simga, District Baloda Bazar Bhatapara, Chhattisgarh.
2. Smt. Kanaklata Agrawal, W/o Shri Ashutosh Agrawal, Aged About 50 Years R/o : Simga, Patwari Halka No. 15, Tehsil- Simga, District Baloda Bazar Bhatapara, Chhattisgarh.

---- Petitioner**Versus**

1. Government Of India Ministry Of Road Transport & Highways, (Department Of Road Transport & Highways), Transport Bhawan, 1, Parliament Street, New Delhi- 110001
2. National Highways Authority Of India, Through Project Director, Project Implementation Unit, (Chilpi- Simga Section) G- 5 & 6, Sector -10, Dwarka, New Delhi - 75
3. Public Works Department, National Highway Development Project, Through The Chief Engineer/Project Director, Raipur (Chhattisgarh)
4. Sub Divisional Officer (Revenue) & Competent Authority Under The National Highways Act, 1956, Bhatapara, N H- 12- A, Tehsill Simga, District Baloda Bazar, Chhattisgarh.

---- Respondent

For Petitioners : Shri Akshat Agrawal, Advocate.
 For Respondent No.1 : Shri R.K. Kesharwani, Advocate.
 For Respondent No.2 : Smt. Fouzia Mirza, Advocate.
 For Respondents 3 & 4 : Shri UNS Deo, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****16/03/2017**

1. The petitioners would assail the notification dated 17.6.2015 issued by

respondent No.1 under Section 3D(1) of the National Highways Act, 1956 (for short 'the Act') and notification dated 3.7.2015 issued under Section 3D(2) of the Act. In these two notifications, it has been declared that the land bearing part of Khasra No.1460/1, area 0.993 hectares belonging to the petitioners has stood vested absolutely free from any encumbrances in the Central Government.

2. The matter pertains to acquisition of land for construction of Balodabazar-Bhatapara, National Highway No.12-A (new NH No.30) including construction of Bypass on the stretch of land from Km.316.075 to Km.317.401 (MP Border Chilpi to Simga Section). A notification dated 25th June, 2014 under Section 3A(1) was published for the subject land bearing Khasra No.1460/1, area 0.099 hectares and again for Khasra No.1460/1, area 0.133 hectares to which the petitioners moved objection under Section 3-C of the Act. Another notification dated 2nd March, 2015 was issued under Section 3A(1) for the land bearing Khasra No.1460/1, area 0.8600 hectares and thereafter notification dated 17.6.2015 under Section 3D was issued for the land bearing Khasra No.1460/1, area 0.993 hectares and thereafter notification under Section 3G for the land bearing Khasra No.1460/1, area 0.993 hectares vide Annexure-P/15.
3. It is argued that the second notification under Section 3A issued on 2nd March, 2015 was only in respect of 0.8600 acre whereas notification under Section 3D was issued for 0.993 hectares, therefore, there is no notification under Section 3A for the area ad measuring 0.133 hectares. It is also argued that in any case the petitioners' objection

dated 19.9.2014 (Annexure-P/5) was not decided for the area 0.133 hectares because at that point of time the second notification under Section 3A issued on 2.3.2015 was not in existence. It is further argued that on the spot the area chosen for construction of land is different than the area shown in the alignment for the project. The area which is actually used is located at better place for which the petitioners would be entitled for higher compensation. The petitioners would thus pray for quashing the notifications.

4. Learned counsel for the respondents would oppose the writ petition. They would refer the judgment rendered by this Court in the matter of **Smt. Santosh Devi Agrawal Vs. Union of India & Others** (WPC No.523/2016 & other connected matters, decided on 26.7.2016).
5. Perusal of the papers would indicate that the first notification under Section 3A was issued on 25th June, 2014 for total area 0.232 hectares and the subsequent notification under Section 3A issued on 2.3.2015 was for area 0.8600 hectares. In both the notifications, total area for Khasra No.1460/1, is 0.232 hectares and 0.8600 hectares whereas notification under Section 3D issued on 17th June, 2015 was for area 0.993 hectares which is less than total area under two previous notifications under Section 3A of the Act. Since the first notification under Section 3A issued on 25.6.2014 has never been withdrawn by issuing any gazette notification, in law both the notifications would remain alive, therefore, it cannot be said that the notification under Section 3A was not issued for area 0.133 hectares.

6. It has been argued that the petitioners' objection under Section 3C has not been decided for area 0.133 areas. However, in their representation dated 26.9.2015 (Annexure-P/16) the petitioners have laid emphasis on the market value of the land without challenging the notification. Thus the main grievance of the petitioners appears to be location and corresponding valuation of the land which has actually been acquired. Since on petitioners own showing their objection under Section 3C has already been considered for 0.8600 hectares of land but it has not been considered only for 0.133 hectares, the argument on this score deserves to be rejected simply for the reason that a notification cannot be quashed in part for some area of the particular Khasra and declaring it valid for some other area of same Khasra, the law does not call for such hyper technical consideration of the matter when the acquisition is for public purpose and the authorities had bona fide intended by issuing successive notifications so that acquisition may not be dumped on account of non issuance of notification for a particular area.
7. In the matter of **Smt. Santosh Devi Agrawal**, referred to above, this Court has referred to the judgment of the Supreme Court in the matter of **Union of India Vs. Dr. Kushala Shetty & Others** {AIR 2011 SC 3210} to hold thus in para-14:-

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.”

8. In view of the principle laid down by the Supreme Court in **Dr. Kushala Shetty** (Supra) relied by this Court in Smt. Santosh Devi Agrawal, referred to above, it is apparent that when the particulars of the land proposed to be acquired were given in the Schedule appended to the notification, it cannot be said that the land holders were prevented from effectively exercising their right to file objection in terms of Section 3 C(1).
9. In the case at hand, the first two notifications contained recital that the boundaries and other particulars of the land are available in the office of the competent authority which can be inspected by the affected land holders.
10. On cumulative reading of all the representations preferred by the petitioners, the tenor thereof would indicate that the petitioners are mainly aggrieved by inadequacy of the compensation. In the return filed by the State, a notification dated 2.9.2016 has been annexed whereby the Government of India, Ministry of Road Transport and Highways has appointed an Arbitrator under Section 3 G (5) of the Act for adjudication of disputes arising out of acquisition of land, including

the dispute concerning inadequacy of compensation. Therefore, for claiming higher compensation, if the petitioners are entitled for, they can approach the Arbitrator.

11. For the foregoing, this petition under Article 226 of the Constitution insofar as it challenges the notifications dated 17.6.2015 issued by respondent No.1 under Section 3D(1) of the National Highways Act, 1956 and notification dated 3.7.2015 issued under Section 3D(2) of the Act has no merit, therefore, it deserves to be and is hereby dismissed. Any dispute regarding quantum of compensation may be adjudicated by the Arbitrator appointed under Section 3G(5) of the Act if the petitioners move before the Arbitrator, in accordance with law.

Sd/-
Judge
(Prashant Kumar Mishra)

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