

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.270 of 2016
IN
Civil Writ Jurisdiction Case No. 15770 of 2013**

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Surya Kuer, Wife of Late Bhikari Tiwary, resident of village- Kumhaw, P.O- More Sarai, P.S.- Shiv Sagar, District- Rohtas at Sasaram presently resident at Sateyndra Nagar (in the house of Ramadhar Dubey) Block Colony, Aurangabad, P.S. and District- Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reforms and Revenue, Government of Bihar, Patna (Bihar).
2. The District Magistrate, Rohtas at Sasaram.
3. The Competent Authority-cum-the District Land Acquisition Officer, Rohtas at Sasaram.
4. The Chief General Manager National Highway, New Delhi.
5. The Project Officer, National Highway II Rohtas at Sasaram,
6. Dineshwar Tiwary,
7. Chandradeep Tiwary, Both Sons of Late Triveni Tiwary, resident of Village- Kamhau, P.O- More Sarai, P.S.- Shivsagar, District- Rohtas at Sasaram.
8. The National Highways Authority of India through its Chairman, G-526, Sector-10, Dwarka, New Delhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Bijay Shankar Choubey, Adv.

For the Respondents 4&5: Mr.S.N. Pathak, Adv.

For the Respondent no.6 : Mr.B.P. Pandey, Sr. Adv.
Mr. Jagannath Singh, Adv.
Mr.Nirbhay Prashant, Adv.
Mr.P.K.Sinha, Adv.

For the Respondent no.7 : Miss. Shilpi Keshri, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 24-01-2018

Heard Mr. Anil Kumar Jha, learned senior counsel assisted by Mr. Bijay Shankar Choubey on behalf of the sole appellant, Mr. Bibhuti Narayan Pandey, learned senior counsel assisted by Mr. Jagannath Singh and Mr. Nirbhay Prashant, advocates on behalf of the respondent no.6, Miss Shilpi Keshari, learned advocate on behalf of the respondent no.7 and Mr. S.N. Pathak, learned advocate on behalf of National Highways Authority of India.

2. The present Letters Patent Appeal has been preferred by the sole appellant being aggrieved by the order dated 09.12.2015 passed by a learned Single Judge of this Court in CWJC No.15770 of 2013 by which the writ petition filed by the present appellant has been disposed of taking a view that the petitioner has a remedy under Section 3-H(4) of the National Highways Act, 1956 (hereinafter referred to as the 'Act'). She is at liberty to approach the competent authority for referring the matter to the Principal Civil Court of original jurisdiction, for deciding the claim of the respective parties, in accordance with law on the basis of the evidence/materials produced by them. The grievance of the petitioner against the order dated 15.07.2013 passed in L.A. Case No.9 of 2011-12 (Annexure-1



to the supplementary affidavit) has not been adjudicated in the writ application and therefore the appellant has a reason to move in appeal before this Court.

3. It appears from perusal of the records, which formed the pleadings before the learned Single Judge that a piece of land bearing khata no.34 and 37, plot no.5, 99, 111 and 42 respectively measuring a total area of 2657 square meter was acquired by the State authorities for construction of a six lane NH-2 situated at village Magapati Chaturbhuj in the district of Rohtas, Sasaram. The case of the petitioner-appellant is that one Palatu Tiwary had two sons namely Bhikhari Tiwary and Triveni Tiwary. Bhikhari Tiwary died leaving behind his widow Most. Surya Kuer (appellant) and a son Ajit Tiwary who is now dead. Triveni Tiwary died leaving behind his two sons namely Dineshwar Tiwary and Chandradip Tiwary.

4. It is not in dispute that a partition suit bearing no.32 of 1967 was filed by one of the descendants from common ancestors, in the court of learned Sub-Judge, Sasaram which was ultimately re-numbered as Partition Suit No.32 of 1967/27 of 1991. In the said partition suit a compromise petition was filed and in terms of the said compromise, a final decree was made. A copy of the final decree is placed on the record as Annexure-1 to the rejoinder filed on behalf of the petitioner-appellant to the counter affidavit filed on behalf of the



respondent nos.6 and 7 before the writ Court. The final decree was prepared on 30.03.1973. The description of the parties as appearing in the final decree would show that in the said partition suit Bhikhari Tiwary and Triveni Tiwary both sons of Palatu Tiwary were defendant nos.1 and 2 respectively. Ajit Kumar, minor son of Bhikhari Tiwary was defendant no.3 under the guardianship of Bhikhari Tiwary. Defendant no.4 was Dineshwar Tiwary whereas defendant no.5 happened to be Chandradip Tiwary. Arvind Tiwary, minor son of Dineshwar Tiwary under the guardianship of Dineshwar Tiwary was impleaded as defendant no.6. In the final decree separate schedules were made. The land mentioned under schedule A of the final decree was allotted to Bhikhari Tiwary. A perusal of the final decree shows that the land in question which are subject matter of acquisition have been allotted under schedule A fully to defendant no.1 Bhikhari Tiwary.

5. The petitioner – appellant has brought on record photocopies of the rent receipts and land possession certificate as contained in Annexure-1 to the writ application to show that after preparation of final decree most of the parties applied for mutation before Anchal Adhikari and after due verification regarding the factum of possession mutation was allowed and since then she is paying tax separately and getting rent receipts. It is further stated that



the petitioner-appellant had sold the land of khata no.14 old/34 new plot no.102 old/141 new area 9 decimals to Kumar Ravi and khata no.34 plot no.146 area 0.454 decimals and in khata no.34 plot no.141 area 20 decimals and again in khata no.34 plot no.146 area 5.544 decimals to different persons and in all these sale deeds Sri Dineshwar Tiwary, son of Triveni Tiwary and brother of Chandradip Tiwary had signed as witness recognizing the validity of the sale deed.

6. It is also stated that earlier in the year 2002 some of the land of the petitioner-appellant had been acquired by the State authority in khata no.34 plot no.99 area 890 square meter for which compensation has been given to the present appellant.

7. The case of the petitioner-appellant is that at this stage when the land of khata no.34, 34, 17, 34 bearing plot nos.5, 99, 111 and 43 respectively measuring a total area of 1657 square meter was acquired by issuing notifications and at the time of determination of compensation under Section 3-G of the Act vide notification no.2334 dated 23.09.2010, there was no objection to her being full owner of the land under acquisition. But later on as the petitioner-appellant received notice dated 20.12.2012 (Annexure-2 to the writ application) from the Competent Authority-cum-District Land Acquisition Officer, Rohtas, Sasaram calling upon her to be present on 13.02.2013 to receive Rs.54,42,572/-, the respondent no.6 raised



an issue and claimed half of the amount therein.

8. The petitioner-appellant has enclosed a copy of the affidavit sworn by one Vishwamitra Tiwary, son of late Narvdeswar Tiwary, Prakash Tiwary, son of Munni Tiwary, Sidhnath Tiwary, son of Nuthuni Tiwary, Dadan Tiwary, son of Dharmadeo Tiwary to show that they had submitted their 'no objection' in favour of the petitioner-appellant saying that they had no objection if the amount under the award no.6 and 19 vide Case No.9 of 2011-12 is paid in favour of the petitioner-appellant.

9. By referring to Annexure-4 which is an objection petition dated 12.03.2013 submitted by Dineshwar Tiwary (respondent no.6), the petitioner-appellant has pointed out that it is at this stage on 12.03.2013 when the petitioner-appellant was going to receive the amount an objection came to be filed from respondent no.6. The respondent no.6 in his objection claimed that he was in possession of half share in the land of Mauza Patti Chaturubhuj. According to respondent no.6, he is the khatiyani raiyat of khata no.17 and other plots involved in the land acquisition. The petitioner-appellant filed her reply before the Land Acquisition Officer, Rohtas, Sasaram in opposition to the objection raised by the respondent no.6 and gave the details showing that Mauza Patti Chaturubhuj has been exclusively allotted to her husband in final decree and no land of that



Mauza has been given either to Triveni Tiwary or to Dineshwar Tiwary or Chandradip Tiwary and Arvind Tiwary. Therefore, objection raised by the respondent no.6 at this stage was unjust and improper. She also submitted in her reply that question of entering the name of Dineshwar Tiwary in the revisional survey does not arise and because just after revisional survey the consolidation operation has been started in the area and separate chak khata has been prepared, therefore, any entry made in the revisional survey has got no meaning in the eye of law.

10. The Competent Authority-cum-DLAO, Rohtas, Sasaram passed the impugned order dated 15.07.2013 in Land Acquisition Case No.9 of 2011-12 and recorded a finding that both the parties were dealing jointly and the partition was not acted upon as it was filed only to save the property from ceiling proceeding.

11. The DLAO, Rohtas recorded that preparation of khatian of khata no.34 in the joint names of the parties in the revisional survey is evidence of jointness and further purchases by Ajit Tiwary and Chandradeep Tiwary and Dineshwar Tiwary in joint name also depicts the joint position of the family. He has relied upon a judgment of this Court in the case of Bibi Batoolan & anothers Vs. Md. Haniff & others reported in 2001(3) PLJR 55. He has also referred to the report dated 31.10.2011 said to have been submitted by



Amin showing that in plot no.42 and 99 the objectors are entitled for half share and Surya Kuer (appellant) is entitled for half share. It is also stated in the report that in plot no. 5 Dharamdeo Tiwary is entitled for half share and in other half share Surya Kuer (appellant) and Dineshwar Tiwary be compensated equally. He has also taken note of the claim of the objector that he had no knowledge of preparation of award in the name of Surya Kuer (appellant) and when he came to know about the same he has filed his objection.

12. Having recorded the aforesaid finding the Competent Authority-cum-DLAO, Rohtas in his operative part of the order held as under:-

“Considering the aforesaid facts and circumstances, this Court comes to the conclusion that, the objector is entitled to be compensated by deduction of 6 dec. (243 square meter) from the share of Surya Kuer i.e. 445 square meter in plot no.99 under khata no.34 as she has received compensation in year 2002 with consent of brother of objector. In this way, the objector is entitled for (243+323½=566½ square meter) and Surya Kuer is entitled to get 323½ square meter in plot no.99. In plot no.5 of khata no.34, objector is entitled for 60½ square meter and Surya Kuar is also entitled for 60½ square meter. In plot no.42 the objector is entitled for 201½ square meter and Surya Kuar is entitled for 201½ square meter. The compensation for plot no.111 of khata no.34 of that mauja be given to the objector for entire 243 square meter.



Let, award be prepared in the name of Dineshwar Tiwari and Surya Kuar in the apportionate mentioned above. In the meantime the N.H. authorities are directed to ask for show cause from the concerned Amin that under what circumstances earlier the award was prepared in the single name of Surya Kuar.

The objection with respect to the land of Sidhnath Tiwari and others (award no.19) is not being decided in this order because still there is paucity in the evidence of the parties. The parties (Sidhnath Tiwari and others Vrs. Bhagwano Devi and Others) are directed to produce their evidence concerning their claims, so that their matter may be decided without any delay.”

13. It appears that initially when the writ application was filed the petitioner-appellant was advised to file the writ application for a writ of mandamus directing the authorities concerned to pay the amount of compensation with interest to the petitioner-appellant in terms of the award vide L.A. Case No.9 of 2011-12 prepared under Section 3-G of the Act. The petitioner-appellant appears to have sworn affidavit in the writ application on 30.07.2013, immediately thereafter a supplementary affidavit was filed for adding the relief for quashing of the order dated 15.07.2013 passed in L.A. Case No.9 of 2011-12 by which the DLAO, Rohtas has directed for preparation of a fresh award. A copy of the order dated 15.07.2013 was brought on record with the supplementary affidavit and a



jurisdictional ground was raised in the supplementary affidavit stating that the authorities had acted without jurisdiction which requires interference.

14. A counter affidavit showing it jointly on behalf of respondent nos.6 and 7 was filed in the writ Court. The defendant no.7 filed a separate affidavit contrary to the stand of respondent no.6. Respondent no.7 supported the version of the present appellant. The respondent no.6, however contested the issue on the line on which the findings have been recorded by the DLAO, Rohtas in his favour. The petitioner-appellant thereafter filed a rejoinder to the joint counter affidavit allegedly filed on behalf of the respondent nos.6 and 7 and brought on record the copy of the final decree as well as copy of the new revisional survey in which the names of the writ-petitioner-appellant and her son have been exclusively shown in respect of khata no.34 and khata no.11 has been shown in the name of Dharamdeo Tiwary and others. The rent receipts in respect of the land in question issued in favour of the petitioner-appellant and notice under Section 3-D which was also published in the Gazette of India on 23.09.2010 and in two newspapers Dainik Jagran and Hindustan Times on 26.11.2010 has been enclosed as Annexure-5. The notice under Section 3-D issued by the Competent Authority-cum-District Land Acquisition Officer, Rohtas, Sasaram is in the exclusive name of this



petitioner-appellant.

15. In the aforementioned background of facts and pleadings when the writ application came to be heard before the learned Single Judge, His Lordship was of the view that there is an alternative remedy under Section 3-H(4) of the Act and therefore on the judgment in the case of The Project Director, National Highway Authority, Araria at Purnea, Bihar & Anr. Vs. Md. Gufran Alam & Ors. reported in 2014(1) PLJR 207, the learned Single Judge disposed of the writ application in terms as stated hereinabove.

Submissions in Appeal

16. Learned senior counsel representing the appellant submits that the learned Single Judge has been misled to understand that it is a case covered under Section 3-H of the Act. The case of the petitioner-appellant was that the order dated 15.07.2013 passed by the Competent Authority-cum-District Land Acquisition Officer, Rohtas, Sasaram was without jurisdiction and therefore the learned Single Judge was required to examine as to whether the DLAO, Rohtas, Sasaram had any authority under law to pass an order of the kind which he passed on 15.07.2013 and which had an effect of preparing a fresh award as envisaged under Section 3-G of the Act in place of earlier award. The learned senior counsel submits that the reliance placed by the learned Single Judge on the judgment reported in



2014(1) PLJR 207 is without appreciation of nature of dispute involved in the said case. According to him, the said case had arisen in a totally different fact situation. The Competent Authority under the Act, in the said case, had declared the award of compensation for the land acquired. Feeling aggrieved by an inadequate amount of compensation the petitioner in the said case had demanded arbitration and a reference was made to the arbitrator. The arbitral award was prepared on 18th January, 2011 and because the authority failed to make payment of the amount of compensation, the writ application was filed for enforcement of arbitral award. It is only in the said context, a Division Bench of this Court held that remedy against the arbitral award lies before the Civil Court and Section 36 of the Arbitration and Conciliation Act, 1996 provides for enforcement of arbitral award under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Thus, it was held that the statutory remedy for enforcement of the arbitral award made under Section 3-G(5) of the Act lies before the Civil Court. The learned senior counsel therefore, submits that citation placed before the learned Single Judge was not only irrelevant but was also misleading.

A glance over the relevant provisions of the Act:

17. The learned senior counsel has taken us through the relevant provisions of the Act. Section 3-A confers power upon the



Central Government to declare its intention to acquire such land as may be required for the building, maintenance, management or operation of a national highway or part thereof. A notification to that effect issued under sub-section (1) of Section 3-A shall give a brief description of the land. Sub-Section (3) of Section 3-A provides that 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.

18. Section 3-B provides the procedure to be followed after issuance of a notification under sub-section (1) of Section 3-A of the Act. According to this it shall be lawful for any person, authorised by the Central Government in this behalf, to—

- (a) make any inspection, survey, measurement, valuation or enquiry;
- (b) take levels;
- (c) dig or bore into sub-soil;
- (d) set out boundaries and intended lines of work;
- (e) mark such levels, boundaries and lines placing marks and cutting trenches; or
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

19. Section 3-C talks of hearing of objections. Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section. Sub-section (2) of Section 3-C states



that every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allows or disallows the objections. Sub-section (3) of Section 3-C provides that any order made by the competent authority under sub-section (2) shall be final. The word competent authority has been defined under Section 3 (a) which reads as under :-

“(a) “competent authority” means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;”

20. Once the objections are decided by the competent authority and an order which is a final order in nature is passed under sub-section(3) of Section 3-C, the competent authority shall proceed to submit a report to the Central Government and on receipt of such report in terms of Section 3-D of the Act, he 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 3-A.



On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. This is the mandate of sub-section (2) of Section 3-D of the Act. According to sub-section(3) of Section 3-A where in respect of any land a notification has been published under sub-section(1) of Section 3-A 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. Under sub-section (4) of Section 3-D 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.

21. Under Section 3-E of the Act any land which has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorized by it in this behalf within sixty days of the service of the notice. Under sub-section (2) of Section 3-E if any person refuses or fails to comply with any direction



made under sub-section (1), the competent authority shall apply as provided under clause (a) or clause (b) as the case may be to enforce the surrender of the land to the competent authority or to the person duly authorized by it.

22. In order to fully appreciate the issues involved in the present case it would be just and proper to quote Section 3-F, 3-G and 3-H of the Act as under:-

“3F. Right to enter into the land where land has vested in the Central Government.—Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation.—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.



(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) 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--

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from



other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount.—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction



the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of subsections (2) to (4) shall apply to such deposit.”

23. Learned senior counsel for the appellant submits that on going through the scheme of the Act it would appear that in terms of Section 3-G the amount liable to be paid on acquisition of any land is to be determined by an order of the competent authority. The procedures for issuance of notice at the time of determination is also provided under the sub-sections of Section 3-G. In terms of sub-section(3) of Section 3-G before proceeding to determine an amount under sub-section (1) or sub-section(2), the competent authority shall give a public notice published in two local newspapers one of which will be in a vernacular language inviting claims from all persons



interested in the land to be acquired. Sub-Section(4) of Section 3-G specifically states that notice shall contain the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by legal practitioner referred to in sub-section(2) of Section 3-C before the competent authority at a time and place and to state the nature of such land. Under sub-section (5) of Section 3-G If the amount determined by the competent authority under sub-section (1) or sub-section (2) 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. Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 has been made applicable by virtue of sub-section (6) of Section 3-G of the Act. The factors which are required to be taken into consideration for determining the amount under sub-section (1) or sub-section (5) of Section 3-G are provided under sub-Section (7) of Section 3-G of the Act which may be noticed above.

24. Learned senior counsel submits that the facts in the present case as emerging from the pleadings of the parties leave no iota of doubt that the land in question is/are exclusively allotted in the share of husband of this appellant which is evident from the final decree passed by the Civil Court of competent jurisdiction. The final



decree had been acted upon is evident from the fact that mutation in respect of those lands have taken place in the name of appellant and the appellant has been paying the rent in respect of those lands. It is also pointed out that the revenue authority has issued even land possession certificate with respect to mauza Patti Chaturbhuj in the name of this appellant which will be evident from the copy of the land possession certificate forming part of Annexure-1 series to the writ application. The report of the karamchari which forms basis of the issuance of land possession certificate in favour of the appellant is quoted hereunder for a ready reference:-

“सेवा में,

अ० अ० शिवसागर

महाशय,

आवेदित भूमि की जाँच पंजी-II से किया। अंकित भूमि पंजी-II में सु० सुर्या कुवर पति स्व० भिखारी तिवारी वो अजीत तिवारी के नाम पर दर्ज है। आवेदिका उषा कुवर के पति अजित तिवारी की मृत्यु हो चुकी है। भूमि दखल कब्जे में है। राजस्व लगान की वसुली वर्ष 2011-12 तक की जा चुकी है।

सेवा में,

अ० अ० शिवसागर

महाशय,

आवेदित भूमि पंजी-II में आवेदिका एवं आवेदिका के पुत्र के नाम से संयुक्त दर्ज है। आवेदिका घर के कार्यकर्ता हैं। भूमि दखल कब्जे में है। राजस्व लगान की वसुली वर्ष 2008-09 तक की जा चुकी है।”

25. Learned senior counsel submits that from Annexure-2 which is a declaration under Section 3-G (Annexure-2 to



the writ application) it would appear that the notification under Section 3-G was published in the gazette notification vide notification no.2334 dated 23.09.2010 and Annexure-2 clearly states that determination of the compensation had already been declared on 31.01.2012 and thereafter the said amount had been deposited by the Central Government with the competent authority. Therefore the notice dated 20.12.2012 was issued by the competent authority only to receive the amount on 13.2.2013. It was not the stage of the determination of compensation as envisaged under Section 3-G of the Act. That stage was already over and in terms of sub-section(3) of Section 3-G determination of amount by the competent authority had taken place in the name of this petitioner-appellant only after giving a public notice in two local newspapers. If the respondent nos.6 had any claim then as a person interested in the land to be acquired he would have filed objection and claimed share by putting appearance before the competent authority in course of hearing. But in the present case respondent no.6 never came forward to raise any objection or claim whatsoever in respect of land in question. There were notifications in gazette and two local newspapers even at the stage of Section 3-A. There were surveys in respect of the land in question and then hearing of objections were the stages when respondent no.6 raised no issue at all.



26. The contention of learned senior counsel on behalf of the appellant is that Section 3-H (4) talks of only a dispute which may arise as to the apportionment of any amount or any part thereof or to any person to whom the same or any part thereof is payable. Scope of sub-section(4) of Section 3-H cannot be relegated back to the stage of sub-section (5) of Section 3-G of the Act. According to him sub-section-(4) of Section 3-H has a very limited scope and ambit, it applies only to the persons who have been found entitled to the amount determined by the competent authority under sub-section(1) of Section 3-G of the Act. Whenever the question of sharing the amount among those in whose favour determination is made would arise, the competent authority shall refer the dispute to the jurisdiction of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

27. According to him in the present case the Competent Authority-cum-DLAO has gone beyond his jurisdiction in virtually rewriting the whole determination as envisaged under Section 3-G of the Act. The competent authority has even decided the apportionment issue after recording a finding of fact that the respondent nos.6 and 7 are in joint possession. The findings recorded by the DLAO are therefore without jurisdiction. It is further submitted by the learned senior counsel that DLAO, Rohtas, Sasaram has



transgressed his authority under the law by quantifying the compensation amount in the name of different persons/objectors and the present appellant. According to him this is beyond the powers conferred by Statute on the DLAO who is the competent authority under the Act, but within the scheme of the Act.

28. On the other hand learned counsel representing the respondent nos.6 and 7 have reiterated that the final decree was never acted upon by the parties and subsequent sale deeds in the joint names are the documents showing jointness of the family and therefore the finding recorded by the DLAO, Rohtas, Sasaram is a correct finding of fact. The learned counsel is however unable to show as to why in the counter affidavit filed showing it on behalf of the respondent nos.6 and 7 there is no explanation as to why they did not raise any objection in hearing before the competent authority at the time of determination of the amount payable. There is no answer as to why despite notices published in the gazette and two newspapers inviting all those who were interested in the land to file their objection the respondent nos.6 and 7 did not come forward to claim their interest in the land in question. The petitioner-appellant has brought on record a copy of the new revisional survey/continuance khatian which is annexure-2 to the rejoinder showing that the land in question is recorded exclusively in the name of this petitioner-appellant. This fact



has not been denied by the respondent nos.6 and 7.

Consideration

29. Having heard learned counsel for the parties and upon perusal of the records, we find much substance in the argument on behalf of the appellant. In the present case there are clinching documents in form of a final decree passed by a court of competent jurisdiction which is in the nature of consent decree showing that these lands are allotted to Bhikhari Tiwary who happened to be the husband of the appellant. There are other documents such as rent receipts and land possession certificate in favour of the appellant showing that the lands in question are recorded exclusively in the name of this appellant and she is paying rent in respect of the land under acquisition. There is also no denial of the fact stated in the writ application that on earlier occasion she had dealt with some part of the land of muaza Patti Chaturbhuj and the respondent no.6 had been the attesting witness to such sale deeds. The appellant is the widow of Bhikhari Tiwary and recording of her name exclusively in respect of the land under acquisition and the documents available on the record clearly suggests that she has rightly been treated as owner of the land in question by the competent authority while issuing notice under Section 3-D of the Act which is Annexure-5 to the rejoinder filed on behalf of the appellant. The notice under Section 3-D was published



in Gazette of India on 23.09.2010 and then in two local newspapers of repute on 26.11.2010, on the back side of the notice it is evident that the respondent no.6 Dineshwar Tiwary had received this notice for and on behalf of the appellant on 4.2.2011. This is a very important piece of document because it goes a long way to falsify the statement made by Dineshwar Tiwary in his objection which was filed at a much later stage before the DLAO, Rohtas, Sasaram that he had no knowledge of this determination of amount of compensation. It is evident that Dineshwar Tiwary had received notice for Surya Kuer (Appellant) and had never claimed any interest in the land in question. Further it appears that co-sharers who were plaintiffs in the partition suit in which final decree was passed had themselves sworn an affidavit on 5.3.2013 in favour of this appellant which is annexure-3 to the writ application. They clearly stated in their affidavit that they had no objection to the compensation being paid to the present appellant. So far as submission of respondent nos.6 that the final decree was never acted upon or that the suit was decreed in terms of compromise only to save the land from going in the ceiling proceeding has no legs to stand. These arguments have been raised only for purpose of raising a futile objection at this stage because the documentary evidences on record shows that lands were duly mutated in the name of this appellant, she was granted rent receipts in her



name and was also issued land possession certificate. These are the positive documents to show that final decree in the partition suit was duly acted upon. Further the plea taken by the respondent nos. 6 that consent decree was obtained only to save the land from going in the ceiling proceeding is also baseless. There is clinching affidavit in favour of appellant filed on behalf of the respondent no.7. Paragraph 7 of the said affidavit would put all disputes at rest, therefore, those are quoted hereunder for a ready reference:-

“That respondent no.7 admits that Plot No.99 of Khata No.34 & Plot No.111 Khata No.17, situated in Mauza-Pattichaturbhuj vide Award No.6, apart from Plot Nos.5&42 of Khata No.34 belongs to the appellant and she was paying rent of the aforesaid land. Respondent Nos.6&7 have no interest in any manner in the aforesaid lands after the aforesaid partition.”

30. As regards the submissions of learned senior counsel representing the appellant with respect to the scope and ambit of Section 3-H of the Act we are in agreement with the submissions that sub-section(4) of Section 3-H would come into play only if any dispute arise as to the apportionment of the amount or any part thereof. The word ‘**apportionment**’ cannot be allowed to be substituted by word ‘**entitlement**’ as has been done in the present case by the competent authority-cum-DLAO, Rohtas, Sasaram. We are of



the opinion that determination of the amount payable as compensation had already taken place in terms of Section 3-G by following the procedure laid down in the sub-sections of Section 3-G. It is not disputed that before proceeding to determine the amount under sub-section (1) the competent authority had given a public notice in two daily newspapers. There is no quarrel with respect to the compliance with the procedures to be followed before determination of the amount. The determination of the amount has been made in favour of the petitioner-appellant alone after finding her entitled to the same, therefore, there is no question of application of sub-section (4) of Section 3-H of the Act at this stage.

31. A person who did not raise any dispute at the time of determination of the amount when a notice was published inviting all interested persons to state the nature of their respective interest on such land cannot be permitted to raise an objection at a belated stage, that too when we have noticed the evidences supporting the case of the appellant. If the respondent no.6 did not appear and raise an issue at that stage, he cannot be taken to mean “any person to whom the same or any part thereof is payable” as envisaged under sub-section (4) of Section 3-H of the Act.

32. In our considered opinion therefore the competent authority-cum-DLAO, Rohtas, Sasaram has committed jurisdictional



error by entertaining the objection filed by the respondent no.6 in the very first place was falsely claimed that it was an objection on behalf of respondent nos.6 and 7 both. The respondent no.7 who is own brother of respondent no.6 has come out with an affidavit in clear terms before this Court in favour of the appellant therefore, the objection filed by the respondent no.6 in the name of respondent no.6 and 7 both was a camouflage and kind of dishonest approach adopted by respondent no.6 at belated stage when he found that some substantial amount is going to be received by widow of a co-sharer in the family. She had received compensation in earlier acquisition of 2002. The joint sale deeds on which reliance has been placed by respondent no.6 cannot be a decisive factor to accept the case of respondent no.6 that too when his own brother (respondent no.7) has sworn affidavit stating that the parties had acted on the basis of final decree.

33. The competent authority-cum-DLAO, Rohtas, Sasaram not only reviewed the entitlement part by recording finding of fact as if he can act as civil court to decide title and possession but also went on to determine the apportionment issue by quantifying the amount of compensation among the appellant and the objectors. This was also not envisaged and DLAO had no authority in law to decide such issues.



34. From the foregoing discussions we come to a conclusion that the order dated 15.7.2013 passed by the competent authority –cum-DLAO, Rohtas, Sasaram in Case No.9 of 2011-12 suffers from jurisdictional error. It is not an order passed by the competent authority in terms of the power conferred upon him by and under the Act. Since the order suffers from jurisdictional error the writ application was very much entertainable and the learned Single Judge has committed error in disposing of the writ application by relegating the appellant to the provisions of Section 3-H(4) of the Act which shall not be applicable in the present case. Once the ownership and share of the parties are already decided in the partition suit and a final decree is operative since 30.03.1973 and they are mutated in respect of their share of land and accordingly a determination has been made in favour of the appellant under Section 3-G of the Act, the appellant cannot be relegated back to Section 3-H(4) of the Act.

35. In the circumstances, the order dated 15.7.2013 passed by the competent authority –cum-DLAO, Rohtas, Sasaram in case no.9 of 2011-12 as well as the impugned order dated 9.12.2015 passed by learned Single Judge in CWJC No.15770 of 2013 are hereby set aside. The competent authority–cum-DLAO, Rothas, Sasaram is hereby directed to make payment of the compensation amount as determined in favour of the appellant within a period of



one month from the date of receipt/production of a copy of this order.

The DLAO, Rohtas, Sasaram shall keep in mind that because of a totally illegal order the appellant has been kept waiting for about four years by now and therefore any further delay on his part in giving effect to this order would be highly detrimental and contrary to the principles of fair play in action.

36. The appeal is allowed. However, there will be no order as to cost.

(Rajeev Ranjan Prasad, J)

I Agree
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	21.12.2017
Uploading Date	24.01.2018
Transmission Date	

