

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.351 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.18961 of 2014**

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1. Ritasi W/o Sri Parmanand Choudhary
  2. Santosh Kumar S/o Sri Parmanand Choudhary Both R/o Baily Road Rukunpura, Bir Basawan Singh Nagar, P.S. Rupaspur, Dist. Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. District Magistrate, Patna.
3. Additional Collector, Patna.
4. S.D.O. Patna Sadar, Patna.
5. The Land Acquisition Officer, Patna.
6. Anchal Adhikari, Patna.
7. Railway Recruitment Board, Rail Bhawan, New Delhi - 1.
8. Chief Engineer/ Con/ GB, E.C. Railway, Mahendrugat, Patna.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Mahesh Prasad, Advocate<br>Mr. Revti Raman, Advocate |
| For the State       | : | Mr. Lalit Kishore, Advocate General                      |
| For Railway         | : | Dr. Anshuman, Advocate                                   |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE JUSTICE SMT. ANJANA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 13-12-2018**

Heard Shri Mahesh Prasad, learned counsel for the  
appellant and Shri Lalit Kishore, Advocate General for the State of



Bihar and its authorities. Dr. Anshuman has appeared for the Railways.

The appellant filed a writ petition that has given rise to this appeal praying that the house of the appellant may not be demolished and since it does not amount to an encroachment, therefore, any acquisition of the said house without payment of compensation was unwarranted.

The learned Single Judge delivered the following judgement on 13.02.2018.

“Heard learned counsel for the petitioner and learned counsel for the State as well as Railway Administration.

With consent of the parties this case is being disposed of finally.

In the present case, the petitioners have initially made a prayer commanding the respondent authority not to acquire the land bearing Plot No. 105/755 appertaining to Khata No. 158 of Village Rukunpura, P.S. No. 18, P.S. and District Patna over which triple storied house is standing in which the petitioners along with family are residing and also for a direction to the respondents to provide service to petitioner no. 2 taking into account of his educational qualification as they have provided employment to similarly situated persons as their land had also been with that undertaking.

For the construction of railway station the Railway Administration has sent the requisition to acquire the land for the aforesaid purposes and certain portion of the land of the petitioners came under acquisition and left out portion remained with the petitioners. As per petitioners they constructed building over left out portion of land whereas State and Railway Administration has taken a plea that left out portion remained 0.01 acre of land and



later on during pendency of this writ petition fresh acquisition was made by the Railway Administration and in pursuance thereof the Land Acquisition Officer has acquired the land of Khata No. 105/755 area is 0.01 Acre of land and for that Rs. 46,53,412 has been offered for payment to the petitioners under Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Only the dispute has been left for consideration by this Court as per petitioners three storied house is standing over the acquired land and every day the State authorities are going to demolish the same. If acquisition has been done validly then State authority is right in taking possession but if the house is standing then compensation must include the valuation of the house. It is not very clear from the award, whether it is amount of compensation of the Land or includes valuation of the house also.

Learned counsel for the petitioner submits that if the house is demolished then there will no material left for assessment of the loss incurred by the petitioners. To that extent the petitioners are correct.

In such view of the matter, this Court directs the Collector to appoint notified valuer. He will visit the house of the petitioners and will make valuation of the house and he will submit the report to the Collector, Patna and Collector, Patna will be obliged to give notice to the petitioners about the valuation which would be submitted by the valuer and if the petitioners will have any objection about the quantum of the amount with respect to the land or valuation of the house, they will be at liberty to raise objection and Collector, Patna will be obliged to refer the matter to the competent authority for proper consideration as per Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Mr. Ashok Kumar Keshari, learned counsel for the Railway Administration submits that for employment of one person the petitioners should approach before the Central Administration Tribunal.



So far claim of the petitioners with respect to one employment, they are at liberty to make proper application before the Central Administration Tribunal under Central Administration Tribunal Act, 1985.

With the aforesaid observation and direction this writ petition is disposed of.”

Since, according to the appellant, the judgement was not complied with, contempt application, MJC No. 2575 of 2018 was preferred in which notices were issued and then a response was filed in the said contempt application by the respondents bringing on record the entire details of acquisition as also the details of the compensation tendered for the purpose of payment to the appellant not only with regard to the open area of land, but also with regard to the constructed area which, according to the respondents, had been acquired after fixing its valuation.

What we find is that the learned Single Judge proceeded on the presumption as if no compensation had been paid nor the valuation of the constructed portion had been carried out. It is in this background that a direction appears to have been issued by the learned Single Judge to the Collector to appoint and notify a valuer and assess the value of the construction and then proceed in the matter as per Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



It appears that there was a simultaneous prayer on behalf of the appellant that the benefit of compassionate appointment should also be extended keeping in view the policy which is applicable in the event any acquisition is made. On this count, the learned Single Judge granted liberty to the appellant to move an application before the Central Administrative Tribunal under the Central Administrative Tribunal Act, 1985.

Aggrieved, the appellant is before us in this background contending that the direction given by the learned Single Judge to approach the Central Administrative Tribunal is unwarranted in law. We entirely agree with the argument raised by Shri Mahesh Prasad, learned counsel for the appellant whose submissions deserve to be accepted for the reason that the question of consideration of compassionate appointment arising out of land acquisition proceedings would not be a service matter so as to be entertained by the Central Administrative Tribunal at this stage. For this, the Railway Authorities themselves will have to pass an appropriate order in accordance with law. To that extent, the appeal deserves to be allowed.

However, so far as the construction standing and the Collector being called upon to conduct a survey, we find this direction issued by the learned Single Judge to be unwarranted



keeping in view the facts that have been brought on record through the affidavit of the respondents in MJC No. 2575 of 2018. The details of the acquisition proceedings and the award including that of the constructed portion have already been brought on record. The fact of quantum of compensation was already there before the learned Single Judge, as is evident from perusal of the impugned judgement. The appellant in this appeal has nowhere made any disclosure nor has raised any plea with regard to the exact quantum to which she is entitled or any dispute with regard to the extent of the area or the constructed area having been acquired. If there is a dispute, for this, the appellant has a statutory remedy under the 2013 Act itself and, in such circumstances, we are not inclined to maintain the order of the learned Single Judge whereby a direction has been issued for carrying out a fresh valuation. It is open to the appellant to avail of the remedies under the 2013 Act for any such valuation or otherwise to claim enhanced compensation which shall be open for the appellant to be raised before the appropriate forum.

Consequently, the appeal is partly allowed subject to the modification noted hereinabove and stands disposed off accordingly.

MJC No. 2575 of 2018 also stands disposed off.



Shri Mahesh Prasad, learned counsel for the appellant urged that on instructions of the appellant he offers an undertaking on behalf of the appellant that the premises shall be vacated within 15 days and, therefore, the demolition may not take place within this period. In the event, the appellant hands over peaceful possession not later than 15 days from today, the respondents shall not take any coercive steps till then.

**(Amreshwar Pratap Sahi, CJ)**

**( Anjana Mishra, J)**

K.C.Jha/Uma/-

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