

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.3205 of 2017

Gram Panchayat Mohka, Through the Up Sarpanch namely Arvind Mishra, S/o Satyanand Mishra, aged about 42 years, R/o Gram Panchayat Mohka, Block Basna, District Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Collector, Mahasamund, District Mahasamund (C.G.)
3. Sub Divisional Officer (Revenue)-cum-Land Acquisition Officer, Basna, District Mahasamund (C.G.)
4. National Highway Authority of India, Through its Deputy Director, Chhattisgarh Division, Raipur, District Raipur (C.G.)
5. B.S.C.P.L., Head In-charge, Chhuhipali, Block Saraipali, District Mahasamund (C.G.)
6. Union of India, Through Secretary, Ministry of Surface Transport and National Highway, New Delhi.

---- Respondents

For Petitioner: Mr. Raghavendra Pradhan, Advocate.

For State/Respondents No.1 to 3: -

Mr. Ratan Pusty, Govt. Advocate.

For Respondent No.4: Mrs. Fouzia Mirza, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/02/2018

1. Petitioner Gram Panchayat Mohka has called in question the land acquisition proceeding initiated by the competent authority under the National Highways Act, 1956 for widening of National Highway No.6 as well as for construction of rest area and for construction of junction.
2. Learned counsel for the petitioner would submit that the impugned

acquisition is unsustainable and bad in law, as the area in question, though owned by the Government, is recorded as grass land and therefore land cannot be sought to be acquired.

3. On the other hand, learned State counsel and learned counsel appearing for respondent No.4 NHAI would submit that acquisition has been initiated way back on 14-8-2015 and notification for acquisition of said land has been issued on 30-9-2016, construction has already been initiated and the land is only grass land which is Government land and it has not been reserved for any other purpose as envisaged under Section 237 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code'), therefore, it cannot be held that such land cannot be acquired, as such, the writ petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.
5. It is not in dispute that the process for acquisition of land was initiated on 14-8-2015. The impugned acquisition at Village Boharpar, Khasra Nos.607, 609, 610 and 611/1, is of Government land and nature of land is grass land which has been acquired for construction of rest area on National Highway No.53 and also for construction of junction. It is the stand of the State Government that the land is only grass land, it is only a Government land and it has not been reserved for any purpose and it is not a common land envisaged under Section 237(2) of the Code.
6. In the matter of **Madhya Pradesh Housing Board v. Shiv Shankar**

Mandil and others¹, similar contention was repelled by the Supreme Court while dealing with Section 237 of the Code by holding as under:-

“24. [Section 237](#) mandates that Collector may set apart unoccupied land for the purposes given in that section, which include as many as about 10 purposes. [Sub-section \(1\)\(b\)](#) mentions for pasture, grass bir or fodder reserve. Sub-Section (2) spells out a specific bar in the following words:

"237. (2) Lands set apart specifically for any purpose mentioned in sub-section (1), shall not otherwise be diverted without the sanction of the Collector.

(3) Subject to the rules made under this Code, the Collector may divert such unoccupied land, which is set apart for the purposes mentioned in clause (b) of sub-section (1) subject to secure minimum two per cent of the agriculture land of that village for the said purposes in to abadi or for agricultural purposes."

Relying heavily on [Section 237\(2\)](#), the contention raised before us, as well as before the High Court was that this being a nistar land, could not have been diverted by the Collector. We do not see any such bar. In the first place, it is not specifically proved that this was a land carrying any nistar rights. On the other hand, this was specifically admitted to be a "nazul land". That apart, we do not see any bar in diverting the unoccupied land. It is shown that this land was specifically set apart for pasture. Barring one revenue entry, the State Government has not produced any evidence either before the learned Single Judge or before the Division Bench of the High Court or even before us to suggest that this particular piece of land was set apart for pasture or for fodder reserve.

¹ (2008) 14 SCC 531

Under the circumstances, we do not see any reason to hold that [Sections 235-237](#) were applicable herein.”

7. Following the principle of law laid down in the aforesaid case, I am of the opinion that since the grass land was not set apart for any particular purpose envisaged under Sections 235 to 237 of the Code, the acquisition made by the respondents cannot be questioned by the petitioner, at this stage. Apart from this, the petitioner has allowed the acquisition to be made final and did not raise any objection as envisaged under Section 3C of the National Highways Act, 1956. The petitioner having sat on the fence cannot be allowed to attack the acquisition when the acquisition has attained finality and construction has started and that is for a particular purpose i.e. widening of National Highway, construction of rest area on National Highway No.53 – Mumbai to Kolkata and construction of junction that too after unexplained delay of more than three years. I do not find any merit in the petition, the petition deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge