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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11920/2016**

DINESH KUMAR & ORS.

..... Petitioners

Through: Mr.Pardeep Gupta with Mr.Parinav
Gupta, Mr.Moazzam Ali & Ms.Mansi
Gupta, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Rakesh Kumar, CGSC with
Mr.Raghav Nagar, Advocate for UOI.
Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
L&B /LAC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **27.11.2018**

1. 112 Petitioners have come to the Court with this writ petition seeking the following reliefs:

“(i) Writ of Mandamus be issued directing the respondents to pay the land compensation and additional land compensation to the petitioners / land owners whose land was acquired vide notification dated 28-7-2006 and 8-2-2007 of village Katha, Tehsil Khekra, Distt. Bhagpat for construction of Eastern Peripheral Expressway immediately within a period of one month.

(ii) Writ of certiorari/Mandamus and certiorari be issued

restraining the respondents from raising any construction of the Eastern Peripheral Expressway over the land of the petition unless and until land compensation is actually disbursed and paid to them along with additional land compensation;

(iii) A writ of certiorari/Mandamus be issued directing the respondents to treat and deemed to be lapsed /quashed the impugned notification dated 28-7-2006 under sub-section (1) of Section 3A of the National Highways Act, 1956 issued by Union of India Respondent no. 1 for construction of Eastern Peripheral Expressway in respect of the land of the petitioners in khasra No. 926, 1100,1101 to 1108, 1113,1114, 1132, 1134 to 1138 (Notified Khasra) of village Katha, District Bhagpat (U.P.); or in the alternate respondent may be directed to the resorted back the possession of land of the petitioners

(iv) To quash the impugned notification dated 8-2-2007 under the provisions of the National Highways Act, 1956 issued by Union of India in respect of the land of the petitioner in khasra No. 926, 1100,1101 to 1108, 1113,1114, 1132, 1134 to 1138 (Notified Khasra) of village Katha, Distt. Bhagpat (U.P.)

(v) To issue writ of Mandamus directing the respondents not to encroach upon the land of the petitioners of notified khasra nos, as neither any notification nor any notice have been issued b y any of the respondents or any of the authority but have taken possession of the land of the petitioners in khasra No.926, 1100,1101 to 1108, 1113,1114, 1132, 1134 to 1138 (Notified Khasra) of village Katha for the construction and operation of the National Highway no. NE II (Eastern Peripheral Expressway).

(vi) As an alternative if the said notifications are not being quashed in larger public interest due to construction of peripheral expressway etc. then additional compensation may be paid to the petitioners over and above to the compensation u/s 31A of the Land Acquisition Act for the land acquired plus compensation u/s 23(2) of the Land Acquisition Act in terms of

the provisions of Section 24 sub clause (2) of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013, whichever is higher.

(vii) Writ of Mandamus be issued directing the respondents to determine and pay land compensation to the petitioners for their land acquired immediately alongwith interest @ 24% P.A.

(viii) Further a writ of Mandamus be issued directing the respondents to pay the additional land compensation to the petitioners @ 30% additional compensation over and above whatsoever is payable to them as the impugned notifications dated 28-7-2006 and 8-2-2007 are illegal and are liable to be quashed; and

(ix) Any other direction / order which this court may deem fit and proper in the facts and circumstances of the case.”

2. The background facts are that a notification was issued on 28th July 2006 by the Ministry of Shipping, Road Transport and National Highways (MoSRTNH), Department of Road Transport and National Highways (DRTNH), New Delhi under Section 3A (1) of the National Highways Act, 1956 (NHA) seeking to acquire land in the aforementioned khasra numbers, apart from other lands, for the public purpose of the Eastern Peripheral Expressway on stretch from Km 13.035 to Km 33.160 (Baghpat Section), Distt. Baghpat in the State of Uttar Pradesh.

3. Pursuant thereto another notification dated 8th February 2007 was issued by the MoSRTNH, DRTNH, New Delhi under Section 3(ii) and Section 3A(1) of the NHAI containing a declaration in respect of the above acquisition of land. This was followed by an Award dated 20th December

2007 determining compensation payable in respect of the land in question.

4. In the counter-affidavit filed in the present case by the competent authority cum Land Acquisition Officer/Additional District Magistrate, Baghpat (Respondent No.4) (referred to by the NHAI as CALA) it is stated that “except few disputed land in question of village Katha, the compensation of acquired land has been disbursed among the owners / land owners.” In para 3 of the counter-affidavit, *khasra* numbers in respect of which compensation has been paid has been given. As far as the lands which the Petitioners claim belong to them, in para 6 of the said counter-affidavit it is stated that “compensation could not be disbursed on the reason that the territorial area was outside the jurisdiction of Janpath Baghpat”. Set out in a tabular column in the said para 6 are each of the *khasra* numbers of the lands which the Petitioners claimed they are owners of, with the area specified.

5. Therefore, the admitted position as on date is that in respect of the lands of the Petitioners, which have been acquired, no compensation has been paid.

6. The National Highways Authority of India (NHAI) (Respondent No.2) has also filed a counter-affidavit where the stand taken is that the land in question vested in the Central Government after acquisition and that the NHAI “has no role to play either in the process of land acquisition or in the determination of compensation which has to be determined solely under Section 2G (7) of the NHA.” Additionally, it is pleaded in para 27 of the counter-affidavit as under:

“27. That it is a matter of record and also borne out from the pleadings the Petitioners herein have never approached the Respondent No.4 for redressal of their grievance. In fact the Answering Respondent proposes that it would extend its full support for redressal of the grievance put forth by the Petitioners herein before the CALA, Baghpat. It is further submitted that keeping in view the fact that the progress of the project is critical in nature and is also warranted in the prevailing circumstances, the Answering Respondent although has already deposited the amounts determined by the CALA, Baghpat vide its Award dated 20.12,2007 and CALA, Sonapat vide its Award with respect to subject Award, it is ready and willing to deposit the further amount as legitimately determined by the CALA in accordance with law. It is also submitted that the said notifications under Section 3H and determination by the CALA under Section 3G has not been challenged by the Petitioner and has since attain finality.”

7. It appears that at one stage before this Court a plea was raised on behalf of the NHAI at the hearing on 27th February 2018 about a writ petition having been filed by the present Petitioners in the High Court of Punjab and Haryana. Counsel for the Petitioners then sought leave of the Court to place on record copies of the pleadings in the said matter before the said High Court.

8. Pursuant thereto an additional affidavit has been filed by the Petitioners on 14th March 2018 where it is clarified that the prayer in the present case is restricted to the competent authority (Respondent No.4) whereas the prayer made before the Punjab and Haryana High Court is restricted to the Haryana Government and its authorities. It is further stated that there is no prayer before that High Court for payment of compensation.

9. The Court has perused the copy of WP(C) 24641 of 2017 filed by these Petitioners in the High Court of Punjab and Haryana. The prayer in that petition is for a direction to the Respondent to prepare the revenue record, carry out consolidation, conduct a demarcation in terms of Section 32 of the Punjab Land Revenue Act. The said petition pertains to the land that has been transferred from the State of Uttar Pradesh to the State of Haryana pursuant to the Dixit Award of 1974 and for staying the dispossession and further alienation of the said lands. Learned counsel for the Petitioners insists that the land which is the subject matter of the present petition is different from the land that is the subject matter of the aforementioned Writ Petition 24641 of 2017 filed by the Petitioners in the High Court of Punjab and Haryana.

10. Be that as it may, the Court finds that there is a clear admission by the competent authority (Respondent No.4) in the present petition that compensation has not been paid till date to any of these Petitioners for the lands acquired by them and which forms the subject matter of the Award dated 20th December 2007.

11. Learned counsel for the Petitioners points out that due to intense pressure for completion of the Eastern Peripheral Expressway, even without payment of any compensation to the concerned land owners, stretches of the land were simply taken over for construction of the Expressway. In the circumstances, there are stretches of the Expressway of which the Petitioners obviously do not have possession any longer. They have been compelled to

part with possession of the lands to the above extent without payment of compensation.

12. Considering that more than 10 years have elapsed since the Award was passed and portions of the land have already been utilised for construction of the Expressway, the prayer of the Petitioners that they should be paid compensation and that directions in that regard should be issued to the Respondent is justified. The Petitioners are also asking enhanced compensation for having been made to wait for more than ten years.

13. Learned counsel for the Petitioners states that he is at this stage not insisting on any declaration about the acquisition having lapsed although he claims that in terms of a judgment of the Karnataka High Court, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would also apply. Consequently, the Court is not going into that question in these proceedings.

14. The Court accordingly issues the following directions:

(i) The competent authority i.e. Respondent No.4 will take steps to ensure that the compensation payable to each of the Petitioners pursuant to the Award dated 20th December 2007 is disbursed to each of them in accordance with the Award not later than 6 months from today.

(ii) Each of the Petitioners will appear in person before the Competent Authority on 21st January 2019 with all the relevant documentation which will identify them and their ownership of the lands in question.

(iii) A representative of the NHAI will also remain present and extend in terms of the undertaking made before this Court, help and full cooperation to each of the Petitioners to process their claims in terms of the Award dated 20th December 2007 to get the amounts which are due to them.

(iv) The competent authority will after verification of the documents and upon being satisfied about the ownership of the claimants disburse the compensation to each of the Petitioners whose documentations are in order without any delay whatsoever and in any event not later than ten days thereafter.

(v) Among the 112 Petitioners, some of them are claiming ownership of lands which have not yet been notified for any acquisition. It is up to the competent authority to decide how to proceed in such cases and what should be done when such lands have already been taken over without payment of any compensation.

(vi) As far as such of those Petitioners whose lands have already been notified and included in the notifications dated 28th July 2006 and 8th February 2007 referred to above, the competent authority will proceed to implement the directions of this Court.

(vii) The Petitioners who seek enhanced compensation will proceed in terms of Section 3G(5) read with Section 3G(7) of the NHAI Act.

(viii) The Secretary, District Legal Services Authority, Baghpat is also requested to render full assistance to the Petitioners in pursuing their claims for higher compensation.

15. The writ petition is disposed of in the above terms. A certified copy of the order be forthwith sent to the Secretary, District Legal Services Authority, Baghpat.

16. *Dasti*.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 27, 2018

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