

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13165 of 2017**

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1. Arun Kumar Mehta S/o Late Rajendra Mehta,
2. Vinod Kumar, S/o Late Rajendra Mehta.
3. Vinay Kumar, S/o Late Rajendra Mehta. All are Resident of Village- Katra Bazar, P.S.- Mal Salami, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary and Commissioner, Land Reforms and Revenue Deptt. Govt. of Bihar, Patna.
3. Collector, Patna.
4. District Land Acquisition Officer, Patna.
5. Principal Secretary and Commissioner, Road Construction Deptt. Govt. of Bihar, Patna.
6. Chief Engineer, National Highways Road Construction Deptt. Patna.
7. Executive Engineer, N.H. East Division Road Construction Deptt. Patna.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Ajatshatru                 |
| For the State        | : | Mr.Raj Kishore Roy-GP-18      |
|                      |   | Mr. Mukul Prasad, AC to GP 18 |

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL ORDER

7      25-06-2019                      Following is the relief which the petitioners are seeking, all of whom are sons of Late Rajendra Mehta:-

“That the petitioners above named prays before this Hon’ble Court to issue a writ in the nature of MANDAMUS or any other appropriate writ or order or direction to respondent authorities to pay the amount of compensation/Award of the acquired



land from the date of possession 28.12.1999 along with statutory interest as well as penal interest for taking the possession of the rayati land of petitioners, appertaining of plot no.166, 170, 172, 188, 189, 220 of khata no.265, 136, 104, 224 & 120 respectively total measuring area approximately 0.52 acre of Thana no.40 of Mauza-Nasirpur Tajpur, P.S.-Mal Salami, District-Patna, without paying compensation in lieu of the acquisition as per Land Acquisition Act, 1894, And be further pleased to issue a writ in the nature of MANDAMUS or any other appropriate writ or order or direction to respondent nos. 5 to 7 to make available/release the amount of award or the land in question. And be further pleased to issue any further direction/directions to the respondents to enumerate the amount of compensation/award of the said plot following the provisions contained in section 24 to 30, 40, 69, 80 & 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[Here in after mentioned as “the New Act”] and pay the compensation



from the date of possession of the plot,  
And be further pleased to issue any  
further direction/directions to the  
respondents in view of the facts and  
circumstances of this case.”

Learned counsel for the petitioners and Learned G.P.  
18 has been heard, and considering the nature of the relief and  
the facts, which have been asserted in the writ application and  
the counter affidavit, filed on behalf of the State-respondents,  
this writ application is being disposed of at this stage itself. The  
facts are not at all disputed in view of the counter affidavit  
which has been filed on behalf of the respondents.

The lands, in question, situate at Mauza Nasirpur  
Tajpur, Thana No. 40, admeasuring 6.16 acre, and Mauza Abdur  
Rahmanpur, Thana No.39 admeasuring 0.95 acre were acquired  
for construction of the Didarganj railway over-bridge. The  
possession of the acquired lands has been handed over in favour  
of the requisitioning authority, namely Executive Engineer,  
National Highway, East Division, Road Construction  
Department on 28.12.1999 and was prepared accordingly on  
10.04.2011. It is manifest from the pleadings on record that  
there was dispute between the private parties over payment of  
compensation, leading to reference of the matter under Section



30 of the Land Acquisition Act, 1894 (for short 'the Act of 1894') to the learned Special Land Acquisition Judge-III, Patna. The learned Special Land Acquisition Judge-III, Patna delivered his judgment and order on 14.09.2012, which has been brought on record by way of Annexure-4 to the writ application. Despite the said final judgment and order dated 14.09.2012, passed by the Learned Special Land Acquisition Judge-III Patna, which appears not to have been assailed by the parties, it is the case of the petitioners that till date the amount of compensation has not been paid to them.

In the counter affidavit filed on behalf of the Collector, Patna and District Land Acquisition Officer, Patna, following statements have been made in paragraphs 9 and 10:-

“9. That it is submitted that due to non-availability of fund, the requisitioning authority i.e. the Executive Engineer, National High Way East Division, Patna has been requested to make available the fund vide letter no.-48 dated 09.11.2016 (annexure-7 of the writ petition). Further reminder has been issued to make available the fund for its payment to the concerned land owners vide letter no-427 dated 04.03.2017.



10. That in spite of issuance of request the requisitioning authority i.e. the Executive Engineer, National High Way East Division, Patna has not made available the fund; therefore, the award amount could not be paid to the petitioners.”

It has been stated in the counter affidavit that once the fund is made available, the petitioners will be paid the amount of compensation, which they are entitled to.

A separate counter affidavit has been filed on behalf of respondent no.7, The Executive Engineer, National Highway, East Division, Road Construction Department. While not disputing the facts pleaded in the writ application and in the counter affidavit of the District Land Acquisition Officer, relevant portion of which have been noted above, it has been stated in paragraph 8 and 9 as follows:-

“8. That it is submitted that the deponent (Executive Engineer), National Highway Division Gulzarbagh, Patna has requested the Department R.C.D. Bihar, Patna vide Letter no.679we dated 10.05.2019 to make available the fund so that the payment may be made.

9. That this respondent



has expedited the matter for the release of the fund and after availability of the fund, the petitioners will be paid the award amount as early as possible.”

It is manifest from what has been noted above that the lands, in question, have been acquired, possession whereof was taken in 1999 and though the award was prepared, no payments of compensation were made. The reason why the amount of compensation could not be paid to the petitioner is manifest, which is failure on the part of the requisitioning department to make available the fund. The land acquisition proceeding was initiated under the Act of 1894. Sub-section (1) of Section 31 of the Act stipulates that on making an award under Section 11, the Collector shall tender payment of compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in sub-section (2). Sub-section (2) of the Act of 1894 stipulates that if the persons interested, entitled to the award made under Section 11 of the Act, do not consent to receive it or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in Court to



which reference has been made under Section 18 of the Act of 1894. In the present case, however, since the funds itself are not available, the Collector could not have tendered payment of the compensation awarded by him, as contemplated under Section 31 of the Act of 1894.

It is in the aforesaid background of the facts, learned counsel or the petitioners has contended that the petitioners are now entitled to re-determination of the amount of compensation and payment thereof in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013'), which has come into force since 01.01.2014. Referring to Section 24 of the Act of 2013, learned counsel for the petitioners has submitted that re-determination of the amount of compensation as per the Act of 2013 requires to be done.

Learned counsel for the respondents, on the other hand, has submitted that the Act of 2013 will have no application, in the facts and circumstances of the case, where the lands acquired were under the Act of 1894, in respect of which award was prepared on 10.04.2001 itself. Referring to Clause (b) of sub-Section 1 of Section 24 of the Act of 2013, learned counsel for the State has submitted that since the award under



Section 11 has already been made in this case, the provisions of the Act of 1894 shall apply in the manner as if the said Act has never been repealed.

In order to appreciate the rival contention on behalf of the parties, it would be apt to quote sub-section (1) of Section 24 of the Act of 2013 which reads thus:-

“24(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),\_

(a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such proceeding shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”

It is reiterated that there is no dispute between the parties that the award has been made under Section 11 of the Act. In such circumstance, as is evident from Clause (b) of sub-



section (1), the proceeding under the Act of 1894 shall be treated to be continuing as if the Act has not been repealed and the petitioner are accordingly entitled for amount of compensation.

It is however, pathetic to note that despite final judgment by the learned Special Land Acquisition Judge-III, Patna, based on which the award has been prepared, till date the petitioners have not been paid the amount of compensation, merely because the requisitioning department has not released the funds to the Collector for acquisition of the land.

In the facts and circumstance of the present case, this application is disposed of with a direction to the respondents to pay to the petitioners the amount of compensation, as determined in the award prepared by the Special Land Acquisition Judge-III, Patna, with up-to-date statutory interest, within three months from the date of receipt/production of a copy of this order.

It is evident from the pleadings on record that it was mainly the default on the part of the requisitioning authority in not making the fund available for payment of amount of compensation, despite award prepared by the Special Land Acquisition Judge-III, Patna, in my view, a suitable cost needs to



be imposed. Accordingly a cost of Rs. 15,000/- is held to be payable by the respondent-Road Construction Department, Govt. of Bihar, to the petitioners in equal proportion (Rs.5000/- each), which also should be paid within the aforesaid period of three months.

**(Chakradhari Sharan Singh, J)**

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