

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.192 of 2019

In
Civil Writ Jurisdiction Case No.9348 of 2015

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Roshan Kumar Late Bhagwan Lal Sahu, resident of Mohalla- Shimrahi Bazar,
P.O.- Raghobpur, P.S.- Raghobpur, District- Supaul.

... .. Appellant/s

Versus

1. THE UNION OF INDIA through Secretary N.H. Division Department, Govt. of India, New Delhi (N.H. 9) through Project Director, Araria, N.H.A.I.
2. The Secretary N.H. Division Department, Govt. of India, Union of India, New Delhi.
3. The State of Bihar.
4. The Collector, Supaul.
5. The District and Acquisition Officer, Supaul.
6. The Arbitrator-cum-Additional Collector, Supaul, District- Supaul.
7. The National Highways Authority of India, through the Project Director, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mani Bhushan Kumar, Advocate
For the Respondent/s	:	Mr. Anshay Bahadur Mathur, Advocate
For the State	:	Ms. Nutan Sahay, A.C. to A.A., G.-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-05-2019

I.A. No.01 of 2019

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.



L.P.A. No.192 of 2019

Heard learned counsel for the appellant.

The appeal questions the correctness of the judgement of the learned Single Judge dated 07.12.2018 whereby the writ petition filed by the appellant praying for quashing of the order dated 15.12.2014 has been dismissed finding that there was no illegality in the proceedings conducted as the appellant had failed to adduce any evidence in support of his claim.

The background in which the writ petition giving rise to this appeal was filed is that the appellant filed C.W.J.C. No. 13245 of 2009 and the same was disposed off on 09.10.2009 with a direction to the appellant to file a representation before the District Land Acquisition Officer, Supaul. The appellant filed another writ petition being C.W.J.C. No. 5382 of 2010 that was also disposed off on 1st of April, 2010 with a direction to approach the Arbitrator appointed by the Central Government in terms of Section 3 G (5) of the National Highways Act, 1956. The said judgement is extracted hereinunder.

“Heard learned counsel for the petitioners
and the State.

2. Petitioners are the raiyat of the lands in



question detailed in paragraph-6 of the writ application, which has been acquired for widening of NH-57 in terms of the notification dated 16.8.2007, Annexure-2 and 11.11.2009. It is submitted on behalf of the petitioners that they had volunteered their lands/building for widening of N.H.-57 and in terms of the provisions of the National Highways Act (hereinafter referred to as the Act) and the relevant notification issued from time to time are entitled for higher compensation.

3. This writ application has been filed for a direction to the authorities to revise the compensation amount. If petitioners dispute the quantum of compensation amount they have remedy in terms of the provisions contained in Section-3G(5) of the Act before the Arbitrator appointed by the Central Government. Accordingly, this writ application is disposed of with direction to the petitioners to approach the Arbitrator-cum-Additional Collector, Supaul raising the claim which they raised in the writ application and the Arbitrator shall be obliged to consider and dispose of the same by passing the award in accordance with law, as early as possible, in any case within three months from the date of receipt of the claim of the petitioners. For the present petitioners should withdraw the amount determined by the competent authority under Section-3G(1) of the Act but such withdrawal will not prejudiced their claim before



the Arbitrator.”

The appellant appears to have approached the Collector, Supaul and also filed a contempt application being M.J.C. No. 3659 of 2010. It was during the pendency of the said proceedings that the award was delivered on 17th May, 2011.

After the award was delivered, the appellant filed a fresh writ petition being C.W.J.C. No. 17199 of 2011 challenging the same that was disposed off on 3rd of July, 2013 by the following judgement:

“Heard learned counsel for the petitioner and the Respondents.

For the construction and widening of NH-57, 2 decimals of land, equal to 200 sqr. *Kari* belonging to the petitioner Raushan Kumar has been acquired. He is not satisfied with the manner the respondent-authorities have treated him as, as per the petitioner, over the area under acquisition, there is a house constructed, which has also been acquired. His claim is that though he has been paid compensation amount but not in a proper manner as well as he has not been paid the compensation for the structure which has been acquired. Further claim has been made that others have been granted solacium including interest but in the case of the petitioner Raushan Kumar, calculation has been made treating the land as residential and not commercial.

This Court is not giving any opinion with regard to the fact whether the land is residential or commercial. The petitioner, if he is so aggrieved, can exercise option in accordance with law.



So far the award filed as Annexure-C to the counter affidavit of the State, it shows petitioner has not been paid any amount with regard to interest and counsel for the State is not in a position to point out that the petitioner has been paid any amount under the head 'interest'.

This Court is directing the District Land Acquisition Officer-cum-competent authority to examine the case of petitioner Raushan Kumar only to the extent whether he has been paid any compensation with respect to the house acquired. He will also examine whether petitioner Raushan Kumar has been paid the interest amount along with other incidence. If he comes to the conclusion that petitioner has not been paid interest, it goes without saying that the petitioner should be given proper compensation, including the interest. While disposing of the matter, he will also pass a reasoned order either in favour of petitioner or otherwise within a period of six months from the date of receipt/production of copy of this order.

It goes without saying that if the petitioner will feel aggrieved, he will have liberty to challenge the order in the appropriate proceeding."

The Court, while disposing off the writ petition, had not examined the provisions of the National Highways Act, 1956 and had made an observation that the District Land Acquisition Officer shall examine only as to whether any compensation has been paid to the appellant in respect of the acquired building/house and also as to whether he has been paid interest along with other incidence.



It appears that pursuant to the aforesaid directions the District Land Acquisition Officer passed an order on 15th of December, 2014 by which the claim of the appellant was rejected on the ground that he could not produce any evidence. It is this order which came to be challenged in the writ petition giving rise to the present appeal.

What is noticeable is that an award was delivered in the present case, admittedly, on 17th May, 2011. It has been pointed out by the learned counsel for the National Highway Authority that once an award has been delivered by the Arbitrator then, in terms of Section 3 G (5), the parties have to invoke the provisions of Arbitration & Conciliation Act, 1996 where it is provided that after an award is given by the Arbitrator then the provisions of the 1996 Act would apply to such proceedings. It is, therefore, evident that the machinery is complete in the 1956 Act itself where the remedy is to get the dispute arbitrated and, if it is not to the satisfaction of the parties, it is open to them to approach the appropriate forum as provided for under the 1996 Act which is by way of moving an application under Section 34 of the 1996 Act before the Civil Court. This issue, as has been pointed out by the learned counsel for the respondents, has been decided by a Division Bench of



this Court in the case of National Highway Authority, Araria at Purnea, Bihar & Anr. Vs Md. Gufran Alam & Ors., 2014 (1) PLJR 207 where paragraphs 8, 9 and 10 are relevant that are extracted hereinunder:

“8. We may look to the certain provisions of the Act of 1956 and the Act of 1996 which are relevant for resolution of dispute before us. Section 3-G of the Act of 1956 provides for determination of amount of compensation by the Competent Authority. Sub-section (5) thereof empowers either of the parties aggrieved by the award of the Competent Authority to seek arbitration against such award. Sub-section (6) of Section 3-G of the said Act provides that the proceeding before the Arbitrator shall be regulated by the provisions contained in the Act of 1956. Section 3-H of the Act of 1956 provides for deposit and payment of amount. Sub-section (1) thereof provides for deposit of the amount of compensation with the Competent Authority. Sub-section (2) thereof provides for payment of the amount to the claimants. Sub-section (6) thereof provides for deposit of the amount of difference in compensation awarded by the Arbitrator. It is this sub-section (6) which is pressed into service by the writ petitioner.

9. As recorded hereinabove, the proceedings before the Arbitrator are governed by the Act of 1996. Section 34 of the Act of 1996 provides for a remedy against the arbitral award by an application for setting aside the arbitral award before the Court. The "Court" is defined under Clause (e) of sub-section (1) of Section 2 of the Act of 1996 to mean, "the principal civil Court of original jurisdiction in a district, and



includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.” Hence, it is evident that the remedy against the arbitral award lies before the civil Court. Section 36 of the Act of 1996 provides for enforcement of the arbitral award under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Thus, the statutory remedy for enforcement of the arbitral award made under Section 3-G(5) of the Act of 1956 lies before the civil Court.

10. In view of the statutory remedy for execution of the arbitral award being available, a petition under Article 226 of the Constitution would not lie. The learned single Judge has erred in entertaining the writ petition under Article 226 of the Constitution in the subject matter.”

We find that the issuance of a direction by this Court to decide a representation without referring to the aforesaid provisions resulted in the matter again reaching the District Land Acquisition Officer who could not have delved into the issue after the matter has been decided earlier and the award had been delivered. In the above background, the only remedy that was available to the appellant was to make invoke provisions of 1996 Act and not to file a writ petition.



Consequently, the learned Single Judge, while dismissing the writ petition, has not concluded erroneously inasmuch as we find that the writ petition itself was not entertainable. We, therefore, are not inclined to interfere with the judgement of the learned Single Judge. For this additional ground as well, the appeal lacks merit and is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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