

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9092 of 2019

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Brij Bhushan Prasad Sinha Son of Late Jagat Prasad Singh Resident of
Village- Manjhway, Police Station- Hisua, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Nawada.
3. The Additional District Magistrate, Nawada.
4. The District Land Acquisition Officer, Nawada.
5. The Deputy Collector, Land Reforms, Nawada.
6. The Circle Officer, Hisua, Nawada.
7. The Project Director, N.H.A.I., Nawada.
8. National High-way Authority of India, through its Chairman, New Delhi.
9. Smt. Gyanti Devi wife of Sri Mukund Pd. Singh resident of Village-
Manjhway, Police Station- Hisua, District- Nawada.
10. Smt. Pratima Devi wife of Sri Anandi Pd. Singh resident of Village-
Manjhway, Police Station- Hisua, District- Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Kumar
For the NHAI	:	Mr. Anshay Bahadur Mathur
For the State	:	Mr.Subash Chandra Yadav (GP-15)
		Ms. Sangha Mitra Ghosh, AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 06-05-2019 Heard the learned counsel for the parties.

The dispute in the present writ application arises out of acquisition of land for widening of NH-82 under Gaya-Hisua-Rajgir, Bihar Sharif Khand Nawada, running across the village-Manjhway and Tungi under the police station Hisua in the district of Nawada.

The acquisition appears to have been done under the



provisions of the National Highways Act, 1956 (for short the Act of 1956'). The petitioner is not disputing the amount of compensation, which has been determined upon acquisition of the said land. There appears to be some intra--family dispute over the shares of the respective members. It also appears that such dispute had given rise to filing of a title suit and partition suit. So far as the title suit is concerned, the same, according to the petitioner, has been decided on 26.02.2018, which has been decreed in his favour, while the partition suit is still pending. It further appears that the parties had raised the dispute in respect of their respective shares in amount of compensation, so determined before the Land Acquisition Officer, Nawada. Keeping in view the nature of the dispute raised, the Land Acquisition Officer, by an order dated 12.07.2017, has invoked Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013').

I am failing to understand that when the acquisition of land has been made under the provisions of the Act of 1956 why the Land Acquisition Officer has invoked Section 64 of the Act of 2013, for resolution of the disputes, on the question of apportionment of the respective shares of the members of the



family.

Mr. Anshay Bahadur Mathur, learned counsel, appearing on behalf of the National Highways Authority of India, has drawn my attention to the Fourth Schedule of Act of 2013, entry 7 of which refers to the Act of 1956 and submits that the said Act has been notified by the Central Government in exercise of power under Section 105(3) of the Act of 2013. The notification under Section 105(3) of the Act of 2013 in respect of the Act of 1956 has a consequence that all the provisions of 2013 Act shall apply in respect of acquisition under the Act of 1956.

Sub-section (3) of Section 105 of the Act of 2013, reads as under:-

“(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second Schedule and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modification that do not reduce the compensation or dilute the provisions of this Act relating to



compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

On a careful reading of sub-section (3) of Section 105 of the Act of 2013, it is difficult to accept the submission of Mr. Mathur, learned counsel for the National Highways Authority of India, that all the provisions of the Act of 2013 shall apply in cases of land acquisition under the provisions of the Act of 1956.

Sub-section(3) of Section 105 of the Act of 2013 states that the Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to (i) determination of compensation in accordance with the First Schedule and (ii) rehabilitation and resettlement specified in the Second and Third Schedule, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule. It is clear from plain reading of sub-section (3) of Section 105 of the Act of 2013 that the First Schedule, the Second Schedule and Third Schedule of the Act of 2013 shall be applicable in respect of the acquisition of the land under the Act of 1956 for the purpose (i) determination of compensation for the land owners (ii) elements of rehabilitation and



resettlement entitlements for all the affected families and (iii) provision of infrastructural amenities; if a notification is issued by the Central Government, in exercise of the power under Sub-section (3) of Section 105 of the Act of 2013. (Emphasis added)

This is not in dispute that the notification has been issued by the Central Government in exercise of the said power and all the enactments which find place under the Fourth Schedule of the Act of 2013, have been notified for the purpose, as indicated under sub-section (3) of Section 105 of the Act of 2013. In my view, it cannot be said that because of the aforesaid notification under Section 105(3), the provisions, other than those, as indicated above, of the Act of 2013, shall be applicable.

Sub-section (4) of Section 3-H of the Act of 1956 contains specifically a provision for resolution of a dispute arising as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable. Sub-section (4) of Section 3-H of the Act of 1956 reads thus:

“(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal



civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

In my view, instead of referring the dispute to the competent authority under Section 64 of the Act of 2013, keeping in mind the nature of dispute, needed to be resolved, the same ought to have been referred to the principal civil court of original jurisdiction, invoking sub-section (4) of Section 3-H of the Act of 1956.

In view of above discussions, the matter is remitted back to the District Land Acquisition Officer, Nawada to take a decision afresh, in the light of the observations made hereinabove, and pass appropriate order, in accordance with law.

This writ application stands disposed of.

(Chakradhari Sharan Singh, J)

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