

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23355 of 2019

Ranjit Singh, Son of Late Tapeswar Singh, resident of Village- Mill Road Nawada Ara, P.S. Ara Nawada, District- Bhojpur at present resident of C-5/32, Safdarjung Development Area, New Delhi- 110016.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman National Highways Authority of India, New Delhi.
2. The Chairman National Highways Authority of India, New Delhi.
3. The Project Director, National Highways Authority of India, Project Implementation Unit Patna.
4. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
5. The Director, Land Acquisition Directorate, Govt. of Bihar, Patna.
6. The Commissioner, Patna Commissioner, Patna.
7. The District Collector, Bhojpur (Ara).
8. The Chairman of Six men Committee-cum-District Collector, Bhojpur (Ara).
9. The District Land Acquisition Officer, Bhojpur (Ara).
10. The Additional District Collector, Bhojpur (Ara).
11. The Deputy Collector, Land Reforms, Bhojpur (Ara).
12. The District Sub-Registrar Land Registration Office, Bhojpur (Ara).
13. The Circle Officer, Ara Sadar, Bhojpur (Ara).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Maya Shankar Mishra
For the Respondent/s	:	Mr.Sajid Slaim Khan (SC25)
For the NHAI	:	Mr. S. N. Pathak, SC NHAI

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 26-11-2019 Heard both sides.

The petitioner in this writ petition craves indulgence
of this court for following reliefs:-

*“I For issuance of a writ in the nature of certiorari for quashing the
order dated 18.07.2019/ 31.07.2019 passed by the Arbitrator-cum-Commissioner,*



Patna in N.H. Arbitration case No. 17/2019 by which order the claim of petitioner with regard to the changing of the nature of petitioner's land bearing Khata No. 216, Khesra No. 230 measuring area 0.818120 acres Khata No. 216 Khesra No. 195 area 0.427656 acres and Khata No. 88 Khesra No. 197 measuring area 0.941832 acres as commercial which was acquired by the respondents for construction of NH-30 and 84 four lane and accordingly for proper calculation of compensation for the said acquired land has been rejected without considering the material available on the record of the case which order is highly illegal, arbitrary and without jurisdiction.

II For issuance of direction upon the respondents to change the nature of acquired land of petitioner bearing Khata No. 126 Khesra No. 230 area 0.828120 acres, Khata No. 216 Khesara No. 195 area 0.427656 acres and Khata No. 88 Khesra No. 197 area 0.941832 acres as commercial and accordingly to calculate the proper compensation of the aforesaid land as per the provision of Section 24 of RFCTLARR Act, 2013.

III For issuance of any other relief/ reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

The facts, bereft of unnecessary details but relevant for disposal of this writ petition, are that a notification vide S.O. No. 2253(E) was issued under Section 3A of the National Highway Act, 1956 (hereinafter referred to as the Act) on 03.09.2009 in which the Central Government expressed its intention regarding acquisition of the land of the petitioner bearing Khata Nos. 126, 88, 216 Khesra Nos. 230, 197, 195 measuring area 0.335 hectare and 0.173 hectare situated under mauza Kayam Nagar, Anchal, Koelwar, District Bhojpur for construction of NH-30 and 84 four lane from Patna to Buxar showing the land agricultural proper spot verification which was published in Hindustan newspaper on 07.10.2009.



The learned counsel for the petitioner submits that there is two storied building on the land of the petitioner and the land of the petitioner is situated just eastern side of the NH 30-84 and several private educational institutions, petrol pumps are situated just near the land of the petitioner and before issuance of notification under Section 3A of the Act nature of the land of the petitioner was changed and the land of petitioner should have been classified as commercial. The petitioner resides in Delhi and he had no knowledge about the issuance of notification for classification of the land. The petitioner made objection before the District Land Acquisition Authority on 21.10.2019 but without disposing of his objection notification under Section 3G of the Act was issued fixing the compensation of the land of the petitioner showing the nature of the land as agricultural. It is further submitted that compensation was not paid as per RFCTLARR Act, 2013, as applicable for acquisition of the land for the purpose of construction of N.H., and the Land Acquisition Authority on the objection raised by the petitioner referred the matter to the Commissioner, who is appointed as Arbitrator under the Act, but the Arbitrator did not hear the objection of the petitioner in accordance with law and dismissed the same.



Mr. S.N. Pathak, the learned counsel for the NHAI raised preliminary objection on the maintainability of the writ petition under Article 226 of the Constitution of India against the impugned award made by the Arbitrator-cum-Commissioner and placed reliance on a division bench judgement of this court in the case of the **Project Director, National Highway Authority, Araria at Purnea, Bihar & anr. v. Md. Gufran Alam and Others** reported in **2014 (1) PLJR 207**. The learned counsel for the NHAI submits that according to the Act notification under Section 3A is issued declaring the intention of the Central Government to acquire such land for the purpose of construction of N.H. Section 3B of the Act vests power in the authority to make any inspection, survey of the land after issuance of notification under Section 3A of the Act. Section 3C of the Act provides hearing of objections and disposals of the same if any interested person in the land may within 21 days from the date of publication of the notification under sub-section (1) of Section 3A object to the use of land for the purpose or purposes mentioned in that sub-section. Such objection should be made before the competent authority in writing and after disposal of objection the authority is empowered to take possession of the land. Section 3 G of the



Act provides for determination of amount of compensation payable to the land owner. Section 3 H of the Act provides for deposit of the amount determined under Section 3 G of the Act with the competent authority for payment of compensation to the land owner but the petitioner did not raise any objection with regard to nature of the land after issuance of notification under Section 3A of the Act or at the time of survey of the land. The land was acquired and when the process for determination of compensation was undertaken by the Land Acquisition Authority the petitioner raised objection. The Land Acquisition Authority after fixing the compensation amount referred the matter to the Arbitrator duly appointed under the Act. It is further submitted that the award made by the Arbitrator is appealable under Section 34 of the Arbitration & Conciliation Act, 1996.

Having considered the facts and submission of both sides, there appears that the petitioner did not raise any objection with regard to the nature of the land after issuance of notification under Section 3A of the Act. The petitioner raised objection only at the time of determination of compensation amount before the Land Acquisition Authority and, therefore, the Land Acquisition Authority after considering the objection



of the petitioner determined the compensation amount considering the nature of the land as agricultural and referred the objection to the Arbitrator to decide the objection with regard to amount of compensation.

In the case of the *Project Director, National Highway Authority, Araria at Purnia, Bihar & anr v. Md. Gufran Alam & Ors* a division bench of this court has clearly held, in paragraph 9 and 10, as follows:-

“9 As recorded hereinabove, the proceeding 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 included 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 3G(5) of the Act of 1956 lies before the civil Court.

10. In view of 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.”

On a bare perusal of the law laid down by the division bench of this court, it is evident that if the petitioner is aggrieved by the award made by the Arbitrator under Section



3G(5) of the Act, the proper remedy is to file appeal under Section 34 of the Arbitration and Conciliation Act, 1996. The court is also defined under Clause (e) of sub-section (1) of Section 2 of the Act of 1996. Thus, I find that petitioner has never raised any objection before the Land Acquisition Authority under Section 3C of the Act and for the first time the petitioner raised objection with regard to nature of land before the Land Acquisition Authority before determining the compensation and the Land Acquisition Authority rightly referred the matter to the Arbitrator, duly appointed under the Act. Therefore, the writ petition under Article 226 of the Constitution cannot be maintained and the same is dismissed.

However, it is made clear that the dismissal of the writ petition shall not come in the way of the writ petitioner from availing statutory remedy as available under the Arbitration and Conciliation Act, 1996.

(Prabhat Kumar Jha, J)

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