

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 714 of 2019**

Thalesh Chandra Dubey, S/o. Late Gangadhar Dubey, Aged About 69 Years,
R/o. Dalpat Sagar Ward, Ganga Farm House, Jagdalpur, District- Jagdalpur,
Chhattisgarh.

---- **Petitioner**

Versus

1. Municipal Corporation Jagdalpur, Through Its Commissioner, O/o. The Municipal Corporation Jagdalpur, District- Jagdalpur, Chhattisgarh.
2. Collector Bastar, O/o. Collectorate, Jagdalpur, District- Jagdalpur, Chhattisgarh.

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For Petitioner	:	Mr. P.K.Bhaduri, Advocate
For Respondents No.1	:	Mr. Arun Kumar Shukla, Advocate
For Respondents No.2	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

04.07.2019

1. The present petition is filed for the following reliefs :

“(i) That, this Hon'ble Court may graciously be pleased to issue appropriate writ, order, direction thereby commanding the respondent nos.1 & 2 to remove the constructed road and drain adjoining it over Khasra No.99/14 area 1.86 acre at Jagdalpur Rural, and

(ii) That, this Hon'ble Court may graciously be pleased to issue appropriate writ, order, direction thereby directing the respondent nos. 1 & 2 to bear the expenses of such removal of road and drain on their own, and to restore the land in question back to the petitioner in the state as it existed before its illegal acquisition.

(iii) That, this Hon'ble Court may graciously be pleased to issue appropriate writ, order, direction thereby directing the respondent nos. 1 & 2 to compensate the petitioner

suitably and adequately in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(iv) Any other relief as this Hon'ble Court may deem fit in the facts and circumstances of the case.

(v) The cost of the petition may also be granted in favour of the petitioner.”

2. The petitioner who is 69 years of age has filed this petition that he had land bearing Khasra No.99/1/4 admeasuring 1.86 acre at Jagdalpur. It is contended that the respondent No.1, Municipal Corporation Jagdalpur has constructed a road without any authority of law and out of the existing land 4000 sq.ft. of land possession was taken over without acquisition. It is further stated that the construction of the road and drain had been carried out without resorting to the acquisition of the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (*for short “the Act, 2013”*). The petitioner therefore claims that the respondents be directed to acquire the land and the calculation and disbursement of the compensation according to the area be made as per the Act of 2013.
3. Learned counsel for the petitioner referred to the letter issued by the Municipal Corporation on 15.06.2017 (Annexure P-3) and would submit that the drain was constructed and the letter was addressed to the petitioner that since he did not object to the construction of drain, therefore, the road too was constructed. Reference was further made to letter dated 08.05.2018 (Annexure P-4) which shows that the petitioner has wrote a letter to the Collector, Jagdalpur, whereby it was stated that the area 4000 sq.ft. of land has been acquired, therefore, he may be given the compensation. The petitioner further made a reference to a letter dated 12.12.2018 (Annexure P-5) addressed to the Collector and would submit that bonafide of the

petitioner can be drawn from the fact that he acceded he has signed certain letters so that he could get the compensation forthwith, however, without any payment of compensation, construction of the road was carried out; therefore, the prayer is made to pay the compensation as per the Act, 2013.

4. Reply of the Municipal Corporation has been filed. It is submitted that the petitioner has consented to the construction of road and *Sahmati Patra* and letter was given wherein the subject property is also included. It is further stated that since the consent was given by the petitioner as such the road was constructed over the land of the petitioner and no compensation would be payable to the petitioner.
5. Learned counsel for the petitioner would submit that the *Sahmati Patra* wherein the Municipal Corporation has placed his reliance would show that it neither contains the name of the petitioner nor signature. It is only basis on basis of Annexure R-1. It is stated by respondent that the petitioner has consented to acquisition of the land; therefore, since the land of the petitioner has been taken over without the lawful means, the petitioner is entitled for the compensation as would be calculated according to the Act of 2013.
6. Per contra, learned counsel for the respondent No.1 would submit that the consent letter would show that the petitioner has consented to forgo his compensation, therefore, in any case the compensation would not be paid.
7. I have heard learned counsel appearing for the parties and perused the documents.
8. The *Sahmati Patra* which is relied on by the Municipal Corporation, which speaks of the fact that the parties thereto do not want compensation. This document do not contain the name of the petitioner and the signature of the petitioner is also not there on such document, the same is Annexure P-2.

Therefore, the submission of the respondent No.1 that the petitioner has relinquished his right of compensation by such *Sahmati Patra*/ consent letter cannot be accepted. The letter which is filed as Annexure R-1 by the Municipal Corporation, the petitioner's signature has been obtained but reading of such letter do not show that the petitioner at any time disclaimed his right to get the compensation. Consequently, if other persons have not claimed the compensation, the petitioner cannot be enveloped by other adjacent land owners consent who decided to leave compensation for acquisition of property for the reason the road and drain is constructed.

9. Article 300A of the Constitution gives the right to the person and mandates that no person shall be deprived of his property save by authority of law. The Municipal Corporation as a State cannot therefore resort to an arm twisting method so as to shelve the provisions of Article 300A. The Act of 2013 to acquire the land exists in the statute book, therefore, the Municipal Corporation who is a body corporate is also expected to adhere to the rules of the law of land instead to follow forceful acquisition of land. Under the circumstances, it is directed that the respondent No.1, Municipal Corporation, shall commence the proceeding for acquisition of land under the Act of 2013 and shall calculate the extent of land acquired of the petitioner and the necessary orders may be passed as per law and compensation should be paid to him.
10. Considering the age of the petitioner that he is senior citizen, it is directed that the aforesaid exercise shall be carried out within the outer limit of six months from the date of receipt of a copy of this order.
11. With such observation/direction, the writ petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge