

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2716 of 2019**

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1. Nirmala Devi Wife of Chhedilal Kedia. Resident of Village/Mohalla-Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
2. Ashok Kedia, Son of Shyamsundar Kedia, Resident of Village/Mohalla-Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
3. Vijay Kumar Kedia, Son of Gajadhar Kedia, Resident of Village/Mohalla-Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
4. Laddu Vishwash Son of Sukhdeo Kamat, Resident of Village/Mohalla-Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
5. Rajkishore Vishwash, Son of Sukhdeo Vishwash, Resident of Village/Mohalla- Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
6. Gautam Kumar Sah, Son of Upendra Sah, Resident of Village/Mohalla-Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
7. Govind Kumar, Son of Upendra Sah, Resident of Village/Mohalla-Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.
8. Lalita Devi, Wife of Upendra Sah, Resident of Village/Mohalla- Sonvarsha, Ward No. 1, P.O. and P.S.- Sonvarsha Raj, District- Saharsa.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary of Transport and Road Construction Ministry, New Delhi.
2. The Chairman, National Highway Authority of India, Dwarika, New Delhi.
3. The Project Manager, NH- 107, Office at Tiltrath, Begusarai (Bihar).
4. The State of Bihar, through the Principal Secretary, Department of Land Reforms and Revenue, Bihar, Patna.
5. The District Collector, Saharsa, District- Saharsa.
6. The Land Acquisition Officer-cum-Competent Authority, NH.- 107 Saharsa.
7. The Circle Officer, Sonvarsa Circle, District- Saharsa.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Rajendra Narayan, Sr. Adv. |
| For the Respondent/s | : | Md.Khurshid Alam (AAG12)      |

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

5      30-09-2020                      Heard both sides through Video Conferencing.

2. Petitioners in this writ petition seek quashing of notice dated 29.12.2018 issued by respondent no.6 (Land Acquisition Officer-cum-Competent Authority) whereby and whereunder respondent no.6 sent information to the petitioners



to accept the compensation of land of the petitioners bearing Khata No.15, Khesra Nos.1309 and 1310, area 0.1433 and 0.1359 acres situated in mauza Sonvarsa, Thana No.11 within one week after producing the relevant documents for their claim. The petitioners further seek direction to the respondent authority to give opportunity to the petitioners for consideration of their objections with regard to payment of compensation treating the land commercial/residential and thereafter the payment be made in view of the provisions of the National Highways Act, 1956 and the Land Acquisition Act, 2013.

3. Mr. Rajendra Narayan, learned senior counsel for the petitioners submits that for construction of 179 kms. of four-lane of N.H.107 (Maheshkhunt-Sonvarsharaj Saharsa-Madhepura-Purnea Section), a notice under Section 3(A) of the National Highways Act, 1956 was published on 06.05.2015 in Gazette Notification showing the intention of the authority to acquire the land. In the aforesaid notification, the nature of the land of the petitioners was described as commercial/residential. Thereafter a Gazette Notification under Section 3(D)(i) of the National Highways Act, 1956 was published in which also the nature of the land was described as commercial/residential. The respondent no.5 issued notice in the month of September, 2018



to the land owner(s) to appear before the authority himself/themselves and show his/their interests in the land to be acquired. The aforesaid notice was also issued under Section 3(G)(3)&(4) of the Act and the nature of the land was described as commercial/residential. Thereafter without considering the objections of the petitioners, the Land Acquisition Officer vide Award Nos.48 and 49 changed the nature of the land of the petitioners and described the same as agricultural. The authority directed the petitioners to bring all relevant papers and receive the compensation amount. The petitioners filed objections and petitions for reconsideration of the amount of compensation and treating the land to be commercial/residential but no order has been passed. It is further submitted that the respondents filed counter affidavit and objected the claim of the petitioners that the notice under Section 3(G)(3) & (4) of the Act was issued for which information was sent to the land owners to appear in person and clarify their interests in the lands but the authority did not consider the objections of the petitioners and changed the nature of the land which cannot be changed after issuance of notice under Section 3(A) and 3(G) of the National Highways Act. Under Section 3(G) of the Act, the Award is to be prepared on the basis of nature of the land and the price of the land



prevailing at the time of acquisition of the land. At the stage of preparation of the Award, the nature of the land cannot be changed, that too, without hearing the land owners. It is further submitted that the petitioners have already filed a reply to the counter affidavit and stated that the Government has described the nature of the land as commercial/residential and also fixed the minimum value of the land for the purpose of collection of revenue at the time of registration of the land but even then the nature of land of the petitioners has been changed and an award was prepared showing the land as agricultural.

4. Mr. Khurshid Alam, learned A.A.G.12 and Mr. (Dr.) Anand Kumar, learned counsel for the NHAI submit that the Ministry of Road Transport and Highways, Government of India issued comprehensive guidelines vide Letter No.NH-I1011/30/2015-LA dated 29.12.2017 regarding land acquisition under the National Highways Act, 1956. Clause 10(iii) of the aforesaid guidelines is with regard to determination of compensation amount by the competent authority. During the pendency of acquisition case, certain undesirable practices have come to notice to the central government including the change in the nature of the land or adoption of incorrect classification of land for determination of



market value of the land. It is submitted that the nature of the land has to be treated as recorded in the revenue record on the day of publication of notification under Section 3(A) of the National Highways Act. It transpired that even after publication of notification under Section 3(A) of the Act, some land owners intentionally changed the nature of the land by raising factory building or commercial building on the land to be acquired and, therefore, the land owners cannot take benefit of treatment of such land as commercial land. Due diligence has to be exercised by the competent authority under the Land Acquisition Act while determining the amount of compensation on the basis of nature of the land and market value of the land. The nature of the land of Plot Nos.1309 and 1310 has been mentioned as *dhanhar* II in the record of rights. The Collector vide Letter No.450 dated 12.04.2017 constituted a Committee to ascertain the nature of the land. The Committee submitted its report on 29.07.2018 after issuing the notice to the land owners and the report was approved.

5. On the basis of submissions, only question arises whether the Land Acquisition Authority can change the nature of the land at the time of preparation of Award, that too, without hearing the petitioners?



6. Admittedly in the Gazette Notification a notice was published on 06.05.2015 showing the intention of the authority to acquire the land for construction of N.H. 107. Under the aforesaid notice, the nature of land of Plot Nos.1309 and 1310 was shown as commercial/residential respectively. Admittedly the notice was published after surveying the land to be acquired but the Officer, who surveyed the land, found the nature of the land changed after preparation of record of rights as in the record of rights, the nature of the land is shown as *dhanhar* II. Second notice was published on 02.05.2016 for acquisition of land. In the aforesaid notification also the nature of the land was shown as commercial/residential. Thereafter notice under Section 3 (G)(3) & (4) of the Act was issued to the land owners in which also the nature of the land of Plot Nos.1309 and 1310 was shown as commercial/residential.

7. From perusal of the provisions as contained in Section 3(A)(1) of the National Highways Act, 1956 which is apparent that if the Central Government is satisfied that for the public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. Section 3(A)(2) of the



Act provides that due descriptions of land shall be given in the notification declaring its intention to acquire such land. Section 3(B) of the Act provides that after notification under sub-section (1) of Section 3(A) it shall be lawful for any person, authorised by the Central Government in this behalf to (a) make any inspection, survey, measurement, valuation or enquiry; (b) take levels; (c) dig or bore into sub-soil; (d) set out boundaries and intended lines of work; (e) mark of levels, boundaries and lines placing marks. Sub-section (1) of Section 3(C) of the Act provides “hearing of objections”. Thereafter Section 3(D) of the Act provides for declaration of acquisition after deciding objections filed in sub-section (1) of Section 3(C) and the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes as mentioned in sub-section (1) of Section 3(A). After publication of such notice, the land shall vest absolutely in the Central Government free from all encumbrances. Section 3(E) of the Act provides power to take possession of the land mentioned in the notice published under Section 3(D) of the Act. Section 3(G) of the Act provides for determination of amount payable as compensation. Sub-sections (3) & (4) of Section 3(G) of the Act provide that the competent authority



shall give public notice inviting claims from all persons interested in the land to be acquired and appear before the competent authority and state the particulars of the land and the nature of their interests in such land. Sub-section(5) of Section 3(G) of the Act provides that if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. Section 3(H) of the Act provides for deposit and payment of amount.

8. From perusal of Annexure 3, it appears that the authority issued notice under Section 3(G)(3)&(4) of the Act and mentioned the nature of the land as commercial/residential but after issuance of notice under Section 3(G)(3)&(4) of the Act, it came to the knowledge of the Land Acquisition Officer or the competent authority under the Act that the nature of the land as described in the notice issued either under Section 3(A) (1) or under Section 3(D)(1) is different. In that event, the Land Acquisition Officer or the authority, who was determining the amount of compensation on the basis of nature of the land and the market value of the land, is duty bound to hear the land



owners and fix the amount of compensation. No order without providing opportunity to the other side should have been passed while determining the amount of compensation on the basis of nature of the land and the valuation of the land prevailing at the time of acquisition of the land. Any order passed determining the amount of compensation of the land to be acquired without hearing the land owners shall be vitiated on account of violation of principles of natural justice. Therefore, I find that the notice dated 29.12.2018 in Case No.04/2014-15 Panchat nos.48 and 49 (Annexure 6) is not sustainable in the eye of law and is fit to be quashed. Accordingly, the notice dated 29.12.2018 (Annexure 6) is quashed.

9. Thus, this writ petition is disposed of with a direction to the Land Acquisition Officer-cum-Competent Authority, Saharsa (respondent no.6) to hear the petitioners at first on the point of nature of the land and the valuation of the land and thereafter determine the amount of compensation of the lands of the petitioners within three months from the date of receipt of this order and pass order in accordance with law.

**(Prabhat Kumar Jha, J)**

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