

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3008 of 2017

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Surendra Prasad Sharma S/o Late Ram Balak Singh resident of village -
Kurkuri, P.S. Phulwarisharif, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Land and Revenue Department, Government of Bihar, Patna.
2. District Magistrate/Collector, Patna.
3. District Land Acquisition Officer, Patna.
4. Additional Collector-cum-Arbitrator, Patna.
5. Registrar, District Registration Officer, Patna.
6. National Highway Authority of India through its Managing Director, New Delhi.
7. Regional Director, National Highway authority of India, Bihar, Patna.
8. Union of India, through its Secretary, Ministry of Road Transport and Raj Marg, New Delhi.
9. Deputy Secretary, Ministry of Road Transport and Raj Marg, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar Sinha, Advocate
For the NHAI	:	Mr. Anshay Bahadur Mathur, Advocate
For the State	:	Mr. Md. Khurshid Alam, AAG 12

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 03-02-2020

Heard learned counsel for the petitioner; learned
AAG 12 for the State and learned counsel for the respondents
no. 6 to 9.

2. The petitioner has moved the Court for the
following reliefs:

*“I. To command and direct the respondents to
quash the order dated 21.12.2015 passed by
Additional Collector cum Arbitrator, Patna
with regard to compensation amount related to*



land of petitioner acquired by the Respondent No.8 and 9 for the purpose of construction of National High way i.e. NH 30 and 84 as well as solacium amount which was awarded by District Land Acquisition officer less amount i.e. 30% instead of 60 % against the land acquisition act 2007 because he is voluntarily ready to give that land to the Govt for the purpose given above and compensation amount on the basis of Agricultural land instead of commercial / Residential land by which Additional Collector cum Arbitrator, Patna has rejected the claim of petitioners in arbitrary manner.

II. To further command and direct the respondent to increase the award of Petitioner on the basis of commercial/ Residential land and solacium amount i.e. 60% amount instead of order passed by Land Acquisition Officer Patna in L.A.No.60/2012-13 relates to land of Petitioner on 19.6.2013 for the purpose mentioned above i.e. Mouza Phulwari Thana No.35, Plot No. 15, Khata no.452 Khesra No. 3032, 3035, 3037, 3040, 3041 Area- 0.032136, 0.177984, 0.002472, 0.533952, 0.266976 Acre respectively though less calculated amount of compensation was paid to the petitioner in the year 2015.

III. To further direct the respondents that less compensation amount which was paid to the petitioner in the year May 2015, be as per the nature of land i.e. residential/commercial and on the basis of "right to fair compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act 2013 and compensation amount may fixed on the basis of present market value as a residential/commercial as rate fixed by the district registration office Patna.

IV. For which petitioner is entitled for."

3. On 23.01.2020, the Court had recorded the objection raised by learned counsel for the State with regard to



the maintainability of the present writ application. The Court had recorded the following order:

“7. At the outset, learned counsel for the State submitted that the challenge is to the award passed by the Arbitrator and, thus, the same has to be now assailed under Section 34 of the Arbitration and Conciliation Act, 1996.

8. Learned counsel for the petitioner submitted that the matter be adjourned for a day as he is not prepared in the matter.

9. In view thereof, as prayed for by learned counsel for the petitioner, the matter is adjourned to be listed tomorrow (24.01.2020) among the top five cases.”

4. The matter was adjourned for a day on the plea of learned counsel for the petitioner that he was not prepared in the matter. Today, learned counsel for the petitioner has not been able to meet the objection of learned counsel for the State that challenge to the award passed by the Arbitrator is to be assailed under Section 34 of the Arbitration and Conciliation Act, 1996.

5. Further, learned counsel for the respondents no. 6 to 9 submitted that the matter has been settled by a Division Bench of this Court in **Project Director, National Highway Authority vs. Md. Gufran Alam** reported as **2014(1) PLJR 207**. The Court deems it appropriate to reproduce paragraphs no. 9 and 10 of the aforesaid judgment which read as under:

“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.”

6. From the aforesaid, it is clear that the challenge to the award of the Arbitrator under Section 3-G(5) of the National Highways Act, 1956 has to be made before the Civil Court.

7. In view thereof, the application stands disposed off with liberty to the petitioner to move before the appropriate forum, in accordance with law, in the present matter.



8. As it has been informed that now the challenge to the award is hit by limitation due to passage of time, the Court would only observe that if the petitioner files a petition seeking condonation of delay, the same shall be considered on its own merits, in accordance with law, and also taking into consideration the pendency of the present writ application.

(Ahsanuddin Amanullah, J)

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