

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 816 of 2019

Poonam Sethi D/o Shri Jagdeesh Sethi Aged About 32 Years R/o Haldi Badi Chirmiri, District- Korea, Chhattisgarh.

---Petitioner(s)

Versus

1. The Union of India Through Secretary, Ministry of Road Transport and Highways.
2. Chairman, National Highways Authority of India, NHAI Head Quarter, G-5 & 6, Sector 10, Dwarka, New Nelhi.- 110075.
3. State of Chhattisgarh Through Its Chief Secretary, General Administration Department, Raipur, Chhattisgarh.
4. The Collector Bilaspur, District- Bilaspur, Chhattisgarh.
5. The Sub-Divisional Officer Bilaspur, District- Bilaspur, Chhattisgarh.
6. Pushpa Manikpuri D/o Late Shri Milan Das Manikpuri Aged About 42 Years R/o Gram and Post Mangla P.S. Civil Lines, Tehsil and District- Bilaspur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Vaibhav Shukla, Advocate.
For Respondent-State	:	Shri Mateen Siddique, Deputy Advocate General.
For Respondent-UOI	:	Shri Himanshu Pandey under instructions of Shri B.Gopa Kumar, ASG.
For Respondent No.2	:	Shri Prasun Kumar Bhaduri, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14.09.2020

1. The present writ petition has been filed assailing the award dated 01.07.2018, Annexure P/1, passed under the National Highways Act, 1956 (in short, the Act, 1956) and also to a report Annexure P/5 dated 29.06.2018 prepared by the respondent No.5 based on Patwari's report.
2. The brief facts relevant for the disposal of the present writ petition is that, the petitioner has a land situated in Khasra No.310/9 in village Sakari measuring 490 square meters situated on the National Highway-111 (New number NH-130). The petitioner had purchased the property by way of a registered sale deed executed on 07.07.2017. The property was purchased from one Jagdish Pandey. Subsequent to the execution of the

sale deed the petitioner applied for mutation of the said property in her name which was also allowed on 10.08.2017. According to the petitioner, at the time of execution of the sale deed the stamp duty collected was on square meter basis. Immediately after the petitioner had purchased the property, the National Highways Authority had initiated the acquisition proceeding acquiring the land adjacent to the aforementioned National Highway i.e. Bilaspur-Katghora National Highway for the purpose of widening and construction of a four lane road.

3. According to the petitioner, a notification under Section 3-A of the Act, 1956 was published on 01.09.2017 and the final award was passed on 01.07.2018 under Section 3-G of the Act, 1956. It is this award dated 01.07.2018 which is challenged by the petitioner in the present writ petition primarily on the ground that the compensation has been wrongly quantified by the respondents.
4. According to the petitioner, she has been awarded much less compensation than what she was entitled for, inasmuch as, the compensation ought to have been calculated on square meter basis whereas in the award the compensation has been quantified on per hectare basis which is erroneous. The further contention of the petitioner is that the award is also liable to be interfered with for the reason that for the adjacent land belonging to the respondent No.6, the authorities have quantified the compensation on square meter basis and in the course the respondent No.6 has got huge amount of compensation as compared to the compensation paid to the petitioner which was done on per hectare basis.

5. According to the petitioner, since she has paid the stamp duty at the time of execution of the sale deed on square meter basis, the compensation also should have been calculated on the same basis i.e. square meter.
6. The counsel for the National Highway Authority of India as also the counsel for the State vehemently opposed the maintainability of the writ petition on the ground of there being a statutory alternative remedy provided to the petitioner. Under Section 3-G(5) of the Act, 1956, it has been envisaged that if any person is not satisfied with the amount of compensation determined by the competent authority, they shall make an application for the matter to be referred to an Arbitrator for determining the proper compensation.
7. The respondents also submitted that from the perusal of the transaction in respect of sale deed between the petitioner and the original owner Jagdish Pandey it would clearly reveal that it was a motivated transaction whereby the sale deed has been executed within the family members with a sole intention of collecting more compensation.
8. According to the respondents, the whole sale deed executed on 07.07.2017 was after the petitioner was well aware of the fact that the property was to be acquired by the respondents and for which proposal have already been initiated. The proposal for acquisition of the lands were forwarded in the department as early as on 25.03.2017. Thereafter, an order was passed by the Collector on 28.06.2017 for publishing the same in the official gazette and on 01.09.2017 the entire scheme was published in the official gazette as per Section 3-A of the Act, 1956. It is in between that the petitioner has got the sale deed executed which clearly indicates that it has been done with a motivated interest and thus is a motivated

transaction. Therefore, the petitioner is not entitled for any relief in the instant case.

- 9.** Having heard the contentions put forth on either side and on perusal of the records, some of the admitted factual position as it stands is that the proceedings for land acquisition under the Act, 1956 was proposed vide proposal dated 25.03.2017. Subsequently, a notification under Section 3-A of the Act, 1956 was published on 01.09.2017 and the final award was passed on 01.07.2018 under Section 3-G of the Act, 1956. It is this award which is under challenge.
- 10.** According to the petitioner, the award seems to have been based upon Annexure P/5 which is incorrect, baseless and inconsequential. Further challenge is drawing a comparison with the compensation calculated for respondent No.6. In nutshell, the basis challenge in the present writ petition is the manner of calculation of the compensation in the award Annexure P/1. If we look into the provisions of Section 3-G of the Act, 1956, it would clearly reveal that the determination of amount payable as compensation has been elaborately dealt with. In addition, Sub-section (5) of Section 3-G of the Act, 1956 also provides for a remedy in the event of any person not being satisfied with the compensation awarded.
- 11.** From the pleadings that have been brought on record, it reflects that the Central Government has already appointed the Additional Commissioner, Bilaspur, to act as an Arbitrator in the event of any person approaching for enhancement of the compensation. As regards the method calculating the compensation whether the sale deed executed in favour of the petitioner can be brought within the ambit of a motivated transaction etc. are all matters which can be best dealt with by the authorities which has been

conferred with power to determine whether the compensation is proper, legal and justified or not?

- 12.** In the instant case the final award was passed on 01.07.2018 and the writ petition has been filed by the petitioner after about six months time from the date the award was passed. In between, the petitioner could have easily approached the Arbitrator for ventilating her grievances of the compensation not being proper and sufficient.
- 13.** Given the said facts, this court is firm view that the remedy available to the petitioner is not that of writ remedy even if she is claiming compensation and parity with the mode of calculation done in respect of the respondent No.6. The same also can be raised before the Arbitrator, who it is expected to take a decision on merits. Exercising the power of judicial review in a writ petition filed by the petitioner under Article 226 of the Constitution of India, this court would not be in a position to decide whether the compensation paid to the respondent No.6 is properly quantified or not and the aspect of parity also would be a ground for the petitioner to claim more compensation by approaching the Arbitrator.
- 14.** Since the Act, 1956 is a complete self contained Code in itself and the remedy sought for by the petitioner in the present writ petition being available under the statutes, this court does not find any good reason for entertaining the writ petition when statutory alternative remedy already exists.
- 15.** The writ petition accordingly stands rejected reserving the right of the petitioner to avail the statutory alternative remedy, if permissible under law.

Sd/-
(P. Sam Koshy)
Judge