

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8915 of 2020

National Highway Authority of India, constituted under the provisions of National Highway Authority of India Act, 1988, having its Head Office at G-5 and 6, Dwarika Sector 10, Delhi 110075 and its Regional Office at D-63, Srikrishnapuri, P.S.-S.K. Puri, Town and District Patna through its Project Director, LT Colonel Yogesh N Garhwal, aged about 45 Years, Male, S/o- Sri Nanak Ram N. Garhwal, Resident of Sasaram Moresarai, P.S.- Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Kaimur at Bhabhua.
2. The Additional Collector, District Kaimur at Bhabhua.
3. The Deputy Collector, Land Reforms, Mohania, District Kaimur.
4. The District Land Acquisition Officer-Cum-Competent Authority for Land Acquisition Under National Highway Act, 1956 having its Office at Bhabhua District Kaimur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S D Sanjay, Senior Advocate with Mr. Anshay Bahadur Mathur and Ms. Parul Prasad, Advocates
For the State	:	Mr. Raj Kishore Roy, GP 18 with Ms. Perna Anand, AC to GP 18

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-01-2021

The matter has been heard *via* video conferencing,

2. Heard Mr. S D Sanjay, learned senior counsel along with Mr. Anshay Bahadur Mathur and Ms. Parul Prasad, learned counsel for the petitioner (National Highway Authority of India) and Mr. Raj Kishore Roy, learned GP 18 along with Ms. Perna Anand, learned AC to GP 18 for the State.

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



- “i] For issuance of appropriate writ and/or direction for quashing the order dt. 31.08.2016 passed by the Respondent Competent Authority-cum-District Land Acquisition Officer, Kaimur, Bhabhua, in case No.14 of 2016-17.*
- ii] For a declaration that the nature and classification of land for the purpose of computation of its rate could not have been legally made on presumption and on the letter of the Official of the Government of Bihar but on the basis of the actual use as per the provisions of the statute.*
- iii] For a declaration that the letter no. 599 dt. 04.12.2015 issued by CALA by which it has informed about the amendment to be made in the original award on the basis of classification of land on presumption of it to be residential, is wholly illegal is liable to be quashed.*
- iv] For issuance of appropriate writ and/or direction upon the Respondents to pass fresh order on the basis of the nature and classification of land as it was existing on the date of notification U/s 3A of the National Highway Act or on the date of original award dated 20.04.2012 for the purpose of determination of rate of compensation and not thereafter, and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts and circumstances of the case.”*

4. On 05.12.2020, the Court had recorded the thrust of the argument of the petitioner and the same is reproduced hereinunder.

- “5. Mr. S D Sanjay, learned senior counsel submitted, in essence, that the petitioner is aggrieved with the mode of determination of fair compensation by the Competent Authorities for the land which is acquired*



for the purposes of constructing National Highways in the State of Bihar. It was submitted that under the National Highway Act, 1956, (hereinafter referred to as the “NH Act”); the Land Acquisition Act, 1894; and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as the “RFCTLARR Act”) the quantum of actual compensation of the land acquired has to be on the basis of actual land usage and not any notional fixation by the authorities. It was submitted that though as a test case, the present matter has been brought before the Court, in which the initial Notification under Section 3A of the NH Act was published, as per the requirement of law, on 12.04.2010 and the publication in the newspapers was on 27.05.2010 and thereafter subsequent notification under Section 3D of the NH Act was also made on 08.04.2011, published in the newspapers on 04.05.2011, and then on 20.04.2012, Award under Section 3G of the NH Act was also made by the Competent Authority, CALA, and the same was determined mentioning the nature of the land as per the Notification dated 12.04.2010. It was submitted that the petitioner discharging its obligation also deposited Rs. 128 crores with CALA for disbursement amongst the land owners.

6. *Learned counsel submitted that some land owners being aggrieved by the quantum of compensation had moved before the Arbitrator under Section 3G(5) of the NH Act and the Arbitrator passed order dated 27.08.2015 holding that the lands in question shall be treated as residential and commercial instead of agricultural, relying on the Report dated 16.04.2015 of the statutory Six Member Committee to which the matter was again referred by the Arbitrator, which has simply gone by Letter*



No. 206 dated 23.08.2014 of the Registration Office, Kaimur, by which all lands situated 100 metres on either side of the National Highways have been treated as residential and commercial and the Arbitrator has directed CALA, to correct the original Award, which, in turn has directed the petitioner to deposit the money at the enhanced rate. Learned counsel submitted that the authorities have misdirected themselves, inasmuch as, the matter which was to be considered and reckoned with reference to 12.04.2010, when undisputedly, the classification has been made on the basis of the Six Member Committee report, as required under law, which has made actual physical verification of lands and, which was headed by the Collector, Kaimur himself. Learned counsel submitted that any re-classification or fresh valuation made three years after the cut-off date cannot, in law, be a ground to revise the quantum of compensation, which was done at the relevant point of time, after fully complying with the existing legal provisions, and base upon the same, the entire amount has also been deposited by the petitioner.

7. Learned counsel further submitted that the petitioner being fair to the landowners, before the Arbitrator had agreed that the matter may be referred again for recommendation by the Six Member Committee, but the same was to be done on actual ground verification of the lands in question, but from the plain reading of the order itself, it is clear that even the Six Member Committee has only acted like a post office by endorsing the classification made by the Registration Office, Kaimur, in its Letter No. 206 dated 23.08.2014, for which a notional classification has been made which is totally in the teeth of the statutory provisions, which does not permit any such assumed or presumed



classification by any authority. Learned counsel submitted that even the Six Member Committee has disregarded its responsibility with regard to re-verification of the lands on the basis of physical inspection relating to its usage and has blindly relied upon the aforesaid classification contained in the letter of the Registration Office, Kaimur, dated 23.08.2014.

8. *Learned counsel drew the attention of the Court to communication dated 15.02.2018 by the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, to all the Collectors in the State of Bihar, clarifying that for the purposes of determination of compensation under the RFCTLARR Act, the requirement is actual land usage.*
9. *Summing up his arguments, Mr. S D Sanjay, learned senior counsel submitted that from any angle or point of view, the impugned orders cannot be sustained, more so, as basically it is the money of the public, which cannot be distributed to a few persons without them having a right under law. Learned counsel submitted that this situation is prevalent in many districts of Bihar and the petitioner is handicapped as being a responsible organization, it cannot be party to such wrongful burden on the public exchequer, that too, for a broader public cause of providing vital connectivity across the country by construction of broad and quality roads. He submitted that against the enhancement of compensation, the petitioner has also moved the statutory forum i.e., the District Judge, Kaimur. However, it was submitted that in the present case, the NHAI is restricting its prayer before the Court to decide the basic principle of law i.e., how the Arbitrator/Competent Authority/CALA are required to deal with the issue relating to determination of the quantum of*



compensation for lands acquired under the NH Act.”

5. After the matter was adjourned on a few occasions, in the supplementary counter affidavit filed on behalf of the respondents no. 1 to 4, the following stand has been taken:

- “8. *That the lands which have been acquired is recorded in RS Khatiyas as “Bhith” and “Dhanhar” in revenue record. A six men committee headed by the Respondent No. 01 (The Collector) was constituted to look into the present nature of the lands which were going to be acquired in the light of Letter No. 1211 dated 01.08.2008 and 1002 dated 10.10.2009 of the Revenue and Land Reforms Department, Government of Bihar. The said 6 men committee visited the spot on 07.03.2012 and after physical verification of the land found the plot no. 01, 49, 04, 05, 06, 07, 11, 12, 24 as agricultural except RS plot no. 48. Some parts of said plot no. 48 was residential and some part commercial. After physical verification of lands the committee vide its resolution no. 07 dated 07.03.2012 decided to treat plot no 01, 49, 04, 05, 06, 07, 11, 12, 24 as agricultural and some parts of plot no. 48 as residential and commercial.*
9. *That after receipt of the said enquiry report and proposal of 6 men committee the respondent no. 04 prepared awards on the basis of the report of the 6 men committee.*
10. *That against the declared awards some of the raiyats approached before the Respondent No. 2 the (ADM-cum-Arbitrator) with a prayer to treat their agricultural lands as residential / commercial. The land owners submitted that as per letter no.206 dated 23.08.2014 of the Registration Office, Kaimur (Bhabua) the District level committee had*



treated the land towards both sides up to 100 meters as residential with regards to acquisition of lands for the extension of NH 30 and prayed that the lands towards both sides up to 100 meters of NH 02 be also treated as residential.

11. *That the Respondent No. 2 (ADM-cum-Arbitrator) vide his letter No. 712 dated 30.03.2015 requested the Respondent No. 1 to get the lands enquired by the six men committee headed by him.*
12. *That in the light of the Letter No. 712 dated 30.03.2015 of the respondent no 02 (ADM-cum-Arbitrator), the respondent no 01 (The Collector, Kaimur) vide letter no 272 dated 13.04.2015 constituted the six man committee under his chairmanship and fixed 16.04.2015 as the date for re-verification of the nature of the lands.*
13. *That the committee vide its report dated 16.04.2015 which is in form of a chart unanimously determined that the lands which were earlier treated as agricultural is residential in nature. It is pertinent to mention here that there is no resolution/proceeding of the second six men committee (as was done by the first six men committee) to show that the committee actually visited the spot or not as per the record of the office. The ADM-cum-Arbitrator on the basis of the report of the six men committee vide his order dated 27.08.2015 ordered the competent Authority-cum-DLAO to prepare award treating those lands as residential which were earlier treated as agricultural.”*

6. After hearing learned counsel at some length, the Court on 21.12.2020 had recorded that there was unanimity amongst the parties that the application can be disposed off on the basis of the stand taken in the supplementary counter



affidavit.

7. Having regard to the fact that the initial award, which was prepared in the year 2012 has attained finality and the petitioner has deposited the requisite amount with the Collector, Kaimur, any subsequent adjudication, but necessarily has to relate to the point of time in 2012, when the lands were acquired by issuance of gazette notification. Moreover, when the initial classification of the land, as agricultural, was determined on the basis of actual physical verification by the Six Men Committee, when the matter was remanded for the second time, that too, on concession made by the petitioner that it was ready to abide by a fresh verification of the lands in question, the Competent Authority having sent the matter back to the Six Men Committee for fresh report, the requirement was that the Six Men Committee actually and physically go to the spot for verification and thereafter submit its report/recommendation. In the present case, in view of the stand taken in the supplementary counter affidavit by the authorities, it is clear that though in the first round in the year 2012, there was actual physical verification by the Six Men Committee, but in the second round, there is no report to show that the Committee actually carried out the exercise on the ground, as was required.



8. There is no dispute on the law that for the purposes of paying compensation under the RFCTLARR Act, quantum of compensation has to be on the basis of actual land usage and not any notional fixation by the authorities. Thus, it is all the more imperative that whatever report or recommendation is sent, the same should have sound legal basis i.e., spot verification for ascertaining actual usage of the land, prior to such recommendation being sent.

9. In the present case, clearly that does not seem to have been done by the Six Men Committee in the second round in the year 2015 and simply relying on the recommendation of the District Sub-Registrar, Kaimur, the Six Men Committee has recommended that the lands in question, be treated as residential.

10. In the considered opinion of the Court, determination of compensation, based on such a report, cannot be legally sustained.

11. Accordingly, the recommendation sent by the Six Men Committee dated 16.04.2015 as also the consequential order of the Competent Authority dated 31.08.2016, are set aside.

12. The matter is remitted to the Six Men Committee



for sending fresh recommendation, in accordance with law, after giving notice to all persons interested, including the petitioner, and by holding a spot verification of the lands in question, also with notice to all concerned.

13. Depending on the recommendation of the Six Men Committee, the Competent Authority i.e., the respondent no. 4, shall pass fresh order, in accordance with law, after giving opportunity of hearing to the petitioner and all persons interested.

14. It goes without saying that natural consequence of such order will follow. However, it shall be open to the aggrieved party to move before the appropriate forum, in accordance with law, with regard to any objection they might have to the order which shall be passed by the respondent no. 4 in terms of this order.

(Ahsanuddin Amanullah, J)

J. Alam/-

AFR/NAFR	AFR
U	
T	

