

NAFR / AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.351 of 2019**

1. State of Chhattisgarh Through The Principal Secretary, Government of Chhattisgarh, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Chhattisgarh.
2. The Chief Executive Officer Chhattisgarh Rural Road Development Agency, Vikas Bhawan, Civil Lines, Raipur, District- Raipur, Chhattisgarh.
3. The Collector, District- Janjgir- Champa, Chhattisgarh.
4. The Executive Engineer-Cum-Member Secretary Project Implementation Unit No.2, Chhattisgarh Rural Road Development Agency, Sakti, District Janjgir- Champa, Chhattisgarh.

---- Appellants**Versus**

1. Hari Singh Chandra S/o Bodhan Aged About 68 Years R/o Village Marghti, Tahsil Magarload, District- Janjgir- Champa, Chhattisgarh.
2. The Union of India Through the Secretary, Ministry of Rural Development, Government of India, New Delhi.
3. National Rural Road Development Agency Ministry of Rural Development, Government of India, Through Director General Office At 5th Floor, N.B.C.C. Tower, Bhikhaji, Cama Palace, New Delhi.
4. Chief Executive Officer Zila Panchyat, District Janjgir-Champa, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Appellants/State	: Mr. Gagan Tiwari, Deputy Government Advocate
For Respondent No.1	: Mr. Rakesh Pandey, Advocate
For Respondents No.2 & 3	: Mr. Ramakant Mishra, Assistant Solicitor General

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Goutam Bhaduri, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****20.10.2021**

Heard Mr. Gagan Tiwari, learned Deputy Government Advocate for the appellants. Also heard Mr. Rakesh Pandey, learned counsel appearing for

respondent No.1/writ petitioner and Mr. Ramakant Mishra, learned Assistant Solicitor General of India appearing for respondents No.2 and 3.

2. Having regard to the order proposed to be passed, we do not consider it necessary to issue notice to respondent No.4.

3. By preferring this writ appeal, the appellants have called into question the order dated 10.10.2018 passed by the learned Single Judge in Writ Petition (C) No.2093 of 2018.

4. The writ petition was disposed of by the learned Single Bench with a direction to the appellants to demarcate the area belonging to the petitioner, which was used for construction of a road and thereafter, to initiate proceeding for acquisition of the land of the petitioner in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013').

5. The case of the petitioner as presented in the writ petition, in short, is that his land, situated at village Ranpota, District Janjgir-Champa bearing Khasra Nos.897 and 934, admeasuring 0.78 and 0.34 Acres, respectively, was utilized for construction of a road under Pradhan Mantri Gram Sadak Yojna (for short 'PMGSY') Scheme between Main Road to Village Marghati i.e. 7.89 Km. in the year 2005-06 without following due process of law and without paying any compensation in violation of Article 300-A of the Constitution of India. It is pleaded that though under Clause 6.12 of the PMGSY Scheme, land can be utilized by way of voluntary donation, exchange or other mechanisms, the petitioner neither gave the land on donation nor consent was given for acquisition of the land for the purpose of road construction.

6. In the reply-affidavit filed by the State/respondents No.3 to 5 and 7, who are the appellants herein, it is stated, amongst others, that they have no records regarding compensation or exchange of land in lieu of land acquisition and

that there is no provision for grant of compensation under the PMGSY Scheme. Averments are, however, made that the land of the petitioner was acquired on the basis of consent of the petitioner and that at the time of construction, the petitioner had not raised any objection.

7. Mr. Gagan Tiwari, learned counsel for the appellants, has drawn our attention to Annexure R/2, which is a *Panchanama*, indicating that the road was constructed before 05.05.2007 and that the land was given by consent and therefore, the learned Single Judge was wholly in error in holding that compensation is liable to be paid to the petitioner for acquisition of land. It is also submitted that in any view of the matter, the learned Single Judge was in error in directing to pay compensation in terms of the Act of 2013 instead of the Land Acquisition Act, 1894 (for short 'the Act of 1894').

8. Mr. Rakesh Pandey, learned counsel for respondent No.1/writ petitioner, submits that it is an admitted position that the land of the petitioner was utilized for the purpose of construction of the road. It is submitted by him that Annexure R/2, on which reliance is placed by the learned State counsel, does not indicate that the petitioner had consented for taking his land for the aforesaid purpose. It is also submitted that no other document has been produced evidencing that the petitioner had in any manner voluntarily given the land for the purpose of road construction. He has, however, submitted that in the facts and circumstances of the case, compensation has to be paid in terms of the Act of 1894 and not under the Act of 2013 and therefore, the writ appeal may be disposed of modifying the direction of the learned Single Judge to that extent.

9. We have considered the submission of learned counsel for the parties and have perused the material on record.

10. That the land of the petitioner was utilized for construction of the road in question, is an admitted position. Though contention is advanced by the learned

State counsel that land was obtained for the purpose of road construction after obtaining due consent, no materials have been placed before the Court to demonstrate the factum of obtaining consent from the petitioner. The document at Annexure R/2, on which reliance was placed by the learned State counsel, is dated 18.04.2018. It is not understood under what circumstances such *Panchanama* had to be obtained from some of the villagers in the year 2018 when the land was utilized in the year 2005. That apart, it is rightly submitted by the learned counsel for respondent No.1/petitioner that even this document does not reflect the name or signature of the petitioner.

11. From the discussions above, it is evident that the land of the petitioner has been utilized for the purpose of road construction without following due process of law, resulting in violation of Article 300-A of the Constitution of India. Taking note of above, the learned Single Judge had directed demarcation of the land of the petitioner which was utilized for the purpose of road construction and thereafter, to grant compensation in accordance with the Act of 2013.

12. Resultantly, while upholding the order of learned Single Judge to the extent of demarcation of the land, in view of submission of Mr. Rakesh Pandey, we modify the direction of grant of compensation in the light of the provisions of the Act of 2013 to the effect that compensation shall be paid under the provisions of the Act of 1894.

13. The writ appeal, accordingly, stands disposed of.

Sd/-

(Arup Kumar Goswami)
Chief Justice

Sd/-

(Goutam Bhaduri)
Judge