

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 2330 of 2018

Kaushal Gupta, S/o. Late Shri Puniram Gupta, Aged About 42 Years, R/o. Village Dansara, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Revenue And Disaster Management Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
2. The Collector, Raigarh, District Raigarh, Chhattisgarh.
3. The Sub Divisional Officer, (Revenue), Sarangarh, District Raigarh, Chhattisgarh.
4. National Highways Authority Of India, Office Of Project Director, Project Implementation, Unit, Raigarh, District Raigarh, Chhattisgarh.
5. Parmanand (Dead) Through LRs.
 - 5.(i) Dilip Nisad, S/o. Late Parmanand, Aged About 45 Years.
 - 5.(ii) Prakash Nisad, S/o. Late Parmanand, Aged About 42 Years
 - 5.(iii) Naresh Nisad, S/o. Late Parmanand, Aged About 40 YearsAll R/o. Village Dansara, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	:	Ms. Sharmila Singhai, Advocate
For State/Respondents No.1 to 3	:	Ms. Richa Shukla, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

22.01.2021

Heard

1. As per the case of the petitioner, for a construction of highway Raigarh-Sarangarh-Saraipali different piece and parcel of the lands were acquired. The land of the petitioner bears khasra No.611/1 admeasuring 0.384 hectare situated at village Dansara. It is contended that the part of the said land was acquired and used for construction of the National Highway, however, since the khasra No.611/2 is adjacent to the land of the petitioner, the said land was notified in the initial notification dated 16.09.2014 and accordingly the award was passed on 28.08.2015 whereby though the respondent No.5/ Parmanand (since deceased) was

not affected by such construction of the road but the compensation was granted to him.

2. Learned counsel for the petitioner submits that since the land of the petitioner was being affected, as such, on an application as to find out the actual location and the existence of the highway. The demarcation was carried out at the request of the petitioner in the year 2016 itself, wherein panchnama and demarcation along with the map would show that the land passes through the land of the petitioner bearing khasra No.611/1 whereas the land of Parmanand was unaffected by such construction. It is stated finality to the demarcation report was arrived at by the Tahsildar, Sarangarh by order dated 20.03.2017. On the basis of that, when the application was filed before the S.D.O. to grant compensation, the same was dismissed simplicitor on the ground that the compensation since has already been paid to Parmanand, S/o. Ratan Singh, therefore, no further award can be passed in favour of the petitioner. Learned counsel further submits the circumstances of the case would show that in any case the petitioner's land though was acquired, he has not been paid the compensation, therefore, irrespective of the fact of provision of Section 84 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (*for short "the Act of 2013"*), the petitioner is entitled for the compensation to be paid.
3. Learned State counsel opposes the argument and would submit that the initial notification was made by National Highways Authority on 16.09.2014 wherein khasra No.611/2 admeasuring 0.049 hectare which was being affected by the construction of highway was notified wherein the owner was shown as Parmanand and eventually the award was passed on 28.08.2015 and in between the period, no objection was ever raised by any of the parties. Consequently, the compensation was paid to

Parmanand in whose name the land bearing khasra No.611/2 was recorded and the State cannot be held liable to pay the compensation.

4. No representation is made on behalf of the Legal Representatives of Parmanand (since deceased) Respondent No.5(i) to 5(iii) and Respondent No.4, National Highways Authority.
5. Heard learned counsel for the parties and perused the documents.
6. The notification though was in respect of khasra No.611/2 wherein Parmanand has been shown to be the owner and the award was eventually passed for acquisition of the land but the documents placed on record, which contains the panchnama show that a demarcation was carried out in respect of khasra No.611/1 & 611/2 and according to the demarcation report, the National highway passes through the land of Kaushal, the present petitioner; whereas in the revenue map, it is shown that the highway is passing through khasra No.611/2. It further purports that the part of the land 0.049 hectare which was acquired, the petitioner was in possession through his predecessors entitle and the map attached to it would show that the land on which the highway passes through the petitioner is in possession. Therefore, though the notification of the highway projected that the highway passes through khasra No.611/2 but on physical verification and the demarcation, it was reported that it passes through the part of khasra No.611/1 wherein the petitioner was in possession.
7. The Act, 2013, Fourth Schedule, contains the National Highway Act have been made applicable by notification dated 28.08.2015. Meaning thereby the Act, 2013 has been made applicable to the National Highway Act. That means if the land is acquired then the compensation would be paid according to the Act of 2013.

8. Section 84(2) of the Act, 2013 purports that if any rehabilitation and resettlement benefit availed of by making a false claim or through fraudulent means shall be liable to be recovered by the appropriate Government in the manner as may be prescribed. Further measures are also been provided in Section 84 of the Act, 2013. For sake of brevity, Section 84 of the Act, 2013 is reproduced herein :

“84. Punishment for false information, mala fide action etc”

(1) If a person, in connection with a requirement or direction under this Act, provides any information that is false or misleading, or produces any false document, he shall be liable to be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one lakh rupees, or with both.

(2) Any rehabilitation and resettlement benefit availed of by making a false claim or through fraudulent means shall be liable to be recovered by the appropriate Government in the manner as may be prescribed.

(3) Disciplinary proceedings may be drawn up by the disciplinary authority against a Government servant, who if proved to be guilty of a mala fide action in respect of any provision of this Act, shall be liable to such punishment including a fine as the disciplinary authority may decide.”

9. Therefore, it is for the appropriate Government and the authority to take measures under the provisions of Section 84. Apart from this fact, the petitioner who is the actual oustee to the extent of land used for the highway cannot be deprived of the benefit as per the demarcation report as land has physically been affected by use of the highway.
10. Since it is a settled proposition that one cannot be deprived otherwise than in due course of law from the lawful ownership of the property which is guaranteed under Article 300-A of the Constitution, it is directed that the respondent authorities shall draw the proceeding for payment of

compensation under the Act, 2013 to the extent of land acquired that of the petitioner of khasra No.611/1. After the acquisition proceeding, the adequate compensation would be paid to petitioner in accordance with law. The aforesaid exercise may be carried out within an outer limit of one year. Accordingly, the order dated 13.02.2018 (Annexure P-1) is quashed.

11. In a result, the petition is allowed. No order as to cost.

Sd/-
(Goutam Bhaduri)
Judge

Aks