

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.370 of 2018

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National Highways Authority of India through its Project Director, (the competent authority on behalf of N.H.A.I), Project Implementation Unit, Patna, House No.D-63, Rajesh Kumar Path, Sri-Krishnapuri, Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Arbitrator cum-Additional Collector, Patna, Vikash Bhawan, Patna.
3. The District Land Acquisition Officer, Patna.
4. Sumit Kumar, S/o Late Rajeev Kumar, Resident of Village Dariyapur Gola, P.S.- Kadamkuan, Dist.- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Kumar Goutam, Advocate
For the Respondent no.4	:	Mr. Yogesh Chandra Verma, Sr. Advocate
		Mr. Jitendra Kumar, Advocate
		Mr. Adarsh Singh, Advocate
For the State	:	Mr. Md. Majid Mahboob Khan, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 05-12-2022

Heard Mr. Kumar Gautam, learned counsel for the appellant and Mr. Yogesh Chandra Verma, learned Senior Counsel who represents the respondent no.4 while AC to AAG 12 represents the State.

2. The appellant has challenged the order dated 12.3.2018 passed by the learned Xth Additional District Judge, Patna in Miscellaneous Case No. 45 of 2017 by which he did not interfere with the Arbitration Award dated 27.6.2016 passed by the Arbitrator cum Additional Collector, Patna by which the nature of land was changed into commercial/residential and



accordingly the value of the compensation of the lands in question was enhanced. The details of land i.e. Plot nos. 708, 709, 710, 711 and 712 of Mauza (revenue village Abdul-Rahmanpur, District-Patna) on NH-30 (Patna-Bakhtiyarpur) was acquired for construction of four lane road between Patna to Bakhtiyarpur.

3. One Sumit Kumar filed application for redetermination/re-fixation of compensation amount stating therein that treating the same as agriculture land, the gazette notification was published and accordingly Award was announced whereas the lands under Abdul Rahmanpur in the MVR has been treated as commercial/residential and accordingly the registration fees are also taken on that basis.

4. The further submission of the applicant-respondent no.4 was that for the adjoining land plot nos. 706, 689 and 695, the payments have been made taking it as a commercial land. Accordingly, he also claimed payments at par with the adjoining land.

5. The Arbitrator after considering the entire matter vide an order dated 27.6.2016 decided the case in favour of said Sumit Kumar and enhanced the compensation amount from Rs. 24,000/- per decimal to 1,20,000/-.



6. Aggrieved by the said order, the National Highway Authority of India (henceforth for short 'the NHAI') preferred the Miscellaneous (Arbitration Case No. 45 of 2017).

7. The learned Additional District Judge-Xth, Patna after going through the entire facts and perusing the records vide an order 12.3.2018 held as follows:

14. On the basis of rival submissions made on behalf of the parties it appears that the main contention of the petitioner is that the Arbitrator has not power to change the nature of the land. It appears that initially the OP No.4 was awarded compensation after holding the nature of acquired land as agricultural and thereafter, the matter was referred to Arbitrator and the Arbitrator ordered to give compensation to opposite party No.,4 regarding his acquired land after holding the nature of acquired land as commercial/residential. It appears that learned Arbitrator while deciding the



compensation amount considered the fact that in MVR of the land in question has been treated as commercial/residential nature. The learned Arbitrator has also considered the fact that in transfer of the lands situated Mauza Abdula Rahmanpur, stamps and registration fee are been charged on the basis of commercial/residential land. Learned Arbitrator while deciding the amount of compensation also considered the fact that other lands situated in the vicinity of the land in question have been acquired for the same purpose and the compensation amount has been awarded on the basis of commercial/residential land. In this connection the Hon'ble Supreme Court, has also gave verdict that "when lands are more or less situated nearby and acquisition is for the same



purpose, it would not proper to discriminate between the land owner unless there are strong reasons." I am also of the considered opinion that the learned Arbitrator did not change the nature of the land rather after considering the relevant fact decided the nature of the land which was earlier not decided property.

15. Therefore, I do not find any merit in this Miscellaneous Case, Accordingly this Miscellaneous Arbitration Case is hereby dismissed.

8. Aggrieved, the present appeal has been filed.

9. Mr. Kumar Gautam, learned counsel appearing for 'the NHAI' submits that the nature of land is decided by the competent authority for land acquisition (C.A.L.A.) cum District Land Acquisition Officer, Patna on the basis of 'Khatiyani' at the time of publication of notification and compensation amount are given accordingly in line with the Bihar Land Acquisition, Rehabilitation and Resettlement of Policy dated 13.5.2018.



10. His further submission is that even in 2017, onion crops were there in the fields of the land owner. He took this Court to Section 26 of the Arbitration and Conciliation Act, 1996 (henceforth for short 'the Act') and in support of his case and further submitted that the Arbitrator could enhance the compensation amount but has no business to change the nature of the land. He as such submits that the order dated 12.3.2018 passed by the learned Xth Additional District Judge, Patna is fit to be set aside.

11. Learned counsel for the appellant further submits that the learned Court did not consider the provision of Section 28 (1) (a) read with 3g (7) of 'the NHAI' Act while passing the order in question.

12. Mr. Yogesh Chandra Verma, learned Senior Counsel on the other hand straight away took this Court to an order of a coordinate bench of this Court, Patna High Court in C.W.J.C. No. 10198 of 2012 and analogous cases disposed of on 14.2.2013 in which the land owner belonging to the same area aggrieved by the notification issued by 'the NHAI' complained that although their lands are commercial/residential, the same were being treated as agricultural land and accordingly they be suitably compensated treating it to be commercial/residential .



13. The coordinate bench of this Court vide an order dated 14.2.2013 held as follows:

"Accordingly, aforesaid writ petitions are hereby disposed of granting liberty to the petitioners to avail remedy under Section 3G(5). If such dispute is raised before the Authority concerned, the court expects that Authority concerned without being prejudiced with this order may examine the same and pass appropriate order in accordance with law.

It goes without saying that if the matter is referred to the Arbitrator, the claim of petitioners as to whether the lands in question are commercial/residential or agricultural may also be examined by the Arbitrator.

With the above observation and direction all aforesaid writ petitions



are disposed of."

14. He thus submits that a plain reading of the said order shows that the Patna High Court clearly held that while considering the case of the petitioners of the C.W.J.C. No. 10198 of 2012, the claim as to whether the lands in question are commercial/residential or agriculture may also be examined by the Arbitrator.

15. He submits that the said order dated 14.2.2013 of the learned Single Judge was never challenged by 'the NHAI' and accordingly the lands were held to be commercial/residential and the payments were later made to the said claimants of the said case as would reflect from the letter dated 12.7.2013 issued by 'the NHAI'.

16. Mr. Verma submits the plot of respondents are 708 to 712 adjoining to the said plots. He submits that when the plot no. 689, 685 and 706 were acquired treating it to be commercial/residential, 'the NHAI' cannot discriminate the land owners who are adjoining to it which included plot nos. 708 to 712. He as such submits that the order is perfectly justified and the present appeal is without any merit and fit to be dismissed.

17. Learned counsel for the appellants in its reply submits that so far as the letter dated 12.7.2013 of 'the NHAI' is



concerned, it was incorporated in the letter itself that this should not be treated as precedent.

18. It is apt to take into account the order of Arbitrator wherein vide an order dated 27.6.2016, it found the land of Mauza Abdul Rahmanpur to be commercial/residential and further held that the sale/purchase, stamp duty and registration fee are taken considering it to be commercial/residential and accordingly Rs. 1,20,000/- would be appropriate in the case of the present respondents instead of Rs. 24000/- that has been fixed.

19. This Court has gone through the submissions put forward by the rival parties as also the documents that are part of the present appeal as also the map attached to the counter affidavit vide Annexure-R/4-I which shows that the plot no. 689 (for which payments have been made treating it to be commercial/residential) and plot nos. 709-10 (lands of the respondents herein) are adjoining and in that context, the submission put forward by Mr. Verma, learned Senior Counsel is justified that when the payments of adjoining lands have been made treating it to be commercial/residential, 'the NHAI' cannot discriminate the respondent no.4 herein by treating it to be agricultural land.



20. On 14.2.2013 itself, in C.W.J.C. No. 10198 of 2012 and analogous cases, the learned Single Judge had held that the Arbitrator may also look into the claims of the petitioners on whether it is commercial/residential or agricultural.

21. The learned counsel for the appellant conceded that this observation of the learned Single Judge was never challenged in appeal by 'the NHAI' and accordingly the Arbitrator held the plot nos. 689, 685 and 706 to be commercial/residential in nature which was accepted and compensation amounts paid by 'the NHAI'.

22. When the compensation amount for the adjoining lands have been given treating it to be commercial/residential, 'the NHAI' cannot discriminate the respondent no.4 from receiving compensation amount treating his land to be agriculture one in view of the fact that it is adjacent to the aforesaid plots that were acquired.

23. In this context, the order of the Hon'ble Apex Court in **Ali Mohammad Beigh and others Vs. the State of Jammu & Kashmir reported in (2017) SCCR 752** becomes important wherein the Hon'ble Supreme Court held that when the lands are more or less situated nearby and when the lands



are identical and similar and the acquisition has also been made for the same purpose it would not be proper to discriminate between the land owners unless there is strong reason.

24. It is apt to quote the relevant paragraphs of the said order.

13. When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper to discriminate between the land owners unless there are strong reasons. In Union of India vs. Bal Ram and another, (2010) 5 SCC 747, this Court held that if the purpose of acquisition is same and when the lands are identical and similar though lying in different villages, there is no justification to make any discrimination between the land owners to pay more to some of the land owners and less



compensation to others. The same was the view taken in Union of India vs. Harinder Pal Singh and others, (2005) 12 SCC 564, where this Court held as under :

"15. We have carefully considered the submissions made on behalf of the respective parties and we see no justification to interfere with the decision of the Division Bench of the Punjab and Haryana high Court which, in our view, took a pragmatic approach in fixing the market value of the lands forming the subject-matter of the acquisition proceedings at a uniform rate. From the sketch plan of the area in question, it appears to us that while the lands in question are situated in five different villages, they can be consolidated into one single unit with little to choose between one



stretch of land and another. The entire area is in a stage of development and the different villages are capable of being developed in the same manner as the lands comprised in Kala Ghanu Pur where the market value of the acquired lands was fixed at a uniform rate of Rs. 40,000 pr acre. The Division Bench of the Punjab and Haryana High Court discarded the belting method of valuation having regard to the local circumstances and features and no cogent ground has been made out to interfere with the same.

16. In our view, in the absence of any contemporaneous document, the market value of the acquired lands of Village Kala Ghanu Pur which were acquired at the same time as the lands in the other five villages



was correctly taken to be a comparative unit for determination of the market value of the lands comprising the lands forming the subject-matter of the acquisition proceedings under consideration..."

14. When the lands are acquired at the same time and for the same purpose that is for resettlement of Dal dwellers, the lands situated in three different land is similar land, it would be unfair to discriminate between the land owners and other references and the appellants who are the land owners in Reference No. 15 and pay less that is Rs. 2,50,000/- per kanal to the appellants and pay more to other land owners that is Rs. 4,00,000/- per kanal. Impugned judgments of the High Court in CIA No. 211/2009 and Cross Appeal No. 64/2011 are to be set aside by



enhancing the compensation to Rs. 4,00,000 per kanal. As a sequel to this, the order passed in review is also to be set aside.

15. In the result, the impugned judgments are set aside and these appeals are allowed. It is held that the appellants are at par with other land owners whose lands were acquired in Bhagichandpora and Pazwalpora in other references, and hence they are also entitled to enhances compensation of Rs. 4,00,000 per kanal with 15% solatium (Jabirana) and all other statutory benefits.

No costs.

25. In the aforesaid background, this Court holds that the order dated 12.3.2015 passed by the learned Xth Additional District Judge, Patna in Miscellaneous (Arbitration) Case No. 45 of 2017 is just and proper, based on cogent reasons and need no interference.



26. The M.A. No. 370 of 2018 fails and is accordingly dismissed.

27. The payments should be made as early as possible preferably within a period of two months.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.12.2022
Transmission Date	NA

