

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6481 of 2020

Ashok Kumar Thakur S/o- Shri Upendra Thakur resident of Village- Pirokhar,
P.S.- Madhwapur, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar represented through the Principal Secretary, Department of Revenue Land Reforms, Govt. of Bihar, Patna.
2. The District Magistrate-cum- Collector, Madhubani.
3. The Land Acquisition Officer, Madhubani.
4. The Dy. Secretary, N.H.A.I, N.H. 527-C, Darbhanga.
5. The National Highway Authority of India, represented through its Project Director, N.H.A.I, N.H. 527-C, Darbhanga.
6. The Arbitrator-cum- Divisional Commissioner, Darbhanga Division, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Srivastava, Advocate Mr. Lal Bahadur Singh, Advocate Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Raj Kishore Roy, GP-18 Mr. Anshay Bahadur Mathur, Advocate Mr. Shri Nath Pathak, S.C.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

6 10-04-2023 Heard learned counsel for the parties.

The petitioner has filed the instant application for the
following relief(s) :-

“I. To issue a writ in the nature of certiorari for quashing of the order dated 24.12.2019 (Annexure - P/7) passed by the Respondent No. 6 in connection with Arbitration Case No. 02 of 2019, by which the Respondent No. 6, in complete departure to the nature of land and the rate fixed by the State Govt., rejected the claim



of the petitioner by observing "राष्ट्रीय राजमार्ग सं0-527C के निर्माण हेतु आवेदक की मौजा-पिरोखर में अवस्थित खेसरा नं० - 3289, रकबा- 3583 डीसमल भूमि किस्म कृषि के रूप में अधिग्रहित किया गया, जबकि आवेदक का कथन है कि प्रश्नगत भूमि आवासीय प्रकृति की है। आवेदक द्वारा प्रश्नगत भूमि के आवासीय होने के समर्थन में कोई साक्ष्य प्रस्तुत नहीं किया गया है, बल्कि आवेदक द्वारा दिनांक 04.12.2012 को निबंधित केवाला के माध्यम से प्रश्नगत भूमि के कय करने संबंधी दस्तावेज प्रस्तुत किया गया है, उक्त दस्तावेज के अवलोकन से ज्ञात होता है कि प्रश्नगत अर्जित भूमि कास्त कायमी पैदावार योग्य है जो REO सड़क के ठीक सटे में अवस्थित है। किसी भूमि के सड़क के सटे होने मात्र से आवासीय नहीं माना जा सकता है, बल्कि उक्त भूमि के आवासीय परिक्षेत्र की परिधि के अन्तर्गत होने पर ही उसे आवासीय प्रकृति का माना जा सकता है। प्रस्तुत मामले में आवेदक द्वारा यह भी स्पष्ट नहीं किया गया कि प्रश्नगत भूखण्ड की कितनी दूरी पर गाँव बसा हुआ है। स्पष्टतः प्रश्नगत भूमि के कृषि योग्य होने के कारण ही सक्षम प्राधिकार द्वारा कृषि योग्य भूमि के आधार पर अनुमान्य मुआवजा का निर्धारण किया गया। ऐसी स्थिति में आवेदक का प्रश्नगत अर्जित भूमि के आवासीय होने का दावा अनुचित प्रतीत होता है।”

II. To issue a writ in the nature of certiorari for quashing of the order dated 24.12.2019 (Annexure- P/7) passed by the Respondent No. 6 in connection with Arbitration Case No. 02 of 2019, as the Respondent No. 6 completely failed to appreciate that the market value of residential house has been determined to a tune of Rs. 49,500/- per decimal, hence a writ in the nature of mandamus be issued for commanding the Respondents No. 2 to 5 to ensure payment of



compensation at the circle rate of residential house @ Rs. 49,500/- per decimal.

III. To issue a writ in the nature of certiorari for quashing of the order dated 24.12.2019 (Annexure - P/7) passed by the Respondent. No. 6 in connection with Arbitration Case No. 02 of 2019, because the Respondent No. 6 in order to save arbitrariness and illegal act of the Respondents No. 2 to 5 in calculating the value of the land of the petitioner at the present circle rate, so the Respondents No. 2 to 5 be directed to recalculate the compensation amount at the prevailing circle rate in the locality, at the relevant time.

IV. That while passing the order impugned the Respondent No. 6 completely ignored and discarded circle rate and in that continuance the Respondent No. 6 without considering the circle rate, rejected the claim of the petitioner, hence it is respectfully submitted that the Respondents No. 2 to 5 be directed to ensure payment of compensation in favour of the petitioner at the rate of circle rate as determined and fixed by the Department of Registration.

V. Any other relief or reliefs.”

At the outset, it is submitted by learned counsel appearing for the respondents that in view of the provisions as contained in section 3G (5) and (6) of the National Highways Act, 1956, there is no dispute with respect to the fact that the



provisions of Arbitration and Conciliation Act, 1996 are applicable to every arbitration under the National Highways Act, 1956. It is thus submitted that once an award has been passed by the arbitrator, as in the instant case, in case the petitioner is aggrieved by the said award, he should challenge the same under the Arbitration and Conciliation Act, 1996 in view of section 3G (6) of the National Highways Act, 1956.

The Court finds substance in the objection raised by learned counsel for the respondents.

In view of the above objection raised by the respondents, learned counsel for the petitioner seeks permission to withdraw this application with liberty to move under the Arbitration and Conciliation Act, 1996 challenging the award of the arbitrator, impugned herein.

The instant application is permitted to be withdrawn with the aforesaid liberty.

(Partha Sarthy, J)

avinash/-

U			
---	--	--	--

