

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.249 of 2022

In

Civil Writ Jurisdiction Case No.1308 of 2020

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Kalpna Devi @ Kalpna Kumari Pathak Wife of Rajiv Kumar @ Rajiv Kumar Pathak, Resident of Village-Fatehpur, P.S. Dyadhi, District-Buxar, presently residing at Mohalla-Malviya Nagar (Dhobi Ghat), Police Station-Buxar, District-Buxar, Bihar.

... .. Appellant/s

Versus

1. The Union of India through the Secretary, N.H. Division Department, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar.
3. The Secretary, N.H. Division Department, Government of India, New Delhi.
4. The National Highway Authority of India through its General Manager, Bihar, Patna.
5. The Chairman, National Highway Authority of India, New Delhi.
6. The General Manager, National Highway Authority, Bihar, Patna.
7. The District Magistrate, Buxar, Bihar.
8. The District Land Acquisition Officer, Buxar, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ambuj Nayan Chaubey, Advocate

For the Respondent/s : Dr. K.N. Singh, Additional Solicitor General

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-09-2023

The appeal arises from the impugned order in the writ petition which relegated the petitioner to the alternate remedy of arbitration as available under Section 3-G of the National Highways Act, 1956 (for brevity “N.H. Act”).

2. The issue agitated in the writ petition was as to whether the land of the petitioner acquired for the purpose of the national highway was a ‘commercial land’ or an ‘agricultural land’. The petitioner relied on a six member committee, in which the District Collector who was the competent authority to determine the compensation was the Chairman; having found the land to be commercial. The petitioner was aggrieved with the District Collector having made a volte-face insofar as the nature of the land and awarding compensation only as applicable to be an agricultural land.

3. Learned Senior Counsel appearing for the appellant would rely on an interim order passed in the writ petition, which directed the 7th respondent to explain as to why a contrary view was taken, despite the Committee, with himself as Chairman, having found the land to be commercial. The learned Senior Counsel would also rely on the decision of the Hon’ble



Supreme Court in *L. Hirday Narain v. ITO, (1970) 2 SCC 355* wherein the Hon'ble Supreme Court had frowned upon the conduct of the High Court in having relegated the writ petitioner to the revisional remedy when the writ petition itself was entertained and heard on merits.

4. At the outset, we are not convinced that the order relied on by the learned Senior Counsel was after a full fledged hearing on merits. The order dated 21.01.2020 took note of the fact that a 6 member Committee, with the Collector, Buxar as the Chairman having opined that the land is a commercial land, contrary to which the District Collector, the 7th respondent had disbursed compensation to the petitioner terming the acquired land as an agricultural land. The District Collector was asked to file an explanation. Counter affidavits were filed by the respondents and on 24.02.2020, on the second posting date the learned counsel for the petitioner sought for time for reason of the counter affidavit having been served only on that day. On the next date 25.03.2022, the petitioner was directed to remove the defects pointed out by the Registry and the matter was then heard on 21.04.2022, when the learned Single Judge relegated the petitioner to the alternate remedy. We do not think that the writ petition was entertained and there was a full fledged



hearing on merits.

5. Be that as it may, we also notice that the purchase of the land by the petitioner was in August 2009 and in November 2009, a notification under Section 3A of the N.H. Act, produced as Annexure-2 was published. Annexure-3 dated 13.05.2010; under Section 3D of the N.H. Act, made the declaration as contemplated under the enactment. The verification report of the 6 member committee is dated 11.09.2016 long after the acquisition. The specific contention raised in the counter affidavit filed in the writ petition as also before this Court is that the google map relating to the period of acquisition indicated no construction on the land and the same was lying as an agricultural land.

6. We find absolutely no reason to interfere with the judgment of the learned Single Judge. However, the observation made by us should not affect an arbitration initiated under the Arbitration and Conciliation Act, 1996 which is made applicable under Section 3-G (6) of the N.H. Act, 1956. We make it clear that the observation regarding the google map as coming out in the counter affidavit is only a *prima facie* consideration, to decline jurisdiction under Article 226. If an arbitration is taken up, it is for the competent authority to establish the nature of the



land before the Arbitrator appointed.

7. With the above liberty reserved, with just exceptions, we reject the appeal.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.09.2023
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