

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15684 of 2018

Shanti Kunwar W/o Mahadeo Vishwakarma, Resident of Quarter No. 51, Jhauakothi Jagdishpur, P.S. and District Bhagalpur, At Present Resident of C/o Pramod Sharma, Sone Ghat Road, Madanpur, P.S. Barun, District Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector-Cum-Arbitrator, National Highway Division-2, Aurangabad.
3. The District Land Acquisition Officer, Aurangabad.
4. The Deputy Collector Land Reform, Aurangabad.
5. The Registration Registrar, Aurangabad.
6. The Circle Officer, Madanpur, District Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur, Advocate Mr. Chandra Shekhar Bimal, Advocate
For the Respondent/s	:	Mr. Dhurjati Kumar Prasad, GP14
For the NHAI	:	Mr. S.N.Pathak, S.C.(NHA) Mr. Saurav Nikunj, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 15-02-2023

Heard learned counsel for the petitioner and learned counsel appearing for the NHAI.

The petitioner has filed the instant application for the following reliefs:

“(i) For issuance of writ in the appropriate nature for quashing of the order dated 31.3.2017 passed by the Additional Collector-cum-Arbitrator, National Highway Division-2, Aurangabad in L.A. Case No. 183/2016-17 whereby and where under the learned Court below has rejected the application filed by the petitioner for payment of compensation against the land acquisition @ commercial value but the learned court below has rejected the same



without considering that in the adjacent land the commercial activity are going on likewise petrol pump, hardware shop and educational institution are there.

(ii) For further direction to the Respondents authority to reconsider the case of the petitioner in the light of the decision taken by the Arbitrator who in a similar situated case for the same project has granted compensation @ commercial value though in a case of the petitioner has rejected the same only on the basis of the report of the concerned officer.

(iii) And for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law.”

The case of the petitioner in brief is that the land of the petitioner appertaining to Khata No.192, Plot no.22 measuring an area of 1.2532 hectares situated in the village Madanpur, P.S. Madanpur, District Aurangabad adjacent to the National Highway was subject matter of the land acquisition case being L. A. Case No.182 of 2016-17. Being aggrieved by the assessment of compensation by the Land Acquisition Officer the petitioner filed L.A. Case no.183 of 2016-17 for enhancement of compensation, however, the same was rejected by the respondent authorities. It is the case of the petitioner that other similarly situated persons have got higher compensation. Not having got any relief from the authorities, this writ application was filed for the prayer mentioned hereinabove.



A counter affidavit has been filed on behalf of the respondent No.2 stating therein that the notices under section 3-G of the National Highways Act, 1956 ('the Act' in short) was issued to the petitioner informing her to appear before the competent authority. The petitioner appeared and raised objection and thereafter the award of her acquired land was prepared under the Act. Being aggrieved by the said award, the petitioner preferred a case before the Arbitrator-cum-Additional Collector, vide L.A. Case no.183 of 2016-17 and the said Arbitrator did not find any merit in the case of the petitioner.

Learned counsel appearing on behalf of the NHAI relying on the provisions of section 3-G and section 3-H of the Act together with the judgment of the Division Bench of this Court in the case of **Project Director, National Highway Authority, Araria at Purnea, Bihar and Anr. vs Md. Gufran Alam & Ors.** reported in **2014 (1) PLJR 207** submits that it has categorically been held therein that on determination of the amount of compensation by the arbitrator, the remedy available to the effected party would be an application under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the said arbitral award. As such it is submitted that the instant



application would not be maintainable.

It would be relevant to quote paragraph nos. 8 and 9 of the aforesaid judgment in the case of **Project Director, National Highway Authority** (supra) which is as follows:

“8. We may look to the certain provisions of the Act of 1956 and the Act of 1996 which are relevant for resolution of dispute before us. Section 3-G of the Act of 1956 provides for determination of amount of compensation by the Competent Authority. Sub-section (5) thereof empowers either of the parties aggrieved by the award of the Competent Authority to seek arbitration against such award. Sub-section (6) of Section 3-G of the said Act provides that the proceeding before the Arbitrator shall be regulated by the provisions contained in the Act of 1956. Section 3-H of the Act of 1956 provides for deposit and payment of amount. Sub-section (1) thereof provides for deposit of the amount of compensation with the Competent Authority. Sub-section (2) thereof provides for payment of the amount to the claimants. Sub-section (6) thereof provides for deposit of the amount of difference in compensation awarded by the Arbitrator. It is this sub-section (6) which is pressed into service by the writ petitioner.

9. As recorded hereinabove, the proceedings before the Arbitrator are governed by the Act of 1996. Section 34 of the Act of 1996 provides for a remedy against the arbitral award by an application for setting aside the arbitral award before the Court. The “Court” is defined under Clause (e) of sub-section (1) of Section 2 of the Act of 1996 to mean, “the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter



of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small Causes.” Hence, it is evident that the remedy against the arbitral award lies before the civil Court. Section 36 of the Act of 1996 provides for enforcement of the arbitral award under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Thus, the statutory remedy for enforcement of the arbitral award made under Section 3-G (5) of the Act of 1956 lies before the civil Court.”

Having heard learned counsel for the parties and taking into consideration the submissions made, this Court finds substance in the submissions made by learned counsel appearing for the NHAI.

Having regard to the facts and circumstances of the case including the reference of the National Highways Act, 1956 together with the Arbitration and Conciliation Act, 1996 and the ratio of the judgment in the case of **Project Director, National Highway Authority** (supra), the Court is of the opinion that the instant application is not maintainable and is accordingly dismissed with liberty to the petitioner to pursue the remedy available to him under law.

In case any application is preferred, while considering the application for limitation, the authority concerned shall take into



consideration the period for which the matter in issue was being
pursued before this Court.

(Partha Sarthy, J)

Bibhash

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CAV DATE	
Uploading Date	20.2.2023
Transmission Date	

