

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.185 of 2022

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1. SHANKAR RAY SON OF LATE BASU RAY RESIDENT OF VILLAGE-CHAKA RAJ ALI, POLICE STATION- PATORI, DISTRICT-SAMASTIPUR.
 2. SHIV CHANDRA RAY SON OF LATE BASU RAY RESIDENT OF VILLAGE- CHAKA RAJ ALI, POLICE STATION- PATORI, DISTRICT-SAMASTIPUR.

... .. PETITIONER/S

VERSUS

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE AND LAND REFORMS, GOVERNMENT OF BIHAR, PATNA.
2. THE PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE AND LAND REFORMS, GOVERNMENT OF BIHAR, PATNA.
3. THE DISTRICT MAGISTRATE-CUM-COLLECTOR, SAMASTIPUR.
4. THE DISTRICT LAND ACQUISITION OFFICER, SAMASTIPUR.
5. THE SUB-DIVISIONAL MAGISTRATE, SHAHPUR PATORI IN THE DISTRICT OF SAMASTIPUR.
6. THE CIRCLE OFFICER, SHAHPUR PATORI ANCHAL IN THE DISTRICT OF SAMASTIPUR.

... .. RESPONDENT/S

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar
For the Respondent/s : Mr. Sajid Salim Khan (Sc25)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 03-11-2023 Heard learned counsels for the parties.

2. This writ petition has been filed for directing the the respondents to treat the land of the petitioners under Acquisition proceeding as residential land bearing Khata No. 46, Khesra No. 541, measuring area 0.13 Decimals, situated at



Mauza-Chaksaho, Thana No. 169 situated at Village main road and also to calculate the amount of compensation of the land of the petitioners under Acquisition proceeding at the existing market rate of residential plot situated at village main road i.e. @ Rs. 5,00,000/- and above per katha and to make payment of the compensation amount at the existing market rate to the petitioners under the Right to fair compensation and transparency in land Acquisition, Rehabilitation and Resettlement Act. 2013 (herein after referred in short as the Act, 2013) As the respondents have calculated the compensation amount treating the land of the petitioners as Bhith-ii at the much lessor rate e.e. about Rs. 16,000/- per Decimal (Rs.70,000/- per katha) than the existing market rate of the land of the petitioners.

3 . However, learned Counsel for the State appears and raises preliminary objections to the effect that an alternative remedy is available to the petitioner with regard to the grievance of the petitioner by way of The provisions of Section 3-G. of "The National Highways Act," 1956, Sub Clause 5, 6 and 7 are as under:-

"(5) If the amount determined by the competent authority under Sub-section (1) or



sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under section 3-A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking



possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

The Hon'ble Supreme Court in the case of The National Highway Authority of India Vrs. Sayedabad Tea Company Ltd. And Ors. In Civil Appeal No(s). 6958-6959 of 2009 decided by the Hon'ble Supreme Court on 27th August, 2019, has observed in para 16 as under:-

(16). We are in full agreement with the legal position stated by a two Judge Bench of this Court in General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. Case (supra) but like to add



further that the Act, 1956 has been enacted under Entry 23 of the Union List of the Seventh Schedule of the Constitution with the exclusive power to legislate with respect to highways, which are declared to be national highways by or under law by the Parliament. It is a comprehensive code and a special enactment which provides as inbuilt mechanism not only in initiating acquisition until culmination of the proceedings in determining the compensation and its adjudication by the Arbitrator to be appointed by the Central Government and if still remain dissatisfied, by the Court of law."

4. Learned Counsel for the petitioner does not dispute the above proposition of law .

5 . In view of the above provisions, remedy lies to a person, who is aggrieved regrading quantum of compensation awarded by the Land Acquisition Officer, where the land has been acquired for under the National Highways Act.

6. The petitioner would be well advised to take up the remedy as provided therein. Since the remedy is of statutory in nature, the writ petition directly challenging the award on the



ground of insufficient compensation, would not be maintainable.

7. Accordingly, this writ petition is disposed of with liberty to take up the matter before the concerned authority as provided under section as above .

8 . It goes without saying that if any question of limitation arises before the competent authority, the same shall be considered, taking into consideration the fact that the petitioner was pursuing the issue before this Court.

(Prabhat Kumar Singh, J)

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