

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1192 of 2023

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Manju Devi Wife of Krishna Sharma, Resident of Village- Nehalpur, Post-Neuri, Police Station- Belaganj, District- Gaya. At present residing at L.I.G.- 140 Old Housing Board Colony, Gaya.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Road Transport and Highways, New Delhi.
2. The National Highway Authority of India Limited under the Ministry of Road Transport and Highways, Govt. of India, New Delhi.
3. The Project Director, N.H.- 83, National Highway Authority of India, Govt. of India, New Delhi
4. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
5. The District Magistrate, Gaya
6. The Arbitrator-cum-Additional Collector, Gaya
7. The District Land Acquisition Officer-cum- the Competent Authority, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No2, Adv.
For the Respondent/s	:	Mr. Radhika Raman, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 28-06-2023 Heard learned counsel for the petitioner, counsel for the State and counsel for the N.H.A.I.

2. The present writ petition has been filed against the order dated 06.04.2018 contained in Memo No. 403 issued by the Arbitrator-cum- Additional Collector, Gaya passed in R.A. No. 42 of 2014-15.

3. Counsel for petitioner submits that the land of the petitioner appertaining to Thana No.- 353, Police Station-

Bodhgaya under Plot No.- 68 appertaining to Khata No. 53 situated at Village- Mastpura, District-Gaya measuring an area of 0.11 Acre has been acquired for construction of National Highway No.- 83 from Dobhi to Patna.

4. It has been submitted that the award of compensation has been prepared and petitioner has received amount of Rs. 1,63,914/-(One lakh sixty three thousand nine hundred fourteen only) with protest. Thereafter, the petitioner filed an appeal before the District Land Acquisition Officer-cum- Competent Authority, Gaya which was sent to the Arbitrator where the arbitration case has been lodged bearing R.A. No. 42 of 2014-15. in which final order has been passed which is annexed as Annexure-2.

5. Counsel for the State submits that the present writ petition is not maintainable as the remedy available to the petitioner is to prefer appeal under Section 34 of the Arbitration and Conciliation Act, 1996. (hereinafter referred to as 'the Act of 1996')

6. Counsel for N.H.A.I. submits that the remedy lies against the said order passed in the arbitration case is not before this Court under Article 226 of the Constitution of India rather the appropriate remedy is to prefer an application under Section

34 of the Act of 1996 for setting aside the award in arbitration proceeding.

7. Upon hearing the parties and going through their pleadings and also the position of law, it is admitted that the petitioner's dispute is relating to acquisition of land for the purpose of construction of N.H. No.83 from Dobhi to Patna. It is also admitted that the acquisition of land is guided by the National Highways Act, 1956 (48 of 1956). (hereinafter referred to as 'the Act of 1956') The arbitral proceeding under this Act has been heard under Section 3(G) (5) of the Act of 1956. For the purpose of deciding this dispute, it is necessary to place the provision of Sections 3(G)(6) of the Act of 1956 which state as follows:-

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

8. Upon conjugal reading of Sections 3(G)(5) and (6) of the Act of 1956, it becomes crystal clear that the remedy against the order passed by the Arbitrator under Section 3(G)(5) of the Act of 1956 shall lie / run according to the provisions of Chapter VII of the Act of 1996. Section 34 (1) of the Act of

1996 states that recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Section 34(2) and Section 34(3).

9. In this background, this Court is of firm view that only remedy available to the petitioner is to file an application under Section 34 of the Act of 1996 and hence, this writ petition is dismissed granting liberty to the petitioner to avail his remedy under Section 34 of the Act of 1996.

10. With this observations and directions, the present writ application is hereby dismissed.

11. Limitation application, if any, in filing the said application shall be counted from the date of order passed by this Court.

(Dr. Anshuman, J.)

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