

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18281 of 2018

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Shashi Bhushan Prasad Singh Son of Late Ganesh Singh, Resident of Village
and Post Office-Akhtiyarpur Patedha, Police Station-Sarai, District-Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Vaishali at Hajipur.
3. The District Land Acquisition Officer, Vaishali at Hajipur.
4. The Project Director, National Highway 77 Hajipur, Distirct-Vaishali.
5. The Arbitrator-Cum-Additional Collector, Vaishali at Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Awadhesh Kumar Singh, Advocate
For the NHAI	:	Dr. Maurya Vijay Chandra, Advocate
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 22-04-2024 Heard learned counsel for the petitioner, the State
and the NHAI.

2. The petitioner has prayed for the following reliefs:

*(i) for issuance of a writ in the
nature of writ of Mandamus
commanding the respondents-
authorities to immediate payment
of compensation amount in light of
order dated 19.7.2016 passed by
Arbitrator-cum-Additional
Collector, Vaishali at Hajipur*



(Respondent no.5) in Land Acquisition Mediation Case No. 244 of 2013 after hearing the parties.

3. A counter affidavit now has come on behalf of National Highway Authority of India (respondent no.4) and paragraphs-8 and 9 read as follows:

8. That at the outset, it is stated that the instant petition is not maintainable as the relief prayed for is in the nature of execution of an arbitration award That such a petition is not maintainable as per the ratio laid down by the division bench of Hon'ble Patna High Court, in Project Director, National Highway Authority, Araria at Purnea. Bihar and another versus Md. Gufran Alam and others (2014) PLJR 207, wherein it has been held. that "in view of the statutory remedy for



execution of the arbitral award being available, a petition under Article 226 of the Constitution would not lie. The learned single judge has erred in entertaining the petition under article 226 of the Constitution in the subject matter."

9. That there is a statutory mechanism for acquisition of land for construction of National Highways stipulated within the National Highways Act, 1956. It has been held by the Hon'ble Supreme Court that these provisions form a complete code for the acquisition of land for the construction of National Highways. As per the said statutory scheme, the land vests in the Union of India at the time of publication of the notification



under Section 3D of the National Highways Act, 1956. Thereafter, what remains is the determination of compensation for the acquired land, for which a mechanism is provided in the Act itself. Competent Authority of Land Acquisition under the National Highways Act, 1956 is mandated to determine the compensation and declare the same. If either the Raiyat or the NHAI is dissatisfied with the determination of the amount of compensation, that party is entitled to file claims for higher compensation before the arbitrator appointed under by the Central Government.

4. Dr. Maurya Vijay Chandra, representing the NHAI has taken to this Court to Sections 35 and 36 of the Arbitration and Conciliation Act, 1996 (henceforth for short 'the Act) incorporated in Chapter VIII and read as follows:



35. *Finality of arbitral awards.*

Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

36. *Enforcement.*-(1) *Where the time for making an application to set a the arbitral award under section 34 has expired, then, subject to the provisions sub-section (2), such award shall be enforced in accordance with the provisions the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were decree of the court.*

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the



Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing: Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil



Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a prima facie case is made out that,

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

5. He has further provided a copy of the order of the Division Bench in the case of the **Project Director, National Highway Authority, Araria at Purnea, Bihar & Anr. vs. Md. Gufran Alam & Ors.** reported in **(2014) 1 PLJR 207** with reference to para-9 which read as follows:

"9. In view of the statutory remedy for execution of the arbitral award being available, a petition under Article 226 of the



Constitution would not lie. The learned single Judge has erred in entertaining the writ petition under Article 226 of the Constitution in the subject matter".

5. It is his submission that in view of the specific provision made in 'the Act', the petitioner has alternative remedy.

6. Learned counsel for the petitioner submits that he will be taking appropriate steps in the light of the provision/rights that is available to him.

7. The writ petition stands disposed of granting liberty to the petitioner to act as per 'the Act'.

(Rajiv Roy, J)

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