

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3830 of 2023

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Dilip Kumar Golchha Son of Late Gordhan Das Golchha, Resident of 20/1V
Motilal Basak Lane, Kankurgachi, S.O. Kankurgachi, P.S. Kankurganchi,
Kolkata, West Bengal

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Road Transport and Highways, Government of India, New Delhi.
2. The Managing Director, National Highway Authority of India, New Delhi.
3. The Project Director, NHAI (NH- 57), Purnea Division, Purnea, Bihar.
4. The Project Director, NHAI, Project Office, Araria, District- Araria (Bihar).
5. The State of Bihar through the Principal Secretary, Land Reforms, Government of Bihar, Patna.
6. The District Magistrate, Araria, District- Araria (Bihar)
7. The District Land Acquisition Officer, Araria, District- Araria (Bihar)
8. The Circle Officer, Narpatganj, District- Araria (Bihar)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam (AAG-12)
For the NHAI	:	Mr. Rajesh Shandilya, Advocate Mr. Vinayak Harshvardhan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

8 24-06-2024 Heard Mr. Suraj Samdarshi, learned counsel for the

petitioner and Mr. Vinayak Harshvardhan representing the

NHAI.

2. The present writ petition has been preferred for the

grant of following relief/s:-

*i) To issue an appropriate writ, order or
direction in the nature of mandamus
commanding the Respondent National Highway*



Authority of India to restore the land described in paragraph 5 below to its original condition and hand over possession thereof to petitioner forthwith considering the fact that compensation for the same has not been paid in accordance with consent letter/affidavit dated 02.12.2009 and also considering the fact that consent to convey the land stands revoked in light of letter dated 22.06.2012.

ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondent National Highway Authority of India to pay rent for the land described in paragraph 5 below from 02.12.2009 on account of their illegal possession.

iii) This Hon'ble Court may adjudicate and hold that the consent granted by the petitioner vide letter/affidavit dated 02.12.2009 cannot be perpetual in nature and the same stood revoked in light of letter dated 22.06.2012 on account of failure of Respondent National Highway Authority of India to pay compensation for the land in question at



commercial rate.

iv) This Hon'ble Court may further adjudicate and hold that the possession of Respondent National Highway Authority of India over the land in question is illegal.

v) This Hon'ble Court may further adjudicate and hold that having accepted the consent letter/affidavit dated 02.12.2009 and the terms and conditions, including the commercial rates mentioned therein, the Respondent National Highway Authority of India cannot resile from the same and were duty bound to pay the compensation to the petitioner.

vi) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”

3. This Court had earlier taken note of the counter-affidavit of the NHAI on 11.03.2024. Mr. Suraj Samdarshi representing the petitioner submits that instead of acquisition, it was a consent and as such, they were duty bound to pay the amount. Further, contrary to the stand of the respondent, the acquisition process never took place. He wanted this Court to take note of paragraphs-7 and 13 of the writ petition which read as follows:-



“7. That it is stated that for the above mentioned purpose NHAI took aid of a Policy Circular bearing number 11041/21/2005-Admn dated 30.01.2006 for acquisition of missing plots from bulk acquisition through consent. As per the said Policy Circular proposals were received from some of the Project Implementation Units (PIUS) to acquire missing plots through private negotiations to avoid delay in handing over the sites to the contractor. As per the said Policy it was contemplated that if the land was acquired through the National Highway Act, 1956, the same would cause undue delay in handing over the sites to the contractor. Therefore, it was felt that land acquisition of these missing additional plots through consent would be helpful in several ways enabling NHAI to come into the possession of the land immediately, enabling to avoid inherent delays noticed in the acquisition of the land, to avoid expenditure incurred in publication of notification under section 3A and 3D of the National Highway Act, 1956 in the local newspaper, to avoid court case



challenging land acquisition and enabling NHAI to pay a lump sum amount straight away.

13. That it is stated that after due negotiation and having arrived at a conclusion that commercial MVR of the land would be paid as consideration towards the land proposed to be conveyed to the Respondent authorities, the Petitioner was supplied a format for giving consent to transfer the said land. The Petitioner duly specified in the consent form the rate at which the Petitioner consented to convey the land to the Respondent Authorities. With respect to land mentioned at Sl no. A in para 5, the petitioner was authorised to give consent on behalf of other family members. Furthermore, with respect to land described at Sl no. B, the petitioner gave the consent since the land was in his name.”

4. He as such submits that the respondents were duty bound to make payment which they failed.

5. Learned counsel appearing on behalf of the NHAI took this Court to paragraph-3 of the reply which is incorporated hereinbelow:-

“3. That before averting to the Para-wise



reply to the petition, the herein respondents will crave leave of this court to present preliminary submissions as follow:

PRELIMINARY SUBMISSIONS

a. The Petitioner is guilty suppressiovari and of suggestiofalsi. The Petitioner has deliberately suppressed the material fact that the land pertaining to Plot No. 1122, 1123 and 1482 had been acquired previously for Lateral Road Project in the year 1961-1970. Therefore, there is no need to require the land that was already been acquired once.

b. That herein the Respondent is National Highways Authority of India, a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involve construction of new highways and widening of existing highways, which are vital for development of infrastructure in the country.

c. It is submitted with the intention to acquire the said land notification under Section 3(A) was issued for Khasra 1043 admeasuring an area of 0.104 Hectare as Notification No



1000 (a) dated 13.07.2005. Subsequently, Notification under Section 3(D) was issued vide Notification No.706 (a) on 13.05.2006. It is further submitted that the land acquisition received assent of the Respondent No. 7 as well.

d. That the Petitioner is aggrieved by the quantum of the compensation determined by the authorities. Therefore, the Petitioner has alternated and efficacious remedy of approaching the Ld. Arbitrator under Section 3(G) of the NH Act, 1956.”

6. He submits that out of five patches of land, some of them were acquired almost 50-60 years ago between 1961 to 1970. The further submission is that the notification under Section 3 (D) were issued in the year 2006 and the last submission is that if he is aggrieved, the petitioner should take recourse to Section 3G of the National Highway Act, 1956.

7. Mr. Samdarshi filed reply to the said counter-affidavit and paragraph-4 read as follows:-

“That in reply to statements made in paragraph 3 (a) of the counter affidavit it is submitted on behalf of petitioner that the statement made therein is false and incorrect. Insofar as the acquisition conducted in the year



1961 1970 is concerned, it is stated that the plot no. 1043, 1122, 1123, 1482 and 1483 were initially intended to be acquired however they were not ultimately acquired. This fact would be evident from the copy of the map obtained by the petitioner from the office of Road Construction Department, Road Sub Division, Forbesganj. in which the details of all the plots have been mentioned. However, a note has been appended at the bottom which says that plot mentioned at sl. no.1 to 31 will be deemed to be free from acquisition in light of order dated 17.03.1969 letter no. 815. Plot no. 1043 is mentioned at Sl No. 2; Plot no. 1122 is mentioned at sl No. 3; Plot no. 1123 is mentioned at sl No. 4; Plot no. 1482 is mentioned at sl No. 20 and Plot no. 1483 is mentioned at Sl. no. 15. It is therefore submitted that the petitioner has not suppressed any fact.”

8. There is claim and counter-claim. On the one hand, the petitioner denied the acquisition process, on the other, the respondents claim that some of the plots were acquired way back between 1961-70.

9. In the opinion of the Court there is remedy for the



petitioner to agitate the same before the Arbitrator-cum-Commissioner, in this case, the Divisional Commissioner, Araria who can very well look into the entire matter under Section 3 (G) of the NH Act, 1956.

10. In that background, the petitioner intends to approach the Arbitrator-cum-Commissioner within four weeks for the redressal of the grievance.

11. The respondents do not have any objection to it.

12. The writ petition accordingly stands disposed of granting liberty to the petitioner to approach the Arbitrator-cum-Commissioner concerned, as stated above.

13. If it is filed within four weeks, the Arbitrator shall consider the fact that the writ petition was pending before this Court while taking up any delay petition.

14. Once the petitioner files the petition, the same be expedited and after hearing all the parties, the matter should be taken to its logical conclusion six months thereafter.

(Rajiv Roy, J)

Adnan/-

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