

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10915 of 2024

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1. Abhimanyu Kumar @ Abhimanu Kumar, Son of Ram Kishore Sharam, R/o village- Bagodar, Block- Hisua, P.S.- Hisua, District- Nawada.
 2. Neeraj Kumar, Son of Ram Kishore Sharam, R/o village- Bagodar, Block- Hisua, P.S.- Hisua, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Magadh Division, Gaya.
2. The Commissioner-cum-Arbitrator under the National Highway Act, 1956, Magadh Division, Gaya.
3. The District Magistrate-cum-Collector, Nawada.
4. The District Land Acquisition Officer-cum-Competent Authority, N.H. Act Nawada.
5. The National Highway Authority of India through the Project Director, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, A AG-9
		Mr. Braj Bhushan Mishra, AC to AAG-9
For the NHAI	:	Dr. Iti Suman, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 01-08-2024

Heard Mr. Krishna Kant Singh, learned Advocate for the petitioners, Dr.Iti Suman, learned Advocate for the National Highway Authority of India (hereinafter referred to as ‘the NHAI’) and Mr. Braj Bhushan Mishra, learned counsel for the State.

2. The petitioners by invoking the prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondent no.4, the



District Land Acquisition Officer-cum-Competent Authority, National Highways Act, Nawada to ensure compliance of the order/direction dated 04.08.2023 passed in Arbitration Case No. 551 of 2018 by the learned Arbitrator-cum-Commissioner, Magadh Division, Gaya whereby the learned Arbitrator has directed to compute the compensation of the land of the petitioners treating the same as residential.

3. Learned Advocate for the petitioners contended that despite the direction being issued by the learned Arbitrator way back on 04.08.2023, till date the respondent no.4 is sitting tight over the matter and computation has not been made, compelling the petitioners to approach this Court.

4. At the outset, learned Advocate for the NHAI made preliminary objection that the order passed by the learned Arbitrator is an award and, as such, it is enforceable under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'). In view of the statutory remedy available for execution of an arbitral award, petition under Article 226 of the Constitution of India would not lie is the contention of the learned Advocate for the NHAI.

5. In support of the aforementioned contention, reliance has also been placed on a judgment rendered by the Division



Bench of this Court in the case of the **Project Director National Highway Authority, Araria at Purnea Vs. Md. Gufran Alam & Ors**, reported in **2014 (1) PLJR 207**.

6. At this juncture, learned Advocate for the petitioners drew the attention of this Court to the award passed by the learned Arbitrator, the copy of which is marked as Annexure-1. Referring thereto, it is contended that there is a direction for computation of quantum of compensation of the land by treating the land of the petitioners as residential and, as such, it is only a direction to the Land Acquisition Officer, Nawada and cannot be treated as an award.

7. The submission of the petitioners is wholly misconceived.

8. Having considered the rival contention of the parties and taking note of the fact that the order of the learned Arbitrator is by way of an award under the National Highways Act, 1956 and for enforcement of the award, the petitioners have statutory remedy available under Section 36 of the Act, 1996, which provides for enforcement of arbitral award under the Code of Civil Procedure, 1908, in the same manner as it was a decree of the Court.

9. The issue raised before this Court has also been



considered by the Division Bench of this Court in the case of **Md. Gufran Alam** (Supra) wherein the learned Division Bench of this Court, while setting aside the order of the learned Single Judge has held 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."

10. In view of the aforesaid facts and the position obtaining in law, the writ petition stands disposed of with a liberty to the petitioners to avail the remedy as provided under Section 36 of the Act, 1996 for enforcement of award, as passed by the learned Arbitrator.



11. The jurisdictional court shall expedite the matter at the earliest.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

