

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21329 of 2018

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Girdhari Sah Son of Late Nuja Sah @ Jugeshwar Sah, resident of Village-
Govindpur, Police Station- Simri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Land Reforms, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. District Land Acquisition Officer-cum- Competent Authority, Darbhanga.
5. National Highway Authority of India Ltd., through its Project Manager.
6. The Project Manager, National Highway Authority of India Ltd. Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
		Mr. Jay Prakash Singh, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, S.C.-25
For the N.H.A.I.	:	Dr. Maurya Vijay Chandra, Advocate
		Dr. Gaurav Govinda, Advocate
		Ms. Ankita Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 28-03-2024

Heard learned Counsel for the petitioner, State as

also learned Counsel appearing on behalf of National Highway

Authority of India (henceforth for short 'the N.H.A.I').

2. The present petition has been preferred for the:

*issuance of a writ in the nature of
mandamus commanding and directing the
respondent-authorities, to make payment of
compensation with interest for the land acquired by
the National Highway Authority of India Ltd.,
Darbhanga in terms of the settlement dated
08.06.2013 and the petitioner further prayed for a
direction for payment of compensation in addition
to the above under section 24 of the Right to Fair*



Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, with all consequential benefits attached to such acquisition and the petitioner further prays for issuance of an appropriate writ/order/direction to which he may be found legally entitled to in the facts and circumstances of the present case as stated hereinafter.

3. Learned Counsel for the petitioner submits that 'the N.H.A.I.' decided to acquire the land for the development of N.H.-57 (Darbhanga-Muzaffarpur road widening between 37.75 km to 69.8 km) which included five of his plots.

4. The further submission is that 'the N.H.A.I.' fixed the compensation at the rate of Rs. 1,26,874/- per *katha*. Aggrieved, the petitioner moved before the Arbitrator cum Additional Collector, Darbhanga who after providing opportunity of hearing to all concerned, enhanced the compensation rate to Rs. 2,50,000/- per *katha* vide an order dated 08.06.2013 (Annexure-1 to the petition).

5. This followed the letter dated 16.06.2015 issued by the District Land Acquisition Officer, Darbhanga (henceforth for short 'the D.L.A.O.') requesting the Director, N.H.A.I for providing enhanced compensation amount so that the difference amount of Rs. 10,22,256/- can be paid to the petitioner



(Annexure 3 to the petition).

6. The 'N.H.A.I.' in turn vide letter dated 23.06.2015 informed 'the D.L.A.O.' that in similar such matters, appeals have been preferred and as such the amount is presently being withheld.

7. Learned Counsel for the petitioner has drawn the attention of this Court to a letter issued by 'the N.H.A.I.' by its Project Director, on 24.06.2015 and addressed to the Regional Officer of the same authority and paragraph-8 of the letter read as follows:-

"8. The award has not been sent by the Arbitrator as per record available in this office, hence the date of receipt of DLAO letter in this office on 17.06.2015 will be considered as date of intimation.

In the light of above, it is requested to take appropriate action regarding acceptance of the award of challenging the decision of Arbitrator at the competent court under section 34 of Arbitrator & Reconciliation Act 1996. The time limit to refer the matter to competent court is 90 days from the date of intimation which is 17.06.2015, beyond which the legal reference may not be acceptable at the competent court."

8. He submits that from the aforesaid paragraph, it is



clear that the higher authority of 'the N.H.A.I.' wanted either to accept the award or challenge the decision. This according to him dates back to the year 2015.

9. Learned Counsel submits that thereafter he ran from pillar to post submitting representations, one after another and as there was no response, the present writ petition.

10. A counter affidavit of 'the D.L.A.O.' is also on record according to which in paragraph-6, it has been narrated that pursuant to the order dated 08.06.2013 passed by the Arbitrator, request was made to the Project Director, N.H.A.I, Darbhanga to make available difference amount of Rs. 10,22,256/- so that the full compensation could be paid to the petitioner but in absence of any response, the payment could not be made.

11. The writ petition was filed in the year 2018 and six years later and after this Court passed an order on 28.02.2024, 'the N.H.A.I.' decided to file its response.

12. In paragraphs 14 to 16, the ground taken by it is that the enhanced amount is not at all permissible, the compensation amount of Rs. 2,50,000/- per *katha* is excessive and if the petitioner is aggrieved by the non-payment, he can approach the Civil Court for execution of the same and the



Patna High Court need not be burdened with the matter. However, in paragraph 25, it takes a completely ‘U turn’, stating that under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth for short ‘the 1996 Act’), they have now filed Misc. Case No. 55 of 2024.

13. Dr. Maurya Vijay Chandra appearing for ‘the N.H.A.I.’ in continuation of the counter affidavit submits that as per section 3G which deals with the determination of amount payable as compensation of the National Highways Act, 1956 (henceforth for short ‘the Act’), the petitioner should have to moved before the Civil Court and not in a writ Court.

14. Section 3G of ‘the Act’ read as follows:-

“3-G. Determination of amount payable as compensation.- (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1), for that land.



(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3-C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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.”

15. It would also be appropriate to incorporate **Section 34** of the Arbitration and Conciliation Act, 1996 (henceforth for short ‘the 1996 Act’).

16. Chapter VII of ‘the 1996 Act’ Act deals with the **“Recourse Against Arbitral Award”** and section 34 read as follows:

“34. Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such



award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted



to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.- For the avoidance of doubt, the test as to whether there is a



contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a



party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]”

17. Learned Counsel for ‘the N.H.A.I.’ reiterates that the petitioner should have gone to the competent Court for the execution of the award and thus the writ petition be dismissed.

18. Having heard the parties and on perusal of records, the facts that emerges before this Court is that:

(i) the land of the petitioner was taken for the widening of N.H. 57 (now N.H. 27);

(ii) the petitioner was not satisfied with



the compensation amount;

(iii) upon filing of the petition by him, the Arbitrator enhanced the amount on 08.06.2013 and wanted 'the N.H.A.I.' to release the same so that the payment is made to the petitioner;

(iv) 'the N.H.A.I.', however, chose not to abide by the order of the 'Arbitrator;

(v) if 'the N.H.A.I.' was aggrieved by the order, it should have promptly challenged the order passed in the year 2013 under Section 34 of 'the 1996 Act' before the competent Court;

(vi) however, till the year 2024 (almost a decade) neither the order was challenged nor payment made despite its own superior authority sounding about in vide letter dated 24.06.2015;

(vii) only after a comprehensive order was passed by this Court on 28.02.2024, 'the NHAI' chose to file reply after six years, simultaneously filing Misc. Case no. 55 of 2024.

(viii) on the one hand their stand is that it is the petitioner who has to approach the Civil Court, on the other hand, a decade later in the year



2024, they have preferred Misc. Case No. 55 of 2024.

(ix) this has been done with the sole motive to frustrate the decade old Arbitrator's reasoned order dated 08.06.2013 passed in favour of the petitioner.

19. This Court reiterates that the Misc. Case No. 55 of 2024 has been filed by 'the NHAI' eleven years after the Arbitrator passed the order on 08.06.2013 only to deny the petitioner the fruits of the order of the Arbitrator anyhow. It has to be noticed that the Arbitrator in its reasoned order observed that in similar situate case, Atiullah Khan, compensation amount of Rs. 2,50,000/- was given in Case No. 16/2008-09.

20. The National Highway 57 (now N.H.-27) for which the lands of the petitioner was/were acquired is known as **East West Corridor** and was constructed more than a decade ago. The people/tourist across the country are happily using this dream project of one of the ex-Prime Minister of India but those who facilitated the said safe and smooth movement by allowing the authorities to acquire their lands are still fighting for the rightful dues. It is high time, the files related to their compensation are consigned after payments are made to them as



per the order.

21. Accordingly, this Court directs ‘the N.H.A.I.’ to clear the amount (Rs. 10,22,256/-) to the petitioner (as per the order of the Arbitrator) within a period of two months from today. This will be subject to the outcome, if any by the competent Court in Misc. Case No. 55 of 2024 preferred ten years later by ‘the N.H.A.I.’. If the payment is not made within the aforesaid period, ‘the N.H.A.I.’ will be duty bound to pay an interest of 6% on the said amount (Rs. 10,22,256/-) from the date of the order (28.03.2024) till the actual payment is made.

22. The writ petition is allowed with the cost of Rs. 10,000/- payable to the petitioner along with the compensation amount.

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.04.2024
Transmission Date	

