

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1270 of 2024

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1. Santosh Kumar Pandey Son of Late Bhuvneshwar Pandey, Resident of Village- Laxmipur, P.O.- Laxmipur, P.S.- Pirpainti, District- Bhagalpur, Bihar- 813222.
 2. Shravan Pandey, Son of Late Shivdayal Pandey, Resident of Village- Laxmipur, P.O.- Laxmipur, P.S.- Pirpainti, District- Bhagalpur, Bihar- 813222.
 3. Rajesh Kumar Pandey, Son of Late Ramshuresh Pandey, Resident of Village- Laxmipur, P.O.- Laxmipur, P.S.- Pirpainti, District- Bhagalpur, Bihar- 813222.
 4. Dinesh Pandey, Son of Late Rameshwar Pandey, Resident of Village- Laxmipur, P.O.- Laxmipur, P.S.- Pirpainti, District- Bhagalpur, Bihar- 813222.
 5. Rakesh Kumar, Son of Late Yamuna Prasad @ Jamuna Pandey, Resident of Village- Laxmipur, P.O.- Laxmipur, P.S.- Pirpainti, District- Bhagalpur, Bihar- 813222.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Road Transport and Highways, Transport Bhawan, 1, Parliament Street, New Delhi-110001.
2. The Secretary, Road Transport and Highways, Government of India, Transport Bhawan, 1, Parliament Street, New Delhi- 110001.
3. The National Highway Authority of India, through its Chairman, G-5 and G-6, Sector-10, Dwarka, New Delhi- 110075.
4. The Chairman, National Highway Authority of India, G-5 and G-6, Sector-10, Dwarka, New Delhi-110075.
5. The General Manager, The National Highway Authority of India, Regional Office, Bihar, S.K. Puri, Patna-800001.
6. The State of Bihar, through the Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
7. The Commissioner-cum-Learned Arbitrator, Bhagalpur Division, Bhagalpur.
8. The District Magistrate, Bhagalpur.
9. The District Land Acquisition Officer, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Ac to AAG-4

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 20-06-2024



Heard Mr. Kumar Kaushik, learned counsel for the petitioners and learned AC to AAG-4.

2. The present petition has been filed for the following reliefs:

(i) for issuance of an order, direction or a writ of certiorari for quashing the order dated 02.08.2023-passed in Land Acquisition Appeal Case No.30/2023-24 communicated to the petitioners through Memo No.998 dated 08.08.2023 whereby and whereunder the application filed by the writ petitioners under Section 3-G (5) of the National Highways Act, 1956 for redetermination of the award has been rejected by the Respondent No.7 namely, the Commissioner, Bhagalpur Division-cum-Learned Arbitrator only on the ground of delay without deciding the claim of the petitioners on merit;

(ii) for issuance of an order, direction or a writ of mandamus for directing the respondent authorities to determine the award in accordance with Section 3-G (7) of the National Highways Act, 1956 read with Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the basis of



market value specified in the Indian Stamp Act, 1899 for the registration of the sale deed in the area where the land is situated.

(iii) for issuance of an order, direction or an appropriate writ for restraining the respondent authorities from taking possession of the landed properties of the petitioners without redetermination and payment of award as prayed for in this writ application in accordance with law.

3. It is the case of the petitioners that the award was prepared in the Land Acquisition Case No. 79/2019-2020. Aggrieved by the award and pursuant to the direction of the Patna High Court in CWJC No. 1778 of 2022, the petitioners moved before the Arbitrator-cum-Commissioner, Bhagalpur Division, Bhagalpur but the same came to be dismissed on 02.08.2023 on the ground of delay and laches after recording that the delay was not satisfactorily explained warranting its condonation.

4. The orders passed by the Commissioner, Bhagalpur Division, Bhagalpur read as follows:

“02.08.2023 आज की सुनवाई में आवेदक के विद्वान अधिवक्ता, विद्वान सरकारी अधिवक्ता, एन०एच०ए०आई० के विद्वान अधिवक्ता एवं जिला भू-अर्जन पदाधिकारी, भागलपुर उपस्थित है।



यह मामला माननीय उच्च न्यायालय, पटना द्वारा C.W.J.C. वाद सं०-1778/2022 संतोष कुमार पाण्डेय बनाम भारत सरकार द्वारा सड़क परिवहन और राजमार्ग मंत्रालय एवं अन्य में दिनांक-19.05.2022 को पारित आदेश के आलोक में दिनांक-20. 06.2023 को दायर किया गया है। आवेदक द्वारा राष्ट्रीय उच्च पथ सं०-80 के मुंगेर-मिर्जाचौकी सेक्शन में फोरलेन सड़क निर्माण हेतु मौजा-खिदरपुर, थाना नं०-214, अंचल-पीरपैती के अन्तर्गत खाता नं०-34, खेसरा नं०-452 अंश, रकवा-0.61 एकड़ भूमि अर्जित किये जाने के फलस्वरूप देय मुआवजा राशि के भुगतान हेतु जिला भू-अर्जन पदाधिकारी, भागलपुर द्वारा भू-अर्जन वाद सं०-79/2019-20, पंचाट सं०-17 में दिये गये आदेश को यह कहकर चुनौती दी जा रही है कि दी गई मुआवजा राशि अर्जित जमीन की प्रकृति के अनुसार काफी कम है।

उल्लेखनीय है कि माननीय उच्च न्यायालय, पटना द्वारा प्रासंगिक मामले में दिनांक-19.05.2022 को पारित आदेश के उपरांत लगभग 01 वर्ष व्यतीत हो जाने के बाद अत्यधिक विलंब से मध्यस्थता हेतु मामला दायर करने के संबंध में आवेदक द्वारा कोई कारण नहीं बताया है। बल्कि विलंब क्षांति के बिन्दु पर लिखित रूप में इनका कहना है कि इन्होंने कोई विलंब नहीं किया है। सुनवाई के दौरान मौखिक रूप में भी पूछे जाने पर इनके द्वारा यह बताया जा रहा है कि इन्हें माननीय उच्च न्यायालय के आदेश की जानकारी समय से नहीं मिल पाई थी।



यह अभिकथन विलंब का औचित्य सिद्ध करने हेतु संतोषजनक उत्तर नहीं है। चूँकि आवेदक द्वारा उन्हें अवसर दिये जाने के बावजूद असामान्य विलंब के क्षांति के बिन्दु पर कोई संतोषजनक अभिकथन / साक्ष्य प्रस्तुत नहीं किया है। ऐसी स्थिति में इस मामले में आगे सुनवाई किया जाना संभव प्रतीत नहीं होता है। अतः अंगीकार के बिन्दु पर यह मामला निस्तारित किया जाता है।

आदेश की प्रति संबंधित पक्षकारों को उपलब्ध करा दी जाय।

आयुक्त,

भागलपुर प्रमंडल, भागलपुर”

5. Learned counsel for the petitioners who wanted the case to be heard on merit submit that since the petition has been rejected by the Arbitrator only on the ground of delay and laches, the present writ petition has been preferred so that a direction be given to the respondent Commissioner to take up the matter once again and take it to its logical conclusion. He submits that after the direction of the Court, the Arbitrator should not have dismissed the case on the ground of limitation.

6. The stand of the respondents, on the other hand, is that an order has been passed by the Commission-cum-Arbitrator and even if it is on the ground of delay and laches, now, the recourse before the petitioners is to approach the competent Court under section 34 of the Arbitration and



Conciliation Act, 1996 (henceforth for short, 'the 1996 Act').

7. According to them, an order has been passed by the Arbitrator-cum-Commissioner on 02.08.2023. It is another matter that the same has been rejected on the ground of limitation and in that background, the Arbitrator cannot review its own order.

8. The National Highway Authority of India (for short, 'the NHAI') in support of the case has filed counter affidavit duly served upon the petitioners on 01.05.2024. Learned counsel further draws attention to an order passed in **CWJC No. 15938 of 2023 (Murari Prasad vs. The NHAI & Ors)** by High Court disposed of on **19.04.2024** and it would be appropriate to incorporate paragraphs 6 to 11 of the said order:

"6. It has been incorporated in paragraph no. 8 that if the petitioner is still aggrieved, he has remedy to move under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth for short 'the Act').

7. This counter affidavit was filed on 10.01.2023 after serving a copy upon the learned counsel for the petitioner and there is no rejoinder/rebuttal to the said statement.

8. The NHAI has clarified the reason for classifying the land of the



petitioner and if he is aggrieved and his case has been rejected though on technical ground by the Arbitrator, he still has remedy to move under Section 30(s/c 34) of 'the Act.

9. It would be appropriate that the petitioner approach the concerned Court, if he so wants.

10. The petitioner submits that he will be availing that liberty.

11. Granting such liberty, the writ petition stands disposed of. It has to be taken into account that the petitioner had preferred writ petition and as such, in case there is any delay, it has to be considered in the aforesaid circumstances.”

9. Learned counsel further relied on another order dated 02.05.2024 of this Court in **CWJC No. 1363 of 2024 (Santosh Kumar Pandey & Ors vs the Union of India & Ors)** with reference to paras 6 to 14 which read as follows:

“6. Learned Counsel for the petitioner submits that as the case has been rejected only on the ground of limitation, it has to be reheard and taken to its logical conclusion.

7. Both the learned State Counsel as also learned Counsel appearing on behalf of the N.H.A.I. jointly submitted that whether a reasoned order has been passed on merit



and/or the same is on limitation, now the recourse with the petitioner is to approach the competent Court under section 34 of the Arbitration and Conciliation Act, 1996, (henceforth for short 'the Act, 1996'). They submit that an order has been passed by the Arbitrator cum Commissioner on 08.08.2023. It is another matter that the same has been rejected on the basis of limitation and now the Arbitrator cannot review its own order.

8. This Court is also of the same view. An order has been passed by the Arbitrator and in that background only recourse available to him is to approach the competent Civil Court under section 34 of the '1996 Act'.

9. So far as the no delay submission is concerned, it has to be noted that the Award/notice of the Collector in LA. Case No. 78 of 2019-20 is 09.08.2021 (Annexure-P-3).

10. The petitioner remained inactive for one year and in the year 2022 having thought of the delay approached Patna High Court in C.W.J.C. No. 1778 of 2022. The same was disposed of on 19.05.2022 directing him to approach the Arbitrator under the N.H. Act, 1956.

11. Again he sat over the matter



for one year and on 05.06.2023 filed L.A. Appeal No. 31 of 2023-24. The Arbitrator thus was fully justified in taking decision on limitation holding that no reason has been explained for filing appeal one year after the disposal of writ petition.

12. Learned Counsel for the petitioner submits that he will be approaching the concerned competent Court within a period of four weeks but again the limitation may come into picture.

13. If the petitioner approaches the concerned competent Court within a period of four weeks from today, the Court concerned shall take into account the fact that he was pursuing his remedy before the Writ Court while considering the limitation petition preferred by him. This Court clarifies that the same is restricted to only four weeks and not thereafter.

14. The writ petition stands disposed of with the aforesaid observation.”

10. ‘The NHAI’ counsel thus submits that the petitioners have the remedy before the competent Civil Court under section 34 of ‘the Act’, the prayer sought for in the writ petition cannot be extended to them and the writ petition is fit to be dismissed.

11. Having heard the rival submissions and perusing



the records of the case, this Court endorses the view put forward by the respondents. Admittedly, the Land Acquisition Case No. 79/2019-2020 was disposed of on 19.08.2020. The petitioners remained inactive for couple of years and later preferred CWJC No. 1778 of 2022 challenging the orders passed against them, *(as per the learned counsel for the petitioners though the details of the case nos. are not on record in said writ order)*. The High Court took note of N.H. Act, 1956 and vide an order dated 19.05.2022 directed them to instead approach the Arbitrator under the National Highway Act, 1956.

12. The petitioners again sat over the matter for next one year and it was only on 05.06.2023 that they chose to prefer the Land Acquisition Case No. 30/2023-2024.

13. It was in the aforesaid background that the Arbitrator cum Commissioner taking note of the failure of the petitioners to explain the inordinate delay chose to reject the petition vide an order dated 02.08.2023 which stands incorporated in the earlier part of this order.

14. This Court is of the view that when the petitioners failed to explain the delay in filing the appeal within a reasonable time after the disposal of the writ petition on 19.05.2022, the Arbitrator-cum-Commissioner, Bhagalpur



Division, Bhagalpur was fully justified in rejecting the claim on the ground of delay and laches vide an order dated 02.08.2023.

15. Again, while the order was passed on 02.08.2023, the petitioners preferred the writ petition six months later in the month of February, 2024.

16. In that background, no relief can be granted to the petitioners. The Arbitrator-cum-Divisional Commissioner has passed a reasoned order and as such, he cannot review its own order. The petitioners have the remedy to approach the competent Civil Court under section 34 of the Arbitration and Conciliation Act, 1996, if they so want.

17. The writ petition lacks merit and is accordingly dismissed.

(Rajiv Roy, J)

kiran/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	25.06.2024.
Transmission Date	

