

(2018) 04 PAT CK 0072

In the Patna High Court

Case No : Letters Patent Appeal No.2284 of 2016 IN Civil Writ Jurisdiction Case No. 3575 of 2014

Abhishekh Kumar & Ors

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(2), 5A, 6, 7, 9, 11, 17(1), 17(3)(A), 17(3)(B), 17(4), 18, 11, 12(2), 31, 31(2)
Constitution Of India, 1950 — Article 300(A)

Citation : (2018) 3 PLJR 273

Hon'ble Judges : AJAY KUMAR TRIPATHI, RAJEEV RANJAN PRASAD

Bench : Division Bench

Advocate : Abhay Shanker, Yashraj Bardhan, Arun Kumar Bhagat

Final Decision : Allowed

Judgement

1. This intra-court appeal has been preferred by the aggrieved writ petitioners for setting aside the judgment dated 09.11.2016 passed by the learned

Writ Court in Civil Writ Jurisdiction Case No.3575 of 2014 and to allow the reliefs prayed in the writ application. By the impugned judgment the

learned Writ Court has refused to set aside the Notification bearing of 2016 dt.11-04-2018 issued under Section 4(2) read with Section 17(4) of the

Land Acquisition Act, 1894 (hereinafter referred to as the Act, 1894) and further declaration vide notification issued under Section 6 of the Act, 1894

as contained in Annexure-1 and 2 respectively to the writ application.

CASE OF THE PETITIONERS

2. From the pleadings available on the record it appears that the basic grievance of the writ petitioners was that while their family have earlier made

available some land in revenue Thana No.514, Mauza-Mohamadpur Gautam, area 3.57 acres for rehabilitation purposes to the persons who were

affected due to change of channel in the river Ganga and were required to be rehabilitated in terms of the rehabilitation policy of the government

prepared in the year 2003, further acquisition of approximately 5.46 acres of land belonging to the petitioners by giving a go-bye to the provision of

Section 5A of the Act, 1894 is wholly illegal, arbitrary and bad in law and such acquisition is adversely affecting their livelihood.

3. It is the case of the writ-petitioners that publication of declaration under Section 6 together with notification under Section 4 read with Section 17(4)

of the Act, 1894 even before obtaining approval from the government level to dispense with the requirement of Section 5A of the Act, 1894 speaks of

non-application of mind and the respondent authorities have acted in haste by issuing notification under Section 4(2) read with Section 17(4) as also the

declaration under Section 6 of the Act, 1894. Referring to a decision rendered by a learned Writ Court in CWJC No.2270 of 2014 as contained in

Annexure-5 to the writ application, it has been contended that in almost similar facts and circumstance when the requirement of Section 5A was

dispensed with and notification under Section 4 as well as declaration under Section 6 of the Act, 1894 were found to have been signed simultaneously

by the Collector, Begusarai, the same was held to be bad and the learned Writ Court found that approval of both the notifications on the same day is

not permissible in terms of Section 6 of the Act, 1894.

STAND OF THE RESPONDENTS NO.4 TO 6

4. The stand of the State-respondents (respondent nos.4 to 6) in the counter affidavit sworn by the District Land Acquisition Officer, Begusarai is that

the notifications issued under Section 4(2) read with Section 17(4) vide notification no.841 dated 14.03.2013 and declaration issued under Section 6 of

the Act, 1894 vide notification no.876 dated 18.03.2013 are for the purpose of rehabilitating the families displaced owing to change in channel of river

Ganga at Matihani Block in the District of Begusarai. The State Government had to undertake the acquisition in question under emergent provision to

urgently rehabilitate the affected persons for which the L.A. Case No.4 of 2011-12 was initiated and the notifications were issued accordingly. It is

their stand that notice under Section 9 of the Act, 1894 was issued after

receiving approval from the government under Section 7 and 17 of the Act, 1894 vide letter no.2066 dated 26.08.2013 and accordingly steps were taken for payment of compensation amount to the extent of 80%. There is, however no statement in the counter affidavit that 80% compensation was offered or paid to the land-holders.

5. The respondents further contended that despite notices issued under Section 9, the land owners refused to receive the notice therefore a public

notice was issued on 19.10.2013 calling upon the land owners to appear on 28.10.2013. It is stated that after complying with the mandatory provisions

as envisaged in Land Acquisition Act, the competent authority prepared the award on 18.10.2013 to make payment to the extent of 80% of the

compensation amount. Reliance has been placed on the resolution of the government as contained in letter no.2156 dated 16.08.2003 (Annexure-E to

the counter affidavit) to show that in respect of rehabilitating the persons affected with the change in channel of river, by letter issued in the year 1991

which is referred therein, the Collector has been empowered to acquire the land at the rate of Rs.20,000/- per acre provided the loss incurred to the

affected parties are to the extent of Rs.5 lakhs and with respect to the land costing more than the amount which falls within the powers of Collect, the

same shall be approved by the Commissioner of the Region on the recommendation of the Collector.

6. It is their stand that from the records available in the circle it appears that the rehabilitation records were opened up for rehabilitating the

affected/displaced persons in the year 2007-08 pursuant to the consent letter submitted before the Circle Officer, Matihani giving consent for

rehabilitating the affected persons upon their land besides the father of the petitioner no.1 there were other members of the family who had also

consented for the same and accordingly the proceeding in question were initiated by opening up a record by the revenue authorities of the circle.

According to answering respondents possession of the land were taken on

26.11.2013 and purcha to the displaced persons have already been issued. The respondents have denied that conclusion of the proceeding has been

done in haste only to deprive the petitioners from getting the benefits of legislative mandate under the new Act due to acquisition of the land.

7. On record there is a rejoinder filed on behalf of the writ petitioners in which it

is stated that the land acquisition proceeding was earlier initiated in the year 2007-08 which lapsed, but at this stage land of the petitioner have been acquired under Land Acquisition Case No.4 of 2011-12. The petitioners claim that they are still in physical possession of the land and the whole acquisition process has been completed hurriedly by applying the emergency provision only with an intention to gain political advantage as well as to deprive the petitioners of their valuable right as granted under Article 300A of the Constitution of India. The emphasis is on the submission that dispensation with the requirement of Section 5A of the Act, 1894 is only with an intention to deprive the petitioners from their right to fair compensation under the new Land Acquisition Act which came into force from 01.01.2014 and at that stage when notifications were issued under new Act was almost in final stage of the enactment. The petitioners submit by such acquisitions they will be left as a marginalized farmers. It is their case that earlier their family have given some land on their own â??WILLâ?? for which they have received compensation and a reference under Section 18 of the Act, 1894 has been made.

8. The learned writ court refused to set aside the impugned notifications taking note of certain facts, reading of the impugned judgment would show that the Writ Court got impressed with the stand of the State that now entire land acquisition proceeding has reached finality, award has been prepared, notice under Section 12(2) has been issued and Parchas have been distributed hence it would not be proper to allow challenge to the impugned notifications.

SUBMISSIONS OF THE PETITIONERS-APPELLANTS

9. While assailing the impugned judgment of the learned Writ Court learned counsel representing the writ petitioners-appellants would submit that at the first instance learned writ court has committed an error by recording that after following all the procedures under the Act, 1894 an award was prepared on 18.10.2013 under Section 11 of the Act, 1894 and notice under Section 12 (2) of the Act, 1894 was issued to the interested persons. Learned counsel submits that Annexure-D to the counter affidavit of respondent nos.4 to 6 is not an award as envisaged under Section 11 of the Act, 1894, rather it is an estimate of 80% of compensation which was required to be prepared before publication of Section 6 declaration. Reference in this

regard is also made to paragraph 19, 22, 23, 24 and 25 of the Executive Instructions. He submits that Form of estimate even though is provided but at the same time it is permissible to use the Form of Award as per Executive Instructions, therefore the authorities of the State mislead the Court saying that it is an award. According to him, a bare perusal of Annexure-D to the counter affidavit would show that it is an estimation of the compensation to the extent of 80% based on the valuation khatiyani. The 80% estimated compensation prepared is in Form 15 under Schedule XIV form no.220 under Land Acquisition Manual, 1928. This has to be read along with abovesaid Executive Instructions and Section 17(3-A) of the Act, 1894 whereunder before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section(3) (a) tender payment of 80% of the compensation towards such land as estimated by him to the persons entitled thereto and (b) pay it to them unless prevented by someone or more of the contingencies mentioned in Section 31; sub-section(2). Learned counsel also refers sub-section (3-B) of Section 17 of the Act, 1894 to show that amount paid or deposited under sub-section (3-A) shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess payment may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue. It is submitted that estimation of compensation for purpose of Section 17(3-A) is not an "award" as envisaged under Section 11 of the Act, 1894. It is submitted that Section 11 Award is to be based on a complete enquiry, spot verification taking note of market value, cess etc. In this case no such enquiry was ever held. Annexure-D to the counter affidavit is only an estimation of 80% compensation is a fact, mentioned at the top of Annexure "D" but the same has been taken by the learned writ court as an award and thereby the petitioners have been ousted on the ground that they have moved this Court after completion of the entire land acquisition proceeding. It is further submitted that no notice under Section 12(2) was ever issued to the land-holders and even respondents in their counter affidavit did not claim to have issued notice under Section 12(2).

10. It is further contended by learned counsel representing the appellants that on perusal of three copies of the affidavits which are part of Annexure-

G (series) it would appear that earlier Ramesh Kunwar (father of petitioner no.1), Dinesh Kunwar and Pawan Kumar are said to have given consent

for certain land, of the given description, on their own will and volition but lands were not acquired in the Land Acquisition Proceeding initiated in the

year 2007 which will be evident from the order-sheet of the Circle Officer, Matihani enclosed as Annexure-F to the counter affidavit of respondent

nos.4 to 6. If the land acquisition proceeding initiated by Circle Officer did not proceed and the very purpose of offering the land got lost as many of

the displaced persons got settled over the period, there was no reason that in the year 2011-12 by initiating a fresh proceeding under emergency

provision the land of these petitioners would be acquired without giving them an opportunity of hearing under Section 5A of the Act, 1894.

11. It is submitted from the pleadings on record that the physical possession of the land is still with the petitioners and the petitioners have been

regularly paying rent with respect to the land in question which will be evident from the rent receipts brought on record with the rejoinder as

Annexure-6 series. It is submitted that the land acquisition office was sleeping over the matter of rehabilitation proposal of displaced persons for past

ten years after framing of the policy and it was only when there was a visit of the Chief Minister of the State, a hurried decision was taken to proceed

with the emergency provision without application of mind to the facts of the case. The proposal for acquisition under emergency provision was made

on 30.03.2012, but it took one year to the respondents to come out with a notification under Section 4(2) read with Section 17(4) of the Act, 1894 and

therefore, if the respondents can wait for a year in the matter of issuance of notification under Section 4(2), there is no reason why they cannot follow

the mandatory provision of Section 5A of the Act, 1894 and in the given facts why the respondents may be allowed to dispense with the right of

hearing of the petitioners which is a valuable right and it relates to protection of their livelihood. Learned counsel would point out that declaration under

Section 6 of the Act, 1894 was got signed by Collector simultaneously with the notification under Section 4(2) read with 17(4) without there being any

approval of the government to adopt emergency provision. No explanation note has been brought on record by respondents to show that a proposal

based on reason was sent to the government and got approved before declaration under Section 6 of the Act, 1894 therefore, he submits the whole acquisition proceeding is illegal as has been held by courts of law in catena of judgments. It is submitted that action was taken hurriedly only to deprive them of their right to fair compensation under the new Land Acquisition Act.

12. Learned counsel has once again pointed out that vide order dated 09.05.2014 passed in C.W.J.C. No.2270 of 2014 the learned Writ Court has in

the matter of land acquisition proceeding decided these issues in similar circumstances of Begusarai itself and initiated simultaneously vide Land

Acquisition Case No.1 of 2011-12 but in the present case the learned Writ Court has rejected the writ application without going into the merits of the

case. It is lastly contended that the statement made by State that they have distributed 'Parchas' is totally wrong and is based on a mere paper

transactions. Attention of this Court has been drawn to Annexure-4 enclosed with the counter affidavit of respondent nos.4 to 6, filed in this

appeal, in the column meant for signature of the persons to whom Parchas are issued there is no signature of any recipient of Parchas, moreover

Annexure-4 contains the land involved in the present case as well as land involved in L.A. Case No.1 of 2011-12 in which a learned Writ

Court has already quashed the entire acquisition proceeding.

SUBMISSIONS OF THE RESPONDENTS

13. Learned counsel representing the State has supported the judgment of the learned Writ Court and submits that the learned Writ Court has rightly

dismissed the writ application for the reasons mentioned in the impugned judgment. Learned counsel has reiterated the stand of respondent nos.4 to 6

as stated in their counter affidavits filed in the Writ Court as well as in appeal.

CONSIDERATION

14. Having heard learned counsel for the writ petitioners-appellants and learned counsel representing the State as also on perusal of the records, we

find that the learned writ court has ousted the petitioners at the threshold mainly on the ground that they have moved this Court after completion of the

land acquisition proceeding by way of preparation of 'Award' under Section 11 of the Act, 1894, the writ Court also recorded that notice under

Section 12(2) was issued to the petitioners and 'Parchas' have been issued to displaced persons. If these facts recorded by the learned Writ

Court are correct then there would be no difficulty in upholding the impugned judgment but what appear to us from the submissions and record are as

under:-

(i) There is no denial of the fact that earlier a land acquisition proceeding was initiated in the year 2007-08 which lapsed and the land in question has

now been acquired under the Land Acquisition Case No.4 of 2011-12. A perusal of the certified copy of the order-sheet as contained in Annexure-3

to the writ application shows that earlier the Land Acquisition Case bearing No.03/07-08 was initiated, the same records were revived on 14.06.2011

after receipt of a direction from the office of Additional Collector, Begusarai vide his letter no.1399 dated 13.06.2011 and because of the said direction

of the Additional Collector, Begusarai the District Land Acquisition Officer placed the record on 14.06.2011, registering a case being L.A. Case

No.4/11-12.

(ii) While initiating L.A. Case No.4/11-12, on the very first day the order shows that proposal was received for taking up the proceeding under the

emergency provision, the reason for acquisition applying emergency provision is nowhere stated while registering the proceeding. This proceeding

proceeded on the same report of Kanungo/ Amin which was part of the record of L.A. Case No.1/11-12

(iii) From the very beginning it was decided to go for this acquisition under emergency provision but on the part of the revenue authorities they took

almost two years in publication of the notifications under Section 4(2) read with Section 7(4) and 17(1) of the Act, 1894. The time taken in publication

of the notifications as contained in Annexure-1 and 2 itself is a proof of fact that there was no urgency in the matter of acquisition of land and right

from the day one without their being any approval from the government level the proposal was taken locally to apply the emergency provision. It

shows that the emergency provision was applied without application of mind. There is neither any pleading nor material on record to show that any

explanatory note, giving reasons for dispensing with Section 5A hearing, was ever sent for approval to the government. In this regard there is a clear

violation of the Executive Instructions framed in this regard. Reference in this regard be made to paragraph which I quote hereunder:-

19. Special procedure under Section 17(4). "Section 17(4) of the Act

authorizes the State Government to dispense with the procedure laid down in Section 5-A and issue the declaration under Section 6 immediately after the publication of the notification under section 4(1), without inviting or hearing objections. When it is considered necessary to have recourse to this special procedure, the sanction of Government should be applied for at the time of submission of the draft notification under Section 4(1). As the effect of this special procedure is not merely to accelerate the proceedings but also to deprive persons interested in the land of a statutory right to contest the propriety of the acquisition, all such applications required careful examination. The requiring authority should therefore furnish the Collector with full reasons justifying their proposal, which should be carefully scrutinized, and all available materials placed before Government to enable them to decide whether the project is really of such an urgent nature that the adoption of the emergent procedure is justified. The Collector is required to certify in such cases that there is no objection to the acquisition of the land on any general or specific grounds.

When in any case the State Government direct that the provisions of Section 5-A shall not apply, the notification under Section 4(1) will issue in the forms 2 to 4 with the omission of the paragraph relating to the filing of objections, and with a statement that in exercise of the powers conferred by section 17(4) the State Government have ruled that the provisions of section 5-A shall not apply to the case. On the publication of the notification in the gazette, general notices shall be issued in the manner laid down in paragraph 12 and the Collector shall at once take measures to submit the draft declaration and other documents required, through the usual channel, for publication at the earliest possible date. It should be noted that even in cases where the provisions, of section 5-A have been followed in full, it is open to the State Government to make use of section 17(1) to take possession before the award.â??

(iv) It is apparent from the order-sheets itself that there was a visit of the Chief Minister of the State in the District and considering the same on 30.03.2012 a direction was issued by the District Land Acquisition Officer to expedite the process of acquisition. On the same day, the District Land Acquisition Officer passed an order that the land is being acquired under the emergency provision, however, there is nothing on record to show that

prior to 30.03.2012 any government approval was obtained to proceed for acquisition under the emergency provision of the Act, 1894.

(v) On 13.04.2012, the District Land Acquisition Officer approved the draft notifications under Section 4 and Section 6 of the Act, 1894 and sent it to

the Additional Collector to get signature of the District Magistrate on the draft copy and to be sent to the Commissioner, Munger Division, Munger

with recommendations. Upto this date there is no whisper of preparation of an estimate of cost in connection with this L.A. Case.

(vi) It took one year for these authorities again in getting the notification under Section 4 and Section 6 published which were finally published on

14.03.2013 and 18.03.2013 respectively.

(vii) The record further shows that after publication of notices under Section 4 and 6 of the Act, 1894 a proposal was sent under Section 7 and Section

17 of the Act, 1894 to the Commissioner. Upto this date also there is no preparation of estimate of cost. The records proceeded and finally as it

appears the sanction under Section 17(1) was received from government vide letter no.2066 dated 26.08.2013 which has been recorded vide order

dated 23.09.2013 under the signature of the District Land Acquisition Officer, Begusarai. Apparently the sanction under Section 17(1) is post facto

declaration of Section 6 notification and without there being any application of mind.

(viii) By the same order direction was issued to prepare the notice under Section 9 and to place the same. Section 9 notices were shown prepared and

placed for signature but in whose name notices were prepared and notices sent are not disclosed in the counter affidavit.

(ix) It appears that on 28.10.2013 it was recorded that Section 9 notices were sent to the land holders but those notices were returned with peonâ??s

note that they have returned the notices and they had refused to receive the notices. In these circumstances, the Amin/Kanungo was directed to

prepare 80% based on the valuation khatiyân so that award may be declared.

(x) From the endorsement made in margin portion of the order dated 28.10.2013 it would appear that on 21.11.2013 Amin/Kanungo prepared the

valuation khatiyân which was signed by him and the same District Land Acquisition Officer sent the map etc. to the Additional Collector for his

approval. The Additional Collector sent it to the Collector for his signature. The

Collector, Begusarai signed the map for purpose of taking possession of land.

(xi) On 25.11.2013 the District Land Acquisition Officer, Begusarai directed the Circle Officer, Matihani to take possession by 26.11.2013.

15. From the certified copies of the order-sheets annexed as Annexure-3 to the writ application it appears that an order was recorded whereunder it is

stated that records have been placed with 80% award based on the valuation khatian which is being placed for signature but this order has been

penned down by cutting and has not been signed. Just below the said order the District Land Acquisition Officer wrote another order directing the

Amin and Kanungo to obtain particulars of sale-deeds from the Registry Office and to place them. This order is dated 30.11.2013 which clearly

means that at this stage enquiry for purpose of "Award" under Section 11" begun but thereafter the petitioners moved this Court in the

writ jurisdiction.

16. One thing is apparent from the records that this file of the land acquisition proceeding was sent to the office of the Collector on 22.11.2013 for

putting his signature on the map so that possession may be taken by the Circle Officer, Matihani. While placing the file before the Collector on

21.11.2013, the Additional Collector has nowhere recorded that award of 80% based on the valuation khatian has been prepared and it was being

sent for signature. The office of the Collector returned the file on 25.11.2013 and thereafter the District Land Acquisition Officer vide his order dated

25.11.2013 fixed the very next date i.e. 26.11.2013 for taking possession. Till this date there is nothing on record to show that 80% of the

compensation was estimated and placed before the Collector for approval.

17. Section 17(1) and Section 17(3-A) and Section 17(3-B) of the Act, 1894 reads as under:-

"17. Special Powers in cases of urgency. (1) In cases of urgency, whenever the appropriate govt. so directs, the Collector, though no such

award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in sec. 9, sub-section(1) [take possession of

any land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

XXXX XXXX XXXX

(3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section(3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the person interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31; sub-section(2),

and where the Collector is so prevented the provisions of Section 31, sub-section(2), (except the second proviso thereto), shall apply as they apply to

the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A) shall be taken into account for determining the amount of compensation required to be

tendered under Section 31, & where the amount so paid or deposited exceeds the compensation awarded by the Collector under Sec.11, the excess

may, unless refunded within three months from the date of the Collector's award, be recovered as an area of land revenue.

18. From the certified copy of the order-sheets it is evident that there was no compliance of sub-section (3-A) of Section 17 before taking possession of the land.

19. In the counter affidavit filed on behalf of the respondent nos.4 to 6 a vague statement has been made regarding the consent said to have been

made available to the authorities by the father of petitioner no.1 named Ramesh Kunwar which according to deponent of the counter affidavit

necessitated the present proceeding and the said consent cannot be revoked. What appears from the record and not denied by the deponent of the

counter affidavit is that earlier proceeding which was initiated giving rise to L.A. Case No.03/07-08 had lapsed and so far as the present proceeding

being L.A. Case No.4/11-12 is concerned, the same was registered at the instance of the Additional Collector, Begusarai who all of a sudden directed

to proceed for acquisition of land in question by applying emergency provision. Rest of the facts as to how the things proceeded thereafter, have been

taken note of by us in detail hereinabove and therefore we have no hesitation in holding that once the land acquisition proceeding being L.A. Case

No.03/07-08 stood lapsed, the consent if any given earlier in course of said L.A. Case No.03-07-08 was not available to the authorities to proceed in

L.A. Case No.4/11-12 by giving a go-bye to the mandatory provision of Section 5-A of the Act, 1894, moreover the order dated 14.06.2011 initiating the L.A. Case No.4/11-12 nowhere talks of consent based acquisition.

20. In the counter affidavit filed before the learned writ court in paragraph 8 the respondent nos.4 to 6 have stated that the competent authority

prepared the award on 18.10.2013 to make payment to the extent of 80% of the compensation amount. Here we find the word "award" has

been loosely used by the deponent of the counter affidavit which is in fact misleading and the same has prevailed over the learned Writ Court also.

From the entire reading of the Executive Instructions on land acquisition process it would be clear that prior to Section 6 declaration the revenue

authorities have to prepare an estimate of cost which has to be approved from appropriate level. This estimate will be used and shall be basis for

preparation of "Award" under Section 11 of the Act, 1894 but for purpose of preparation of "Award" enquiry would be required to be

held after inviting objections, spot verification to find out existence of trees, houses etc., then sale-deeds executed in respect of the sale of land in

vicinity, market value etc. The Form prescribed for preparation of estimate is Form No.6 but for reasons to be recorded the authorities may

depart from it. In this regard the relevant part of paragraph 22 of the Executive Instructions reads as under:-

"Form of estimates" To ensure accuracy it is essential that the original estimate should be calculated, as far as possible in the same manner as

the award, and the form of the estimate should correspond with the form in which the award will be made. Form 6 is the best form for preliminary

estimates for rural areas and should invariably be used for such areas.

In preliminary estimates for sites in towns or in exceptional circumstances the Collector must use his discretion as to the form to be used, but he

should always adopt the method of calculation which is expected to be used in the award, and when the standard form 6 is not used, the reason for

departing from it should be stated briefly on the estimate in an explanatory note. In railway projects there will be a separate preliminary estimate for

each district through which the project passes, but there will not be separate preliminary estimates for each mile."

21. In the present case Form No.15 has been used for purpose of calculation of

80% of the estimated compensation but it has been wrongly described as "Award". Fact remains that only on 30.11.2013 the District Land Acquisition Officer directed Amin and Kanungo to obtain sale-deeds particular from Registry office which clearly demonstrates that it was a step taken towards holding inquiry for preparation of Award under Section 11 of the Act, 1894. Under Section 12(2), immediately after Award is made a notice is to be issued to the land holders. In this case it is not the stand of the respondents that Section 12(2) notice was ever issued.

22. Under Section 17(3-A) a duty has been cast upon the revenue authorities that before taking possession of any land under sub-section (1) and sub-section (2) of Section 17, the Collector shall tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto and pay it to them, unless prevented by someone or more of the contingencies mentioned in Section; sub-section (2).

We have no hesitation in holding that what has been brought on record by way of Annexure-D to the counter affidavit of respondent no.4 is only a calculation of 80% of the compensation as estimated for the purpose of Section 17 (3-A). What is apparent is that this document Annexure-D has been prepared in Form 15 which applies to Section 11 of the Act, 1894 and has been shown signed by the Collector on 28.10.2013 but in fact the signature thereon is that of the District Land Acquisition Officer and not of the Collector, Begusarai. This may be found from the naked eyes if the signature as appearing on Annexure-D is seen simultaneously with the signature appearing on the certified copy of Annexure-3 to the writ application where signature of District Land Acquisition Officer as well as the Collector, Begusarai both may be seen. If this document is taken as an award under Section 11, it will be nothing but a total misreading of the entire scheme of acquisition. No award in terms of Section 11 is claimed to have been prepared but the respondents used a word 80% award which is not a correct expression under the provisions of the Act, 1894 read with the Executive Instructions. No such award was prepared and it is not supported by order-sheets, certified copies of which have been brought on record. Further, if Annexure-D is an award under Section 11 of the Act, 1894 then question arises as to where is the estimate of cost and further estimation of eighty per centum of the compensation amount as envisaged under Section 17(3-A)

which is required to be paid before taking possession of the land. In the entire counter affidavit of respondent nos.4 to 6, there is no statement that the land holders were offered 80% of the compensation which they refused to receive. A bare reading of the counter affidavit shows that date for taking possession of land was fixed on 26.11.2013, but on the said date the estimated amount of 80% of the compensation was not made available to the land holders.

23. We also find from the records that opposite to the order dated 28.10.2013 in the margin portion there is a note of the Amin showing that as per the order valuation khatian has been prepared and is being placed. This valuation khatian was placed under the signature of the Amin on 21.11.2013, if it is so then it is apparent that Annexure-D which is said to be estimated 80% award based on valuation khatian and shown to have been signed on 28.10.2013 is anti-dated.

24. At this stage we also find that in similar circumstance in respect of L.A. Case No.01/11-12 (wrongly typed as L.A. Case No.1/12-13) which is in relation to total area of land about 8.15 acres by applying emergency provision in similar manner in the Begusarai district, the learned Writ Court while considering the case of the land holders in CWJC No.2270/14 held that the land acquisition proceedings as a whole cannot sustain for various reasons including that the Honâ??ble Apex Court in a catena of decision has held that the only right which a citizen has to oppose compulsory acquisition of the land is Section 5-A of the Act and this being a valuable right cannot be ignored except for valid reasons. The learned Writ Court recorded a finding that purpose for acquisition admittedly was for rehabilitating the people who had been displaced because of erosion of river Ganga in the year 1991, i.e., two decades back, thus how and under what circumstances they can be said to be so urgent that they would justify dispensation of objection.

25. The learned Writ Court also took note of the identical situation as is existing in the present case that in the year 2007 also proceedings were initiated for the same very purpose but the same was allowed to lapse. In the said case it was also found that notifications under Section 4 and declaration under Section 6 of the Act, 1894 were signed and approved by the Collector, Begusarai on the same date i.e. 5.9.2012. The learned Writ

Court held that if there was any such urgency then they ought to have been notified forthwith but those notifications were published on 18.3.2013,

therefore, stand of the State that there was any emergency is not made out or accepted.

26. In the present case, all those reasons which are mentioned in respect of L.A. Case No.01/11-12 exist, rather in this case it took two years

approximately for the State in coming out with the notifications under Section 4 and Section 6 of the Act, 1894. If the State authorities could take two

years in publication of notifications under Section 4 and Section 6, this Court is inclined to hold that the application of emergency provision taking away

valuable right of the petitioners to be heard under Section 5-A of the Act, 1894 was made without application of mind.

27. We find that in the light of the discussions made above and the materials which are available on the record and have been discussed hereinabove

we are unable to uphold the impugned judgment dated 09.11.2016 passed in CWJC No.3573 of 2014. The learned Writ Court seems to have been

carried away by bald statements made on behalf of the respondents that entire land acquisition proceeding had concluded and award was prepared on

28.10.2013 and even notices under Section 12(2) of the Act, 1894 was issued whereas there is nothing on record to show that award as envisaged

under Section 11 of the Act, 1894 was prepared. There is no averment in the counter affidavit that notices under Section 12(2) of the Act, 1894 was

issued to the land holders. On perusal of the records we have recorded the findings hereinabove that Annexure â?"D to the counter affidavit of

respondent no.4 to 6 is even though prepared in Form 15 but at the top of it, it is clearly written about nature of the document which is nothing but

estimation of 80% of the compensation amount. The respondents have loosely used the word â?"awardâ?" and that seems to have prevailed over the

learned Writ Court. We have also found that Section 4 and Section 6 notifications were signed on the same date which is illegal and it took two years

for the revenue authorities in publishing the notifications under Section 4 and Section 6.

28. The fact that before taking possession of the land, land holders have not been tendered payment of 80% of the estimated compensation even

though it is apparent from the records that the respondents have nowhere pleaded in the counter affidavit that they had tendered payment of 80% of

the compensation for such land as estimated, before taking possession of the land. In the above view of the matter, judgment of the Honâ??ble Apex

Court in the case of State of Rajasthan Vs. D.R. Laxmi reported in (1996) 6 SCC 445 and in the case of Municipal Council, Ahmednagar Vs. Shah

Hyder Beig reported in (2000)2 SCC 48 on which the learned Writ Court has relied upon would not be applicable because in those cases the

Honâ??ble Apex Court had found that there has been unwarranted delay of about 15-16 years in challenging the proceedings after passing of the

award. The facts of the present case speak otherwise.

29. In result, the entire land acquisition proceeding, being L.A. No. 4 of 2011-12, stands vitiated, hence quashed. It is also held to be in violation of the

Land Acquisition Act of 1894 and in view of Article 300-A of the Constitution of India the acquisition is totally unconstitutional.

30. In the writ application, the petitioners have stated that they are in possession of the land as they are paying rent in respect thereof, in support of

their contention they have enclosed rent receipts for the period after 26.10.2013 when the possession is said to have been taken by the Circle Officer,

Matihani. It is also apparent from the documents enclosed by the respondents themselves that even though they have stated that the Parchas have

been issued, but in the column requiring signature of the persons to whom the Parchas have been issued, there is no signature at all which we record

after perusal of Annexure-H series to the counter affidavit of respondent nos.4 to 6.

31. Be that as it may, as we have set aside the acquisition proceeding, the petitioners would be entitled for similar reliefs as have been granted to the

petitioners of L.A. Case No.1/11-12 of the learned Writ Court. If the land are not in possession of the petitioners-appellants as is the stand of the

State it would be immediately restored to the petitioners and if they have been distributed as is claimed, all steps have to be taken to recall and cancel

the same. Appeal is accordingly allowed.