

(2019) 07 JH CK 0005
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5294 Of 2017

Jagdish Prasad And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-07-2019

Acts Referred:

Right To The Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Re-Settlement Act, 2013 — Section 64
National Highway Authority Act, 1956 — Section 3A, 3(g)(v)
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0005

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ramawatar Sharma, Ankit Kumar, Sweety Topno

Final Decision : Disposed Off

Judgement

1. This writ petition is under Article 226 of the Constitution of India, whereby and whereunder the petitioner has sought for direction upon the

respondents to pay suitable compensation amount as per the new rate of the entire residential acquired land, and shop, according to the commercial

use of the land for shop.

2. It is the case of the petitioner that the land in question, where the shops are there and were being used for the commercial purposes, having

acquired by the State authority to be handed over in favour of the National Highway Authority of India, in pursuance thereto after following the

procedure laid down, due notices have been issued and thereafter, the Award has been prepared, but as yet, not a single penny has been paid to the

petitioner and further that the quantum, as has been fixed in the said Award, is not commensurate with the market rate, since the land in question were

being used for the commercial purposes, therefore, the instant writ petition, since the amount of compensation has been quantified on the basis of the

Land Acquisition Act, 1894, while it ought to have been quantified on the basis of the new Right to the Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Re-settlement Act, 2013, but, have not done so.

3. The State Respondent has filed the counter affidavit, wherein, the stand has been taken that if the petitioner is aggrieved with the quantum of the

Award, the remedy is available under Section 64 of the Act, 2013, but, instead of availing the same, this writ petition has been filed, therefore, it would

be appropriate, just and proper for the petitioner to approach before the competent authority under Section 64 of the Act, 2013 for adjudication of the

quantum of the amount of compensation.

4. Mrs. Sweety Topno, learned counsel appearing for the Respondent-National Highway Authority of India has submitted by taking the stand that

since the N. H. authority is the beneficiary and the paying master and therefore, it would be just and proper to direct the petitioner to approach before

the authority in view of the provision of Section 3 (g) (v) of the National Highway Authority Act, 1956.

5. Having heard the learned counsel for the parties and after appreciating the rival submissions, the factual aspect is not in dispute that the State has

acquired the land by adopting the mechanism of the Land Acquisition Act, 1894. The land has been acquired and the Award has also been prepared

but the petitioner being dissatisfied with the quantum of the Award has not received the same, the plea of assessment of quantum of the compensation

amount has been raised, even though the land in question were being used for the commercial purposes, therefore, the instant writ petition has been

filed and the question, which has been raised by both the learned counsel appearing the Respondent-State of Jharkhand as also the Respondent-

National Highway Authority of India is that the instant writ petition is not maintainable, may not be entertained, since the matter pertains to

quantification of the quantum of the amount of compensation and the Writ Court will not be in a position to decide the quantum, which will depend

upon the various factors to be adjudicated by the competent authority and for that, under the Act, 2013, provision has been made under Section 64 of

the Act 2013 and also under the National Highway Authority Act, 1956.

6. After considering the aforesaid arguments, advanced on behalf of the respondents, this Court is of the view that since the question of quantification of the amount of compensation cannot be decided by this Court sitting under Article 226 of the Constitution of India for the reason since it depends upon the various factors and therefore, when the mechanism is available under the statutory provision applicable, it would be just and proper to direct the petitioner to invoke the said jurisdiction for quantification of the quantum.

The only question remains is as to whether in view of the provision of Section 64 of the Act, 2013 or under Section 3 (g) (v) of the National Highway Authority Act, 1956, to be invoked.

It is the admitted fact in this writ petition that the land has been acquired by the State authority in order to be used by the National Highway Authority,

it is the interested parties and also paying master and therefore, if the petitioner would be relegated to adjudicate the dispute before the authority under

the provision of Section 64 of the Act, 2013 wherein the State authority will exercise the power, there may be grievance with the National Highway

Authority regarding the quantification being the paying master and therefore, when the same mechanism is there under the N.H. Act as also it has

been submitted by Mrs. Topno, learned counsel appearing for the Respondent-National Highway Authority of India Ltd. that the notice has been

effected under the provisions of the Section 3 A of the National Highway Authority Act, 1956 therefore, it would be just and proper to direct the

petitioner to approach before the authority under Section 3 (g) (v) of the National Highway Authority Act, 1956.

7. In view thereof and basing upon the reasons aforesaid, the writ petition is disposed of giving liberty to the petitioner to approach before the

competent authority by invoking the jurisdiction under Section 3 (g) (v) of the National Highway Authority Act, 1956 by making an application

annexing the relevant documents in support of the documents, if any, within a period of six weeks, the said authority will adjudicate upon it after

hearing the petitioner as also calling upon the relevant records from the competent authority of the State Government, so that a decision by passing a

speaking order shall be taken within a period of three months from the date of submission of the claim by the petitioner within the period aforesaid.

8. In view thereof, the writ petition is disposed of.