

**(2012) 09 CHH CK 0009**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (C) No. 3461 of 2011**

Mamta Goel

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

**Date of Decision :** 11-09-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 12(2), 17(1), 4, 4(1), 6

**Citation :** (2012) 3 CG.L.R.W. 137

**Hon'ble Judges :** Prashant Kumar Mishra, J

**Bench :** Division Bench

**Advocate :** Ashish Shrivastava, for the Appellant; Sanjay K. Agarwal, Advocate General and Sumesh Bajaj, Govt. Advocate for State, for the Respondent

## Judgement

Prashant Kumar Mishra, J.—In this writ petition filed under Article 226/227 of the Constitution of India, the petitioner has prayed for quashment of the land acquisition award dated 18-2-2011 (Annexure-P-1) passed by respondent No. 3 Land Acquisition Officer, Raipur, in Land Acquisition Case No. 22/A/82, year 2009-2010 village Mova, Patwari Halka No. 109, R.I. Circle Raipur. The petitioner is owner of lands bearing Khasra Nos. 752, 754 and 755/3, Patwari Halka No. 109/39 village Mova, Raipur. For acquiring a part of Khasra No. 755/3, area 0.251 hectares belonging to the petitioner, amongst other lands, the Land Acquisition Officer issued notification u/s 4(1) read with section 17(1) of the Land Acquisition Act 1894 (henceforth "the Act") on 14-7-2010 (Annexure-P-5) and thereafter, declaration u/s 6 of the Act was published on 9-11-2010 (Annexure-P-6), notice u/s. 9(3) of the Act was issued on 14-12-2010 for hearing on 7-1-2011 and thereafter award was passed on 18-2-2011. After passing of the award notice for disbursement of compensation u/s 12(2) of the Act was issued on 10-3-2011 vide Annexure-P-10.

2. It has been argued by learned counsel for the petitioner that the petitioner is residing at Itwari Nagpur in the State of Maharashtra and therefore she was

never served with any notice under any of the provisions and hence the acquisition having been made without notice to the petitioner is illegal and further that urgency clause u/s 17(1) of the Act has wrongly been invoked disentitling the petitioner and other landowners to raise objection to the acquisition proceedings. It has also been urged that the compensation amount/ expenditure in construction of road has been shared by the C.G. Council of Science and Technology and C.G. Housing Board, however, there being no mention about this fact that the land is also required for C.G. Housing Board and part of compensation will be borne by the said Board, the acquisition proceeding is mala fide and bad in law. Learned counsel for the petitioner has relied on decisions of Hon'ble the Supreme Court in the matter of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, and Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, to argue that invocation of urgency clause u/s 17(1) of the Act is illegal as there was no urgency in the matter.

3. Shri Sanjay K. Agarwal, learned Advocate General appearing for the State has argued that in the subject acquisition proceedings, land of the petitioner along with the land belonging to 10 other holders have been included for construction of approach road to the Science City and Regional Science Center to be established by the National Science Museum Council under the Cultural Ministry, Government of India and for establishment of this ambitious project, the State Government has allotted 40 acres of land at village Daldal Seoni, Tahsil and District Raipur. The subject land belonging to the petitioner along with 10 other holders are of immense importance for construction of approach road for the facility and convenience of the public visiting the Science City and thus the acquisition has been made for public purpose and that since the construction of Science city is complete, the invocation of urgency clause is perfectly in accordance with law. It has also been argued that the notifications under sections 4 and 6 were published in the official gazette as well as in local Newspaper, therefore, there is absolute compliance of the provisions of the Act. If the petitioner is not residing at Raipur, the fault cannot be found with the respondents and that notices were always sent to the petitioner's addresses mentioned in the revenue records. It has been vehemently argued that challenge to the acquisition cannot be made after passing of the award and obtaining possession as has been settled by Hon'ble the Supreme Court in catena of decisions.

4. This Court has heard learned counsel for the parties at length and perused the papers available in the record of the writ petition.

5. In the entire records of the writ petition, there is no whisper about the fact that part of the compensation is paid by C.G. Housing Board, therefore, the said contention deserves to be rejected at once. Even otherwise, the document filed in this regard vide Annexure-P-14 only demonstrates that the expenses of actual construction of the road would be borne equally by the Chhattisgarh Council of

Science and Technology and C.G. Housing Board. It is nowhere mentioned in those documents that the compensation amount has been paid by the C.G. Housing Board. Payment of compensation for acquisition and bearing expenditure for construction of road are two different aspects and cannot be intermixed permitting the petitioner to raise an argument which is contrary to record.

6. This writ petition was presented before this Court on 28-6-2011 challenging the award passed on 18-2-2011. Learned Advocate General has informed that the State Government has already incurred expenditure of about Rs. 100 crores in construction of Science City which is an ambitious project for the newly created State of Chhattisgarh for the benefit of science students and members of the public. After passing of the award possession has in fact been obtained on 23-5-2011 and the revenue records have also been corrected as shown in Annexure-R-1/11 and R-1/12 respectively filed along with the additional return.

7. It is settled in several decisions of the Supreme Court that where the challenge is made after acquisition proceedings have become final and possession has been taken, the Court should be loath to quash the notifications and the award, as held in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, : *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, and the Division Bench judgment of this Court in the matter of *Manoj Rathi vs. State of Chhattisgarh* passed in W.A. No. 185/2011 decided on 20-4-2012.

8. The decisions relied on by learned counsel for the petitioner deal with legality and validity of invocation of urgency clause. However, in the present case, challenge has been made after passing of the award. Hence this writ petition suffers from delay and laches. That apart, possession has also been taken and the projected public purpose is infact a genuine public purpose for acquisition of land under the Act therefore, the facts of the cases/decisions relied upon by the petitioner are distinguishable and have no application in the facts of the present cases.

9. The other argument raised by learned counsel for the petitioner about non-service of notice u/s 9 of the Act. Suffice it would be to observe that in *Nasik Municipal Corporation Vs. Harbanslal Laikwant Rajpal and Others, etc.,* , it has been held that non-service of notice u/s 9(3) of the Act is not fatal for the land acquisition proceedings and even in a case where such notice has not been issued it would not adversely affect the subsequent proceedings including the award and title of the Government in the acquired land. In view of the above, this Court finds no substance in the writ petition which fails and is hereby dismissed.