
(2012) 11 PAT CK 0071
In the Patna High Court
Case No : CWJC No's. 12188 of 2012

Murari Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 36
National Highways Act, 1956 — Section 3(G)(5)

Citation : (2013) 1 PLJR 211

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Advocate : Shashi Nath Jha in both, for the Appellant; Ram Balak Mahto, Krishna Chandra (in both), M/s. Sunil Kumar and Mr. Ranjan Kumar Singh (in 12247), for the NHAI, for the Respondent

Final Decision : Allowed

Judgement

Kishore K. Mandal, J.—Heard Mr. Jha for the petitioner(s), Mr. Singh for NHAI and its official as well as A.C. to A.G. for the State. Both the matters raise common issue inasmuch as some of the lands common in both the applications were acquired by the National Highways Authority of India (for short "the NHAI"). Therefore, both the matters have been listed and heard together with the consent of the party. The order present shall govern them.

2. Relevant facts shall be drawn from CWJC No. 12188 of 2012 in which counter affidavit on behalf of Respondent-NHAI as well as the State has been filed.

3. Petitioner(s) pray for quashing of the order dated 5.11.2011 (Annexure-3) passed by the Respondent-Arbitrator in Case Nos. 44/10-11 and 43/10-11 respectively in terms of the provisions contained in Section 3(G)(5) of the National Highways Act, 1956 (for short "the Act"). Land(s) of the petitioner(s) appertaining to survey plot nos. 2327, 2328 and 2329 situate in Mauza-Araria Sangram, P.S.-Jhanjharpur in the district of Madhubani were acquired for construction/widening of NH-57. In the year 2006 the same was notified for

acquisition. On conclusion of the procedures prescribed therefor, award(s) were prepared in the name of the petitioner(s) (Annexure-1 series) wherein land(s) were treated as residential. There is no dispute that petitioner(s) were paid compensation thereof. The same was accepted by the petitioner(s) with objection and a dispute in terms of the provisions of the Act was raised for enhancement of compensation amount. The application(s) filed by the petitioner(s) is/are enclosed as Annexure-2 series. The matter was referred to the Respondent-Arbitrator and treated as Appeal Case No. 44 of 2010-11. By the impugned order dated 5.11.2011, the Respondent-Arbitrator denied the petitioner(s) any relief. Aggrieved thereby, the present writ application has been filed.

4. Learned counsel for the petitioner(s) referring to the application (Annexure-2) submits that amongst others the claim(s) for enhancement of the award amount was made on the ground that petitioner(s) was/were entitled to receive compensation amount as per the new policy decision of the Government called Bihar Bhuarjan Niti/Bihar Settlement and Rehabilitation Policy, 2007 (for short "the Niti/Policy"). He submits that Respondent Arbitrator while dealing with the case of other claimants in Appeal Case No. 17/ 10-11 (Annexure-9) dealt with the claim of the applicant and granted relief. He submits that from perusal of the order/award impugned in the present writ petitions, it would appear that there is absolutely no consideration with regard to the claim(s) of the petitioner(s) based on 2007 Policy of the Government which is admittedly applicable in relation to the acquisition made under the Act. He submits that various documents were filed by the petitioner(s) including the certificate(s) issued by the Registration Department in order to show that part/portion of the land(s) have already been treated as commercial by the Respondents. He submits that the impugned order simply overlooked the documents placed by the petitioner(s) for enhancement of the compensation amount. In the submission of the counsel for the petitioner(s), the impugned award, therefore, is fit to be interfered with and set aside directing the Respondent Arbitrator to consider the grievance of the petitioner(s) in the light of the document placed on record and pass a fresh award in accordance with law.

5. A counter affidavit has been filed on behalf of the NHAI.

6. Learned counsel for the respondents takes a stand that the award made by the Arbitrator can be challenged before the court of competent civil jurisdiction in accordance with Sections 34 and 36 of the Arbitration and Conciliation Act, 1996.

7. I have considered the rival submissions made at Bar and perused the materials on record. Annexure-2 is the objection/application filed by the petitioner(s) seeking enhancement of the award amount which gave rise to Appeal Case No. 44/ 10-11. It appears therefrom that diverse issues were raised therein relying on different documents. Paragraph 10 thereof specifically deals with the claim based on 2007 Policy/Niti. Counsel for the NHAI has fairly stated before this Court that the said policy of the Government is applicable in relation to the acquisition made by the NHAI under the provisions of the Act. I have gone

through the award(s) impugned (Annexure-3) in the writ petition(s). There is absolutely no consideration of the said claim(s) of the petitioner(s). It appears that the said claim(s) of the petitioner(s) was/were simply overlooked by the Respondent-Arbitrator.

8. Counsel for the petitioner(s) has drawn attention of the Court to Annexure-9 which is yet another award passed by the Respondent-Arbitrator on the claim raised by another applicant in relation to the land(s) situated within the same Mauza called Araria Sangram. At least, one aspect of the matter is apparent from the perusal of the said award that the claim of the applicant for enhancement of the award amount based on 2007 Policy of the Government was considered and relief was granted. Here is the case where specific claim was raised for enhancement of the award amount on the basis of 2007 Policy/Niti of the Government. The impugned order/award does not deal with the said aspect of the matter. The petitioner(s) could have been relegated to the court of competent jurisdiction for setting aside the award in terms of relevant provision of the Arbitration Act but since there is absolutely no consideration of the claim of the petitioner based on 2007 Policy/Niti, this Court does not deem it appropriate to adopt the said course. It further appears from the impugned order (Annexure-3) that in spite of opportunity granted to the State Respondent nobody had appeared to contest the claim(s) of the petitioner(s) by filing written statement/show cause. If the matter is remitted back to the Respondent-Arbitrator then State-Respondent shall also get an opportunity to appear and contest the claim(s) of the petitioner(s) in accordance with law. Let it be recorded that diverse submissions have been made by the petitioner(s) that part of the subject land, if already treated as commercial, then it is wholly inappropriate on the part of the respondent to treat the remaining portion thereof as residential. The Respondent-NHAI, on the other hand, has controverted the aforesaid stand of the petitioner(s). It is submitted that status of the land(s) would depend on diverse facts. The Committee constituted by the authority has already gone into this aspect of the matter and the same cannot be substituted by this Court in exercise of its writ jurisdiction. This Court for the present is not delving into those aspects of the matter. Since the claim of the petitioner shall now be re-examined by the Respondent-Arbitrator this Court would permit the parties to raise those objection/claim before him in accordance with law.

9. For the reasons noted above, order dated 5.11.2011 passed by the Respondent-Arbitrator in CWJC No. 12188 of 2012 and CWJC No. 12247 of 2012 in Case Nos. 44/10-11 and 43/10-11 (Annexure-3) respectively is/are quashed and set aside. Petitioners shall appear before the Respondent-Arbitrator along with a copy of this order within four weeks enabling him to proceed and dispose of the arbitration proceeding(s) afresh in accordance with law. It will be open to the petitioners as well the Respondent-NHAI to place on record additional facts/documents/evidence as they wish to place.

10. The application is allowed in the aforesaid terms. No order as to cost(s).