

(2017) 09 AHC CK 0009
In the Allahabad High Court
Case No : 11246 of 2014

Prashant Singh, & Ors.

APPELLANT

Vs

Union of India Thru Secy., & Ors.

RESPONDENT

Date of Decision : 13-09-2017

Acts Referred:

National Highways Act, 1956, Section 3A(1), Section 3D(1), Section 3C(1), Section 3C(2), Section 3D(2), Section 3D(3) - Power to acquire land, etc - Declaration of acquisition - Hearing of objections - Hearing of objections - Declaration of acquisition - Declaration of acquisition

Citation : (2017) 09 AHC CK 0009

Hon'ble Judges : Dilip Gupta, Dinesh Kumar Singh-I

Bench : Division Bench

Advocate : Hariom Tiwari, R.K. Ojha, M.C. Tripathi, Pranjal Mehrotra, Usha Mehrotra

Judgement

1. Writ Petition No. 11246 of 2014 has been filed for quashing the communication dated 27 January 2014 sent by the Project Manager / In-charge Project Director, National Highways Authority of India to the Additional District Magistrate / Competent Authority, Jalaun in connection with the proceedings initiated for acquisition of land by publication of the notification issued under Section 3-A(1) of the National Highways Act, 1956 in the Official Gazette on 28 December 2012. The petitioners have also sought a relief that the respondents should issue the declaration under Section 3-D(1) of the Act by treating it to be within one year from the date of publication of the Section 3-A(1) notification. 2. Writ Petition No. 23362 of 2017 has been filed by the National Highway Authority of India for a direction upon the Additional District Magistrate (Finance Revenue), Jaulan to process the proposed fresh 3-A(1) notification so that it can be published in the Official Gazette since the earlier 3-A(1) notification ceased to have any effect as the declaration under Section 3-D(1) of the Act was not published within one year from the date of publication of Section 3-A(1)

notification. 3. The records indicate that the notification under Section 3-A(1) of the Act was published in the Official Gazette on 28 December 2012. The said notification mentions that the Central Government, after being satisfied that for the public purpose, the land of which description was given in the Schedule was required for building (widening/six/four laning etc.), maintenance, management and operation of National Highway-25 on the stretch of land from Kms. 242.00 to Kms. 244.600 (Orai-Bhognipur Section) Jalaun, declares its intention to acquire such land. The notification further mentions that any person interested in the land could within 21 days from the date of publication of the notification in the Official Gazette object to the use of such land for the aforesaid purpose under Section 3-C(1) of the Act. The area of the land was proposed to be acquired was indicated 8.505 hectares. The notification under Section 3-A(1) of the Act was also published in the two Newspapers on 27 February 2013 as contemplated under Section 3-A(3) of the Act. 4. The objections filed under Section 3-C(1) were heard and finally disposed of on 16 November 2013. 5. The petitioners of Writ-C No. 11246 of 2014 had earlier filed Writ-C No. 69220 of 2013 which was disposed of on 18 December 2013 with the following observation :- "Heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Hariom Tiwari, for the petitioner and Sri Pranjal Mehrotra, learned counsel for the respondent authorities. Prayer in this petition is for quashing the letter dated 20.11.2013 (Annexure-20 to the writ petition) passed by the Project Officer. During course of argument learned counsel for the petitioner placed before this court the order/recommendation made by the competent authority to the Project Director, National Highway Authority, for proceeding with the declaration under Section 3-D of the National Highway Act, 1956. Section 3-D of the Act provides for declaration of acquisition and thereafter there is a provision of taking possession and in due course the provisions of deposit and payment of the amount as provided in various sub clauses of Section 3 of the National Highway Act. It is not to be emphasised that every step of authority has to be in accordance with law. Sri Pranjal Mehrotra, learned counsel for the respondents, rightly submits that as on date there is no declaration under Section 3-D of the Act, and therefore, whatever is to proceed that is to proceed, as provided in law. In view of the aforesaid provisions, and observation, this writ petition stands disposed of." 6. Writ Petition No. 11246 of 2014 was filed before the Court on 18 February 2014 to assail the communication dated 27 January 2014 sent by the Project Director to the Additional District Magistrate pointing out that the declaration under Section 3-D(1) of the Act cannot be issued for the reason that a period of one year has already lapsed from the date of publication of the Section 3-A(1) notification in the Official Gazette on 28 December 2012. 7. On the other hand, the National Highways Authority of India has filed Writ-C No. 23362 of 2017 asserting that the notification issued under Section 3-A(1) of the Act ceases to have any effect as the declaration under Section 3-D(1) of the Act was not made within one year from 28 December 2012 when the Section 3-A(1) notification was published in the Official Gazette. The prayer, therefore, is that steps should be taken to process the fresh Section 3-A(1) notification that has been submitted

by it. 8. Sri R.K. Ojha, learned Senior Counsel appearing for petitioners assisted by Sri Hariom Tiwari has contended that the period of one year contemplated under Section 3-D(3) of the Act has to be counted from the date of publication of the Section 3-A(1) notification in the two Newspapers and if that be so, the period of one year should be counted from 27 February 2013. It is, therefore, his submission that the reason given by the Project Director that Section 3-D(1) notification cannot be issued is patently illegal. It is, therefore, his submission that the Section 3-D(3) declaration could have been made upto 26 February 2014 and as the petition was filed on 18 February 2014 before expiry of the said period, the date of filing of the writ petition till the date of decision should be excluded and a direction should be issued to the respondents to make the declaration under Section 3-D(3) of the Act within the remaining period of eight days. In support of his submission, learned Senior Counsel has placed reliance upon a Division Bench judgment of this Court in Hare Krishna Public School v. Project Manager Dedicate, Freight Corridore Corp. and Others, 2012 (10) ADJ 202 (DB). Learned Senior Counsel has also placed reliance upon the correspondence exchanged between the parties, to which reference shall be made at the appropriate stage. 9. Sri Pranjali Malhotra, learned counsel appearing for the National Highways Authority of India has, however, placed the provisions of Section 3-A of the Act also 3-D of the Act and has submitted that the period of one year contemplated under Section 3-D(3) of the Act has to be counted from the date of publication of the 3-A(1) notification in the Official Gazette and not from the date of publication of the notification in the two Newspapers. It is, therefore, his submission that the period of one year should be counted from 28 December 2012 when the notification under Section 3-A(1) of the Act was published in the Official Gazette and, therefore, the declaration under Section 3-D(1) could have been made upto 27 December 2013 which was in fact the period indicated in the communication dated 27 January 2014 sent by the Project Manager of the National Highways Authority of India. The submission, therefore, is that the notification issued under Section 3-A(1) of the Act ceases to have any effect as the declaration was not made within one year from the date of publication of the Section 3-A(1) notification in the Official Gazette. It is for this reason that learned counsel submitted that fresh steps were taken for acquisition of the land and a proposal was sent to the respondents, but the respondents have declined to proceed with it for the reason that the earlier Section 3-A(1) notification published in the Official Gazette on 28 December 2012 is still in effect. 10. We have considered the submissions advanced by the learned counsel for the parties. 11. In order to appreciate the contentions advanced by learned counsel for the parties, it would be appropriate to refer to the provisions of Sections 3-A, 3-B, 3-C and 3-D of the Act and they are:- "3A: Power to acquire land, etc. (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. (2) Every notification under sub-section (1) shall give a brief description of the land. (3) The competent authority

shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language. 3B: Power to enter for survey, etc. On the issue of a notification under subsection (1) of Section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to- (a) make any inspection, survey, measurement, valuation or enquiry; (b) take levels; (c) dig or bore into sub-soil; (d) set out boundaries and intended lines of work; (e) mark such levels, boundaries and lines placing marks and cutting trenches; or (f) do such other acts or things as may be laid down by rules made in this behalf by that Government. 3C: Hearing of objections. (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under subsection (1) of Section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section. (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections. Explanation.-For the purposes of this subsection, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of Section 2 of the Advocates Act, 1961 (25 of 1961). (3) Any order made by the competent authority under sub-section (2) shall be final. 3D: Declaration of acquisition. (1) Where no objection under sub-section (1) of Section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in subsection (1) of Section 3-A. (2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. (3) Where in respect of any land, a notification has been published under subsection (1) of Section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect : Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of Section 3-A is stayed by an order of a court shall be excluded. (4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority." 12. A bare perusal of Section 3-D(1) of the Act indicates that where no objection under sub-section (1) of Section 3-C has been made to the Competent Authority within the period specified therein or where the Competent Authority has disallowed the objection under subsection (2) of that Section, the Competent Authority shall, as soon as may be, submit a report to the Central Government and on receipt of such report, the Central Government shall declare,

by notification in the official gazette, that the land should be acquired for the purpose mentioned in sub-section (1) of Section 3-A. Sub-section (2) of Section 3-D provides that on the publication of the declaration under sub-section (1) of Section 3-D, the land shall vest absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3-D provides that where in respect of any land, a notification has been published under sub-section (1) of Section 3-A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease have any effect. 13. It is, therefore, more than apparent that what has been referred in sub-section (3) of the Section 3-D of the Act is the publication of the Section 3-A(1) notification. Section 3-A(1) refers to the publication of the notification in the Official Gazette. The publication of the Section 3-A(1) notification in two Newspapers is referred to in sub-section (3) of Section 3-A. Thus, the legislature itself has drawn a distinction between the publication of Section 3-A(1) notification in the Official Gazette and its publication in the two Newspapers. The time period for issuance of a declaration under Section 3-D(1) is, therefore, one year from the date of publication of the 3-A(1) notification in the Official Gazette. However, learned Senior Counsel for the petitioners has placed before the Court a decision of a Division Bench of this Court in Hare Krishna Public School to contend that the period of one year should be counted from the date the notification under section 3-A(1) of the Act was published in two newspapers. Even if, the contention of learned Senior Counsel for the petitioners that the period of one year contemplated under Section 3-D(3) of the Act should be counted from 27 February 2013 when the Section 3-A(1) notification was published in the two Newspapers is accepted, then too the period of one year lapsed on 26 February 2014 but the declaration was not made by that time. It is not possible to accept the contention of Sri R.K. Ojha, learned Senior Counsel for the petitioners that the time period between filing the Writ Petition on 18 February 2014 and its decision should be excluded because there was no interim order staying proceedings to be taken pursuant to the issuance of the Section 3-A(1) notification. Thus, the notification under section 3-A(1) of the Act ceases to have any effect. 14. It is also not possible to accept the contention of learned Senior Counsel for the petitioners that if the order made by the Competent Authority under Section 3-C(2) is treated to be final under Section 3-C(3), a declaration has to be made irrespective of the time period prescribed in Section 3-D(3) of the Act. Finality is attached in the sense that no appeal or representation can be entertained and it cannot take away or dilute the provisions of Section 3-D(3) of the Act providing for a time limit within which the declaration under Section 3-D(3) of the Act can be made. 15. The National Highways Authority of India requires the land because it has again submitted a proposal under Section 3-A(1) of the Act for its publication in the Official Gazette and in the two Newspapers. The respondents should, therefore, take appropriate further steps as the earlier Section 3-A(1) notification published in the Official Gazette on 28 December 2012 ceases to have any effect and they cannot be permitted to contend that since the Section 3-A(1) notification earlier issued on

28 December 2012 is still in existence, a fresh proposal cannot be entertained. 16. Thus, for all the reasons stated above, Writ Petition No. 11246 of 2014 deserves to be dismissed and is, accordingly, dismissed. Writ Petition No. 23362 of 2017 filed by the National Highways Authority of India, however, deserves to be allowed and is, accordingly, allowed. A direction is issued to the respondents to process the proposal submitted by the National Highways Authority of India under Section 3-A(1) of the Act at the earliest.