

(2015) 07 MP CK 0009
In the Madhya Pradesh High Court
Case No : W.P. No. 6207 of 2010

Ramswaroop and Others

APPELLANT

Vs

National Highway Authority of India and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

National Highways Act, 1956 — Section 3A, 3B, 3C, 3D, 3G

Citation : (2015) 3 MPJR 95

Hon'ble Judges : J.K. Maheshwari, J.

Bench : Single Bench

Advocate : Hare Krishna Upadhyay, Advocate, for the Appellant; K.N. Pethia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.—The petitioners have filed this petition invoking the jurisdiction under Article 226 of the Constitution of India seeking the writ in the nature of certiorari challenging the orders Annexure P/4 dated 7.7.2008, Annexure P/9 dated 13.4.2010, Annexure P/1016.4.2010, seeking further direction to refer the dispute for decision to the Principal Civil Court in whose local jurisdiction the land situated has been acquisitioned, and further prayed to hold the respondent No. 3 liable for the loss caused to the petitioners on account of paying the amount of compensation only to respondent Nos. 4 to 6, exceeding to the jurisdiction which is not conferred on him under the law. The facts, which are not in dispute, are that land in question is situated in Patwari Halka No. 9 of Khasra No. 169 area 1.335 hectare at Village Lolri, Tahsil Tendukhedra, District Narsinghpur. It is also not in dispute that the said land is jointly recorded in the name of the petitioners as well as respondent Nos. 4 to 6. The documents indicating the same are available on record vide Annexures P/1 & P/8. Out of the said land, approximately 20 decimal of the land was acquired for the National Highway No. 26 as per the notification issued under Sections 3A and 3D of the National Highways Act, 1956 (hereinafter shall be referred to as the "Act"). After

acquisition of the said land, the compensation was determined to the tune of Rs. 7,08,000/- and a cheque in the joint name of petitioners as well as respondent Nos. 4 to 6 were prepared. The petitioners submitted a memorandum before the competent authority as per Annexure P/2 on 3.6.2008, requesting to pay the amount of compensation, after apportioning the same regarding their share. The respondent Nos. 4 to 6 have also submitted their objection vide Annexure P/3 dated 24.6.2008 inter alia contending that the land of said khasra number has already been partitioned, and the acquired land fallen into their share. It is also stated that the application seeking partition and correction in the revenue entries has been filed by them before the Tahsildar Tendukheda, which is pending for decision.

However, the amount of compensation may not be disbursed to any other co-owner except the respondent Nos. 4 to 6. On receiving the said objection, the competent authority vide letter Annexure P/4 dated 7.7.2008 asked the detail of partition from Tahsildar Tendukheda, whereupon an enquiry was conducted as reveals vide Annexure P/5 dated 25.3.2010. On receiving the said enquiry report, the objection was submitted by the petitioners vide Annexure P/6. However, vide Annexure P/7 dated 29.3.2010, the competent authority further sought clarification regarding Batankan of the land in question, which were replied, inter alia contending that in the revenue entries, no such Batankan has been made, which reflects from Annexure P/8 dated 1.4.2010. Even thereafter, vide Annexure P/9 dated 13.4.2010, request was sent to the Project Director to issue cheque in the name of respondent Nos. 4 to 6 as per the said decision, and accordingly vide Annexure P/10 dated 16.4.2010, compensation was paid to respondent Nos. 4 to 6, deciding the objection filed by the petitioners.

2. Shri Hare Krishna Upadhyay, learned counsel for the petitioners submits that under Section 3G of the Act, the determination of compensation ought to be made by the competent authority as per the procedure prescribed, and after determination of the amount, it ought to be deposited and the payments be made as per Section 3H of the Act. It is his contention that if any dispute arises with respect to disbursement of the amount of compensation, raised by any person, who is entitled to receive the same, the competent authority shall refer the dispute for decision to the Principal Civil Court of original jurisdiction within whose limits, the land situated. In the case in hand, on determining the compensation, the memorandum was submitted by the petitioners as well as respondent Nos. 4 to 6 setting forth their entitlement, but without referring the said dispute to the Principal Civil Court, the authority competent vide orders Annexure P/9 and P/10 dated 13.4.2010 and 16.4.2010 held that respondent Nos. 4 to 6 are only entitled to receive the amount of compensation and accordingly the cheques were issued through the Project Director in their names, thus, committed an error of jurisdiction in deciding the entitlement, which is not conferred on such authority as per Sub-sections (3) & (4) of Section 3H of the Act. In view of the aforesaid, prayer is made to set aside the order Annexure P/4 dated 7.7.2008, order Annexure P/9 dated 13.4.2010, order delivering amount of

compensation Annexure P/10 dated 16.4.2010 and the dispute may be referred to the competent Civil Court for adjudication.

3. Shri K.N. Pethia, learned counsel for respondent No. 1/National Highways Authority, on the other hand, by filing reply has interalia contended that their role is limited to the extent of paying the amount of compensation, as directed by the competent authority. However, in case of any dispute regarding receiving and non-payment of the amount, it ought to be decided by the competent authority or by the Civil Court.

4. Smt. Divya Kirti Bohrey, learned Government Advocate for respondent Nos. 2 and 3 submits that in exercise of the power conferred on them under Sub-section (3) of Section 3H of the Act, the competent authority has rightly decided, the entitlement of respondent Nos. 4 to 6 to receive the amount of compensation, as they were found in possession of the land as per the enquiry. Thus, the order impugned Annexure P/4 dated 7.7.2008, the order Annexure P/9 dated 13.4.2010, the order Annexure P/10 16.4.2010 have rightly been passed, which do not warrant any interference in the facts of this case.

5. Shri R.K. Verma, learned Senior Advocate assisted by Shri Saurabh Shrivastava, Advocate for respondent Nos. 4 to 6 submits that the competent authority has rightly exercised the jurisdiction under Sub-section (3) of Section 3H of the Act and accordingly paid the amount of compensation to respondent Nos. 4 to 6. However, in case if petitioners feel aggrieved of not receiving the amount of compensation, they may take recourse as permissible, before the Principal Civil Court joining respondent Nos. 4 to 6 as party in the suit. In view of the aforesaid, the petition filed by the petitioners is devoid of any merit, hence it may be dismissed.

6. After hearing the rival contentions of counsels for the parties and in the facts of this case, to adjudicate the issue as involved in the present case, first of all, the provisions as contained under the National Highways Act, 1956 are required to be looked into. As per Section 3A of the Act, if 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 be notified in the official gazette declaring its intention to acquire such land. The objections be invited, and after affording an opportunity of hearing, final notification be issued under Section 3D of the Act. After the final notification, the land so acquired, shall be vested in the Central Government under Sub-section (2) of Section 3D of the Act and the amount of compensation be determined by the competent authority as per Section 3G, and it be deposited under Sub-section (1) of Section 3H of the Act. It is further apparent that the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver the possession thereof, to him or to any person duly authorised to receive possession, and accordingly the possession shall be obtained acquiring the right to enter on the land vested in Central Government. Thereafter, the amount of compensation

determined, as per Section 3G of the Act, and deposited under Sub-section (1) of Section 3H of the Act shall be disbursed. In case any dispute regarding right of user or the right of easement, the determination of compensation may be made by the competent authority. After determination and depositing the amount, how the payment be made, it is specified under Section 3H of the Act, which is being reproduced as under for ready reference:--

"3H. Deposit and payment of amount - (1) The amount determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited Under Sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under Sub-section (1), the competent authority shall determine the person who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated."

7. A bare reading of the aforesaid provisions of law makes it clear that the amount determined under Section 3G of the Act shall be deposited by the Central Government in such manner as may be laid down by the rules made in this behalf, with the competent authority before taking possession of the land. On depositing the said amount, the competent authority shall on behalf of the Central Government pay the amount to the person or the persons entitled thereto. It is further clarified that where the several persons claim interest in the amount so deposited under Sub-section (1), the competent authority under Sub-section (3) shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. If any dispute of apportionment of the amount or any part thereof arises, the competent authority shall refer the dispute as per Sub-section (4) for decision to the Principal Civil Court of the original jurisdiction within the limits of whose jurisdiction the land situated has been acquisitioned. Meaning thereby on depositing the amount, the competent authority at the stage of payment, where several persons claim their interest, it shall determine the entitlement of the persons interested, or each of them. In case of any dispute of apportionment or any part thereof or to any person to whom the same or any part is payable, the competent authority is required to refer such dispute for decision of the Principal Civil Court within the limits of whose jurisdiction, the land situated has been acquisitioned.

8. In view of the aforesaid legal position, in the facts of the present case, it is

clear that the land was acquired in exercise of the power under Sections 3A,3B,3C,3D of the Act by issuing the notification. After acquisition, the competent authority has determined the compensation by passing an award and thereafter the possession of 20 decimal of the land of Patwari Halka No. 9 of Khasra No. 169 of area 1.335 hectare situated in Village Lolri of Tahsil Tendukhedra, District Narsinghpur has been taken. The compensation to the tune of Rs. 7,08,000/- has been determined, however, for payment of the said amount, the memorandum was raised by the petitioners to pay the amount of compensation as per their respective shares, and also by the respondent Nos. 4 to 6 inter alia contending that after partition the land has fallen in their share and they are in possession thereof, therefore, the amount so deposited be not disbursed to anyone except them.

9. In the aforesaid legal and factual context, it is required to understand the meaning of dispute. In this regard if a claim is asserted by one party and denied by the other would fall within the purview of the word "dispute" in the context of the facts of this case in absence of any definition specified under the Act; meaning thereby it postulates the assertion of claim by one party and its denial by the other. Looking to the provisions as contained hereinabove, the term "dispute" has been used in a narrower sense limited to the contested claim and required to be adjudicated by the Civil Court. In such circumstances, for the purpose of Sub-section (4) of Section 3H of the Act, the dispute arose before the competent authority either for apportionment of the amount, or to the effect that whether the petitioners are also entitled to claim the compensation, or it is only the respondent Nos. 4 to 6.

10. In the aforesaid backdrop, the entitlement to receive the amount by both the parties as raised by them is a dispute and the only option was with the competent authority to refer it for decision to the Principal Civil Court of original jurisdiction in whose limits the land situated has been acquisitioned. But the competent authority has not exercised the said power and by holding an enquiry as per Annexure P/5 and receiving the objection of the petitioner, decided the entitlement to pay compensation only to the respondent Nos. 4 to 6. Though the document of partition in favour of respondent Nos. 4 to 6 sought from Tahsildar or the Batankan of the said survey number in favour of respondent Nos. 4 to 6 is not available on record. In my considered opinion, the power as exercised by the competent authority, on having a dispute of apportionment and to claim the compensation by the petitioners as well as respondent Nos. 4 to 6, was not conferred on him under the law, therefore, the impugned order Annexure P/4 dated 7.7.2008, the order Annexure P/9 dated 13.4.2010, the order Annexure P/10 dated 16.4.2010 passed by the respondents are hereby quashed! In view of the foregoing, it is further directed that the competent authority shall refer the dispute as per Sub-section (4) of Section 3H of the Act to the Civil Court of original jurisdiction. As the amount of compensation has already been paid to respondent Nos. 4 to 6, however, it is also directed that the respondents Nos. 4 to 6 shall furnish an undertaking & surety before the Civil Court that in case they

lose from the Civil Court and the amount of compensation determined by the competent authority is payable to the petitioners also, then they shall pay such amount to the petitioners as per judgment of Civil Court. Accordingly, this petition stands allowed. The impugned order Annexure P/4 dated 7.7.2008, the order Annexure P/9 dated 13.4.2010, the order Annexure P/10 dated 16.4.2010 are hereby quashed. The competent authority is directed to refer the dispute to the original Civil Court within a period of two months from the date of receipt of certified copy of this order. It is also directed that respondent Nos. 4 to 6 shall comply the observations made hereinabove, within one month from the first date fixed before the Civil Court. It is made clear here that this Court has not expressed any opinion with respect to entitlement of the petitioners or respondent Nos. 4 to 6 to receive the amount of compensation. However, the Civil Court on receiving the dispute shall decide the same on the basis of the material brought before him applying its mind independently without influencing any of the observations made by this Court and to take final decision not later than six months from the first date fixed before him. In the facts and circumstances of the case, the parties shall bear their own costs.