

Court No. - 39

Case :- WRIT - C No. - 34016 of 2022

Petitioner :- Rajesh Chandra @ Rakesh And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Manoj Kumar
Singh, Devesh Kumar Singh

Counsel for Respondent :- C.S.C., Neeraj
Dube, Sushil Kumar Pandey

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Manjive Shukla, J.

The petitioners herein, claim to be residents of House No. 74 Bheekampur, Dayalpur, Tehsil and District Auraiya and stated to be owners of Arazi No. 558 area 0.041 hectares situated at Mauza/ Pargana Bheekampur Tehsil and District Auraiya and claim that their names are recorded in the revenue records namely Khatauni for the fasli year 1428-1433. A perusal of the copy of the Khatauni appended as Annexure-'1' to the writ petition, indicates that the names of the petitioners, herein, have been shown as the owners of Gata No. 528 area 0.041 hectare.

The contention in the writ petition is that the land in question was acquired for the construction of National Highway widening of 2 lane to 4 lane NH-II, in the year 2015-2016. The notice under Section 3G (4) of the National Highway Act, 1956, fixing 7.5.2018 was issued to the petitioners inviting their objections by the competent authority. It is further stated that in compliance of the said notice, petitioners approached the competent authority and submitted the revenue papers to put forth their claim for disbursement of compensation. It was then transpired that the compensation for acquisition of Arazi No. 558 area 0.041 hectare, plot in question has not been determined by the competent authority. The contention is that though the construction of Highway has been completed but compensation has not been provided to the petitioners despite the fact that they have been approaching the respondents for a long time.

In the counter affidavit filed on behalf of the State-respondents, pursuant to the order dated 30.11.2022 passed by this Court whereby reasons were called for from the competent authority to explain for non declaration of award for more than six years, it is admitted that Gata No. 558, area 0.008 hectares had been acquired for widening of NH-II from 4 lane to 6 lane. The acquisition notifications were issued under Section 3A and 3D of the National Highways Act, 1956. Out of the land of total 37 villages acquired by the aforesaid notifications, the award for 28 villages had been declared and the proceeding for declaration of award for 9 villages has not been completed. Individual notices were issued to the tenure holders village-wise and the date of hearing fixed by the competent authority has been indicated in para-6 of the counter affidavit of the State. It is stated therein that the objections of the tenure holders have been received and kept on record.

However, the stand of the State-respondents is that under Section 3B of the National Highways Act pertaining to the power of survey, it is provided that after issuance of the notification under Section 3A, the survey would be conducted by the authorised officer appointed by the Central Government. The power of survey includes inquiry/ investigation/ survey/ valuation and inspection of the site in question. It is then contended that for declaration of the award of 9 villages, the competent authority completed the following actions for evaluation of the affected land of the remaining 9 villages:-

- I. *Letter no. 46/Bhu.Aa/NHAI/Auraiya was sent on 15.05.2017. A copy of the letter dated 15.05.2017 is being enclosed herewith and marked as Annexure No. 1 to this affidavit.*
- II. *On 21.07.2020 pertaining to the point No. 7 of the meeting held with Project direction National Highway, Kanpur, the valuation report was directed to be made available. A copy of the letter dated 21.07.2020 is being enclosed herewith and marked as Annexure No. 2 to this affidavit.*
- III. *Vide memo no. 137 dated 19.06.2021, the meeting scheduled on 25.06.2021 was sent. A copy of the letter*

dated 19.06.2021 is being enclosed herewith and marked as Annexure No. 3 to this affidavit.

IV. Vide memo no. 171 dated 12.07.2021, the letter was issued for disposal of pending matters. A copy of the letter dated 12.07.2021 is being enclosed herewith and marked as Annexure No. 4 to this affidavit.

V. Thereafter vide memo no. 188 dated 20.07.2021 a letter was issued concerning disposal of the pending matters, to Chief General Manager, Area Officer, Area Office-West 3/248, Vishalkhand Gomtinagar, Lucknow. A copy of the letter dated 20.07.2021 is being enclosed herewith and marked as Annexure No. 5 to this affidavit.

VI. The District Magistrate, Auraiya vide letter No. 754/Bhu.Aa/NHAI/Auraiya dated 17.08.2022 issued a letter to the Project Director for disposal of pending matters. A copy of the letter dated 17.08.2022 being enclosed herewith and marked as Annexure No. 6 to this affidavit.

VII. The letter was also issued by the Competent Authority/Additional District Magistrate, Auraiya (deponent) vide memo No. 874 dated 01.11.2022. A copy of the letter dated 01.11.2022 is being enclosed herewith and marked as Annexure No. 7 to this affidavit.

VIII. In view of the letter No. 884 dated 02.11.2022 a meeting was held for disposal of the pending matters and direction was given for making available the valuation report. A copy of the letter dated 02.11.2022 is being enclosed herewith and marked as Annexure No. 8 to this affidavit.

IX. Vide memo no. 918/Bhu.Aa.NHAI/Auraiya dated 09.12.2022, for declaring Award of remaining 9 villages, the direction was issued for making available the valuation report. However, the valuation report from the side of project Director NH authority, Kanpur is still unavailable. It is further submitted that an availability of the valuation report, the award would be declared. A copy of the letter dated 09.12.2022 is being enclosed herewith and marked as Annexure No. 9 to this affidavit."

A perusal of the said statement made in the counter affidavit filed on behalf of the State indicates that for declaration of award of remaining 9 villages, a

letter dated 09.12.2022 was issued by the competent authority to the Project Director NHAI to provide the valuation report. The stand is that since the valuation report has not been made available by the Project Director, NHAI, Kanpur, the award for the remaining 9 villages could not be declared.

From the contents of the counter affidavit of the State, noted above, it is more than evident that the letter dated 15.5.2017 was written by the competent authority to the Project Director, PIU, Kanpur to provide the valuation report of the things attached to the Earth and joint measurement survey report for the purposes of declaration of award. However, for 3 years, nothing has been done in the matter. The document dated 21.7.2020, appended with the counter affidavit of the State is the minutes of the meeting of the competent authority and the Project Director, NHAI Kanpur dated 21.7.2020, wherein it was noted that the compensation could not be determined for non-availability of the valuation report and there was agitation by the affected tenure holders. After one year of the said meeting, another communication dated 19.6.20221 was issued by the competent authority reiterating its earlier stand in the pending matters relating to making of award for acquisition of land from NH-II from 4 lane to 6 lane. Other communications dated 12.7.2021, 20.7.2021, 17.8.2022, 1.11.2022 and 9.12.2022 were then issued by the competent authority, in this regard.

Having noted the above facts, by means of the order dated 27.1.2023, we required explanation of the Project Director, Project Implementation Unit, NHAI, 53 Basant Vihar, Naubasta, Kanpur by filing his personal affidavit to explain the delay caused in declaration of award and disbursement of compensation.

We my note at this juncture that the authorities have slept over the matter for a period of more than 3 years since after the notices were issued in the year 2018 and they were reactivated only when the present writ petition has been filed. Personal affidavit of the Manager (Technical), National Highway

Authority of India, Project Implementation Unit, Kanpur has been filed today.

It is sought to be submitted therein that after publication of the gazette notification under Section 3A of the National Highway Act, 1956 declaring its intention to acquire the land specified in the schedule for construction of Six Lane Etawah-Chakeri (Kanpur) Section NH-II from Km. 323.475 to Km. 483.687 of Village Bheekampur Tehsil and District Auraiya, the proposed land was to be verified by the revenue authority at the site alongwith the available record for the purposes of declaration under Section 3-D. The objections of the land holders were also required to be examined by the competent authority. The answering respondent no. 4 namely the Project Manger vide its letter dated 16.6.2017 appended as Annexure -C.A. 1 has requested to the competent authority for nominating the representative/ revenue team for making joint inspection of the site in question for preparation of valuation report. It is then contended that another letter dated 21.12.2018 was issued to the competent authority for the purposes of preparation of draft award and sending the same to the Project Manager, Regional Office. It was further stated therein that the change of use of land after Section 3D notification should not be accepted. Another communication dated 7.1.2019 was written by the General Manager/Assistant Project Director to the competent authority asking it to declare the award in accordance with the nature of the land shown in the acquisition notification under Section 3D and it was intimated that there should not be any kind of change in the nature of acquired land as indicated in the notification under Section 3D. The communications issued thereafter, on behalf of the respondent no. 4, namely the Project Manager, NHAI, to the competent authority dated 21.06.2019 and 29.08.2019 have been appended as Annexures C.A. '4' and C.A. '5' to the personal affidavit of the Project Manager. It is then stated that respondent no. 4 has requested to the competent authority several times but award has not been prepared till date.

Lastly, in Para-13 of the personal affidavit of

respondent no. 4 it is that pursuant to the order of this Court dated 27.1.2023, the Structural Valuation Report prepared by the valuer 'Unik Designer Consultant' has been sent to the competent authority for the purposes of determination of compensation after getting due verification of the same in accordance with the rules from the Public Works Department, Auraiya. The copy of the said report is appended as annexure C.A.-'6' to the personal affidavit of the respondent and seems to have been submitted by the letter dated 18.02.2023 of the Project Director, NHAI, Kanpur to the competent authority.

In various paragraphs of the personal affidavit of respondent no. 4, thereafter, giving parawise reply to the writ-petition, it is sought to be submitted that the delay in passing the award is on part of the respondent no. 3.

From the affidavits of respondent nos. 3 and 4, it is more than evident that the concerned authorities who were responsible for preparation of the award and for payment of compensation to the land-owners are shifting the responsibility of non-payment of compensation by non declaration of award, upon each other. It is more than evident in various communications of the Project Implementation Unit, NHAI, Kanpur the officer is blaming the competent authority. No explanation has been furnished for delay in the sending the valuation report for the things attached to the earth which has been submitted by the letter dated 18.2.2023 only after the explanation of respondent no. 4 was called for, asking him to file his personal affidavit.

Taking note of the said scenario, we are further required to go through the provisions of the National Highways Act, 1956 which provides the manner of acquisition of private properties/ lands for the purposes of construction of the National Highways. The provisions contained in Section 3A to 3H relate to the acquisition, declaration of award, dispossession of the tenure holders and determination of compensation to the persons

interested in the affected lands.

The notification issued under Section 3A is the proposal for acquisition where-after survey has to be conducted in accordance with Section 3B for disposal of the objection of the tenure holders and preparation of the report for declaration under Section 3D after dealing with the objection filed by the persons interested-tenure holders.

Section 3-C provides that order has to be passed by the competent authority dealing with the objections of the tenure holders. Section 3D, thereafter, provides that, in case, there are no objections or the objection of the tenure holders have been decided, the competent authority shall submit a report to the Central Government for declaration of notification under Section 3D for acquisition of the land which is the final notification for acquisition. With the issuance of the declaration under Section 3D, the acquired land vests absolutely in the Central Government free from all encumbrances, in accordance with the provisions of Section 3E (2) of the Act.

The proceedings for dispossession of the tenure holders can be undertaken only in accordance with Section 3E of the Act which provides for making of an award under Section 3G and deposit of compensation 3H(1) of the Act. Section 3E(1) states that once the amount is determined by the competent authority under Section 3G of the Act with respect to the acquired land and is deposited under Section 3H(1), the competent authority may issue notice to the land owners, in accordance with law to deliver the possession of the acquired land. In case of refusal by such persons to deliver the possession, the forcible dispossession of the owners/ occupants is contemplated under Section 3E (2) of the Act. Section 3F only gives liberty to the Central Government to enter into the acquired land after declaration under Section 3D and vesting of the same for the purpose of carrying out the building, maintenance, management or operation of a National Highway and the work related therewith.

In the instant case, it is an admitted fact of the matter that no award has been made within the meaning of Section 3G of the Act. There was, thus, no question of deposit of compensation under Section 3H (1). Taking note of the said fact, we raised a pointed query to the counsels for the respondents to answer as to how the tenure holders of 9 villages, including the village in question namely Bheekampur Tehsil and District Auraiya, whose land had been acquired for construction of Six Lane Etawah-Chakeri (Kanpur) Section NH-II from Km. 323.475 to Km. 483.68, have been dispossessed without there being any award or deposit of compensation with the competent authority. No answer is forthcoming from any of the respondents.

From a perusal of the affidavit filed on behalf of the competent authority and the Project Director NHAI atleast, it is evident that they were writing letters for the purposes of valuation reports pertaining to the property attached to the earth. As regards the situation of properties subject matter of acquisition, the land and things attached to the earth, survey, management inspection, inquiry must have been done prior to the preparation of the report by the competent authority for declaration under Section 3D, after dealing with the objections filed by the tenure holders.

The dispute between the competent authority and the project director was only with regard to the valuation of the things attached to the earth namely the constructions existing over the acquired land, noted in the survey report prepared under Section 3B of the National Highways Act, 1956. We fail to understand as to why the award for the acquired land has not been prepared by the competent authority in accordance with the provisions of Section 3G even after issuing notices to the tenure holders in the year 2018, inviting their objections. The compensation for the things attached to the earth is in addition to the compensation for the acquired land.

The fact remains that the land holders of village

Bheekampur, the land subject matter of dispute, herein, alongwith 8 other villages, had been dispossessed/ deprived of their landed property and the construction of National Highway-II between the aforesaid section of the road has been completed without payment of compensation to them, which is nothing but a clear violation to the constitutional mandate under Article 300-A of the Constitution of India.

The matter is to be inquired into by the Principal Secretary (Revenue), U.P. Lucknow. We, therefore, call upon the Principal Secretary (Revenue) U.P. Lucknow to conduct an inquiry into the matter for wherein the tenure holders of 9 villages, details of which have been given in the table extracted in para-'6' of the counter affidavit filed on behalf of respondent nos. 3 & 4, have been dispossessed/ deprived of their landed property, without making any award in contravention of the constitutional mandate as also the provisions of the National Highways Act, 1956.

In the said inquiry, the involvement of the officials of the National Highways authority, specially the Project Director, Project Implementation Unit, Kanpur, NHAI as also the District Level Authorities, specially the competent authority within the meaning of National Highways Act, 1956 shall be inquired into. The inquiry report shall be shared with the concerned Minister of the Ministry of Road Transport & Highways, Government of India, New Delhi and action against the guilty officials accordingly, shall be initiated both on the civil and criminal side. The inquiry report and the action taken against the guilty officials shall be submitted before this Court on the next date fixed.

In the meantime, the proceedings for preparation of award of 9 villages, noted above, shall be completed by the competent authority and the compensation determined shall be deposited by the NHAI.

It goes without saying that the financial loss caused to the State and the Central Government, if any, in

the matter, on account of the delay in determination of compensation for the land holders due to levy of interest on the amount determined under the award, shall be recoverable from the personal pockets of the guilty officials. Notice, in writing, inviting explanation of the guilty officials in that regard shall duly be given.

Let this matter be posted in the additional cause list on 03.04.2023 at 2.00 P.M.

Re:-Civil Misc. Impleadment Application No.05 of 2023

Heard. On the issue of impleadment of private persons claiming their right, title and interest in the land in question in the Gata No. 558, suffice it to say that in the present matter, we are not deciding the rival claims of the tenure holders in the matter of disbursement of compensation. It would be open for the impleadment- applicants, as also the petitioners here in, to put their rival claims before the competent authority after declaration of the award. We do not find any good ground to enter into any dispute in relation to the right of the private persons to payment of compensation, claiming themselves as owners/ persons interested in the acquired property.

Impleadment application is accordingly, **disposed of.**

Order Date :- 2.3.2023

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