



2024: DHC: 3770-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 07.05.2024

+ **W.P.(C) 11818/2018**

ATUL RAHEJA AND ANR.

..... Petitioners

Through: Mr B.P. Gupta, Mr Rajesh Gupta and
Mr G.R. Upadhyay, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Ajay Digpaul, CGSC for UOI/R-1
with Mr Kamal Digpaul, Ms Ishita
Pathak and Ms Akanksha Kumari,
Advocates.

Mr Sanjay Kumar Pathak, Standing
Counsel with Mr Sunil Kumar Jha,
Mr M.S. Akhtar, Ms Nidhi Makur and
Ms Musarrat Benazeer Hasmi,
Advocate for R-LAC/L&B.

Mr A.P. Singh, Advocate for NHAJ
with Ms Akshada Mujwar, Advocate.

Mr Divyam Nandrajog, Panel
Counsel for GNCTD/R-4 with Ms
Surbhi Soni, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

1. The petitioners have filed the present petition, *inter alia*, impugning a notification dated 15.05.2017 (hereafter *the impugned notification*) made



under Sub-section (1) of Section 3A of the National Highways Act, 1956 (hereafter *NH Act*) and published on 01.06.2017. The petitioners claim that the said declaration erroneously refers to the subject land held by the petitioners as agricultural land instead of urbanised/residential land. The petitioner also impugns the determination of the amount of compensation assessed by the competent authority under Section 3G(1) of the NH Act.

2. The petitioners claim that they are owners of separate portions of land located in Village Bijwasan, Delhi. Petitioner no.1 claims that he owns land measuring 0.295 acres comprising in Khasra No.66//3/1; land measuring 0.704 acres comprising in Khasra No.66//3/2; and land measuring 0.792 acres comprising in Khasra No.66//4. Petitioner no.2 claims to be the owner of land measuring 0.755 acres comprising in Khasra No.66//7; land measuring 0.529 acres comprising in Khasra No.66//8/1; and land measuring 0.427 acres comprising in Khasra No.66//8/2. The aforesaid parcels of land are hereafter referred to as *the subject lands*.

3. The petitioners claim that the subject lands are located in an area, which was declared as a 'low-density residential area' in terms of the Notification No. S.O. 1744 (E) dated 18.06.2013 issued by the Ministry of Urban Development (Delhi Division), Government of India. The subject lands were included in the impugned notification.

4. Respondent no.3/the Land Acquisition Collector (hereafter *LAC*) made an Award dated 20.03.2018 (being Award No.1/2018/SW and hereafter *the impugned award*) in respect of the subject lands, which is also



the subject matter of challenge in the present petition.

5. The petitioners' principal grievance as articulated in the present petition is that the subject lands have been incorrectly classified as 'agricultural' instead of 'residential' by the competent authorities. Concededly, the question whether the remedy available to the petitioners is efficacious is covered by a decision of the Coordinate Bench of this Court in *Anubhav Chand Kathuria v. Union of India and Ors. and Other Connected Matters: W.P.(C) 5822/2018* and *W.P.(C)5831/2018* and, *Subhash Chand Kathuria and Anr. v. Union of India and Ors.: W.P.(C) 5846/2018*, decided on 19.02.2019.

6. The Coordinate Bench had noted the provisions of Section 3G of the NH Act and held that if the determination made by the competent authority under Section 3G (1) of the NH Act was not acceptable to the parties, it is open for the parties to make an application for appointment of an Arbitrator. The Arbitrator would have the necessary jurisdiction to make corrections, if necessary. The relevant extracts of the said decision are set out below:

“13. At this juncture, it is necessary to refer to Section 3-G of the NH Act, which reads as under:

“3G. Determination of amount payable as compensation.

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other



person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under subsection (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by



reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

14. It will thus be seen that the determination of compensation payable for any land sought to be acquired under the NH Act is, in the first instance, by an order of the CA in terms of Section 3G (1) of the NH Act. If such a determination is not acceptable to either of the parties, then in terms of Section 3G (5) of the NH Act, an application can be filed which would be decided by an Arbitrator to be appointed by the Central Government. Admittedly, in the present case, the DM has been appointed by the Central Government to be the Arbitrator to decide the applications filed by the three Petitioners against the Awards dated 2nd April, 2018 passed by the CA

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20. This Court has considered the above submissions. Section 3G of the NH Act delineates the scope of the powers of the CA for determining the compensation payable for land acquired in exercise of the powers under the NH Act. Section 3G (7) spells out four factors that are required to be taken into consideration either by the CA or by the Arbitrator while determining compensation. Therefore, the scope of the powers of the CA and the Arbitrator in regard to the determination of compensation is no different. In other words, what the CA can do under the NH Act, as far as the determination of compensation is concerned, can well be done by the Arbitrator. If the CA can, as has been contended both by the counsel for



the Petitioners as well as the NHAI, make corrections to the factual errors in the notifications issued under Sections 3A and 3D of the NH Act, so can the Arbitrator.

21. Therefore, as far as the present cases are concerned, the Petitioners need not harbour any apprehension that the Arbitrator will not be able to exercise the same powers of the CA. In other words, as far as the present cases are concerned, when both the Petitioners and the NHAI have agreed that the CA can correct the factual errors in the notifications issued under Section 3A or 3D of the NH Act and correct the type of the land as ‘private’ instead of ‘government’, the Arbitrator can make similar changes.

22. By the same logic, if the Petitioners contend that the nature of the land should not be treated as ‘agricultural’, that plea can also be examined by the Arbitrator notwithstanding the fact that the CA has not agreed with the Petitioners in that regard in W.P(C) 5831/2018. In other words, the Arbitrator can and will examine the plea of the Petitioners that in view of the notifications issued under Section 507 of the DMC Act, and the subsequent notifications under the DDA Act, the lands in question are in fact urbanized villages, where the circle rate is much higher than what has been applied by the CA in the impugned order.”

7. Thus, in view of the aforesaid decision, the petitioners’ grievance can be addressed by the arbitrator appointed under Section 3G(5) of the NH Act.

8. The learned counsel appearing for the petitioners also seeks to challenge the impugned notification on the ground that the acquisition of the subject lands is beyond the powers conferred under Section 3A of the NH Act. He submitted that in terms of Section 3A(1) of the NH Act, the Central Government could acquire any land required for completion, maintenance,



management or operation of a national highway. However, the subject lands were not acquired for building a national highway, but a highway connecting two points of the national highway No.48. He referred to a Notification No.S.O 1995(E) dated 23.06.2017 issued by the Central Government, Ministry of Road Transport and Highways notifying the said highway as a new national highway, which describes the highway for which the subject lands were acquired. He submits that the impugned Notification was issued prior to the Notification dated 23.06.2017 (notifying the new national highway), therefore, the impugned notification was not in respect of a national highway but an ordinary highway. Thus, the impugned notification is liable to be set aside.

9. A tabular statement set out in the Notification dated 23.06.2017, which sets out the description of the national highway in question is set out below:

“TABLE

| Serial No. | New National Highway No. | Description of National Highways |
|------------|--------------------------|--|
| (1) | (2) | (3) |
| 405 | 248BB | The highway starting from its junction with NH No.48 near Shiv Murti connecting Bharthal Chowk, Delhi Haryana border in the Union Territoy of National Capital Territory of Delhi and terminating near Kherki Daula on NH 48 in the State of Haryana.” |



10. It is material to note that no ground of challenge, as contended above, is articulated in the present petition. The same is an afterthought. Notwithstanding the same, we have considered the said contention as well.

11. It is relevant to refer to Section 3A(1) of the NH Act. The same is set out below:

“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.”

12. A plain reading of Section 3A(1) of the NH Act indicates that the Central Government may acquire land required for building, maintenance, management or operation of a national highway or a part thereof. It is apparent that the national highway would be so named, after it is built. Prior to an highway being constructed, there is no question of lands being acquired for building the national highway being termed as a national highway. The learned counsel has completely misconstrued the aforesaid provision to mean that lands could be acquired under Section 3A(1) of the NH Act only after a national highway has been so notified.

13. There is no dispute that the subject lands have been acquired for the purpose of building a national highway as described in the table set out in the Notification dated 23.06.2017 and as reproduced above.

14. The petition is, accordingly, dismissed.



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15. It is clarified that this would not preclude the parties from availing their remedies in accordance with law.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 07, 2024
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