

A.F.R.

Court No. - 21

Case :- WRIT - C No. - 16025 of 2024

Petitioner :- Mohammad Shahid And 2 Others

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Shiv Kant Mishra

Counsel for Respondent :- A.S.G.I.,C.S.C.,Rajesh Kumar Jaiswal

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Manish Kumar Nigam,J.

1. The prayer made in the instant petition is for a direction to the respondents to pay compensation to the petitioners in pursuance of award of the Competent Authority, Bareilly dated 06.07.2023 in respect of land bearing Gata no.156 area 0.6053 hectare of revenue Village- Sarniya, Tehsil and District- Bareilly and also interest on the compensation amount.

2. The case of the petitioners is that their land aforesaid was notified for acquisition on 28.01.2022 under Section 3-A of the National Highways Act, 1956 (for short 'the Act') followed by notification under Section 3-D of the Act dated 13.09.2022. An award was declared by the competent authority on 06.07.2023. The value of land determined is Rs.3,02,65,000/- and of super structure as Rs.2,95,64,257/-. Thus, the petitioner has become entitled to a sum of Rs.5,98,29,257/- plus solatium and other statutory benefits. The total sum would be Rs.12,48,72,386/-. The

competent authority addressed a communication to the Project Director, NHAI on 17.07.2023 for making available the requisite amount to facilitate payment of the compensation amount to the affected persons. The Project Director, in turn, sent a communication dated 19.10.2023 to the higher authorities seeking financial approval. It seems that the higher authorities of NHAI did not accord financial approval and as a result whereof the compensation amount has not been paid to the petitioners so far.

3. The competent authority in its instructions supplied through learned Standing Counsel took the stand that the amount has not been made available to him by NHAI and, therefore, compensation has not been paid.

4. The Project Director, NHAI has filed his affidavit on behalf of respondent no.5 (NHAI) and therein it is not disputed that the subject land of the petitioner was acquired under the provisions of National Highways Act, 1956. However, the stand taken is that the Ministry of Road Transport and Highways through Office Memorandum dated 23.11.2023 placed ban on incurring additional expense/liability under Bharatmala Pariyojana and, therefore, the compensation amount has not been approved nor transmitted to the account of competent authority for payment. Copy of the Office Memorandum dated 23.11.2023 has been brought on record as Annexure CA-2 and it reads as follows:

"F. No. RW/G-20011/08/2023-W&A
Government of India
Ministry of Road Transport & Highways

Transport Bhawan, 1, Parliament Street, New Delhi-11001

New Delhi 23rd November, 2023

OFFICE MEMORANDUM

Sub: Non-creation of any liability under Bharatmala Pariyojana Phase-I.

I am directed to inform that during the meeting held on 10.11.2023 under the chairmanship of Secretary, Expenditure on Pre-Budget discussion for deciding Revised Estimate of 2023-24 and Budgetary Estimate of 2024-25, it was clarified that no new liability is to be created under Bharatmala Pariyojana Phase-I until the revised CCA approval is obtained. This has been further reiterated vide Secretary, Expenditure D.O. letter dated 16.11.2023 in which it has been categorically mentioned that

"(i) No new works are approved and no contracts are awarded under Bharatmala under any phase until CCEA approval is received (ii) No Expenditure is incurred beyond the level of 20% above the amount approved by the CCEA in 2017, except for (a) inevitable payments such as contractually payable amounts under ongoing contracts, (b) expenditure under Vivad Se Vishwas 1 & 2 schemes (which have been separately sanctioned by the Government)".

2. Accordingly, all concerned are requested to strictly adhere to the above direction of the Secretary, Expenditure and no additional liabilities are to be created including liabilities on land acquisition and pre-construction activities under Bharatmala Pariyojana without approval of the Competent Authority.

(Kamal Parkash)

Under Secretary to the Govt. of India

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5. Reliance has been placed on Section 3-H of the Act to contend that the petitioners would be entitled to compensation only when possession of the acquired land is taken from them. Since, NHAI, at present, is not taking

possession, therefore, there is no question of compensation amount being paid to the petitioners.

6. Learned counsel for the petitioner submits that once the respondents had issued notification under Section 3-D of the Act and as a result whereof the land had vested in the Central Government, it is not open to it to refuse to pay compensation on the ground that it does not intend to take possession and the amount would be paid as and when possession is taken.

7. We have considered the rival submissions and perused the material placed on record.

8. Sub-section (2) of Section 3-D of the Act unequivocally lays down that on publication of the declaration under Section 3-D(1), the land shall vest absolutely in the Central Government free from all encumbrances.

9. Section 3-E stipulates that where any land is vested in the Central Government under sub-section (2) of Section 3-D and the amount determined by the competent authority under Section 3-G with respect to the said land has been deposited under sub-section (1) of Section 3-H, 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 possession thereof within sixty days of service of notice. In case any person refuses to deliver possession, the competent authority can use such force as is required to enforce surrender of the land. Section 3-F confers power in the Central Government to enter and do other act

necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or part thereof or any other work connected therewith.

10. Section 3-F is extracted below for ready reference:

"3-F. Right to enter into the land where land has vested in the Central Government.--Where the land has vested in the Central Government under section 3-D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith."

11. Section 3-G invests the competent authority with power to determine compensation.

12. Section 3-H stipulates as follows:

"3-H. Deposit and payment of amount.--(1) The amount determined under section 3-G 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."

13. It is evident from the scheme of the Act that the title in the land vests in the Central Government free from all encumbrances upon publication of the declaration under Section 3-D(1) of the Act. Thereafter, the Central Government is conferred with power to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof or any other work connected therewith.

14. The consequence of vesting is that the real owner is divested of his title in the land and he cannot deal with it in any manner. At the same time, as noted above, although, actual physical possession of such land could be taken only after the compensation amount is deposited by the Central Government with the Competent Authority but it gets power to enter upon the land to carry out necessary act for building, maintenance, management and operation of a national highway.

15. Section 3-H(1), which mandates that the State Government will deposit the compensation amount before taking possession is not a provision enabling the Central Government to delay payment of the compensation amount and contend that the compensation would be paid as and when possession is taken. Rather the said provision is for the benefit of the tenure holders, whose lands had been acquired under the provisions of the Act. It is a safeguard against taking over of possession of the land without payment of compensation. The said provision cannot be interpreted to confer power on the Central Government to delay payment of compensation to the affected persons, who have been divested of their title.

16. The said conclusion also stands fortified by Rule 3 of the National Highways (Manner of Depositing the Amount by the Central Government; Making Requisite Funds Available to the Competent Authority for Acquisition of Land) Rules, 2019, which mandates that the executing agency (NHAI herein) would make available requisite funds to

the competent authority as determined under Section 3-G of the Act within fifteen days of the raising of demand by the competent authority. The competent authority on receipt of the amount would disburse the same to the land owners or the persons interested therein by electronically crediting the said amount into their respective bank accounts. Relevant part of Rule 3 is extracted below:

"3. The manner of making requisite funds available to the competent authority shall be as follows:-

(i) Subject to provisions of the Act, the executing agency authorised by the Central Government in this behalf, shall open and maintain an account with one or more Scheduled Commercial Banks for remittance of the amount for land acquisition across the country, with arrangements for access to such account by the competent authority for specific jurisdiction as per authorisation of limits by the executing agency. The Executing Agency shall, on the demand raised by the competent authority before announcement of the award, issue requisite authorisation limits in favour of the competent authority for withdrawal of amount from such account as per requirements from time to time for disbursement to the landowners or persons interested therein through an electronic banking mechanism as per extant Reserve Bank of India regulations and the said authorisation limits, revolving in nature, shall entitle the competent authority to withdraw money from such account as per requirements, without any further reference to the land acquiring agency, for disbursement to the landowners or persons interested therein, as follows:-

(a) The amount determined under section 3-G of the Act within fifteen days of the raising of demand by the competent authority, and

.....

.....

(iv) The competent authority shall, in turn, disburse the compensation amount to the landowners or the persons interested therein preferably by electronically crediting the said amount into their respective bank accounts."

17. As such, the stand taken by NHAI in its counter affidavit for declining to pay compensation is manifestly against the scheme of the Act and is, accordingly, rejected.

18. The Office Memorandum of the Central Government on which reliance is being placed, is not applicable in respect of the compensation amount, which NHAI is liable to deposit under any award given under the provisions of the National Highways Act in respect of acquisitions in progress at the time of its issuance. The Office Memorandum would only apply to new projects of acquisition and works and contracts and not to the compensation amount under an existing award. Therefore, even, the aforesaid plea on basis of which NHAI is refusing to accord financial approval to the amount awarded as compensation is not sustainable in law and is thereby rejected.

19. The writ petition is **allowed**.

20. A *mandamus* is issued to NHAI to make available compensation amount to the competent authority for being paid to the petitioner and other affected persons in accordance with law within a period of four weeks from the date of communication of the instant order.

21. No order as to costs.

(Manish Kumar Nigam, J.) (Manoj Kumar Gupta, J.)

Order Date :- 4.7.2024

Ankit.