

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

WRIT PETITION (C) No: _____ OF 2018

(Under Article 32 of the Constitution of India)

Petitioner No.
261/2018

IN THE MATTER OF:

Rastriya Rajmarg Utpidan

Virodhi Sangarsh Samiti & Ors

...Petitioners

Versus

Union of India & Ors

...Respondents

Paper Book

(for index please see inside)

IA No. _____ of 2018 : Application for Interim Directions

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Synopsis

1. This petition is filed in public interest raising the following issues relating to acquisition of land by the respondents for a national highway using the provisions of The National Highways Act, 1956.

Points of Law of general public interest

- I) Whether acquisition of land of land owners can be done without payment of compensation and without rehabilitation?
- II) Whether land can be acquired in excess of the requirements for the construction of a highway as set out in the agreement 28th April, 2016 entered into NHAI and Sadbhav Engineering Ltd?
- III) Whether the state authorities and particular contractors are acquiring land in excess of what is needed for the construction of a highway by way of a conspiracy and whether such an arrangement is required to be enquired into?
- ✓ IV) Whether the 27 landlords who are missing from the revenue map prepared for the acquisition of lands ought to be inquired into and the 27 landlords included?

- V) Whether section 3G(5) of the National Highways Act, 1956 is arbitrary and unconstitutional as it forces the landlords whose lands are being acquired to have recourse only to an arbitrator appointed by the central government in respect of any dispute relating to the amount of compensation determined by the competent authority? Whether there exists an inherent institutional bias and conflict of interests since it is in the NHAI interest to proceed with acquisition rapidly and pay the minimum possible compensation? Whether NHAI can simultaneously perform the impartial role of an arbitrator in disputes directly or indirectly involving NHAI?
- VI) What is the legal impact of not giving a hearing to the landowners as required by section 3F (4)^{3C?}? Does it result in the voiding of the acquisition process under the Act?
- VII) What is the legal result of the authorities ignoring the claims for compensation made by the landowners in accordance with section 3G (3) of the Act and in proceeding to determine compensation according to a pre-decided formula? If application of mind is not done in respect of the claims of the landowners and the true

market value, is the determination of compensation under section 3G invalid?

VIII) Did the authorities determining the compensation to be paid apply their mind at all to market value when it could be shown that the amounts determined were not only lower than the market value determined by reference to recent sale deeds but also lower than the circle rate?

✓ IX) Does the takeover of double the land (60 ha) as compared to the official acquisition of land (30 ha) require investigation by the CBI? Is this a method by which 30 ha of excess land remains with the contractor for commercial sale/ development contrary to the contract for the construction of the highway?

✓ X) Is the deprivation of the landowners in respect of compensation, resettlement and rehabilitation in accordance with the 2013 Act arbitrary and discriminatory? In the present instance there is no resettlement or rehabilitation at all. Is this constitutionally or legally permissible?

Acquisition process

✓ 2. This petition covers 17 villages comprising more than 5,000 landholders and families between Lalqua to Kathgodam in

district Nainital in the state of Uttarakhand. Acquisition of about 34 hectares of land is being done on 4.7.12, section 3A notification under the Act was published declaring the intention of the central government to acquire the lands.

3. ✓ Most of the landholders remained unaware of the notification under section 3A and of its ramifications, nevertheless over 500 land owners sent in their objections under section 3C.
4. ✓ Under section 3D of the Act, after objections are received, the competent authorities are required to submit a report to the central government and it is only after such a report is submitted that a section 3D notification can be made requiring the said lands to be acquired. It is appears that such a report has not been made.
5. On 2.7.13, notification of the central government under section 3D was made.
6. No physical possession has been taken of the land of the private land owners.
7. ✓ On 10.9.14, notice under section 3G (3) was published in the newspapers inviting claims regarding the compensation payable to the landowners. Over 1,000 landowners claimed compensation at the market rate of approximately Rs. 5,000 per sq.ft. Although the newspaper notice stated that a hearing would be given, no such hearing was given to any of

the landlords and they were merely required to submit the claim forms and take their receipt. Thus section 3 F (4) of the statute was breached.

Compensation

8. On 26.9.16, over 2 years later, the authorities made an order stating the determined compensation to be paid not on the basis of the compensation each individual would receive but on the collective basis of khata numbers. There was no application of mind at all to the objection raised by the landowners whose claim forms were virtually thrown into the dustbin and ignored. Though the landowners claimed land compensation approximately at Rs. 5,000 per sq.ft., the authorities determined the compensation at Rs. 75 per sq.ft., for 2 villages and Rs. 29.32 for the remaining villages, resulting in compensation ranging from Rs. 116 per sq.ft. to Rs. 300 per sq.ft.

9. Resultantly, the compensation determined was not only below the market value of land but also below the circle rate. Where the compensation base rate was determined at Rs. 75 per sq.ft. the circle rate was approximately Rs. 790 per sq.ft. Similarly, where the compensation was determined at Rs. 29.32 per sq.ft. the circle rate was approximately Rs. 233 sq.ft.

10. ✓ Regarding the market rate of the lands in respect of which compensation was determined at Rs. 29 per sq.ft. Petitioners refer to the sale deeds in respect of 2 transactions where sale was done at Rs. 650 per sq.ft. Similarly in respect of lands where the compensation was determined at Rs. 75 per sq.ft., petitioners rely on the order dated 26.9.16 of the authorities abovementioned where in the order itself the market price is shown at Rs. 450 per sq.ft. These are lands far away from the National Highway at approximately 200 mts., whereas the lands being acquired are close to the National Highway and obviously of higher market value.

11. ✓ Petitioners now refers to the order dated 26.9.16 of the Special Land Acquisition Officer (SLAO) purporting to make an assessment of the market price of land in one village which was assessed at Rs. 75 per sq.ft., a careful perusal of this order shows that the average of the relevant sale deeds comes to Rs. 150 per sq.ft. and yet the SLAO fixed the compensation at Rs. 75 per sq.ft.

12. ○ On 29.1.2018, 3E/H notice was published in the newspapers by the Special Land Acquisition Officer stating the amount of the compensation to be paid including the names of the landowners, their khata numbers and the rate at which the compensation is to be provided.

13. By excluding the procedure and substance for the payment of compensation under the 2013 Act, the exclusion becomes arbitrary and discriminatory and violative of Article 14.

UOI notification dated 28.12.17

14. By this notification UOI clarified the relationship between The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act) and the National Highways Act, 1956.
15. According to the petitioners, the provisions relating to compensation, rehabilitation and resettlement as prevailing in the 2013 Act have now been made applicable to land acquisitions taking place having recourse to the provisions of the National Highways Act, 1956.
16. Alternatively, petitioners impugns as unconstitutional and arbitrary and violative of Article 21, section 105 read with the IVth Schedule Entry 7 which excludes the provisions of the 2013 Act for acquisitions done under the NHA, 1956. Such exclusion is unconstitutional, arbitrary, has no rational basis and deserves to be quashed. As far as the landowners are concerned there is no difference whatsoever between acquisition under the 2013 Act and the National Highway Act, 1956. Land owners are scarcely concerned about the purpose of acquisition and are only concerned about their lands being

acquired by the state. If landowners are entitled under the 2013 Act to compensation, rehabilitation and resettlement, there is no reason whatsoever to exclude these three factors for acquisitions done under NHA 1956. Compensation, rehabilitation and resettlement must be done irrespective of the purpose of acquisition, be it for a public purpose or a national highway.

Wilful wrong mapping and the acquisition of excess land

17. This case is an example of a conspiracy entered into between the NHAI and the contractors constructing the highway resulting in excess acquisition of land contrary to the contracts entered into so that while only approximately 34 hectares of land should have been acquired for the highway, approximately double that i.e. 68 hectares of land are currently being acquired. The contract entered into with the contractor gives the width of the highway. A comparison made between the width of the highway specified in the contract and the official mapping of the width of the road clearly reveals that approximately double the area of land is being acquired. Thus the actual construction of the road is contrary to the section 3A notification, the section 3D notice and the section 3G payment of compensation notice.

18. In this way a conspiracy emerges between the NHAI and the contractor whereby the contractor unjustly enriches himself by having approximately 30 hectares of excess land on either side of the highway at his disposal for commercial sale/development. This has been arranged in connivance the NHAI officials.

27 landholders missing from the revenue records

19. Village Kishanpur Sakulia (Khet 35/1, 2, 3) is missing from the revenue map submitted by the officials even though the land owners have all the authentic revenue records in their possession. Resultantly, these lands have not been shown in the section 3G notice for payment of compensation on the ground that these lands are not shown in the revenue map. This is a major mistake as these lands are shown in the section 3A notification and the section 3D notice.

Rehabilitation and Resettlement

20. In accordance with central government notification dated 28.12.17 abovementioned the landholders are entitled to compensation, resettlement and rehabilitation in accordance with the 2013 Act. This is confirmed by G.O. dated 20.4.15 wherein the above position is admitted by the state government. Moreover, in a similar project at Dehradun where the road is being constructed by the PWD,

compensation, resettlement and rehabilitation is being done in accordance with the 2013 Act. To deprive the present landholders amounts to discrimination and arbitrariness.

Arbitration

21. Section 3G (5) of the NHA I Act forces the landowners to agree for arbitration with the central government being the sole arbitrator. This is unconscionable and arbitrary and vitiated by conflict of interest and bias. The arbitrator ought to be a person independent of the central government. Hence the abovementioned section is liable to be struck down as violative of Article 14 of the Constitution of India.
22. Apart from the constitutionality of the section, 42 landowners have moved for arbitration in respect of quantum of compensation and related issues in August 2017 and thereabouts. Till today no step has been taken towards arbitration by the authorities. Not even the arbitrator has been appointed.

Exclusion of section 24 of the 2013 Act

23. The decision to statutorily exclude section 24 of the 2013 Act as mentioned above and to thereby not have a statutory ceiling for the expeditious completion of acquisition proceedings and payment of compensation, renders the statutory exclusion arbitrary, and unconstitutional as it leaves

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it open to the acquiring authority not only to take unreasonably long periods of time to complete the acquisition but it also leaves it open to the authorities to unreasonably delay the payment of compensation to the landowners.

List of Dates and Events

DATES	✓ EVENTS
4.12.2013	3A notification was published in Gazette of India declaring the intention of the Central Government to acquire the lands of Nanital District, Uttarakhanad.
2.7.2013	Notification of the Central Government under section 3D of The National Highway Act, 1956 was made.
10.9.14	Notice under section 3G (3) was published in the newspapers inviting claims regarding the compensation payable to the landowners.
28.4.2016	An Agreement was done between the NHAI and Sadbhav Engineering Limited.