

Mohd. Chand vs The General Manager (B.O.T.) National ... on 2 January, 2025

Author: Manoj Kumar Gupta

Bench: Manoj Kumar Gupta

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:89-DB

Court No. - 21

Case :- WRIT - C No. - 42759 of 2024

Petitioner :- Mohd. Chand

Respondent :- The General Manager (B.O.T.) National Highway And 2 Others

Counsel for Petitioner :- Avinash Kumar Sharma,Rajesh Dutta Pandey

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Vaibhav Tripathi

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Anish Kumar Gupta,J.

1. The case of the petitioner is that his land was acquired by NHAI under the provisions of National Highways Act, 1956 and an award was also made. The petitioner has received compensation but the rehabilitation and resettlement award has not been made as per the Second Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It has, therefore, been prayed that the respondents be directed to make rehabilitation and resettlement award as per provisions of the Act, 2013.

2. Learned counsel for the petitioner submits that the claim of the petitioner is similar to the one raised in Writ C No.2782 of 2023 (Ashok Kumar and 8 others vs. National Highway Authority of India and 3 others), which was disposed of by this Court, by order dated 24.2.2023 in terms of the order passed in Writ C No.21601 of 2022 (Ranvir Singh and 35 others vs. National Highway Authority of India and Competent Authority For Land Acquisition and Others). The operative part of the order passed in Writ C No.2782 of 2023 (Ashok Kumar and 8 others vs. National Highway Authority of India and 3 others), dated 24.2.2023 is as follows :-

"9. Lastly the writ petitions have been disposed of with the following directions:-

"For the above, without entering into the merits of the claim of the petitioner, it is directed that the competent authority under the National Highways Act, 1956 shall prepare a proposal for the rehabilitation and resettlement award for affected families, within the meaning of Section 3(c) of the Act, 2013, in terms of the entitlements provided in the Second Schedule, with the assistance of the officers of the NHAI and submit the same before the Collector for making award in accordance with the provisions of Section 31 of the RECTLARR Act, 2013.

For preparation of the said proposal, the competent authority shall make necessary enquiry as per the provisions of the Sections 34, 35 and 36 of the RECTLARR Act, 2013 as contained in Chapter V of the Act, 2013, i.e before preparation of the rehabilitation and resettlement award, in relation to the acquisition in question.

It goes without saying that the representatives of the National Highways Authority and the affected tenure holders are entitled to participate in the proceedings for preparation of the award. The claim of the petitioners herein for the entitlements under the Second Schedule at serial no. (1) for provision of housing unit in case of displacement; serial no. (4) choice of annuity and employment and serial no. (10), one time resettlement allowance, shall be specifically considered by the competent authority in making such an award.

The entire exercise shall be completed, as expeditious as possible, preferably, within a period of six months from the date of receipt of copy of this order.

We may make it clear that, at this stage, no direction has been given for providing benefits of Third Schedule as no such demand has been raised by the petitioners herein.

In any case, while making such an award, independent consideration shall be given to the elements of rehabilitation and resettlement entitlements for the affected families provided in the Second Schedule, without being influenced by any of the observations made hereinabove."

10. The petitioners herein are similarly situated and, therefore, are entitled for the same relief.

11. The present writ petition is, accordingly, disposed of."

3. It is submitted on behalf of the petitioner that the instant petition be also disposed of in same terms.

4. Shri Pranjal Mehrotra and Shri Vaibhav Tripathi, learned counsel appearing on behalf of N.H.A.I. and Shri Rajiv Gupta, learned Additional Chief Standing Counsel appearing for the State-respondents do not dispute that the claim of the petitioner is identical, however, they submit that in the matters arising out of acquisition made under the provisions of National Highways Act, 1956, it is the Competent Authority notified by the Central Government, who is competent to declare the award and not the Collector of the district concerned and they submit that this aspect may be clarified by this Court.

5. This Court, recently, while deciding Writ C No. 13489 of 2024 (Rampal Singh and 12 others vs National Highway Authority of India and 2 others) by order dated 24.04.2024, considered identical submission made on behalf of N.H.A.I. and observed as under:

"6. Section 23 read with Section 31 of the Act, 2013 empowers the Collector to pass rehabilitation and resettlement award for each affected family in terms of the entitlements provided in the second schedule. Under Section 3(g) of the Act, 2013 the Collector has been defined thus:-

"(g) Collector means the Collector of a revenue district, and includes a Deputy Commissioner and any officer specially designated by the appropriate Government to perform the functions of a Collector under this Act;"

7. It is evident from the definition of Collector that it includes any Officer specially designated by the appropriate Government to perform the functions of the Collector under the said Act.

8. In NH Act, the power to declare award is conferred upon the competent authority under Section 3G. The competent authority has been defined under Section 3(a) of the Act of 1956 as follows:-

"(a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;"

9. It is not disputed that the Central Government had issued notification on 28.08.2015 under Section 105(3) of the Act, 2013 directing that the provisions relating to the second and third schedule shall apply to all cases of land acquisitions under the enactments specified in the fourth schedule to the said Act. The effect of said notification is to extend the beneficial provisions of the Act, 2013 to the acquisitions made under the NH Act. However, the machinery provided for holding enquiry and determining compensation does not get altered. The same is still to be done in the manner and by the authority stipulated under the Statutes under which acquisition was done. We, therefore, find force in the submission of learned counsel for NHAI that in matters relating to acquisitions under NH Act, it would be the competent authority, as defined under Section 3(a) of

NH Act, which would be empowered to examine the claims pertaining to rehabilitation and resettlement and make award accordingly and not the Collector of the district."

6. In view of above, the instant petition stands disposed of with direction to the Competent Authority under National Highways Act, 1956 to proceed with the exercise of examining the claims pertaining to rehabilitation and resettlement and take decision on the said aspect having regard to the provisions of Chapter V of the Act, 2013 within twelve weeks from the date of communication of the instant order.

Order Date :- 2.1.2025 Mukesh Kr.

(Anish Kumar Gupta,J.) (Manoj Kumar Gupta,J.)