

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

NHLA Case No. 310 of 2013.

The Land Acquisition Officer and Competent Authority,
Special Land Acquisition (NH) Cell, Plot No.318,
Dharakote House, P.S. – Kharvela Nagar, Bhubaneswar
- 750 105, Dist. – Khurda.

... **Petitioner.**

-V e r s u s-

1. Sarada Nanda, Wife of late Birupakshya Nanda, Near Ananta Basudev Mandir, Plot No.2227, Keshari Bhawan, P.S. – Lingaraj, Bhubaneswar - 751 002, Dist. – Khurda.
2. M/s. Keshari Estates Pvt. Ltd., Plot No.98, Kharavela Nagar, Bhubaneswar, Dist. – Khurda, represented through Managing Director Sri Ajaya Kumar Choudhury, Son of late Jagannath Choudhury, at present residing at Plot No.261, Forest Park, P.S. – Capital, Bhubaneswar, Dist. – Khurda.

... **Opp. Parties.**

Counsel :

For Petitioner	--	Shri U.C. Mohanty & Associates.
For O.P. No.1	--	Shri A.K. Chanda & Associates.
For O.P. No.2	--	None (Set ex parte).

Date of argument : 17.09.2014.

Date of order : 27.09.2014.

Order No.13, Dated 27.09.2014.

O R D E R

This is a reference under section 3(H)(4) of the National Highways Act, 1956 (hereinafter called “the Act”) and

Rules framed thereunder read with Section 151 of the C.P.C. for a decision in the matter regarding apportionment of compensation amount relating to the suit land in favour of the opposite parties.

2. The factual matrix leading to the case of the petitioner is that the process of acquisition of land for construction of N.H. No.203 at Bhubaneswar has been taken up by the Government of India and acquired land as per the provisions of law, as stipulated under the Act and Rules framed thereunder. By virtue of the Notification under section 3(A) of the Act, the petitioner has been appointed as Competent Authority. It is averred, inter alia, that under the Act, plot Nos.2869, 2903, 2905, 2870 & 2874, khata No.1200, mouza - Pandara were acquired and, accordingly, compensation was determined under section 3G of the Act by the petitioner. Then, the petitioner invited objection from the persons interested in the land to claim compensation. Since opposite party No.1 is a recorded Raiyat, she was also issued notice; but during field enquiry, nobody remained present. Later, opposite party No.1 informed about pendency of two civil suits bearing No.C.S.85 of 2007 and C.S. 96 of 2007 in the Court of 1st Addl. Civil Judge (Sr. Division), Bhubaneswar and about status quo order passed in I.A. Nos.75 of 2007 & 84 of 2007.

On 17.08.2011, opposite party No.1 asked for demarcation of the acquired land in her presence. But, she did not remain present at the time of demarcation. Then, the son of opposite party No.1 appeared before the petitioner on 28.06.2013 and produced the order of the Civil Court in I.A. No.88 of 2007, mentioning that opposite party No.1 had received consideration amount from opposite party No.2 towards sale of the disputed plots; but the consideration amount received in shape of cheques were dishonoured and there was only Agreement for Sale. It was further informed by the son of opposite party No.1 to the petitioner that C.S. No.85 of 2007 along with I.A. No.75 of 2007 are pending before the learned Civil Judge (Sr. Division), Bhubaneswar on the issue of such Agreement for Sale. It is further averred in the petition that on 19.07.2013, the petitioner found that opposite party No.1 being title holder is claiming compensation amount of the suit land and, at the same time, she is expecting rest land value from the Agreement Holder. As the matter is pending before the Civil Court, the petitioner made reference to this Court under section 3H(4) of the Act to determine the compensation and payment thereof to the persons entitled to the same. It is also prayed to permit the present petitioner to deposit the award amount under Fixed Deposit scheme in any Nationalised

Bank, awaiting final adjudication of the matter.

3. Opposite party No.2 is set ex parte. Opposite party No.1 has filed objection, stating that she being the true owner of the suit property is exclusively entitled to the compensation amount. She has already received the compensation amount of Rs.29,46,520/- in respect of suit plot Nos.2870 & 2874 from the petitioner's office; but, unfortunately she is deprived of the compensation amount of Rs.29,20,552/- relating to the other three plots i.e. plot Nos.2869, 2903 & 2905 appertaining to khata No.1200, which has caused immense mental agony to opposite party No.1, who is a senior citizen of the State. It is the further case of opposite party No.1 that from the date of first appearance, she has been apprising the petitioner about the Agreement for Sale of the suit plots with opposite party No.2. Opposite party No.2 also did not appear before the petitioner. Opposite party No.2 rather filed C.S. No.85 of 2007 for specific performance of contract. There, opposite party No.2 filed I.A. No.75 of 2007 to maintain status quo of the suit land; but it was dismissed on merit by the learned 1st Addl. Civil Judge (Sr. Division), Bhubaneswar. Against that order, appeal was filed before this Court and the same was also dismissed on merit on 29.11.2013. So, there is no dispute over the suit land.

Moreover, it is averred in the objection that by virtue of the decision of the Hon'ble Apex Court in the case of ***Sunil Kumar Jain*** Vs. ***Kishan and others*** (AIR 1995 SC 1891), Their Lordships have observed that compensation can be paid to the true owner even if there is a valid Agreement for Sale executed after acquisition of land under section 4(1) of the Act. It has been observed in the said decision that a true owner is always entitled for compensation and since in the instant case opposite party No.1 is the true owner and Agreement for Sale has been executed with opposite party No.2, the entire compensation amount is to be paid to opposite party No.1, when there is no embargo for payment of the same. She has questioned as to why the petitioner has not paid the compensation amount in spite of the fact that opposite party No.2 has not objected at any time before the petitioner for non-disbursement of the amount. Opposite party No.1 has further averred that the Agreement for Sale is not Agreement of Sale, even if compensation has been disbursed. But, in the instant case, unregistered Agreement dated 22.02.2006 executed by opposite party No.1 in favour of opposite party No.2 was cancelled by opposite party No.1 after issuance of due and proper notice. So, in view of the decision of the Hon'ble Apex Court, opposite party No.1 is entitled to the

entire compensation amount. Thus, she has prayed to direct the petitioner for disbursement of the entire awarded amount with interest thereon for the ends of justice.

4. After going through the pleadings of both parties, the following points emerge for decision :

- (i) Whether opposite party No.1 is entitled to compensation amount ?
- (ii) If so, what amount will be disbursed to opposite party No.1 ?

Point No.(i) :

5. The petitioner has not adduced any evidence, but filed copies of lower Court record. Opposite party No.1 though has not adduced any oral evidence, but filed documents, which are marked as Exts.A to D. There is no doubt as to the acquisition of suit plots, as mentioned in the petition, and admitted by opposite party No.1. It is also admitted by opposite party No.1 that she has already received the compensation in respect of suit plot Nos.2870 & 2874 appertaining to khata No.1200. Ext.D, which is the original Record of Right, shows that the suit plot stands recorded in favour of opposite party No.1 in the current settlement published on 28.05.1989. It appears from the certified copy of the order in I.A. No.75 of 2007 that opposite party No.2 has filed C.S. No.85 of 2007, which corresponds to the said I.A.,

against opposite party No.1 and another Bibhuti Bhusan Kar for specific performance of contract, as he is ready and willing to pay the rest amount, declaration for cancellation of General Power of Attorney dated 08.03.2006 and the Agreement for Sale to be inoperative. Opposite party No.1 filed objection therein and, finally, in that case, opposite party No.2 prayed for injunction against the present opposite party No.1 and said Bibhuti Bhusan Kar from interfering in his possession and proceeding with alienating the suit property; but it is found that the said I.A. was dismissed. Similarly, against that order, F.A.O. No.14 of 2013 was filed before this Court and it was also dismissed. Not only this, but also I.A. No.88/84 of 10/07, arising out of C.S. No.96 of 2007, which has been quoted by the petitioner in his petition, also has been dismissed for non-prosecution, as available from Ext.C. In Ext.C also, the present opposite party No.2 was the petitioner.

6. From an analysis of the documents, it appears that no specific order is there over the suit plots; but the results of the main suits are not put-forth. Even if the results of the main suits are not available, but the fact remains that opposite party No.1 being owner of the suit plots has executed the Agreement for Sale, but not Agreement of Sale of the same. In the case of *Sunil Kumar Jain Vs. Kishan and others* (supra), Their

Lordships have been pleased to observe at para-2 that :

“xx xx xx xx

In a reference, the dispute is to the title to receive the compensation. It is settled law that the agreement of sale does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property. It is seen that the agreement is subsequent to the notification under S.4(1). The Government is not bound by such an agreement. The inter-se dispute is only with respect to the title as on the date of notification under S.4(1). The respondent is the undoubted owner of the property as per S.4 notification and that, therefore, the compensation was directed to be paid to the respondent since he is one of the members.

xx xx xx xx”.

With due respect to the said decision, I find that opposite party No.1 being the true owner of the suit land and since she has not transferred the right, title, interest and possession over the same, she is entitled to the entire compensation amount. If the opposite party No.2 has got dispute with opposite party No.1, he may seek redressal before proper forum but not before the petitioner. In such circumstances, it must be held that opposite party No.1 is entitled to the entire compensation amount from the petitioner. Point No.(i) is answered accordingly.

Point No.(ii) :

7. The petitioner has not been able to disburse the

amount, as opposite party No.1 has received the consideration amount of Rs.2,50,000/- on 04.03.2006; Rs.3,50,000/- on 28.03.2006; Rs.20,15,000/- in May, 2006; and balance amount of Rs.27,65,000/- by PDC from opposite party No.2; but those cheques were bounced. In view of such transaction between opposite party Nos.1 & 2, the petitioner is afraid of paying the compensation amount to opposite party No.1. Opposite party No.1 has admitted about the Agreement for Sale, but did not admit about receipt of any such amount of consideration from opposite party No.2. Apart from this, this is a dispute between opposite party Nos.1 & 2 and it has been held that opposite party No.1 being the owner is entitled to the compensation amount. Not only this, but also opposite party No.1 has admitted in her objection, supported by affidavit, that she has already received the amount of Rs.29,46,520/- relating to the suit plot Nos.2870 & 2874. But, now she claims Rs.29,20,552/- for other three plots. When opposite party No.1 being the owner is entitled to the latter compensation amount, as claimed by her, and the dispute about payment of some consideration amount to opposite party No.1 by opposite party No.2 being alien to the dispute referred by the petitioner, in my considered opinion, she is entitled to Rs.29,20,552/- with regard to plot Nos.2869, 2903 & 2905

appertaining to suit khata No.1200. Point No.(ii) is answered accordingly.

8. In view of the aforesaid analysis, I find that opposite party No.1 being the owner of the suit plots is entitled to a sum of Rs.29,20,552/- towards compensation, which is payable by the petitioner, and it is not necessary to pay anything to opposite party No.2. Hence ordered :

O R D E R

The NHLA Case under sub-section (4) of section 3H of the Act is allowed without cost. The petitioner is directed to pay compensation of Rs.29,20,552/- (Rupees Twentynine Lakhs Twenty Thousand Five Hundred & Fiftytwo) in shape of Bank Draft to opposite party No.1 within a period of one month from the date of this order as per the provisions of section 3G of the Act.

**District Judge, Khurda
at Bhubaneswar.**

27.09.2014.

Dictated, corrected by me and pronounced in the open Court this day the 27th September, 2014.

**District Judge, Khurda
at Bhubaneswar.**

27.09.2014.

List of witnesses examined for petitioner.

Nil.

List of witnesses examined for opposite party No.1.

Nil.

List of documents admitted in evidence for petitioner.

Nil.

List of documents admitted in evidence for O.P.No.1.

- Ext.A -- Certified copy of order in I.A. No.75 of
2007,
Ext.B -- Certified copy of judgment in F.A.O. No.14
of
2013,
Ext.C -- Certified copy of order dated 14.11.2011 in
I.A. No.88/84 of 10/07, &
Ext.D -- R.O.R. of khata No.1200.

**District Judge, Khurda
at Bhubaneswar.**

27.09.2014.