

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 2285 of 2018**

- National Highway Authority Of India, Through Project Director, S. Choudhury, S/o Late Shri N. Choudhury Aged About 52 Years, R/o -F-5, Shivraj Greens, Sihava Road Dhamtari, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

---- **Petitioner****Versus**

1. Union Of India Through Secretary Ministry Of Road Transport And Highways New Delhi., District : New Delhi, Delhi
2. State Of Chhattisgarh, Through Sub - Divisional Officer, Competent Authority For Land Acquisition (C A L A) Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- **Respondent**

For Petitioner	:	Mr. Himanshu Pandey, Advocate
For Respondent No.1	:	Mr. Tushar Dhar Diwan, Advocate
For State	:	Mr. Ghanshyam Patel, G.A.
For Intervenor	:	Mr. Prafull N. Bharat, Sr. Advocate with Mr. Keshav Dewangan, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

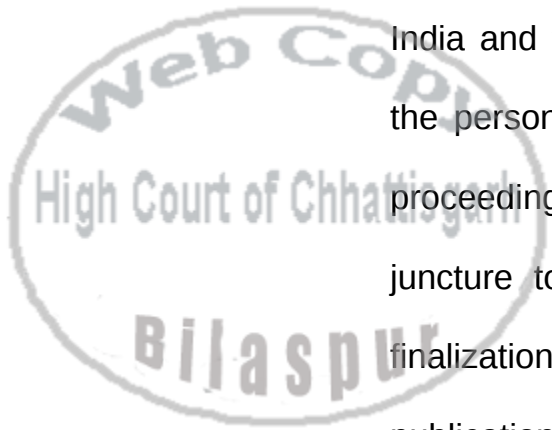
17/01/2023

1. The present writ petition has been filed seeking for the relief of a direction to the respondent No.1-Union of India to initiate proceedings for denotification of the land which stood acquired by the petitioner by publication of a notification under the National Highways Act, 1956 under Section 3D on 21.01.2016 as per Annexure P/1.
2. The brief facts relevant for adjudication of the present writ petition is that the petitioner-National Highways Authority of India has initiated an acquisition proceeding for the purpose of construction of NH No.



30 (old NH No. 43) Raipur-Dhamtari section. The notification under Section 3A was initially published on 29.05.2015 in the official Gazette of the Government of Chhattisgarh and subsequently the paper publication in this regard was made on 08.07.2015. Subsequently, the final Gazette notification under Section 3D of the National Highways Act was published on 21.01.2016 in the Gazette and thereafter the same was published in the newspaper having wide circulation on 09.02.2016 and the award was finally passed on 18.07.2016.

3. In the instant writ petition the petitioner has made only the Union of India and the State of Chhattisgarh as a necessary party. None of the persons whose land stood acquired under the said acquisition proceedings have been made a party. It would be relevant at this juncture to take note of the fact that as a consequence of the finalization of the acquisition proceedings particularly after the publication of the notification under Section 3D of the National Highways Act, sub-section (2) of Section 3D envisages that the entire land stands vested absolutely with the Central Government free from all encumbrances. Under Section 3E also it is envisages that the authorities have the power to take possession of the said property immediately upon the notification under Section 3D having been published.
4. Much to our surprise now after a period of more than two years from the date of the publication of the 3D notification the National Highway Authority have filed the present writ petition seeking for the relief of the permission for denotification of the said notification under





Section 3D dated 21.01.2016 (which has got wrongly typed as '21.01.2018' in the writ petition).

5. The counsel appearing for the intervenor makes a categorical submission that as a consequence of the acquisition and the notification under Section 3D having been published, the petitioner herein have entered upon the property of the intervenor and have demolished the existing structure and have erased the same and thereby the intervenor has lost possession and has been deprived the use of the land since then.

6. It would be relevant at this juncture to take note of the fact that Section 48 of the old Act i.e. the Land Acquisition Act of 1894 provides for the government to withdraw from the acquisition in the event if the said land is not required. For ready reference Section 48 of the old Act is reproduced herein under:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”





7. So also under the new Act of 2013 Section 93 prescribes for a *pari materia* provision which again for ready reference is being reproduced herein under:

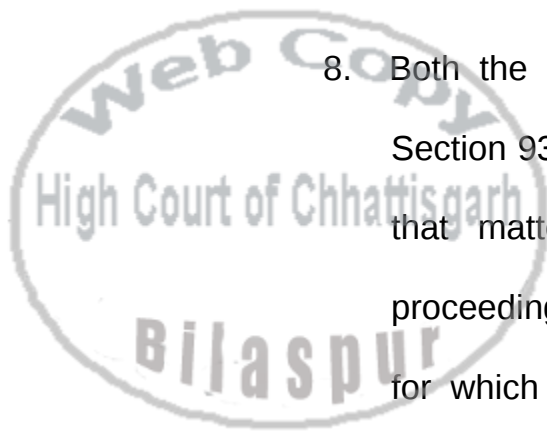
“93. Completion of acquisition not compulsory, but compensation to be awarded when not completed.–

(1) The appropriate Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the appropriate Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.”

8. Both the above said provision of Section 48 of the old Act and Section 93 of Act of 2013 permits the appropriate Government or for that matter the department to withdraw from the acquisition proceedings in the event if the land is not required for the purpose for which it was being acquired subject ofcourse complying with other statutory conditions stipulated under the said Act.

9. A point to be considered in the instant case is that both Section 48 under the Act of 1894 as also Section 93 under the Act of 2013, the withdrawal from the acquisition would only be permissible unless the possession is taken by the appropriate authority, which in other words mean that in the event if the acquisition stands concluded, the possession having been taken, the authorities concerned would not have the power to withdraw from the acquisition proceedings.
10. It would be trite at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **“Pimpri Chinchwad New Township**





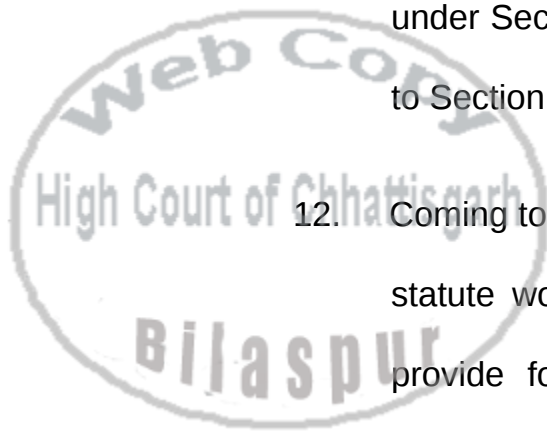
Development Authority v. Vishnudev Cooperative Housing Society and others” 2018(8) SCC 215, wherein in paragraph 32 the Hon'ble Supreme Court has held as under:

“32. Once we hold that the possession of the land in question was taken by the State in accordance with law on 30.05.2004 from the landowners, we have no hesitation in holding that the provisions of Section 48 of the Act were not applicable to the case at hand. In other words, once it is held that the possession of the acquired land was with the State, the land stood vested in the State disentitling the State to release the land from the acquisition proceedings by taking recourse to the provisions of Section 48 of the Act.”

11. It goes without saying that the said principles of Law laid down by the Hon'ble Supreme Court would also squarely apply in a proceeding under Section 93 of the Act of 2013 which is a provision *pari materia* to Section 48 of the Act of 1894.

12. Coming to the provisions of the NH Act, the bare perusal of the entire statute would by itself reflect that, the said Act of 1956 does not provide for any such provision or the power with the National Highway Authority or the concerned Government to withdraw from the acquisition proceedings. On the other hand after the notification under Sections 3A & 3D has been notified and published, subsection (2) of Section 3D of the Act of 1956 specifically enumerates that upon the publication of the notification under Section 3D, the land shall stand vested absolutely with the Central Government free from all encumbrances.

13. It would also be relevant at this juncture to refer to the observations made by the Hon'ble Supreme Court in the case of **“Manish Goel vs Rohini Goel” 2010 (4) SCC 393**, though the said judgment was passed under a different statute, but dealing with the powers of the





writ Court and the extent the writ Court could exercise its power has been laid down by the Hon'ble Supreme Court in paragraphs No. 14 & 15, which is reproduced herein under:

“14. Generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide State of Punjab & Ors. v. Renuka Singla & Ors (1994) 1 SCC 175; State of U.P. & Ors. v. Harish Chandra & Ors. AIR 1996 SC 2173; Union of India & Anr. v. Kirloskar Pneumatic Co. Ltd. AIR 1996 SC 3285; Vice Chancellor, University of Allahabad & Ors. v. Dr. Anand Prakash Mishra & Ors. (1997) 10 SCC 264; and Karnataka State Road Transport Corporation v. Ashrafulla Khan & Ors. AIR 2002 SC 629).

15. A Constitution Bench of this Court in Prem Chand Garg & Anr. v. Excise Commissioner, U.P. & Ors. AIR 1963 SC 996 held as under:

"12.....An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."

The Constitution Benches of this Court in Supreme Court Bar Association v. Union of India & Anr. AIR 1998 SC 1895; and E.S.P. Rajaram & Ors. v. Union of India & Ors. AIR 2001 SC 581 held that under Article 142 of the Constitution, this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure."

14. It has been the settled position of law by a catena of decisions by the Hon'ble Supreme Court wherein it has been time and again reiterated that in the course of exercising of the writ powers by the High Court under Article 226, it would not create a law or exercise powers, which are otherwise not enshrined under the provisions of law. Exercising of such powers, which are otherwise not prescribed would be inconsistent to the substantive law itself. Particularly in the instant





case where the Land Acquisition Act of 1894 and the subsequent Act of 2013 both having a clause for withdrawal from the acquisition and the subject Act in the present writ petition i.e. the National Highways Act, 1956 not having such a provision, this Court is of the opinion that there seems to be a deliberate exclusion by the Law Makers while enacting the said law. Hence under the circumstances, it would not be fit for this Court in exercise of its writ powers to grant a relief that the petitioner in WPC No. 1442 of 2018 has sought and the writ petition of the petitioner-NHAI, therefore deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

