

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No.276 of 2018

Devi Prasad Saklani & othersPetitioners

Versus

Union of India & others Respondents

Present: Mr. Pankaj Tangwan, Advocate for the petitioners.
Mr. C.S. Rawat, Additional C.S.C. along with Mr. P.C. Bisht, Standing Counsel for the State/respondent nos.2 & 3.
Mr. Sanjay Bhatt, Advocate for the respondent no.1.
Mr. Naresh Pant, Advocate for the respondent no.4.

Hon'ble Sharad Kumar Sharma, J. (Oral)

This writ petition has been preferred by 27 writ petitioners who claim their status as to be that of a tenant and some of them also claim themselves to be the owner of the property/land which has been acquired by the National Highway Authority by issuance of the notification dated 27.1.2017 and the corrigendum dated 28.7.2017 issued under National Highway Authority Act, 1956, by exercising power under Section 3A of Act, for NH-109, which is put to challenge by the petitioners in the present writ petition.

2. The contention of the petitioner in brief is that as a consequence of the acquisition proceedings held under National Highway Authority Act, 1956 by invoking the provisions of Section 3-A of the Act, the land which

has been acquired is the land which was occupied by the petitioners in the capacity of a tenant or as a landlord. The same has been taken over for the purpose of the construction of National Highway No.109. The grievance of the petitioner is that while determining their compensation under Section 3-G of the said Act of 1956, the respondent no.2, i.e. the SLAO/CALA is not taking into consideration the impact of the provisions contained under Right to Fair Compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act, 2013. His submission is that in view of Schedule Fourth of the Act of 2013, the provisions of the said Act of 2013 has been held applicable for determining compensation on the acquisition proceedings which are taken under National Highway Act of 1956, for the said purpose. Section 105 of Right to Fair Compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act of 2013 and part of Schedule Fourth is quoted here under:-

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications- (1)

Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth schedule.

(2) Subject to sub-section (2) of Section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to

compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

THE FOURTH SCHEDULE
(See Section 105)
**LIST OF ENACTMENTS REGULATING LAND ACQUISITION
AND REHABILITATION AND RESETTLEMENT**

- 1. -----
- 2. -----
- 3. -----
- 4. -----
- 5. -----
- 6. -----
- 7. The National Highways Act, 1956 (48 of 1956).
- 8. -----
- 9. -----
- 10. -----
- 11. -----
- 12. -----
- 13. -----

3. The petitioner submits that raising his grievance, he has submitted his representations/ objections on 22.11.2017 which was followed with a reminder which was submitted on 15.12.2017 to the Special Land Acquisition Officer and the said objection thus submitted by him will fall to be an objections within the ambit of the provisions contained under Section 3-C of the National Highway Act of 1956 and it was incumbent on the Special Land Acquisition Officer to have decided the said objection in the light of the

provisions contained under sub clause 2 of Section 3 (C) of the National Highway Authority Act of 1956.

4. After having heard the learned counsel for the parties, I dispose of this writ petition directing the respondent no.2 to consider and decide the representation/objection submitted by the petitioner dated 22.11.2017 and 15.12.2017 for the determination of a fair compensation, after a harmonious reading of the Act No.13 of 2013 along with the National Highway Authority Act of 1956. The said representation as submitted by the petitioner would be decided by the SLAO/CALA, in accordance with law, as expeditiously as possible.

5. Subject to the above observation, writ petition stands disposed of.

6. No order as to costs.

(Sharad Kumar Sharma, J.)
Vacation Judge
31.1.2018