

**IN THE HIGH COURT OF UTTARAKHAND**

**AT NAINITAL**

ON THE 24<sup>TH</sup> DAY OF JULY, 2021

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition (M/S) No. 1397 of 2021

**BETWEEN:**

Yudhbir Singh. ....Petitioner

(By Mr. B.S. Negi, Advocate)

**AND:**

Union of India and others. ....Respondents

(By Mr. Rakesh Kunwar, Additional C.S.C. for the State of Uttarakhand and Mr. Naresh Pant, Advocate for respondent nos.2, 4 & 8)

**JUDGMENT**

According to the petitioner, he was tenant in a shop, which was acquired for widening of National Highway under the provisions of National Highways Act, 1956. Since no compensation was paid to the petitioner, therefore, he has approached this Court seeking the following reliefs:

"(i) issue a writ, order or direction in the nature of mandamus, commanding/directing the respondents to award the compensation, damages, including all other admissible benefits, with interest to the petitioner.

(ii) issue a writ, order or direction in the nature of mandamus, commanding/directing the respondents to consider the claim of the petitioner of compensation, rehabilitation, resettlement as per the

National Rehabilitation & Resettlement Policy, 2007 (Annexure No. 4 to this writ petition)."

2. Learned counsel for respondent nos.2, 4 & 8 submits that compensation has been paid to the owner of the shop, therefore, petitioner's claim for compensation is without any legal basis.
3. Learned counsel for the petitioner, however, has referred to provision contained in Section 3 (c) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which is reproduced below:

**"3. Definitions-** In this Act, unless the context otherwise requires,-

- (a)....
- (b)....
- (c) "affected family" includes-
  - (i) a family whose land or other immovable property has been acquired;
  - (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;
  - (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

- (iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;
- (v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;
- (vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;"

4. Learned counsel for the petitioner has also referred to provision contained in Section 3 G (2) of the National Highways Act, 1956, which reads as under:

**"3G. Determination of amount payable as compensation-**

(1).....

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land."

5. Learned counsel for respondent nos. 2, 4 & 8 then submits that if petitioner has any claim for compensation, then he has a remedy of approaching Competent Authority Land Acquisition under Section 3G (5) of National Highways Act, 1956.

6. Since petitioner has statutory remedy under Section 3G (5) of National Highways Act, 1956, therefore, the writ petition is disposed of with liberty to petitioner to approach Competent Authority Land Acquisition. If petitioner approaches the Competent Authority Land Acquisition within three weeks from today, the Competent Authority Land Acquisition shall consider and decide petitioner's claim on merits as early as possible, preferably within a period of one year from the date of production of certified copy of this order.

**(MANOJ KUMAR TIWARI, J.)**

*Arpan*