

Court No. - 46

Case :- WRIT - C No. - 32044 of 2023

Petitioner :- A.C. Brothers Export Pvt. Ltd.

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Shiv Sagar Singh, Sr. Advocate

Counsel for Respondent :- A.S.G.I., C.S.C., Dhananjay
Awasthi, Pranjal Mehrotra

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Petitioner's land came to be acquired by the National Highway Authority of India, pursuant to a notification issued, on 04.10.2021, under Section 3A(1) of The National Highways Act, 1956. The objection apparently was made in terms of Section 3(C) of the Act and ultimately a declaration referable to Section 3(D) of the Act has been issued on, 03.02.2022. An award has also been made by the competent authority on 24.11.2022. It is this award which is impugned in the present writ petition.

Sri Shashi Nandan, learned Senior Counsel for the petitioner, submits that award has been made by the competent authority treating the nature of the land to be agricultural, although a declaration in terms of Section 80 of the U.P. Revenue Code has already been made by the competent authority, as per which, the land was non-agricultural. Though a subsequent order was passed, to the contrary, but the issue is pending before this Court in Writ Petition No.31551 of 2021 and interim protection is also available to the writ petitioner. It is, therefore, submitted that the authorities have not correctly determined the compensation. It is also submitted that the petitioner's objection made under Section 3(C) of the Act has not been bestowed any consideration by the

competent authority.

The petition is opposed by the counsel for National Highway Authority of India. Sri Dhananjay Awasthi for authority states that the award made under Section 3(G)(1) of the Act can always be assailed before Arbitrator in terms of Clause (5) of Section 3(G) of the Act and the claims relating to the potentiality of land or the amount admissible to be paid as compensation are left open for determination before such authority. It is, therefore, submitted that the award passed by the competent authority under Section 3(G)(1) of the Act is not required to be interfered with in the present petition.

We have heard learned counsel for the parties and perused the materials on record.

The statutory scheme is clear, as per which, preliminary notification is required to be issued under Section 3(A)(1) of the National Highways Act, 1956 and right to make objection is conferred on the tenure-holder and consideration of such objection and hearing is contemplated under Section 3(C) of the Act. In para-27 of the writ petition the petitioner submits that such objection of the petitioner made under Section 3(C) of the Act has been rejected. A contrary submission, however, is made vide amendment application filed today, as per which, the objection of the petitioner has not been considered. We are not impressed by the contrary pleadings made by the petitioner in the writ petition of such kind. It is further undisputed that declaration referable to Section 3(D) is already made by the competent authority. Subsequent in point of time of an award under Section 3(G)(1) of the Act is also made. The scheme contemplates that person aggrieved by such award can challenge it before an Arbitrator. In

view of such statutory scheme, we are not inclined to entertain the writ petition directed against the award as the petitioner has remedy of approaching the Arbitrator in terms of Section 3(G)(5) of the Act.

Learned Senior counsel, appearing for the petitioner, vehemently contended that question as to whether the land is to be treated as agricultural or non-agricultural on account of decision taken by the competent authority under Section 80 of the Revenue Code is engaged attention of this Court in Writ-C No.31551 of 2021. It is, therefore, submitted that the authorities can not treat the land to be possessed of agricultural potentiality alone.

The argument raised by the petitioner does not require any consideration by this Court inasmuch as the potentiality of the land has to be independently determined by the competent authority under Section 3(G)(1) of the Act. The person aggrieved has the remedy of approaching the Arbitrator against it. The question as to whether the land is possessed of agricultural or non-agricultural potentiality would be independently decided by the competent authority under Section (G)(5) of the Act. Pendency of the writ petition arising out of the decision taken under Section 80 of U.P. Revenue Code would thus not preclude the authority from an independent consideration of the potentiality of the land in terms of above direction. In that view of the matter, we are not inclined to entertain the writ petition on account of pendency of the Writ-C No. 31551 of 2021. It is, however, provided that in the event, the petitioner raises challenge to the award before the Arbitrator, in terms of Section 3(G)(5) of the Act, the authority concerned shall independently take a decision with regard to the potentiality of the land without being influenced by the decision taken under Section

80 of U.P. Revenue Code.

Subject to the observations made above and while protecting the petitioner's right to approach the Arbitrator in terms of Section 3(G) (5) of the Act, the writ petition is consigned to the records.

Sri Pranjal Mehrotra has appeared for respondent no.1.

Order Date :- 28.11.2023

MN/-