

Court No. - 21

Case :- WRIT - C No. - 37995 of 2023

Petitioner :- Ajeet Singh And 5 Others

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Shiv Sagar Singh

Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Donadi Ramesh,J.

1. The instant petition is directed against the notification dated 3.2.2022 under Section 3-D of the National Highways Act, 1956 acquiring certain land for purposes of construction of a four Lane National Highway. The petitioners have also challenged the award dated 26.12.2022 in so far as it relates to plot nos. 143 and 144, situated in Village Batwali Mustahkam, Tehsil and District Moradabad and have prayed for payment of compensation by treating the acquired land as non-agricultural instead of agricultural in character.

2. The submission of learned counsel for the petitioners is that the aforesaid land which was purchased by the petitioners by sale deeds dated 13.4.2021, 9.7.2021, 15.7.2021, 16.4.2021 and 25.1.2023 respectively, was declared non-agricultural by Up-Ziladhikari by order dated 20.7.2014 but award has been made treating it to be agricultural. It is also contended that name of the vendors of the petitioners was mentioned in the notification under Section 3-A and on account of which they could not file objections under Section 3-C of the Act. It is also submitted that the petitioners were not heard under Section 3-G(4) before passing the award. He submits that the mechanism provided under the Act was not followed and therefore all consequent proceedings would stand vitiated. In support of his contentions, he has placed reliance on

judgment of Bombay High Court in **Writ Petition No. 6927 of 2023 (Govind Poslya Gavit & Another vs. The Competent Authority and or Special Land Acquisition Officer, Nandurbar & Another)**.

3. However, we find no force in any of the contentions. It is not in dispute that the plots of the petitioners were included in the notification under Section 3-A of the Act. The said notification was published in the Gazette on 28.9.2021. The substance of the notification was published in two local newspapers on 4.10.2021 as per requirement of Section 3-D(3). Any person interested in the land included in the notification under Section 3-A and not only those whose name finds place therein, could have filed objection under Section 3-C. Therefore, the notification under Section 3-A cannot be said to be illegal for the reason that it did not mention the name of the petitioners, but their predecessor-in-title.

4. Moreover, objection under Section 3-C could only be in relation to proposed user of land for purpose or purposes mentioned in Sub-section (1) of Section 3-A. Under Section 3-A(1), the Central Government notifies its intention to acquire land for a public purpose. Thus, the scope of objection under Section 3-C(1) is confined to proposed acquisition of the land for public purpose and not in relation to any plea which is relevant for determining the compensation amount. The said stage arises after issuance of declaration under Section 3-D and when public notice is given inviting claims from all persons interested in the land, as provided under Section 3-G(3) of the Act.

5. The petitioners have allegedly purchased the subject land from a promoter prior to issuance of notification under Section 3-A dated 28.9.2021. However, they have not filed any objection. There is no

avermment in the writ petition that the competent authority had not issued public notice in two newspapers, as is required under Section 3-G(3) of the Act. Thus, we are not ready to accept that the petitioners were not given proper notice or were not heard.

6. Additionally, it has to be noted that once the award has been pronounced, the remedy of the petitioners is by way of seeking arbitration in challenging the award as contemplated under Section 3-G(5) of the Act. It is still open to the petitioners to avail the said remedy and wherein they shall have every right to demonstrate that the land was no more agricultural in character on the date of notification under Section 3-A of the Act. The judgment of the Bombay High Court was based on facts of that case and does not lay down that in every case, the plea that land is non-agricultural should be entertained in writ jurisdiction, by-passing the statutory remedy provided under the Act.

7. Accordingly, without interfering with the impugned notification under Section 3-D of the Act, we dispose of the instant petition with liberty to the petitioners to challenge the award as per the statutory scheme, if so advised and in which event, no observation made herein would influence the decision of the Arbitrator.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, J.)

Order Date :- 3.11.2023

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