

Court No. - 3

Case :- WRIT - C No. - 8460 of 2022

Petitioner :- Jai Prakash And Another

Respondent :- State Of U.P. Thru Addl Chief Secy Deptt Of Revenue Lko. And 4 Others

Counsel for Petitioner :- Rajiv Kumar Bajpai

Counsel for Respondent :- C.S.C.,Prashant Kumar Srivastava,Sarvesh Kumar Dubey

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

Heard learned counsel for petitioner and learned counsel for respondents.

The present writ petition has been filed by the petitioner challenging recovery order notice dated 17.09.2022 passed by opposite party no.2.

Facts of the case are that land of petitioners was acquired for the purpose of national highway and compensation for the same was fixed by an award passed by the competent authority on 21-06-2017. Against the said award, claimants filed application for enhancement of compensation under section 3 G (5) of the National Highway Act,1956. The National Highway Authority did not move any application for reduction of the amount of compensation awarded by the competent authority. Said application of claimants for enhancement was referred for arbitration as per provisions of 3G (5) of the National Highway Act. The Arbitrator has reduced the amount awarded by the competent authority by the impugned order/award. Meanwhile, petitioner was paid higher compensation as fixed by the competent authority.

Since, the amount of compensation was reduced by the Arbitrator, hence, a recovery certificate is issued against the petitioner for recovery of difference of amount between the award granted by competent authority and the reduction made by the arbitrator.

Sole ground of learned counsel for petitioner for challenging the impugned order is that the award itself states that National Highway Authority has not challenged the compensation granted to the petitioner by the competent authority and, infact, before the Arbitrator, it had submitted that the amount granted

by the competent authority is as per rules and appropriate. Thus, submission of learned counsel for petitioner is that without there being any prayer for reduction of amount, Arbitrator could not have reduced the same.

Learned counsel for National Highway Authority was granted time to seek instructions in the matter and on the basis of instructions, he submits, that National Highway Authority had not made any application for reduction of compensation awarded to petitioner.

Since, there was no prayer made before the Arbitrator for reduction of compensation, hence, Arbitrator could not have reduced the same. At the best, he could have rejected petitioner's application for enhancement of compensation. Hence, the award passed by the Arbitrator cannot stand. Recovery certificate, as a consequence, also cannot stand.

Thus, the writ petition is allowed and the impugned award dated 21.06.2027 and recovery certificates dated 17.09.2022, are set aside.

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[Manish Kumar,J.] [Vivek Chaudhary,J.]

Order Date :- 18.10.2023

S. Kumar