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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12499 of 2016
With
Interlocutory Application No.6714 of 2016

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1. Pramod Kumar, S/o Surendra Sah, R/o Sarai Bazar, P.S. Sarai Bazar, District Vaishali.
2. Poonam Gupta, D/o Surendr Sah, R/o +P.O.+P.S. -Sarai Bazar, District Vaishali.
3. Sri Raj Kishore Gupta, S/o late Rajeshwar Prasad @Sah, S/o Ram Jiwan Sah, R/o +P.O.+P.S.- Sarai Bazar, District Vaishali.
4. Sri Bishwanath Prasad Gupta, S/o Ram Jiwan Sah, R/o +P.O.+P.S. Sarai Bazar, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms (Land Acquisition) Bihar Patna.
2. The Additional Collector-Cum-Arbitrator, Vaishali, Hazipur.
3. The District Magistrate, Vaishali, Hazipur.
4. The District land Acquisition Officer, Vaishali.
5. The National High Way Authority of India, Plot No. 65, Sector-6, Dwarika New Delhi -75
6. The Project Implementation Officer, Govt. of India, N.H.A.1 Hazipur, Sharma House, IInd Floor, Ramashish Chowk, Hazipur, Vaishali.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mrs. Archana Meenakshee, Adv.
For the Respondent nos.1to4 : Mr. Md.Khurshid Alam, AAG-12
Mrs. Nutan Sahay, AC to AAG-12
For the Respondent nos.5&6 : Mr.S.N.Pathak, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 31-08-2016

Heard the parties.

The petitioners are aggrieved by the orders dated 22.12.2015 passed separately in Land Acquisition Arbitration Case Nos.25 of 2015, 26 of 2015, 27 of 2015 and 28 of 2015 by the respondent Arbitrator-cum-Additional Collector, Vaishali, as contained in Annexure-1 series to the writ petition, whereby the aforesaid cases filed on behalf of the petitioners under Section 3-G(5) of The National Highways Act, 1956 (in short ‘Act, 1956’) have been

rejected, and thereby the claims of the petitioners for payment of higher amount of compensation, than that fixed by the competent authority, have been rejected.

Though, the learned counsel appearing on behalf of the petitioners has argued the matter at some length by referring to certain issues of facts, but, at the very outset, the learned AAG-12, appearing on behalf of the respondent nos.1 to 4, has raised the question of maintainability of the present writ petition. It is contended by the learned AAG-12 that, in view of the provisions contained in Section 3-G(6) of the Act, 1956, the provisions of The Arbitration and Conciliation Act, 1996 (in short 'Act, 1996) are applicable with respect to an arbitration made by the Arbitrator under the provisions of the Act, 1956. Therefore, according to him, against the impugned arbitral award, in view of the provisions contained in Section 34 of the Act, 1996, appropriate remedy to the petitioners is to move before the Civil Court of competent jurisdiction and the writ petition is not maintainable. In support of his above contentions, he has placed reliance on a judgment of Andhra Pradesh High Court in the case of **Nekkalapudi Ramakrishna Pratap Vs. The District Collector-cum-Arbitrator, West Godavari District & Anr. [AIR 2006 A.P. 136).**

The learned counsel appearing on behalf of the respondent nos.5 and 6, while supporting the submissions of the learned AAG-12 about non-maintainability of the present writ petition, submits that the issues involved herein are squarely covered by a Division Bench judgment of our own High Court in the case of **The Projector Director, National Highway Authority, Araria Vs. Md. Gufran Alam & Ors. [2014 (1) PLJR 207].** Therefore, he contends that the present writ petition is not maintainable and is fit to

be dismissed on that ground alone.

Before embarking on the points raised by the learned counsel appearing on behalf of the parties, this Court finds that there is no dispute that the lands in question claimed by these petitioners, fully detailed in paragraph 5 of the writ petition, were acquired by the State Government on the requisition made by the National Highway Authority of India under the provisions of the Act, 1956 for widening the National Highway No.77, Haijpur-Muzaffarpur section, and converting it into four lane, by a Gazette Notification issued in the daily newspaper “Hindustan” (Hindi) on 22.04.2010. Determination of compensation payable to the interested persons in the lands in question was made by the competent authority in terms of Section 3-G(1) of the Act, 1956. The petitioner nos. 1 and 2 as also one Rajeshwar Prasad Gupta@ Sah, now deceased father of the petitioner no.3 and deceased full brother of the petitioner no.4, being aggrieved by the amount of compensation determined by the competent authority in terms of Section 3-G(1) of the Act, 1956 and also questioning the action of the respondent State in acquiring the lands in question under the provisions of the Act, 1956, filed two separate writ petitions viz CWJC No.11748 of 2013 and CWJC No.9858 of 2013. Both the writ petitions were heard and disposed of together by an order dated 12.08.2014 (Annexure-2) by a Bench of this Court (Coram: Shivaji Pandey, J.) and all other objections raised on behalf of the petitioners of those cases were negatived, but they were granted liberty to approach the Arbitrator-cum-Additional Collector, Vaishali, Hajipur for redressal of their valid grievances regarding payment of higher amount of compensation in terms of Section 3-G(5) of the Act, 1956. The aforesaid order dated 12.08.2014 (Annexure-2) has attained its finality as the petitioners have not questioned the validity and

correctness of the aforesaid order either in L.P.A. or before the Hon'ble Apex Court. Apparently, in the light of the order/direction of this Court dated 12.08.2014, the petitioners approached the respondent Arbitrator-cum-Additional Collector, Vaishali, Hajipur in terms of Section 3-G(5) of the Act, 1956 and, accordingly, Land Acquisition Arbitration Case Nos.25 of 2015, 26 of 2015, 27 of 2015 and 28 of 2015 were registered, but, by the impugned orders dated 22.12.2015, all the aforesaid cases have been rejected and claim for payment of higher amount of compensation has not been accepted by the Arbitrator. Hence, the present writ petition has been filed assailing the validity and correctness of the impugned orders dated 22.12.2015 (Annexure-1 series).

The learned counsel appearing on behalf of the petitioners, while assailing the validity and correctness of the impugned orders, has raised various issues of facts with respect to the lands in question. As noticed above, the learned AAG-12, appearing on behalf of the respondent nos.1 to 4, and the learned counsel appearing on behalf of the respondent nos.5 and 6, at the very outset, have raised the question of maintainability of the present writ petition against the impugned arbitral awards.

Under the scheme of the Act, 1956, if a parcel of land belonging to any private individual is acquired by the State Government on the requisition made by the National Highway Authority of India under Section 3-A of the Act, 1956, then objections are required to be considered under Section 3-C of the Act, 1956 and after disposal of objection, if any, declaration of acquisition is made under Section 3-D of the Act, 1956 and thereafter the lands vest absolutely in the Central Government free from all encumbrances. Determination of compensation payable to the interested

person(s)/land owner(s) is required to be made by the competent authority under Section 3-G(1) of the Act, 1956. Section 3-G(5) of the Act, 1956 provides that, if the amount determined by the competent authority is not acceptable to either of the parties, the amount of compensation payable is required to be determined by an Arbitrator to be appointed by the Central Government. It is not in dispute that the Additional Collector of every districts in the State of Bihar have been appointed as Arbitrator by the Central Government by issuing appropriate notifications for exercising powers under Section 3-G(5) of the Act, 1956. Section 3-G(6) of the Act, 1956 provides that for every arbitration made under the Act, 1956, the provisions of the Act, 1996 shall be applicable. Thus, it is apparent that the Arbitrator, so appointed by the Central Government under Section 3-G(5) of the Act, 1956, will have to follow the procedures under the provisions of the Act, 1996.

Under the scheme of the Act, 1996, if a party to Arbitration is aggrieved by the arbitral award, then he/she is required to take recourse under Section 34 of the Act, 1996 to a Court for setting aside such arbitral award. The grounds for setting aside such arbitral award have been specified under Section 34(2) of the Act, 1996. Section 36 of the Act, 1996 provides that, if the time for making an application for setting aside the arbitral award under Section 34 of the Act, 1996 has expired or if the application so made has been rejected, then the arbitral award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it was decree of the Court. Section 37 of the Act, 1996 provides for an appeal from the original decree of the Court. The Court has been defined under Section 2(e) of the Act, 1996 to mean the principal civil court of original jurisdiction in a district and includes the High Court in

exercise of its ordinary original civil jurisdiction, but it does not include any civil court of a grade inferior to such principal civil court or any Court of small Causes.

After noticing the various provisions of the Act, 1996 as also the provisions of the Act, 1956, a Division Bench of our own High Court in the case of **The Projector Director, National Highway Authority, Araria Vs. Md. Gufran Alam & Ors. (supra),** has laid down a principle that the writ petition against the arbitral award passed with respect to the dispute relating to compensation for the land acquired under the provisions of the Act, 1956 is not maintainable. It has further been held that, in view of Section 34 and Section 36 of the Act, 1996, statutory remedy for execution of the arbitral award is available to the land owner before the civil court of competent jurisdiction. The order passed by the learned Single Judge entertaining the writ petition under Article 226 of the Constitution of India in such matter and issuing appropriate directions were set aside by the aforesaid Division Bench of our own High Court.

The identical issues came up for consideration before a learned Single Judge of the Andhra Pradesh High Court in the case of **Nekkalapudi Ramakrishna Pratap Vs. The District Collector-cum-Arbitrator, West Godavari District & Anr. (supra).** After consideration of scheme and scope of the Act, 1956 as also the Act, 1996, it was held that against an arbitral award prepared under Section 3-G(5) of the Act, 1956, the writ petition cannot be entertained. For better appreciation, the paragraphs 3,4 and 5 of the aforesaid judgment are reproduced hereinbelow:-

> "3. When the land is acquired under the Act, the competent authority shall determine the amount which shall be payable to the landowners in accordance with the principles contained in sub-section (7) of Section 3G of the Act, the aggrieved person may approach the

Arbitrator appointed by the Central Government in accordance with Section 3G(5) of the Act. The Act provides that the provisions of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') shall apply to every arbitration under the Act. In this case, there is no denial that the District Collector is appointed by the Central Government as Arbitrator for the purpose of redetermination under Section 3G(5) of the Act. Applying the procedure under the Arbitration Act, therefore, a person aggrieved by the proceedings of the Arbitrator under Section 3G(5) of the Act has to necessarily invoke the provisions of S.34 of the Arbitration Act, and a writ petition is not a proper remedy.

4. It is also brought to the notice of this Court by the learned Assistant Government Pleader for Revenue (Land Acquisition) that as per Section 3J of the Act the provisions of Land Acquisition Act, 1894, shall not apply for the acquisition under the Act, and therefore, Section 3G of the Act alone is a comprehensive provision. If any person is aggrieved by the compensation determined or redetermined by the authorities under Section 3G(3) of the Act or 3G(5) of the Act, a remedy lies under Arbitration Act, and in a writ petition this question cannot be adjudicated. It is settled law that when statute provides for depriving a citizen of his/her rights and also provides the necessary procedure to be followed for redressal of such grievance, the same procedure should be followed. Therefore, the writ petition cannot be entertained.

5. Though the learned counsel for the petitioner made submissions for sometime, having regard to the clear provisions of the Act as contained in Section 3G(6) of the Act, he seeks permission to withdraw the writ petition with a liberty to file an appropriate application under Section 34 of the Arbitration Act before the Civil Court."

The scheme and scope of Section 11(6), 16, 34 and 37 of the Act, 1996 vis-à-vis Article 226 and 227 of the Constitution of India came up for consideration before a 7 Judges Bench of the Hon'ble Supreme Court in the case of **M/s. S.B.P. & Co. Vs. M/s. Patel Engineering Ltd. and Anr. [AIR 2006 SC 450].** The majority

view of 6 Judges was authored by P.K. Balasubramanyan, J. and it was held in paragraphs 44, 45 and 46 that the orders passed by the arbitral tribunal are not open to challenge in a proceeding under Article 226 or 227 of the Constitution of India. In paragraph 46, the conclusions arrived at by the aforesaid Constitution Bench have been summed up, but the entertainment of the writ petitions by different High Courts under Article 226 or 227 of the Constitution of India against any order passed by the arbitral tribunal has been held to be not permissible. The paragraphs 44 and 45 of the aforesaid judgment are usefully reproduced hereinbelow:-

> "44. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appelable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.
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> 45. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could

be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

Taking into consideration the principles enunciated by our own High Court in the case of **The Projector Director, National Highway Authority, Araria Vs. Md. Gufran Alam & Ors (supra),** Andhra Pradesh High Court in the case of **Nekkalapudi Ramakrishna Pratap Vs. The District Collector-cum-Arbitrator, West Godavari District & Anr (supra)** as also the Constitution Bench of the Hon'ble Apex Court in the case of **M/s. S.B.P. & Co. Vs. M/s.Patel Engineering Ltd. and Anr. (supra),** this Court has no difficulty in holding that the present writ petition filed on behalf of the petitioners against the impugned arbitral awards dated 22.12.2015 (Annexure-1 series) is not maintainable. It is, accordingly, dismissed, but without costs.

I.A.No.6714 of 2016 stands accordingly disposed of.

However, it is clarified that the writ petitioners shall be at liberty to approach the Civil Court of competent jurisdiction under Section 34 of the Act, 1996 for grant of an appropriate relief to them with respect to the lands in question as also the order impugned.

(Birendra Prasad Verma, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	N/A
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