

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No.1487 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The appellants herein are the petitioners in W.P. No. 27408 of 2017. Their lands were sought to be acquired under the National Highways Act, 1956 (hereinafter referred to as "the 1956 Act"). It is not in dispute that an award was passed on 27.3.2015 and a revised award was passed on 28.8.2015.

Relying on the order passed by the Central Government under Section 113 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") by notification in the Gazette of India dated 28.8.2015, Mrs. B. Rachna, learned counsel for the appellants, would submit that all the appellants are entitled to be paid compensation under the 2013 Act, besides damages for illegal and unauthorized demolition of their structures in terms of clauses (a) to (d) of Section 3G(7) of the 1956 Act. She would state that, in terms of Section 3E, the respondents were required to put the appellants-writ petitioners on notice before demolishing their structures; and as the respondents had highhandedly demolished the structures raised by the appellants-writ petitioners, they were entitled for damages for such illegal and unauthorized demolition under Section 3G(7) of the 1956 Act.

Section 3E of the 1956 Act enables the competent authority to take possession on depositing the compensation awarded with the competent authority, and by notice directing the owner to

handover possession thereof. The complaint of the appellants-writ petitioners is that the subject buildings were highhandedly demolished without putting the appellants on notice. Sri A. Lakshminaryana, learned Standing Counsel for the NHAI, would, however, submit that notice was issued to the land owners under Section 3E(1); and it is only on their failure to deliver possession, though compensation was made available to them, were the structures demolished. Learned Standing Counsel would further submit that the compensation amount is available with the Competent Authority-cum-Land Acquisition Officer, and it is the appellants-writ petitioners who have not come forward to receive the said amount.

The order made under Section 113(1) of the 2013 Act by the Government of India, published in the Gazette of India dated 28.8.2015, no doubt makes the provisions of the 2013 Act, relating to determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule, and the infrastructure amenities in accordance with the Third Schedule, applicable to all cases under the enactments specified in the Fourth Schedule of the 2013 Act. The 1956 Act is listed at Sl. No. 7 of the Fourth Schedule to the 2013 Act. The question whether or not the compensation, determined in favour of the appellants by the competent authority, satisfies the criteria stipulated under the 2013 Act are all matters for the Arbitrator, appointed under Section 3G of the 1956 Act, to decide. Under Section 3G(5) if the amounts determined by the competent authority, under sub-section (1) and (2) of Section 3G, is not acceptable to either of the parties, the amount shall, on an

application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. The factors, which the arbitrator is bound by, are those enumerated in clauses (a) to (d) under Section 3G(7), which are all required to be taken into consideration by the arbitrator. The provisions of the Arbitration and Conciliation Act, 1996 have been made applicable to arbitration under the 1956 Act.

While Sri A. Lakshminarayana, learned Standing Counsel for the NHAI, would submit that the subject lands were acquired under the 2013 Act and the compensation paid to the appellants-writ petitioners is also under the 2013 Act, the dispute appears to be with regards the quantum and extent of compensation paid to them. The question whether the appellants are justified in their claim for higher compensation, or whether the respondents are justified in contending otherwise, are all matters which the Arbitrator is required to decide. The learned Single Judge has, in the order under appeal, recorded the submission of the learned counsel, appearing on behalf of the NHAI, that the compensation amount has been deposited before the competent authority; and several of the appellants-petitioners have received the compensation.

In the order under appeal, the learned Single Judge has held that the compensation amount was made available, and it was for the petitioners to take the same. While expressing his disinclination to interfere with the award, the Learned Single Judge granted the appellants-writ petitioners liberty to agitate all points in the pending arbitration proceedings.

While Mrs. B. Rachna, learned counsel for the appellants-writ petitioners, would submit that no amount is available, with the competent authority, to be paid to the appellants-writ petitioners, both Sri A. Lakshminarayana, learned Standing Counsel for NHAI, and the learned Government Pleader for Land Acquisition, would insist that the amounts are still lying with the Competent Authority cum-Land Acquisition Officer; and in case the appellants-writ petitioners furnish details of their bank account, the compensation amount would be deposited in their account at the earliest. Both the learned Government Pleader for Land Acquisition, and the learned Standing Counsel for NHAI, also express their readiness to have the matter resolved by the arbitrator within a specified time frame.

We consider it appropriate, therefore, to pass the following order. Those of the appellants-writ petitioners, who have not yet received compensation, shall furnish details of their bank account, and such other particulars as may be required by the competent authority, for depositing the said amount to their respective bank accounts within 15 days from today. The respondents shall deposit the compensation awarded by the Land Acquisition Officer, to the respective bank accounts of the appellant-writ petitioners within 15 days from the date of receipt of intimation for the appellant-petitioners as aforementioned. The arbitrator, appointed under Section 3G(5) of the 1956 Act, shall determine the compensation payable to the appellants-writ petitioners with utmost expedition and, in any event, within five months from the date of receipt of a copy of this order.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

9th October, 2017

Note:
Furnish c.c. in one week.
b/o
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