

S/L.1 .
20.08.2019
MNS

***Calcutta* High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

WPA 142 of 2019

Md. Asaduzzaman and another

-Vs.-

The State of West Bengal and others

Mr. Jagriti Mishra

...for the petitioners.

Ms. Supriya Singh,
Mr. Vikas Agarwal

...for the respondent no. 4.,

Mr. Bikramaditya Ghosh,
Mr. M. Rahaman

...for the State.

The present challenge is directed against a notice dated May 21, 2019, whereby the 'competent authority' of land acquisition under the National Highways Act, 1956 gave a notice to the petitioners asking for a refund of allegedly excess payment of compensation in LAP Case No. 5/NH/2010-11.

It was stated in the said notice, *inter alia*, that from the office records and field enquiry it was evident that excess payment had been made by way of compensation to the petitioner, a refund of which was sought.

Learned counsel for the petitioner argues that the notice was *de hors* the provisions of the 1956 Act.

Placing reliance in particular on sub-sections (5) and (6) of Section 3G of the 1956 Act, learned counsel argues that if the amount determined by the competent authority under sub-sections (1) or (2) thereof was not acceptable to either of the parties, the amount was, on an application by either of the parties, to be determined by the arbitrator to be appointed by the Central Government.

It is also provided in sub-section (6) that, subject to the provisions of the 1956 Act, the provisions of the Arbitration and Conciliation Act, 1996 was applicable to every such arbitration contemplated under the 1956 Act.

It is submitted on behalf of the petitioner that already the petitioner had challenged the award before the arbitrator and, against the order passed on such application by the arbitrator, a further challenge has been preferred by the petitioner, which is now pending.

It is argued that the authority might very well have challenged the amount paid as compensation in the said proceeding itself, instead of the competent authority exercising, apparently *suo moto*, jurisdiction to review its own order, as done by the impugned notice.

It is argued by the petitioners that the competent authority became *functus officio* after the quantum of award was determined and had no jurisdiction to come up after an inordinately long period of several years with the present notice asking for a refund.

It is submitted that the time taken to do so by the competent authority was eight years, which was, by any stretch of

imagination, excessively long and beyond the jurisdiction of the competent authority.

Learned counsel for the competent authority, on the other hand, submits that the power of review was inherent with the competent authority.

Citing Section 3 I of the 1956 Act, learned counsel argues that the powers of the civil court enumerated therein were not exhaustive and it was but natural that the competent authority could, at any time, review of its own order, particularly if there was an error in calculation of the quantum of compensation.

It is submitted that the said authority deals with numerous such cases and it was well within the limits of human error to commit such mistakes in some cases which, in the absence of the remedy of review, would result in unjust enrichment of landholders.

It is also submitted that the error in the present case came to notice on a subsequent discovery that a portion of the

land acquired was not under occupation of the petitioners but of somebody else. As such, the yardsticks of review, being an error apparent on the face of the record and discovery of subsequent relevant facts, were satisfied in the instant case.

Learned counsel for the National Highways Authority argues that the human error could not result in the authorities being prohibited from seeking a refund from the awardee of the compensation.

If such an approach was taken, then huge quanta of public money would be lost, which would affect the public at large, justifying the action of the competent authority in that regard.

A perusal of the notice under challenge shows *ex facie* that the competent authority relied on the “office record” and “field enquiry” on the basis of which it came to the conclusion that an excessive amount had been paid by way of compensation to the petitioners. Such a field enquiry apparently was the brainchild of the authorities and the

petitioners had no notice or nothing to do with the same. Such unilateral action cannot be justified under any provision of law or equity. The competent authority is not a civil court having inherent powers, but a creature of statute, being the National Highways Act, 1956. It is well-settled that when a particular post is created by a statute, the person in charge of such position has to act exactly in consonance with the provisions of the said statute and cannot go beyond that.

It is rightly submitted on behalf of the petitioners that sub-sections (5) and (6) of Section 3G of the 1956 Act specifically provides a remedy to the authorities as well as the awardee of the compensation to challenge any erroneous determination of compensation.

Not only was the premise of the refund sought in the present case illegal, since no field enquiry was envisaged under the statute after eight years from the award of compensation, it is specifically evident from the statute itself that the competent authority

was hopelessly *functus officio* at the juncture when the refund was sought.

Needless to mention, if the authorities claimed such an amount on the basis of the “office record”, as claimed in the impugned notice, the said monetary claim would now be time-barred.

A further factor which has to be kept in mind while deciding the matter is that the present case puts the court in a dilemma between the so-called ‘public interest’ and the interest of land losers. One cannot lose sight of the plight of land losers upon losing their means of livelihood and the consequent drastic socio-economic impact.

In such view of the matter, the expression “public interest” must also take within its fold the interest of the majority of the public of our country, who come from the weaker sections of society, and not merely the interest of certain errant officials of the authorities concerned.

In such view of the matter, even accepting the argument of the National

Highway Authorities, the public interest would not be sub-served if, after a long period of eight years, a substantial chunk of the compensation paid to the land losers, who must have spent most of such amount for subsistence in the meantime, is asked to be refunded. As such, the impugned notice cannot stand a moment's scrutiny.

Learned counsel for the petitioners has cited two judgments in this regard, the first being ***Project Director, National Highways Authority of India Vs. Krishnasamy Gounder***, reported at **2012 1 MLJ 558**.

In the said judgment, the Madras High Court held, *inter alia*, that the 1956 Act does not confer any power on the competent authority, either expressly or impliedly, to pass a modified award or fresh award overriding the earlier award passed by himself either on account of wrong calculation or on account of wrong fixation of the value of the amount or the value of any other thing.

The other judgment cited by the petitioners was rendered by the Patna High Court in ***Kameshwar Singh Vs. Union of India and others reported at 2008 1 BBCJ 38***, where the controversy related to the jurisdiction of the competent authority to deal with the matter of payment of compensation after the money had been paid over to the claimants.

In such a case, the Patna High Court categorically held that where rightly or wrongly payment had been made to a claimant, the competent authority become *functus officio* as he had no money left to distribute and even if a dispute was raised then he had to refer the dispute to the civil court. It was further held that once payment is made then if there is any dispute with regard to apportionment, the only remedy is to approach competent civil court and get a decision in that regard.

Although the second portion of the ratio, relating to apportionment, is not applicable to the present case, the present

dispute relates to money already disbursed by the competent authority. In fact, the present case goes one step further, since the competent raised a dispute as to the area of land occupied by the petitioners and the compensation refund was sought on the basis of such challenge, which goes to the root of the award and touches the merits of the case, which the competent authority, in any event, had no jurisdiction to go into at this belated juncture.

It may be mentioned here that the Patna High Court judgment referred to by the petitioners also held that the competent authority has no inherent power and it is a statutory authority whose life is limited and once payments are made his right would cease and he becomes *functus officio*.

Such judgments cited by the petitioners have persuasive value and this Court agrees with the ratio laid down in the said judgments.

As such, WPA 142 of 2019 is allowed on contest, thereby setting aside and

quashing the notice dated May 21, 2019 issued by the competent authority of land acquisition and Special Land Acquisition Officer, Cooch Behar to the petitioners.

It is, however, made clear that if any other remedy is available to the authorities to seek a refund of such allegedly excess payment from the petitioners, the authorities would be free to proceed with such remedy, subject to limitation and in accordance with law, before the appropriate forum.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)