

30.08.2019

MNS

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

WPA 386 of 2019

**Pradip Ch Paul
Vs.
The State of West Bengal and others**

Mr. Jagriti Mishra

...for the petitioner.

Mr. Subir Kumar Saha,
Mr. Momenur Rahman

...for the State.

Mr. Samir Paul

...for the respondent no. 7.

Mr. Suransh Choudhury,
Ms. Supriya Singh

...for the respondent no. 8.

Mr. Dipankar Sen

...for the respondent no. 9.

All the respondents, along with the petitioner,
are represented in Court today.

The grievance of the petitioner is that, although
situated on an equal footing, as that of persons who
have neither formal legal nor recognized or
recognizable claim to a land, such persons were
disbursed compensation in terms of a Re-settlement
and Indigenous Peoples Plan prepared by the Ministry
of Road Transport and Highways, Government of
India for the Asian Development Bank in respect of an

acquisition for the purpose of building an Asian Highway, which is Annexure-P/2 at page – 23 of the instant writ petition.

In case of the present petitioner, although the executing authority was different, being the National Highways Authority of India, the implementing authority remain the same, being the Ministry of Road, Transport and Highways. As such, it is submitted that there could not be a classification drawn reasonably between the persons in possession of the acquired lands in respect of the acquisition for the Asian Highway and in respect of similarly placed persons in respect of the present acquisition for construction of a national highway.

It is thus submitted that the representation of the petitioner, to get compensation in respect of such acquisition in view of the petitioner having a running business on the said acquired land, which is owned by the PWD as per the petitioner, ought to have been considered by the competent authority.

Learned counsel appearing for the State, as well the National Highways Authority, submit in unison that the present acquisition cannot be governed by a policy decision taken in respect of a different acquisition in respect of a different project for building an Asian Highway.

It is submitted that the policy governing the acquisition of such Asian Highway has no nexus with the present acquisition and as such, since the law does not permit the petitioner to get any

compensation, the petitioner's claim for compensation cannot have any legal footing.

The argument as to similarly placed persons being compensated in case of the compensation in Asian Highway is refuted by learned counsel for the respondent-authorities on the ground that such compensation, in case of the Asian Highway acquisition, was in terms of a particular policy decision, which differs from the policy adopted in the present case, and the latter cannot be interfered with under Article 226 of the Constitution of India by this court.

Learned counsel appearing for the National Highways Authority of India further places on record a memorandum whereby, apparently, the State Government committed not to charge any amount for transferring government/vested land to National Highways for four laning/six laning projects, which apparently pertained to the present acquisition.

In reply, learned counsel for the petitioner argues that Section 3G(2) itself provides for compensation being paid not only to the owner but to any other person whose right of enjoyment in the land has been affected and as such, it is argued that, unfettered by any objection having not been taken by the petitioner, as contemplated under Section 3G(4), read with Section 3C, of the National Highways Act, 1956, which objection is confined in scope to the purpose of acquisition, the petitioner is entitled to

compensation, as envisaged under the National Highways Act itself.

It is reiterated that similarly placed persons cannot be differentiated between, in view of there being no reasonable basis of classification of the present petitioner and his ilk with that of the persons getting compensation under the Asian Highway project.

However, it is seen from the National Highways Act itself that it is for the competent authority to decide and determine the compensation payable to persons entitled thereto.

As such, in view of the petitioner having already given a representation to the competent authority, being the Special Land Acquisition Officer, Jalpaiguri, which is Annexure- P/3 at page 34 of the instant writ petition, it would not be prudent to pre-judge the entitlement of the petitioner as well as the quantum of compensation, if any, at this juncture, which would be a premature adjudication, usurping the jurisdiction of the competent authority.

As such, WPA 386 of 2019 is disposed of by directing the respondent no. 2 to consider and dispose of, upon passing a reasoned order, the representation dated September 11, 2018 given by the petitioner to the respondent no. 2, being Annexure- P/3 at page 34 of the instant writ petition, within one month from date and to intimate the decision arrived at by the respondent no. 2 to that effect to the petitioner immediately thereafter.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Sabyasachi Bhattacharyya, J.)