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BP
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C.O. 3281 of 2018

The Metro Railway
Vs.
M/s. Lily Residency Private Limited

Ms. Aparna Banerjee
..for the petitioner.

Mr. Amit Pan
Ms. Tanusree Santra
..for the Opposite Party.

The instant application is at the instance of the Metro Railway and is directed against an order dated June 7, 2018 passed by the Appellate Authority, Metro Railway in Claim Appeal No. 28 of 2017 thereby modifying the order dated November 23, 2017 passed by the Competent Authority in Acquisition Claim Case No. NGA/27/2014.

By virtue of the notification of the Government of India the land of the opposite party was acquired. The opposite party herein, claiming to have an interest in the land which has been acquired, submitted its claim giving rise to Acquisition Claim Case No.NGA/27/2014.

The Competent Authority allowed the said claim case upon holding that the claimant is entitled to an award of compensation to the tune of Rs. 3,18,34,451/- (rupees three crore eighteen lakh thirty four thousand four hundred fifty one) only to be paid by the Metro Railway authorities. The opposite party herein preferred an appeal before the Appellate Authority being dissatisfied with the order dated November 23, 2017. The said appeal was registered as Claim Appeal No. 28 of 2017.

By an order dated June 7, 2018 the Appellate Authority modified the order passed by the Competent Authority in part. The Appellate Authority held that the claimant will get compensation of Rs. 3,91,87,002 (rupees three crore ninety one lakh eighty seven thousand two) only to be paid by the Metro Railway authority.

Learned advocate for the petitioner submits that the Appellate Authority arrived at the amount of compensation without correctly interpreting the provision of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013"). It has been further submitted by the learned advocate that the issue involved in the instant application is covered by an order dated February 25, 2020 passed by this Court in C.O. 3091 of 2018 wherein it has been held that the final award in terms of Section 30 of the Act of 2013 will comprise of sum total of three ingredients, namely, market value of the lands and assets as envisaged in Section 27 of the said Act, solatium as contemplated in Section 30(1) as well as the amount calculated at the rate of 12% per annum on the said market value as provided in Section 30(3) of the said Act of 2013. She submits that solatium is to be calculated only on the market value of the land.

Mr. Amit Pan, learned advocate for the opposite party, in his usual fairness, do not dispute that the ratio of the decision rendered in C.O. 3091 of 2018 is to be applied in the instant case. However, he submits that his client is entitled to interest in terms of Section 80 of the Act of 2013. He further submits that liberty is to be given to the opposite party herein to raise any point which is not the subject matter of the instant application before the appropriate forum.

I have heard the learned advocates for the respective parties and have considered the materials on record.

The issue as to whether the additional amount of 12% is to be added with the market value of land acquired including the value of all assets attached to the land for the purpose of calculating the solatium has been set at rest by the order passed in C.O. 3091 of 2018 wherein it has been held that solatium has to be calculated only on the market value of the land acquired and assets thereon and not on the total arrived at upon adding the market value with 12% thereon.

The Appellate Authority in the impugned order calculated the solatium at the rate of hundred percent on the sum total of the market value and the additional amount of 12% thereon. The Appellate Authority failed to exercise the jurisdiction vested in law by not interpreting the provisions laid down in the Act of 2013 for the purpose of calculating the solatium correctly. In view thereof the finding of the Appellate Authority cannot be sustained.

There is no dispute that the market value of the property in question is Rs. 1,25,59,937/- (rupees one crore twenty five lakh fifty nine thousand nine hundred thirty seven) only. Solatium is to be calculated @ 100% on the aforesaid sum which comes to Rs. 1,25,59,937/- (rupees one crore twenty five lakh fifty nine thousand nine hundred thirty seven) only. The additional amount calculated @12% per annum in terms of Section 30(3) of the said Act of 2013 which comes to Rs. 70,33,564/ (rupees seventy lakh thirty three thousand five hundred sixty four) only is also not disputed. Thus, the aggregate of the aforesaid amount comes to Rs. 3,21,53,438/- (rupees three crore twenty one lakh fifty three thousand four hundred thirty eight) only which shall be the final award.

It is not in dispute that the Metro Railway has already paid a sum of Rs.2,51,19,438/- (rupees two crore fifty one lakh nineteen thousand four hundred thirty eight) only. Thus a sum of Rs. 70,33,564/ (rupees seventy lakh thirty three thousand five hundred sixty four) only is due and payable by the petitioner to the opposite party herein.

For the reasons as aforesaid, the impugned order is modified only to the extent as indicated above. The petitioner is directed to pay the balance sum of Rs. 70,33,564/ (rupees seventy lakh thirty three thousand five hundred sixty four) only to the opposite party herein within four weeks from date.

It is, however, made clear that the opposite party shall be at liberty to raise any point which is not the subject matter of the instant application before the appropriate forum in accordance with law.

With the above observations, C.O. 3281 of 2018 is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties at an early date.

(Hiranmay Bhattacharyya, J.)