THE HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Heard through Video Conferencing

Writ Petition No.9395/2019

Anoop Agrawal ... Petitioner

versus

State of Madhya Pradesh and others ... Respondents

Appearance:

Shri Ashok Kumar Agrawal, learned counsel for petitioner.

Shri Ashish Anand Bernard, learned Additional Advocate General for respondents No.1, 3 and 4/State and its functionaries.

Shri Mohan Sausarkar, learned counsel for respondent No.2.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Date of decision : **06.11.2020**

O R D E R

Per Sanjay Yadav, Acting Chief Justice :-

Challenge in this petition is to an Award dated 06.12.2017 passed by Commissioner, Sagar Division Sagar, in purported exercise of the power under sub-section (5) of Section 3G of the

National Highway Act, 1956 (for short '1956 Act'); whereby, while setting aside the Award passed by the Competent Authority, the Arbitrator has remanded the matter for fresh determination.

2. The issue as to whether it is within the competence of the Arbitrator under Section 3(G)(5) of 1956 Act, to set aside the Award and remanded the matter to the competent authority for its reconsideration, is no more res integra. A co-ordinate Bench of this Court in Writ Petition No.18374/2014 (Santosh Soni vs National Highway Authority) and in connected batch of writ petitions decided on 23.01.2015, relying on earlier decision in Writ Petition No.5883/2011 (Radheshyam vs National Highway Authority) decided on 11.10.2011, has held :

> "Section 3(G)(5) of the National Highways Act reads as under :
>
> > "3G(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) 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."
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> A perusal of the aforesaid goes to show that if the amount determined by the competent authority under sub-section (1) or sub-section (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 words 'to be determined by the Arbitrator' has been subject matter of interpretation and in W.P. No.5883/2011 after considering the same on 11.10.2011, it has been held by a Coordinate Bench of this Court as under :

> "A reading of the aforesaid provisions indicates that sub section (6) which applied the provision of the Arbitration and Conciliation Act, 1996 is subject to the other provisions, including Section 3(G)(5) of the 1956 Act. Sub-section (5) of Section 3G provides expressly that the Arbitrator, appointed by the Central Government which in the present case is the Revenue Commissioner, Gwalior Division has to determine the amount.
>
> The grievance of the petitioner is that the Commissioner instead of determining the amount as contemplated by Section 3G(5) of the National High Way Act, 1956 has remanded the matter to the competent authority."

It has been held by the Coordinate Bench after holding so that under Section 3(G)(5) the Arbitrator has no power to remand the matter back to the competent authority for re-determination. Instead he has to himself determine the amount of compensation to be paid on the basis of material available on record.

In doing so, there is no reason to take a different view as already held by a Coordinate Bench in W.P. No.5883/2011.

Keeping in view the aforesaid, this petition is allowed. The order impugned is quashed and the matter is

remanded back to the Commissioner to determine the compensation in accordance to law."

3. Being not in variance with the view expressed by a co-ordinate Bench in Writ Petition No.5883/2011 and Writ Petition No.18374/2014 (supra), it was beyond the competence of the Arbitrator under Section 3(G)(5) of 1956 Act to have set aside the Award and remanded the matter to the Competent Authority.

4. The impugned order dated 06.12.2017 is, accordingly, quashed and the matter is remitted to the Commissioner, Sagar Division Sagar to decide the reference in accordance with law, expeditiously; however, not later than 6 months from the date of communication of this order.

5. The petition stands **disposed of** finally in above terms. No costs.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

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