

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 8423 OF 2019

Shri. Mahendra Dhirajlal Seth

vs.

Additional Commissioner, Nagpur and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S. S. Sitani, counsel for petitioner.
Shri. A. A. Kathane, counsel for respondent No.4.
Smt. H. N. Prabhu, AGP for respondent Nos.1 and 2.

CORAM : MANISH PITALE J.

DATED : 27/02/2020

By this writ petition, the petitioner (original claimant) has challenged Award dated 06/01/2016 passed by respondent No.1 under the provisions of the National Highways Act, 1956 in respect of compensation payable to the petitioner for acquisition of land under the provisions of the said Act. The petitioner is aggrieved by the fact that the respondent No.1, while granting enhancement of compensation, has refused to grant relief of solatium and interest and other reliefs that would be payable to the petitioner for the acquisition of his land.

2. Reliance is placed on recent Judgment of the Hon'ble Supreme Court in the case of **Union of India and another vs. Tarsem Singh and others**, reported in

(2019) 9 SCC 304, particularly paragraph 52 thereof to contend that the Hon'ble Supreme Court has specifically held Section 3-J of the aforesaid Act as unconstitutional and further reliefs payable to claimants like the petitioner under Section 23(1-A) and 2, as also Section 28 proviso have been held to be payable.

3. The learned counsel appearing for respondent No.4 has raised a specific objection in the present writ petition to the effect that since the subject matter of challenge in the present writ petition is an Arbitration Award in terms of the provisions of the said Act to which the provisions of the Arbitration Act, 1996 would be applicable, the petitioner ought to have raised challenge under Section 34 of the Arbitration Act, 1996, and that filing of the present writ petition directly in the year 2019 challenging an Award dated 06/01/2016 was not sustainable. The very maintainability of the writ petition was challenged on the aforesaid ground.

4. The learned AGP has appeared on behalf of the respondents No.1 and 2.

5. The aforesaid objection raised on behalf of the respondent No.4 and the prayers made on behalf of the petitioners in the present writ petition seeking specific reliefs for an amount of solatium and other aspects is clearly covered under the aforesaid judgment of the Hon'ble Supreme Court in the case of **Union of India and another vs. Tarsem Singh and others (supra)**.

In paragraph 52 of the said judgment, it has been held as follows :-

“52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no [Section 34](#) petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under [Article 136](#) of the Constitution of India. We therefore declare that the provisions of the [Land Acquisition Act](#) relating to solatium and interest contained in [Sections 23\(1-A\)](#) and (2) and interest payable in terms of [Section 28](#) proviso will apply to acquisitions made under the [National Highways Act](#). Consequently, the provision of [Section 3-J](#) is, to this extent, violative of [Article 14](#) of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, the Appeal arising out of SLP (C) No. 9599/2019 is dismissed.”

6. This Court finds that the since Section 3-J of the aforesaid Act has been declared as unconstitutional by the Hon’ble Supreme Court and it has been positively declared that provisions of the Land Acquisition Act, 1894, regarding solatium and interest contained in Section 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply under the National Highways Act, 1956, the relief sought by the petitioner

deserves to be granted. As regards the objection raised on behalf of the respondent No.4 in the context of Section 34 of the Arbitration Act, 1996, the above quoted paragraph 52 of the judgment takes care of the objection also and according to this Court by applying the ratio of the aforesaid judgment of the Hon'ble Supreme Court, the said objection also deserves to be overruled.

7. In view of the above, the writ petition is allowed and the respondents are directed to pay to the petitioner solatium and interest in terms of Section 23(1-A) and (2) of the Land Acquisition Act, 1894, and interest as per proviso to Section 28 thereof, on the enhanced compensation. The respondent shall make the said payment to the petitioner within a period of three months from today.

8. Steno copy be supplied to the parties.

JUDGE