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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 14th August, 2020**

+ **W.P. (C) 1179/2019**

MANJU ARORA

.....Petitioner

Through: Mr. Rajesh Yadav, Advocate

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC
for R-1/UOI.

Ms. Padma Priya & Mr. Dhruv
Nayar, Advocates for R-2/NHAI.

Mr. Yeeshu Jain & Ms. Jyoti

Tyagi, Advocates for R-
3/CALA/LAC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

W.P. (C) 1179/2019, C.M. Appl. No.13801/2020 (for ad-interim ex-parte stay/direction)

1. This petition was filed with the following prayers: -

“(a) issue a writ of certiorari or any other appropriate writ order or direction in the nature thereof, thereby quashing the determination of the amount payable as compensation (award) bearing No.02/2018/NHAI, passed by the Respondent No.3, the Competent Authority for Land Acquisition (CALA), dated 18.12.2018, under

Section 3G(1) of the National Highways Act, 1956, in respect of land of the Petitioner bearing Survey/Khasra No.424/1, measuring 2107 square meters (area in hectare being 0.2107), Village Rangpuri, Tehsil Vasant Vihar, New Delhi;

(b) issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondent No.3, the Competent Authority for Land Acquisition (CALA) to conduct a fresh determination of amount payable as compensation and pass a fresh award under Section 3G(1) of the NH Act, treating the land of the Petitioner bearing Survey/Khasra No.424/1, measuring 2107 square meters (area in hectare being 0.2107), Village Rangpuri, Tehsil Vasant Vihar, New Delhi, as 'urban land' and its user as 'commercial/residential';

(c) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the appointment of District Magistrate, District New Delhi, by the Central Government, as an Arbitrator under Section 3 G(5) of the NH Act.”

2. The petition came up first before this Court on 4th February, 2019, by order of which date, the further proceedings before the Arbitrator appointed under Section 3G(5) of the National Highways Act, 1956 were stayed and which order was made absolute on 19th February, 2020 and is continuing till now.

3. The petition was adjourned from time to time and the pleadings have been completed.

4. On 1st July, 2020, CM Appln.13801/2020 of the petitioner for interim relief, seeking to restrain the respondents from taking over possession of the land in occupation of the petitioner and with respect whereto acquisition proceedings under the National Highways Act had

been undertaken,came up before this Court, when noticing that the challenge in the petition was only qua quantum of compensation and not to acquisition, orders were passed for delivery of possession and we are today informed that the possession of the land stands delivered. By the same order of 1st July, 2020, the petition was posted for hearing for today, as already scheduled,via virtual hearing.

5. The counsel for the petitioner, at the outset, has contended that another petition namely, W.P. (C) 9372/2018 titled ***Moti Lal Bothra (HUF) Through: Karta Shri Moti Lal Bothra v. Office Of The Competent Authority (Land Acquisition) Under The National Highways Act, 1956 & Ors.***,also challenging the appointment of the District Magistrate as the Arbitrator, under Section 3G(5) of the National Highways Act,was also scheduled to be listed for today, but has not been listed for hearing, in the absence of an order thereinfor virtual hearing. It is contended that the petitioner in that writ petition has filed certain replies received to the queries under the Right to Information Act, 2005 and which help the case of the petitioner herein also and the present petition be also thus ordered to be taken up on whichever date W.P. (C) 9372/2018 stands adjourned, as per the general notification during the pandemic in this regard.

6. The counsel for the respondent No.2 National Highways Authority of India (NHAI) has opposed the request of adjournment contending that the arbitration proceedings are held up. It is further stated that the question of the challenge to the District Magistrate acting as Arbitrator under Section 3G(5) of the National Highways Act has already been negated in ***Anubhav Chand Kathuria v. Union of India***, 2019 SCC

OnLine Del 7307 (DB),in which also the counsel for the petitioner herein was the counsel for the petitioners and the said judgment has attained finality.It is thus contended that as far as the prayer in the present petition challenging the nomination by the Central Government of the District Magistrate, to act as Arbitrator is concerned, in view of the judgment in ***Anubhav Kathuriasupra***, does not survive.

7. We have in the circumstances proceeded to hear the counsel for the petitioners.

8. The counsel for the petitioner has contended that the land of the petitioner with respect where to notification under Section 3A of the National Highways Act was issued, was being used by the petitioner for operating a petrol pump, after obtaining permissions from all the authorities concerned and was thus being put to commercial use; however in Section 3A notification, the same was described as agricultural. It is further contended that the petitioner preferred W.P.(C)6117/2018 impugning the Section 3A notification *inter alia* on the said ground and which writ petition was disposed of vide order dated 30th May, 2018, Annexure P-3 to this petition, with a direction that notwithstanding the description of the subject land as agricultural in the notification dated 12th January, 2018, the petitioner will be at liberty to contend that because the subject land was used for commercial purposes, the compensation, if any payable to her, should be the same that ought to be paid qua a commercial property. It is argued that notwithstanding the said direction, the respondent No. 3 Competent Authority for Land Acquisition (CALA) under the National Highways Act, while passing Section 3G notification (award), has not correctly dealt with the said objection of the petitioner

and Section 3G notification (award), to the extent holding that the land remained agricultural notwithstanding being put to use as a petrol pump, is erroneous and liable to be set aside with a direction to the respondent No. 3 CALA to re-determine the compensation, treating the land as commercial.

9. We have enquired from the counsel for the petitioner, whether not it is open to the petitioner to raise the said question before the Arbitrator under Section 3G(5) of the National Highways Act.

10. The counsel for the petitioner states that though it is so open to the petitioner, but since the arbitration under Section 3G(5) is subject to the provisions of the Arbitration and Conciliation Act, 1996 and the remedy against the Award in the said arbitration, under Section 34 of the Arbitration Act is of limited scope, it is not an equally efficacious remedy and is not an alternative remedy owing where to, this Court should refuse to exercise the writ jurisdiction. Attention is invited by the counsel for the petitioner to *Sudesh Solanki Vs. Delhi Development Authority* 2012 SCC OnLine Del 5999 (DB); *Gur Pratap Singh Vs. Union of India* 2004 (111) DLT 25; *Lt. Governor of Delhi Vs. Gurpratap Singh* 2004 (113) DLT 690 (DB); *Sanraj Farms Private Limited Vs. Charan Singh & Another* 2019 SCC OnLine Del 10741; *Hari Chand Vs. Union of India* (2001) 91 DLT 602 (DB); *Delhi Development Authority Vs. Land Acquisition Collector & Others*, 2006 SCC Online Del 443; and *Competent Authority Vs. Barangore Jute Factory and Others*, (2005) 13 SCC 477, to show that Section 3G notification (award), in computing the compensation, treating the land as agricultural, is contrary to the direction in the order dated 30th May, 2018 in W.P.(C)6117/2018 earlier filed by the

petitioner.

11. However, once we have shown our disinclination to entertain the challenge to the Section 3G determination in the writ jurisdiction owing to the remedy of arbitration available, the counsel for the petitioner, drawing attention to paragraphs 20, 23 and 28 of **Anubhav Kathuriasupra**, where the counsels for NHAI and CALA had conceded that the powers of the Arbitrator are the same as of the CALA and all questions, as urged before CALA, can also be urged before the Arbitrator, has not pressed the said aspect further. For this reason, we do not deem it apposite to detail the arguments of the counsel for the petitioner before us in this regard or to deal with the same.

12. As aforesaid, the challenge to the District Magistrate as Arbitrator, has already been negated.

13. The counsel for the respondent No. 2 NHAI, in addition to **Anubhav Kathuriasupra** has also drawn attention to **Vishwasrao Dattatray Kachare Vs. Union of India** 2017 SCC OnLine Bom 451, **Surendra Kumar Chhabda Vs. State of Chattisgarh** MANU/CG/0693/2017 and **National Highways Authority of India Vs. Sayedabad Tea Company Ltd. & Ors.**, 2019 SCC Online SC 1102, to contend that therein also, the Courts have held that since the appointment of Arbitrator under Section 3G(5) of the National Highways Act is by Central Government and not by NHAI, which has acquired the land, the appointment of Arbitrator by the Central Government is not bad under the Arbitration and Conciliation Act and merely because the District Magistrate has been appointed as the Arbitrator, there is no presumption that would be biased in favour of NHAI.

14. We thus dispose of this petition, declining the reliefs claimed in prayer paragraphs in terms of *Anubhav Kathuriasupra* and by clarifying that the disposal of this petition and the description of the land as agricultural in Sections 3A, 3D and 3G notifications, would not come in the way of the petitioner contending in the arbitration proceedings under Section 3G(5) of the National Highways Act, that the land is commercial and that the petitioner is entitled to compensation at commercial and not agricultural rates, and by reiterating the statements of the counsels for the NHAI and CALAas contended in *Anubhav Kathuriasupra*, that they would not object to such claim of the petitioner on the ground of Arbitrator not having the jurisdiction to go into the said question.

15. The counsel for the petitioner has also stated that the husband of the petitioner is a '1971 War Veteran' and is not being released the compensation already deposited, for frivolous reasons and is being harassed.

16. Ms. Jyoti Tyagi, Advocate for the respondent No. 3 CALA to ensure that the compensation already deposited is released to the petitioner without any further delay. The counsel for the petitioner, if faces any difficulty, may contact Ms. Jyoti Tyagi Advocate in this regard.

17. At this stage, Ms. Jyoti Tyagi Advocate states that the compensation has not been released because a claim therefor has also been made by Indian Oil Corporation and the respondent No. 3 CALA has sought clarification from the respondent No. 2 NHAI, which has not been received as yet.

18. Ms. Padma Priya Advocate for the respondent No. 2 NHAI to also ensure that the decision, if any on the clarification sought, if not already

furnished, is furnished at the earliest.

19. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 14, 2020/ck/s

