

04.10.2021
Ct-10
P.A./A.P

WPA No. 736 of 2019
Aimun Bibi & Ors.
versus.
The State of West Bengal & Ors.

Mr. Partha Pratim Roy ... for the petitioner.

Mr. Soumitra Bandyopadhyay
Mr. Subhasis Bandyopadhyay for the State.

Mrs. Maanika Roy ... for the NHAI.

The allegation of the writ petitioners is that they have not been awarded adequate compensation for acquisition of land and building in District Mushidabad, P.S. Beldanga, Mouza:- Barua, Sabek Dag No:- 1903/3001 (L.R. 3216). The said plot of land was acquired by the concerned authority for the purpose of widening the National Highway 34 by LA Case No. NHAI-34-21/2009-2010. The petitioners raised objection against notice of acquisition published in 2010 which was turned down and the respondent authorities issued notice under section 3C (2) of the National Highways Act, 1956 directing the petitioners to appear before the authority. But the respondent authorities did not publish award and without payment of the compensation amount initiated eviction proceedings illegally. The amount of compensation awarded in favour

of the petitioners in respect of the structure was informed to the petitioners but no award was granted in respect of the land in question. The petitioners submit that no notice was served upon them under section 3H (2) of the 1956 Act and no award declared prior to 01-01-2015. In view of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioners are entitled to compensation in terms of the said Act.

The grievance of the petitioners with regard to non issuance of notice of payment under section 3H (2) of the National Highways Act 1956 was ventilated by the petitioners in writ petition being W.P. 369 (W) of 2018 which was disposed of by a coordinate bench of this court with a direction upon the concerned authority to communicate to the petitioners the amount of compensation payable to them. By an intimation dated 13-09-2018, the Additional District Magistrate (Land Acquisition) / competent authority informed the petitioners that the total compensation with regard to the acquired land could not be apportioned among the land owners as the land was involved in the Partition Suit being 279/2011 pending in the court of Ld. Civil Judge (Senior Division), Berhampore, Murshidabad. The petitioners submitted a representation before the

concerned authority for determining compensation in terms of the Act of 2013.

Learned counsel for the petitioners fairly submits that as the land in question is the subject matter of a partition suit, the petitioners, for the present, claim revised compensation in respect of the structures thereon.

The National Highways Authority has submitted that as the entire compensation has been deposited with the State authorities, it has no further role to play in the matter.

The State respondents have submitted a report in compliance with an order of this court. The report demonstrates that compensation in respect of land and structure in LA Case No. 21/2009-2010 was declared by the competent authority on 27-03-2015. The matter was referred for arbitration and as per order of the arbitrator under section 3G (5) of the 1956 Act passed on 07-11-2019; an additional award for the said land was made. The compensation for the land itself could not be apportioned due to pendency of the partition suit where the land is involved. The matter is due to be referred to the Ld. District Judge, Murshidabad under section 3H (4) of the Act of 1956 for apportionment. Award in respect of the structure in the land was declared in

favour of the writ petitioners and paid to them in 2017. The additional amount of compensation in terms of the arbitral award has also been paid to the petitioners on 05-01-2021. Supplementary award for left out structure has been paid to the second petitioner and such payment is due only in respect of the third petitioner.

I have heard the submissions made on behalf of the parties and considered the documents on record.

It is the admitted position that the acquired land is subject matter of a partition suit and therefore the amount of compensation so far as the land is concerned, payable to the co-sharers cannot be apportioned. However, compensation payable for the said land has been assessed. The report filed by the State respondents reveals that the petitioners have been awarded compensation in respect of the structures standing on the land in 2017. The land losers who were aggrieved by the said compensation applied before the arbitrator under section 3G (5) of the National Highways Act, 1956 for determination of additional compensation. Notices were served upon all the land losers and were also published in two daily newspapers before the matter was decided by the learned arbitrator. The arbitration proceedings concluded by an order dated 07-11-2019 wherein the arbitrator considered the claim of the land losers for additional compensation in terms of the first

schedule of the 2013 Act and awarded such additional compensation in their favour. The petitioners in the present writ petition were awarded additional compensation for the structure in the land in question in terms of the arbitral award on 05-01-2021. Therefore the petitioners had knowledge of the arbitral award on 05-01-2021 if not earlier. With regard to the initial award received by the petitioners in 2017, there is nothing on record to demonstrate that such award was received by the petitioners on protest or any objection in this regard was ventilated by the petitioners before the appropriate authority. In fact, in their representation before the respondent no. 3 which was received by the latter on 05-11-2019, the petitioners have admitted receipt of compensation in respect of the structure and there is no whisper in the four corners of the representation that the said compensation was inadequate. In the said representation, the petitioners claimed compensation under the 2013 Act as the declaration of compensation was made on 17-03-2015. This grievance of the petitioners was dealt with by the arbitrator under section 3G (5) of the Act of 1956 and the petitioners have been granted additional compensation in terms of the arbitral award. Therefore the grievance of the petitioners as made out in their representation before the respondent no. 3 has been redressed and nothing

remains for consideration in the present writ petition. It is pertinent to mention here that the arbitral award was also not challenged by the petitioners under section 34 of the Arbitration and Conciliation Act, 1996 in terms of section 3G (6) of the Act of 1956.

In view of the above observations, the writ petition being W.P.A. 736 of 2019 is dismissed.

There shall be however no order as to costs.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities

(Suvra Ghosh, J.)