

17. 14.12.2021  
Ct. No.06  
Tanmoy

**F.M.A. 2825 of 2016**  
**With**  
**IA No: C.A.N. 1 of 2016 (Old No: C.A.N. 8805 of 2016)**  
**Hidayetulla Jangi @ Hidayet Ali Mondal & Ors.**  
**-Versus-**  
**The State of West Bengal & Ors.**  
**(Through Video Conference)**

Mr. Kumar Jyoti Tewari, Adv.,  
Mr. Tarunjyoti Tewari, Adv.,  
Ms. Rajlakshmi Ghatak, Adv.,  
Mr. Aniruddha Tewari, Adv.

...for the appellants.

Mr. Tulshidas Ray, Adv.

...for the State.

By consent of the parties, the appeal and the stay application are taken up together for hearing.

The petitioners, on an earlier occasion had filed a writ petition being W.P. No. 3034(W) of 2015, which was disposed of on February 17, 2015, by a Single Bench of this Court with a direction upon the competent authority under the National Highways Act, 1956, to consider the representation of the petitioners in accordance with law after giving them opportunity of hearing.

In compliance with the said order, the competent authority under the said Act gave an opportunity of hearing to the petitioners and disposed of the matter on March 31, 2015. The authority in the said order

recorded that the said issue had been decided earlier on January 28, 2015 by a reasoned order. The said order dated March 31, 2015 reads as follows:

*“In connection with W.P. No. 3034[w] of 2015 an order was passed by the Hon’ble High Court on 17.02.2015 to dispose the matter by the Competent Authority.*

*Accordingly Hidayetulla Jangi was called for hearing.*

*He is present today. His lawyer is also present today. Heard.*

*It appears that the matter was disposed earlier by passing a reasoned order on 28<sup>th</sup> January, 2015. The detailed findings are mentioned in that order.*

*After examination of the records of previous land acquisition and the records of R.R. & R Deptt. it was ascertained in that order that the land in question in plot No. 172 belongs to Govt. of West Bengal, the Refugee Relief & Rehabilitation Deptt. That order was passed in presence of the present petitioner, Hidayetulla Jangi. Hence in that order it was also decided that no private person including Hidayetulla Jangi will get compensation for land value.*

*Part of that land was handed over to Dhubulia Deshbandhu High School by an order of R.R. & R Deptt. and rest of the land are occupied by other person. Hidayetulla Jangi has no possession at all for long on that land. He is not entitled for any kind of compensation in this connection of land acquisition for four laning of National Highway.*

*Let typed copy of this order as well as the order dt. 28.01.2015 duly signed by me be handed over to he present petitioner within two weeks.”*

The said order has been challenged in this writ petition with a prayer for setting aside the said orders dated January 28, 2015, and March 31, 2015 and with a further prayer for payment of compensation for acquiring the said R.S. Plot No. 172 corresponding to

L.R. Plot No. 631 under R.S. Khatian No. 180 to L.R. Khatian No. 1361 in Mouza – Dhubulia, District – Nadia.

It was the case of the writ petitioners that they were entitled to get compensation under the National Highways Act, 1956, since the land in question belonged to them and the same was acquired for the purpose of construction of roads under the said Act.

The learned Single Judge dismissed the writ petition on the basis of the finding of the competent authority that the land in question had been acquired in the pre-independence period for setting up an aerodrome for defence purpose and subsequently, the said land was transferred to Refugee Relief and Rehabilitation Department. It was also a finding in the said order dated January 28, 2015, that a part of the said land was in the possession of a school and the remaining part was in the possession of some private parties.

Though, it has been suggested by Mr. Tewari, learned advocate appearing for the writ petitioners/appellants, that they are entitled to compensation since the R.S. record-of-right shows the possession of the petitioner over Plot No.172, we are unable to accept such contention. The record-of-right does not create or extinguish title, but it only gives rise to a rebuttable presumption; and moreover, the

possession of the said land was not found to be with the appellants/writ petitioners. The latest land record (L.R. record) also does not show that the land in question was in the possession of writ petitioners.

It is, therefore, clear that when the land in question was acquired for the purpose of construction of roads by the National Highways Authorities, the same was already vested in the State. The writ petitioners had, therefore, no right to claim compensation.

In that view of the matter, no interference with the order of the learned Single Judge is called for.

The appeal being F.M.A. 2825 of 2016 and the connected application being IA No: C.A.N.1 of 2016 (Old No: C.A.N. 8805 of 2016) are accordingly dismissed.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(Kausik Chanda, J.)**

**(Arijit Banerjee, J.)**