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07.10.2021
Ct. No.10
b.das

W.P.A. 22970 of 2019

(Via Video Conference)

Kalipada Pal
Vs.
State of W.B. & Ors.

Mr. P. P. Roy
Mr. Dyutiman Banerjee ...for the petitioner.

Mr. Jahar Lad De
Mr. Shamim-ul-Bari ...for the State.

Ms. Manika Roy ...for the NHAI.

Heard learned counsels for the parties.

It is not in dispute that being aggrieved by the compensation granted to the petitioner by the respondent authorities for acquisition of his land, the petitioner took recourse to arbitration under Section 3G (5) of the National Highways Act, 1956 and participated in the said arbitration, the arbitral award being granted on 2nd February, 2018.

The allegation of the petitioner is that copy of the award was not supplied to him by the authority. Fair and adequate compensation has not been awarded to him in the arbitral proceeding under the Act of 2013 though the award was declared after 01.01.2015.

Learned counsel for the petitioner has placed reliance upon judgment in **Bhaben Construction Through Authorized Signatory Premjibhai K. Shah vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr. in Civil Appeal No.14665 of 2015.** Referring to paragraphs 10, 17 and 19 of the judgment, learned counsel submits that the petitioner being able to demonstrate exceptional circumstances and bad faith on the part of the authority in depriving the petitioner of his legitimate claim, this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain the prayer of the petitioner.

Per contra, the State authorities and the NHAI also place reliance upon the same judgment and submit that the petitioner not having taken steps against the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 and having submitted to the jurisdiction of arbitration, is debarred from raising the same issue before the writ court.

Admittedly, the petitioner approached the arbitrator under Section 3G (5) of the Act of 1956 for redressal of his grievance with regard to inadequate compensation granted to him.

The petitioner participated in the said proceeding and final arbitral award was granted on 2nd February, 2018 upon consideration of the prayer of the petitioner made before the learned arbitrator. No appeal has been preferred

by the petitioner against the said award under Section 34 of the Act of 1996.

The petitioner has also failed to demonstrate any exceptional circumstance or 'bad faith' to justify the consideration of his grievances in the present writ petition.

Alternative efficacious remedy being available to the petitioner before a statutory forum and the petitioner not having availed of such remedy, the present writ petition is not maintainable.

This Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution cannot usurp the jurisdiction of the appellate authority under the Arbitration and Conciliation Act, 1996.

Accordingly WPA 22970 of 2019 is dismissed. However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)