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**IN THE HIGH COURT AT CALCUTTA
 CONSTITUTIONAL WRIT JURISDICTION
 APPELLATE SIDE**

**WPA 23908 of 2019
 (Via Video Conference)**

**Subhash Biswas & Anr.
-Vs-
State of West Bengal & Ors.**

Mr. Partha Pratim Roy,
 Mr. Satyam Mukherjee,
... for the petitioners

Mr. Susobhan Sengupta,
 Mr. Ram Chandra Guchait,
 Mr. Manas Kr. Sadhu,
... for the State

Ms. Manika Roy,
... for the NHAI

The petitioners being the husband and the wife, claime to be the owners of a plot of land situate at Mouza- Lalpur, J. L. No. 20, Plot No. 961, Police Station-Chakdaha within the district of Nadia (hereinafter referred to as ‘the plot of land’).

It is the case of the petitioners that the said plot of land is commercial in nature, and the same was acquired by the National Highways Authority under Section 3H(2) of the National Highways Act, 1956 (in short, ‘the Act of 1956) for the purpose of widening the National Highway- 34. Although the petitioners accepted the acquisition of the plot of land, but they did not accept the compensation ascertained by the competent authority under Section 3G(1) of the Act of 1956. Accordingly, the petitioners required an

arbitration proceeding being initiated by the Arbitrator, the respondent No. 2 herein, (the District Magistrate, Nadia) under Section 3G(5) of the Act of 1956. The said arbitration proceeding was numbered as Arbitration Case No. XI/Arbi/2017 arising out of L. A. Case No. 71/NH/10-11.

The grievance of the petitioners is that although their plot of land acquired by the National Highways Authority is commercial in nature but the respondents had treated the said land as 'Viti land', that is, a 'homestead land'. Accordingly, the petitioners filed an application before the competent authority being referred to the arbitrator praying for enhancement of the compensation amount of the acquired land by considering the said land as a commercial land. The petitioners complain that in spite of being aware of the fact that their plot of land was a commercial land, the respondent No. 2 Arbitrator committed a patent illegality in passing the arbitral award by treating the said plot of land as homestead land. Thus, according to the petitioners, this Court in exercise of power under Section 226 of the Constitution of India should set aside the impugned award dated August 2, 2017 made and published by the respondent no. 2 Arbitrator.

However, a vehement objection is raised by the State respondents as well as the respondent National Highways Authority to the maintainability of the present writ petition. It is contended that from a conjoint reading of the provisions contained in Sub-Sections (5) and (6) of Section 3G of the Act of 1956, it is evident that the arbitration proceeding conducted by the Arbitrator resulting in publication of the impugned award was covered by the provisions of the Arbitration and Conciliation Act, 1996 (in short, 'the Act of 1996') and as such, the remedy of the petitioners to challenge the impugned award made by the respondent no. 2

Arbitrator lies in preferring an application under Section 34 of the Act of 1996. In other words, it is contended by the respondents that this Court lacks the jurisdiction to entertain the present writ petition challenging the impugned award published by the respondent no. 2 Arbitrator.

I have considered the materials on record, as well as the contentions advanced by the Counsel of the respective parties. In the present case, at the instance of the petitioners, a reference was made to the respondent no. 2 Arbitrator under Section 3G(5) of the Act of 1956 for arbitration. As per Section 3G(6) of the Act of 1956, such arbitration proceeding conducted by the respondent no. 1 Arbitrator was governed by the Act of 1996. In the Act of 1956, there is no provision to challenge any arbitral award made under Section 3G(5) of the Act of 1956 by a High Court, exercising power under Article 226 of the Constitution or before any designated authority/Court. Thus, I find that the respondents are correct in their contention to raise the objection to the maintainability of the writ petition before this Court. The remedy of the petitioners to challenge the impugned award made by the respondent no. 2 Arbitrator lies in preferring an application under Section 34 of the Act of 1996 before the competent civil Court, which should be dealt with in accordance with law.

For the reasons as aforesaid, the writ petition, being WPA 23908 of 2019 stands rejected.

There shall, however, be no order as to costs.

(Ashis Kumar Chakraborty, J.)