

04.01.2021
p.b.
Sl. No.14.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. 23965 of 2019

Ayesa, wife of Sarifuddin & Ors.
Vs.
Union of India & Ors.

Mr. Samim Ahammed,
Ms. Saloni Bhattacharya.
.....for the petitioners.
Ms. Manika Roy.
.....for the NHAI.
Mr. Nirmal Kumar Maity.
.....for the Union of India.
Mr. Chandi Charan De,
Ms. Chandana Ghosh.
.....for the State.

Petitioners claim that they were the owners of separate plots of land mentioned in paragraph 1 of the writ petition. The concerned respondent issued a notification dated February 18, 2016 under section 3A(1) of the National Highways Act, 1956 (in short, 'the Act of 1956') intending to acquire the plots of land of the petitioners for construction of the bypass connecting Malatipur and Chanchal in the district of Maldah in the state of West Bengal. The said notification was published in the newspaper, a copy whereof has been disclosed as Annexure – 'P-3' to the writ petition. In this writ petition the petitioners have prayed for a writ of mandamus quashing of the entire acquisition proceeding in respect of

their respective plots of land. They have also sought an alternative relief of the writ of mandamus directing the respondent authorities to pay them compensation at the prevailing market rate of their respective plot of land by preparing a scheme in terms of the Right To Fair Compensation And Transparency Act, 2013 (hereinafter referred to as 'the Act of 2013').

From the documents disclosed in the writ petition being Annexure P-3 (at pages 73 to 89), it appears that the petitioners received the respective notices issued to them, all dated November 25, 2016 by the ADM(LA), Maldah under Section 3G of the Act of 1956 calling upon them to produce the relevant documents to substantiate their right in respect of the respective plots of land mentioned in the said notice dated October 28, 2016. The date of hearing was fixed by the ADM(LA), Maldah on December 8, 2016 which was attended by the petitioners. The said documents further mentioned issuance of notices under section 3D(1) of the Act of 1956. Now the documents disclosed as Annexure – 'P-4' to the writ petition (at pages 90 to 137) go to show that all the petitioners had furnished the particulars of their respective bank accounts to the competent authority to receive the amount of compensation awarded to them on account of acquisition of their respective land under the Act of 1956. Thereafter, as is evident from the documents appearing at pages 145 to 161 of the petition, the petitioners filed separate

applications under Section 3G(5) of the Act of 1956 before the Arbitrator claiming higher amount of compensation. The documents comprising Annexure 'P-8' disclose the notices of hearings of the arbitral proceeding issued by the Arbitrator to the petitioners. When the petitioners participated in the proceeding for fixation the respective compensation amount receivable by them they cannot dispute the publication of the declaration under Section 3-D(1) of the Act of 1956 and consequential vesting of the respective plot of land in the Central Government under Section 3-D(2) of the same Act. At this juncture, it is to be noted that the petitioners have not disclosed any document to suggest that they had ever disputed the factum of vesting of their land in the Central Government under Section 3D(2) of the Act of 1956. On the contrary, they submitted the documents before the Competent Authority under the Act of 1956 in support of their claim for compensation. Petitioners have further availed of their remedy for higher compensation under Section 3-G(5) of the Act of 1956 by approaching the arbitrator. As per Section 3-G(6) of the Act of 1956 the arbitration proceeding before the arbitrator shall be governed by the Arbitration and Conciliation Act,1996.

In the above factual background the petitioners now pray for quashing of the entire acquisition proceeding of their respective land under the Act of 1956.

It is contended that in view of the notification dated August 28, 2015 issued by the Ministry of Rural Development, read with Entry -7 of the Fourth Schedule of the Act of 2013 (hereinafter referred to as “the said Act”), the provisions of the said Act relating to determination of compensation, rehabilitation and resettlement are also applicable to the present acquisition proceedings in respect of the plots of land of the petitioners under the Act of 1956. According to the petitioner, in the present case, inasmuch as the benefit of the said Act of 2013 providing for rehabilitation and resettlement scheme, the entire acquisition of the plots of land under the Act of 1956 is vitiated by fraud on statute and such acquisition proceeding is void and liable to be set aside by this Court.

It is further contended that while passing the awards dealing with claims of the respective petitioners for higher amount of compensation under Section 3-G(5) of the Act, 1956, the Arbitrator committed various illegalities in not following the provisions of the Act of 2013 and as such, the awards published by the arbitrator in favour are liable to be quashed by this Court in exercise off writ jurisdiction. It is to be noted that at the instance of the petitioners the arbitration proceedings were initiated to consider their respective claims for higher amount of compensation and at this belated stage when the land of the petitioners already stand vested in the Central

Government the petitioners now want to challenge the acquisition proceeding itself.

Learned counsel appearing for the petitioners prays for an interim order in support of his prayer to challenge the acquisition proceeding initiated under the Act of 1956 in respect of their respective plots of land. He also prays for an interim order to challenge the award made by the Arbitrator which has allegedly not been served upon the petitioners.

On the other hand, learned advocate for the State respondents as well as the National Highways Authorities r strongly objects to the maintainability of the writ petition. In the first place, it was argued that in the present case it is evident that the petitioners were well aware with regard to the notice of acquisition issued by the concerned respondent and it was at their instance that arbitration proceedings were initiated by the Arbitrator under Section 3G(5) of the Act of 1956 to consider their claim of higher compensation than that declared by the competent authority under Section 3G(1) of the Act of 1956. Thus, the petitioners cannot dispute the publication of the declaration under Section under Section 3-D(1) of the Act of 1956 and consequential vesting of all the plots of land in the Central Government under Section 3D(2) of the same Act. Secondly, in view of the provision contained in Section 3G(6), the remedy of the petitioners to challenge the awards published by the Arbitrator lies in approaching

the proper civil court by invoking Section 34 of the Arbitration & Conciliation Act, 1996 and the said order cannot be challenged under Article 226 of the Constitution of India.

I have considered the materials on record. The petitioners allege that they are not aware of acquisition proceeding initiated by the competent authority under Section 3-A Act of 1956. From the documents disclosed in the writ petition, as mentioned above it is evident that the petitioners accepted the acquisition proceeding and their only grievance was the compensation awarded by the competent authority under Section 3G(1) was insufficient. It was only at the instance of the petitioners that their respective claims for higher amount of compensation were referred to the Arbitrator. It is well settled law that once the land stands vested in the Central Government or State Government under any Acquisition Act, any challenge to the validity of the acquisition proceeding is not maintainable. In this regard reference may be profitably made to the decisions of the supreme Court on the cases of Municipal Corporation of Greater Bombay-VS-Industrial Development Investment Pvt. Ltd. reported in (1996)11 SCC 501 and Sulochana Chandrakants Galandi -Vs-Pune Municipal Transport , reported in (2010)8 SCC 467.

In view of the above facts, the petitioners' challenge the acquisition proceeding fails. Whether the petitioners

have any lawful claim for rehabilitation or resettlement under the Act of 2013 is an issue which is beyond the scope of the relief claimed in the writ petition and such issue cannot be adjudicated in the present writ petition. Even the petitioners' prayer claiming relief with regard to the awards made by the Arbitrator under Section 3G(6) of the Act of 1956 cannot be entertained by this Court in writ jurisdiction. The remedy of the petitioners to challenge any act of the arbitrator in the arbitration proceeding including the validity of the respective arbitral awards lies in approaching the competent civil court under Arbitration & Conciliation Act, 1996.

For the reasons as aforesaid, the writ petition being WPA 23965 of 2019 stands dismissed.

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

(Ashis Kumar Chakraborty, J.)