

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

WPA 23968 of 2019

Samiul Hoque & Ors.

- Versus -

Union of India & Ors.

Mr. Nirmal Kumar Maity

.....For the Union of India

**Mr. Chandi Charan De
Ms. Chandana Ghosh**

.....For the State

Ms. Manika Roy

.....For the respondent nos. 2 & 3

On earlier two occasions, i.e. on December 17, 2020 and January 8, 2021 the petitioners remained unrepresented. The respondents were, however, represented by their respective counsel.

By order dated January 8, 2021 it was recorded that if the petitioners remained represented on the next date of hearing, this matter would be appropriately dealt with in their absence. Even on January 11, 2021 the petitioners remained unrepresented. Even today, the same situation continues and as such the application is taken up for hearing in the absence of the petitioners.

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 of National Highway 81, in the district of Malda 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').

It is contended by the learned counsel that in effect the petitioners have filed a writ petition to challenge the award made by the Arbitrator under Section 3G(5) of the Act of 1956. The arbitral proceeding conducted by the Arbitrator was governed by the provisions of Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') and as such, the remedy of the petitioners in challenging the decision of the Arbitrator lies in application under Section 34 of the Act of 1996. It is strongly contended that this Court exercising power under Article 226 of the Constitution of India lacks the jurisdiction to entertain the present writ petition. In support of such contention, the respondents relied on the

unreported decisions of the then Division Bench of the Allahabad High Court dated January 10, 2019 and November 8, 2013 in the cases of Pramod and Ors. Vs. Union of India & Ors. and Navin Tyagi and Ors. Vs. Union of India & Ors., respectively.

In view of the above, it is strongly contended by the learned counsel appearing for the State respondents as well as the respondent National Highway Authority of India that the present writ petition is liable to be dismissed.

I have considered the materials on record. In the writ petition, the petitioners have alleged that they were not aware of acquisition proceeding initiated by the competent authority under Section 3-A of the Act of 1956. From the documents disclosed in the writ petition being Annexure P-3 (at pages 82 to 142), 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), Malda on December 09, 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 go to show that 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 disclosed by Annexure – ‘P-6’ to the writ petition, the petitioners filed separate application 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 respective 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.

From the aforementioned documents 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.

For all the foregoing reasons, 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 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.

Accordingly, the writ petition being WPA 23968 of 2019 stands dismissed.

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

(Ashis Kumar Chakraborty, J.)