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**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

WPA 288 of 2020

**Md. Asaduzzaman & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Jagriti Mishra
...For the Petitioners.**

**Ms. Supriya Singh
...For the Respondent No.4.**

**Mr. Bikramaditya Ghosh
Mr. Momenur Rahaman
...For the State.**

This writ petition has been filed for a direction of status-quo in respect of two Memos dated 8th November, 2019 and 6th January, 2020 issued by the respondent no.3 being the Special Land Acquisition Officer and Competent Authority Land Acquisition under the National Highways Act, 1956, District Cooch Behar.

By the said notices, the competent authority of land acquisition and the Special Land Acquisition officer, Cooch Behar has made a demand for refund of the excess payment of compensation made to the petitioner in respect of certain plots of land which were acquired by the authority from the petitioner.

Mr. Jagriti Mishra, learned counsel appearing for the petitioner submits that besides the compensation

being made to the petitioner beyond the time contemplated under section 3-G of the National Highways Act, 1956 (the Act), the concerned respondent had no authority to issue the impugned Memos in light of the order passed by a learned Single Judge in an earlier writ petition filed by the writ petitioner being WPA 142 of 2019. Counsel places the order dated 20th August, 2019 of the co-ordinate Bench in some detail and urges that in light of the observations made in the said order, the two subsequent notices are amenable to challenge.

Mr. Bikramaditya Ghosh, learned counsel appearing for the State and Ms. Supriya Singh, learned Counsel appearing for the National Highway Authority argue on the same plane, namely, that the authorities are empowered to seek a refund of excess compensation made to any person whose land has been acquired under the 1956 Act. It is also submitted that the respondents have the right to demand refund of excess payment made to a party before an appropriate forum.

On hearing learned appearing for the parties and on perusing the order passed by the learned Judge on 20th August, 2019 in the earlier writ petition filed by the petitioner, it appears that the said order contains detailed reasons for setting aside the notice which was the subject matter of the challenge in the earlier proceeding.

Admittedly, the notices impugned in the present proceeding is virtually identical to the notice impugned in the earlier proceeding. It is not in dispute that the order of the learned Single Judge was not challenged by any of the respondent and subsists till date. Moreover, the learned Judge was of the view that once compensation has been made to the land-loser, the authority becomes *functus officio*.

The co-ordinate Bench, however, gave liberty to the authority to seek refund of any alleged excess payment from the petitioners before an appropriate forum subject to limitation.

It is the case of the petitioner that being aggrieved by the quantum of the compensation awarded by the competent authority, the petitioner has applied for setting aside under Section 3-G(5) of the Act before the District Judge in Cooch Behar. The proceedings challenging the Award are presently pending and the respondent authorities are to file their written objections in the said proceedings.

Two issues arise in view of the above facts. First, the sanctity of court orders would be irrevocably compromised if persons/authorities are permitted to proceed in the same manner as they had done before the action complained of was quashed. The respondents were at liberty to challenge the said order if they had been aggrieved by the directions or

observations made therein. If the respondent failed to do so, they cannot be permitted to take the same objections in a fresh writ petition filed by the petitioner challenging identical Memos for refund of compensation. The respondents have also not been able to establish a legal basis for issuing notices identical to the one which have been stayed by the co-ordinate Bench on 20th August, 2019.

Second, under Section 3-H(4) of the Act, if any dispute arises as to the apportionment of the amount or any part thereof or to any person, the competent authority shall refer the dispute to a Principal Civil Court of Original jurisdiction within the limits of whose jurisdiction the land is situated. The term “*Competent authority*” has been defined under Section 3 as any persons or authority authorized by the Central Government by notification in the Official Gazette.

As stated above, the challenge to the Award in the form of a Section 34 application is pending before a civil court. Hence, if any notice of refund is given effect to the proceeding pending for challenging the Award will also be rendered infructuous.

One issue however, should be mentioned. The impugned Memo dated 8th November, 2019 mentions a discussion held in the Chamber of the Special Land Acquisition Officer, Cooch Behar on 11th September, 2019 in which the petitioner allegedly agreed in

principle to return an amount of Rs.6,36,931/- for area mentioned in the said Memo. This part is a new addition to the earlier notice which was stayed by the order of the co-ordinate Bench. Since it appears that this statement has not been disputed by the petitioner in a reply to the impugned notice or in the present writ petition, the concerned respondents will be at liberty to seek appropriate directions in the proceedings pending before the Learned District Judge, Cooch Bihar.

Having found that the respondent authorities were not legally empowered to issue the impugned Memos date 8th November, 2019 and 6th January, 2020 for the reasons as stated above, WPA 288 of 2020 is disposed of in terms of prayer (b). The respondent authorities are directed to maintain status quo in respect of the two Memos which are under challenge in the present writ petition.

The writ petition is disposed of accordingly.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Moushumi Bhattacharya, J.)