

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 16.09.2021

Order Passed on : 26/10/2021

W.P.(227) No. 378 of 2021

1. Sohan, S/o. Dubraj, aged about 72 years, R/o. Village Orgai, District Koriya, Chhattisgarh. (Defendant No. 3).
2. Ramkripal, S/o. Kallu Prasad, aged about 52 years, (Defendant No. 4)
3. Sukul Prasad, S/o. Shivnandan, aged about 67 years, (Defendant No. 5)
4. Shyamlal, S/o. Sahdeo @ Sukhdev, aged about 57 years, (Defendant No. 6)
5. Nandlal, S/o. Sahdeo @ Sukhdeo, aged about 52 years (Defendant No. 7)
6. Pushpraj, S/o. Bihari, aged about 20 years, (Defendant No. 8)
7. Umesh, S/o. Bihari, (wrongly mention Vishwanath in order), aged about 18 years, (Defendant No. 9)
8. Ramnath, S/o. Chhoturam, aged about 78 years (Defendant No. 10)
9. Jagarnath, S/o. Chhoturam, aged about 70 years, (Defendant No. 11)
10. Umesh, S/o. Vishwanath, aged about 28 years, (Defendant No. 13)
11. Amarnath, S/o. Chhoturam, aged about 59 years, (Defendant No. 14)

Petitioner No. 2 to 11 Caste Rajwar, and R/o Village - Kharwat, Tahsil - Baikunthpur, District Koriya, Chhattisgarh.

---- Petitioners

Versus

1. Mohar Sai, S/o. Dubraj, aged about 75 years, Caste - Rajwar, R/o Village - Cherwapara, Tahsil - Baikunthpur, District Koriya, Chhattisgarh. (Applicant Before Court Below).
2. Chief Engineer, Public Works Department, National Highways, Circle Raipur, Chhattisgarh. (Defendant No. 1)
3. Competent Authority/Sub Divisional Officer (Revenue) Baikunthpur, District Koriya, Chhattisgarh. (Defendant No. 2)
4. Ramesh, S/o. Vishwanath, aged about 28 years, R/o Village - Kharwat, Tahsil Baikunthpur, District Koriya, Chhattisgarh. (Defendant No. 12)

---- Respondents

For Petitioners : Mr. Sushobhit Singh & Mr. Syed Majid Ali,
Advocates

For Respondents No.1 : Mr. Hemant Kumar Agrawal, Advocate

For Respondents/State : Mr. Sameer Uraon, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This petition has been brought challenging the impugned order dated 20.07.2017, passed by the Commissioner, Sarguja Division, Ambikapur.
2. It is submitted by the learned counsel for the petitioners that the land in question, situated in village – Cherwapara, Tahsil Baikunthpur, District Koria was acquired for National Highway Development Project. The respondent No.3, the competent authority has passed the award dated 04.10.2018. A dispute arose between the petitioners and the respondent No.1 regarding apportionment of the compensation amount. Respondent No.1 filed an application under Section 3G (5) of the National Highways

Act, 1956 (hereinafter referred to as “the Act, 1956”), which was entertained by the Commissioner and the impugned order has been passed. It is submitted by the counsel for the petitioners that the proceeding drawn by the Arbitrator/Commissioner is illegal. The respondent No.1 was required to file application under Section 3H (4) of the Act, 1956, before the principal Civil Court of original jurisdiction, which is the authority to decide such dispute. The authority available under Section 3G(5) of the Act, 1956, is totally different field. Therefore, the impugned orders passed by the Commissioner is nullity and non-est in the eyes of law, which is fit to be quashed. It is also submitted that the application under Section 3G(5) of the Act, 1956 filed by the respondent No.1 was in fact an appeal praying to set-aside the award dated 04.10.2018, passed by the competent authority, which was not maintainable. Therefore, it is prayed that the impugned order be set-aside and the respondent No.1 be directed to file application under Section 3H(4) of the Act, 1956, before the appropriate forum.

3. Learned counsel for the respondent No.1 opposes the petition and the submission made in this respect. It is submitted that the present petition under Article 227 of the Constitution of India is not maintainable. Reliance has been placed on the judgment of Calcutta High Court in case of **Tapan Kumar Basak Vs. Union of India & Ors.**, reported in **2017 SCC OnLine Cal 15769**, in which it has been clearly held that award passed under Section 3G(5) of the Act, 1956 can be challenged before the appropriate forum under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act, 1996”) therefore, the petition

under Article 227 of the Constitution of India is not maintainable. It is submitted that it has been similarly held in case of **Lalit Kumar Vs. Sanghavi (dead) through : LRS Neeta Lalit Kumar Sanghvi & Anr. Vs. Dharamdas V. Sanghavi & Ors.**, reported in **(2014) 7 SCC 255** and also in the case of **Bhaven Construction through : Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. And Anr.**, reported in **2021 SCC OnLine SC 8**.

4. It is submitted that Section 3G(6) of the Act, 1956 very clearly provides in the case of reference under Section 3G(5) of the Act, 1956, the provision of Act, 1996 shall be applicable. Section 4 of the Act, 1996 provides that any person who participates in any arbitration proceeding without raising any objection, then that shall be deemed to be a waiver of his rights of making such objection, therefore, the petitioners have remedy available under the Act, 1996 for which writ jurisdiction under Article 227 of the Constitution of India can not be availed.
5. The claim of the respondent No.1 is for his entitlement of compensation with respect to the complete landed property, which was acquired for respondent No.2 on the ground that all that property has fallen in the share of respondent no.1 only, which was not examined by the competent authority. The learned Commissioner has passed the order, which is sustainable in the eyes of law. Hence, on this ground, the present petition is not maintainable. Prayer has been made to dismiss this petition.

6. In reply, it is submitted by the learned counsel for the petitioners that the Commissioner, Sarguja Division has illegally assumed the jurisdiction, which was not available to it, therefore, the impugned order is not an order in the eyes of law. The case laws on which the respondent No.1 has placed reliance are not applicable in the present case on the ground that the impugned order is totally illegal, therefore, there is no question for resorting to the Arbitration and Conciliation Act for challenging the impugned order. Petition under Article 227 of the Constitution of India is very much maintainable. It is also submitted that the dispute, which was present between the parties can not be decided in arbitration. Hence, prayer has been made for allowing this petition.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. The land acquisition revenue case No.01/A/82/2017-18 was initiated against the Supriya Yadav and 46 others, which was purely for adjudication of compensation under Section 3G(1) & 2 of the Act, 1956. Sub-section 5 of Section 3G of the Act, 1956 is as follows :-

“3G(5) “If the amount determined by the competent authority under sub-section (1) of sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government”
9. Respondent No.1 preferred an application under Section 3G(5) of the Act, 1956, in which he has prayed the Commissioner Sarguja

division to exercise jurisdiction against the order dated 04.10.2018, passed by the Competent Authority. Grounds raised in the application was this that Patwari had submitted a report that whole landed property acquisitioned had been the property fallen in the share of respondent No.1 as per the enquiry made, which was not given any consideration. On this basis, the prayer was made to set-aside order of compensation dated 04.10.2018. Learned Commissioner entertained the application for considering on the dispute raised by the respondent No.1 and held in the impugned order that respondent No.1 alone is entitled for compensation, which has been ordered at Sr. No.65 to 69 in the order dated 04.10.2018 and directed payment of full compensation to the respondent No.1.

10. The provision under Section 3G(5) of the Act, 1956 gives a very limited jurisdiction to the arbitrator to determine the appropriate compensation on any dispute being raised by the parties regarding insufficiency and inadequacy of the compensation granted to them. This provision does not provide for determining the right of any party for receiving compensation. The learned Commissioner has by the impugned order determined that it is the respondent No.1, who is alone entitled for grant of compensation, whereas, the petitioners and the respondent No.1 are the joint holders of the landed property acquisitioned. The authority of the arbitrator is clearly governed by the provisions of Act, 1996 and in the the Act, 1956, there is no such provision to decide any such dispute regarding entitlement of one party against the other party.

11. The provisions under Section 3H4 of the Act, 1956 is relevant, which is as follows :-

“3H(4). – If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

12. It is clearly provided that the dispute regarding apportionment of the amount shall be referred by the competent authority for decision to principal civil Court of original jurisdiction, therefore, there is a clear provision present, which should have been invoked by the respondent No.1 for the purpose of making a claim as he has made in the application under Section 3G(5) of the Act, 1956, before the Commissioner.
13. Hence, I am of this view that the application under Section 3G(5) of the Act, 1956 filed by the respondent No.1, which appears to be in the nature of appeal memo was not fit to be entertained by the Commissioner and further the order that has been passed by the Commissioner referring to Section 3G(5) of the Act, 1956 is clearly beyond the jurisdiction as provided under Section 3G(5) of the Act, 1956, which is limited only for the purpose of considering and deciding adequacy of the compensation awarded to the claimants by the competent authority. Under these circumstances, it is held that the impugned order is without the authority of any law, therefore, illegal and perverse, which is not sustainable. The case laws cited by the respondent side are not applicable in the present

case. The impugned order can not be considered as lawful award passed under Section 3G(5) of the Act, 1956. Hence, the remedy under Section 34 of the Act, 1996 will not be available against such award, which is by itself non-est in the eyes of law.

14. In the result, this petition is allowed. The impugned order dated 20.07.2021, passed by the Commissioner, Sarguja Division, Ambikapur is quashed. The respondent No.1 is granted liberty to file application under Section 3H(4) of the Act, 1956, before the competent authority and when any such application is filed, the competent authority is directed to refer the matter to the principal civil Court of original jurisdiction.
15. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram