

D/L
Item No. 7
16.03.2022
KOLE

**FMA 675 of 2019
With
IA No. CAN 1 of 2017 (Old No. CAN 10004 of 2017)**

**Kanai Lal Dutta
-Vs.-
The State of West Bengal & Ors.**

*Mr. Amit Kumar Pan,
Ms. T. Santra,*

...for the appellant.

*Mr. S. Sengupta,
Mr. S. Pal,*

...for the State.

By consent of the parties the appeal and the connected application are taken up together for hearing.

The writ petitioner/appellant approached the learned Single Judge, *inter alia*, with the following prayers:-

- “a) Issue a writ of and/or in the nature of mandamus commanding the respondents to pay compensation of Rs.7,80,000/- for illegal demolition of running Stationary shop room including all article, goods, furniture and others without serving any notice to the petitioner;
- b) A writ in the nature of mandamus commanding the respondent to further pay the award money passed in favour of the petitioner amounting Rs.3,49,538/- for the land and amounting to Rs.2,74,942/- for the structure, total amounting Rs.6,24,480/- to the petitioner.
- c) A writ in the nature of mandamus commanding the respondent to pay compensation in respect of the land and structure in terms of the provision of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013.”

Being so approached, the learned Single Judge found that the relevant land was the subject matter of a gift and the donor subsequently challenged the execution of the gift deed by filing a civil suit. The learned Judge disposed of the writ petition by directing the respondent no. 3 to refer the dispute with regard to the apportionment of the amount of compensation to the Principal Civil Court of original jurisdiction within the limit of whose jurisdiction the land and structure are situated, as per Section 3H(4) of the National Highways Act, 1956.

Before us, the appellant has, however, argued a somewhat different point. Mr. Pan, representing the appellant, submits that the learned Single Judge did not take into consideration the pleadings in paragraph 19 of the writ petition and passed the order without appreciating the grievance of the petitioner. Mr. Pan submits that the writ petitioner had been dispossessed without giving due notice under Section 3E of the National Highways Act, 1956 which provides for a sixty days notice to be served before taking possession. Mr. Pan submits that the petitioner had been dispossessed illegally and due to the acts of the administrative authorities has suffered damages in the region of rupees eight lakh.

Paragraph 19 of the writ petition reads as follows:-

“Your petitioner states that on 31.08.2017 petitioner’s wife was absent in the said stationery shop due to her illness and in the absence of the said running stationary shop along with their men, agent, labour and illegally damaged the running Stationary shop room and also damaged the article, goods,

furniture, electric meter and others, totaling amounting Rs. 7,80,000/-.”

He argues that the authority while computing the compensation amount in terms of Section 3G (2) of the said Act, ought to have considered the damage suffered by the appellant due to the administrative excess in dispossessing the appellant.

We are unable to accept the submission of Mr. Pan. Sub-section (2) of Section 3G is reproduced hereinbelow:-

“3G.(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-Section (1), for that land.”

The compensation payable in terms of Section 3G of the National Highways Act, 1956 is an incident of acquisition of “land” simpliciter. If anyone claims damages for administrative excess in taking possession in terms of Section 3E of the said Act, the same cannot be determined or granted within the scope of Section 3G of the Act.

The remedy in such case may lie in filing a civil suit since such claim is dehors the provisions of Section 3G(2) of the Act.

In view of the aforesaid, the appeal being FMA 675 of 2019 and the connected stay application being I.A. No. CAN 1 of 2017 (Old No. CAN 10004 of 2017) are dismissed.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties, as early as possible, upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)