

November 30, 2022
ARDR
(4 to 21)

WPA 1877 of 2017

Israil Molla
Vs.
The Union of India & Ors.

With

WPA 1878 of 2017

Farejul Haque
Vs.
The Union of India & Ors.

With

WPA 1879 of 2017

Sahadul Haque
Vs.
The Union of India & Ors.

With

WPA 1880 of 2017

Soheluzzaman
Vs.
The Union of India & Ors.

With

WPA 1881 of 2017

Sirajul Haque
Vs.
The Union of India & Ors.

With

WPA 1882 of 2017

Nasiruddin Monal
Vs.
The Union of India & Ors.

With

WPA 1883 of 2017

Sk. Sirajul Haque

Vs.
The Union of India & Ors.
With

WPA 1885 of 2017

Md. Abdul Hafiz
Vs.
The Union of India & Ors.

With

WPA 1886 of 2017

Asadul Haque
Vs.
The Union of India & Ors.

With

WPA 1887 of 2017

Sahidul Haque
Vs.
The Union of India & Ors.

With

WPA 1889 of 2017

Md. Hafijur Rahaman
Vs.
The Union of India & Ors.

With

WPA 1890 of 2017

Sirajuddin Molla
Vs.
The Union of India & Ors.

With

WPA 1891 of 2017

Asaduzzaman Mondal & anr.
Vs.
The Union of India & Ors.

With

WPA 1892 of 2017

Md. Abadulla Mondal
Vs.
The Union of India & Ors.

With

WPA 1893 of 2017

Firojuddin Molla
Vs.
The Union of India & Ors.

With

WPA 1895 of 2017

Haran Ali Mondal
Vs.
The Union of India & Ors.

With

WPA 1896 of 2017

Tuhina Hena
Vs.
The Union of India & Ors.

With

WPA 1899 of 2017

Rafik Molla
Vs.
The Union of India & Ors.

Adv. Arindam Das,
Adv. Anushka Mahato,
Adv. Priyanka Kundu

...for the petitioners.

Adv. Dipankar Das,

...for the NHAI.

Adv. Ansar Mondal,
Adv. Srilekha Bhattacharjee,

...for the State in WPA 1877/17.

Adv. Ansar Mondal,
Adv. Srilekha Bhattacharjee,

...for the State in WPA 1878/17.

Adv. Chandi Charan De,
Adv. Anirban Sarkar,

...for the State in WPA 1879/17.

Adv. Chandi Charan De,
Adv. Anirban Sarkar,

...for the State in WPA 1882/17.

Adv. Tulsi Das Roy,
 ...for the State in WPA 1886/17.
 Adv. Lalit Mohan Mahato,
 Adv. Prasanta Behari Mahato,
 ...for the State in WPA 1887/17.
 Adv. Lalit Mohan Mahato,
 Adv. Prasanta Behari Mahato,
 ...for the State in WPA 1893/17.
 Adv. Chandi Charan De,
 Adv. Anirban Sarkar,
 ...for the State in WPA 1895/17.

Since similar points of law and fact are involved in all these writ petitions, the writ petitions are disposed of by a common order.

Heard learned counsels for the parties.

The petitioners claim to be the owners of the plots in question and submit that the plots were acquired by the National Highways Authority of India under the National Highways Act, 1956 vide L.A./NH-34/N-24 Pgs/Amdanga/1 of 2011-12 dated 21st July, 2015. The petitioners received notice under Section 3H(2) of the Act of 1956 requesting collection of the amount of compensation from the authority. Despite objection being raised by the petitioners, no opportunity of hearing was granted to the petitioners. The prayer of the petitioners, in the writ petitions, are two fold:

Firstly, an opportunity to submit an application under Section 3G(5) of the Act of 1956 before the Arbitrator for consideration of enhancement of the compensation amount declared in their favour; and

Secondly, to grant compensation in terms of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013, which came into effect in respect of National Highways Act, 1956 from 1st January, 2015.

Learned counsel for the petitioners has referred to a judgment passed by an Hon'ble Division Bench of this Court on 7th September, 2022 in MAT 1520 of 2019 with I.A. No. Can 2 of 2021 in support of his contention.

It is submitted on behalf of the National Highways Authority of India that though the authority deposited the compensation under Section 3G(1) of the Act of 1956 before the competent authority on 15th October, 2014, the amount was admittedly paid to the petitioners after 1st January, 2015. Learned counsel for the National Highways Authority of India candidly submits that in view of the same, the petitioners are entitled to compensation in terms of the Act of 2013 which may be decided by the Arbitrator under Section 3G(5) of the Act of 1956.

Learned counsels for the State also speak in tune with the learned counsel for the National Highways Authority of India and submit that the petitioners may make an application under Section 3G(5) of the Act of 1956 before the Arbitrator who shall decide the same in accordance with the Arbitration and Conciliation Act, 1996 as well as Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

It is not in dispute that compensation under Section 3G(1) of the Act of 1956 was paid to the petitioners after 1st January, 2015 and, therefore, the petitioners are admittedly entitled to compensation under the Act of 2013. The Hon'ble Division Bench of this Court, in the judgment referred to earlier, has categorically held that in the event notice of arbitration is served to the petitioners depriving them of an opportunity of hearing before the learned Arbitrator, the petitioners cannot be said to be bound by the said order and are at liberty to file fresh application before the Arbitrator under Section 3G of the Act of 1956. The fact situation in the case in hand is identical to the matter involved in the judgment passed by the Hon'ble Division Bench. Here too, the petitioners were not served any notice of arbitration under Section 3G (5) of the Act and were not given any opportunity to place their respective contentions before the Arbitrator.

In view of the above, this Court is inclined to hold that since the petitioners are admittedly entitled to get compensation in terms of the Act of 2013, liberty be granted to them to file fresh applications under Section 3G(5) of the Act of 1956 before the learned Arbitrator appointed under Section 3G(5) of the Act of 1956 within one month from date. The learned Arbitrator shall deal with the applications filed by the petitioners in accordance with the Arbitration and Conciliation Act, 1996 and upon giving reasonable opportunity of hearing to the petitioners

and other interested persons, shall assess compensation/award payable to the petitioners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in accordance with law.

The entire exercise should be completed within six months from the date of filing of the applications by the respective petitioners.

Copy of the award be served upon the petitioners within one month thereafter.

Let a photocopy of this order be tagged with each of the files.

With the aforesaid observations and directions, writ petitions are disposed of. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J.)