

30.11.2022
rc/ct.no.10
Item No.22-43

WPA 2645 of 2017
with
WPA 2649 OF 2017
with
WPA 2653 OF 2017
with
WPA 2656 OF 2017
with
WPA 2658 OF 2017
with
WPA 2659 OF 2017
with
WPA 2660 OF 2017
with
WPA 2662 OF 2017
with
WPA 2663 OF 2017
with
WPA 2664 OF 2017
with
WPA 2665 OF 2017
with
WPA 2668 OF 2017
with
WPA 2671 OF 2017
with
WPA 2672 OF 2017
with
WPA 2674 OF 2017
with
WPA 2675 OF 2017
with
WPA 2676 OF 2017
with
WPA 2679 OF 2017
with
WPA 2684 OF 2017
with
WPA 2688 OF 2017
with
WPA 2690 OF 2017
with
WPA 31247 OF 2017

Mr. Arindam Das
Mr. Atanu Banerjee
Mrs. Rumeli Sarkar

...for the petitioners

Mr. Dipankar Das

...for the NHAI

Mr. Chandi Charan De
 Mr. Soumitra Bandyopadhyay
 Mr. Anirban Sarkar
 Mr. Tulsidas Roy
 Mr. Ram Chandra Guchait ...for the State

Since the question of law and facts involved in all these writ petitions are similar, by consent of the parties, the writ petitions are taken up for consideration analogously and disposed of by a common order.

Heard learned counsels appearing on behalf of the parties.

The petitioners claim to be owners of the plots in question and submit that the plots were acquired by the National Highways Authority of India (in short, “NHAI”). Despite objections raised by the petitioners, notices under Section 3H(2) of the National Highways Act, 1956 (hereinafter referred to as “the Act of 1956”) were issued to the petitioners though no opportunity of hearing was granted to them. The petitioners submit that since compensation was paid to them after coming into effect of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the Act of 2013”) on 01.01.2015, the petitioners are entitled to compensation under the said Act. The petitioners seek to submit an application under Section 3G(5) of the Act of 1956 before the learned Arbitrator and pray for a direction upon the learned Arbitrator to consider the said application in terms

of the Arbitration and Conciliation Act, 1996 as well as the Act of 2013 upon affording reasonable opportunity of hearing to the petitioners.

Per contra, it is submitted by the learned counsel appearing on behalf of the NHAI that since the petitioners received the amount of compensation prior to 01.01.2015, the Act of 2013 is not applicable in the present cases.

It is also submitted by the learned counsel appearing on behalf of the State-respondents that the entire amount of compensation as well as the arbitral award was disbursed in favour of the petitioners in 2014 and as such, the petitioners are not entitled to claim compensation under the Act of 2013.

The report submitted on behalf of the State-respondents indicate that an arbitral proceedings under Section 3G(5) of the Act of 1956 was held by the learned Arbitrator in respect of 157 petitions filed before him but there is no whisper in the four corners of the report to the effect that the petitioners or any of them were served notice under the said provision of law or were granted opportunity of hearing by the learned Arbitrator before the award was passed.

In view of the same, this Court is inclined to hold that the arbitral proceedings which prima facie took place behind the back of the petitioners cannot be applicable in case of the petitioners and the petitioners are not bound by the decision taken by the learned Arbitrator therein.

An Hon'ble Division Bench of this Court, in a judgment passed on 07.09.2022 in MAT No. 1520 of 2019 with IA No:CAN 2 OF 2021 has dealt with an identical issue and has made similar observation therein.

In view of the above, I am inclined to hold that since the arbitral award was passed behind the back of the petitioners herein, the petitioners are granted liberty to file an application under Section 3G(5) of the Act of 1956 before the learned Arbitrator within one month from date. The learned Arbitrator shall deal with the application in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and consider whether the petitioners are entitled to payment of compensation under the Act of 2013, upon affording reasonable opportunity of hearing to the petitioners, in accordance with law.

The entire exercise should be completed within a period of six months from the date of communication of this order.

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

It is made clear that this Court has not gone into the merits of the case and the learned Arbitrator shall be at liberty to decide the matter independently upon hearing the petitioners and all other interested persons and considering relevant documents without being influenced by any observation made by this Court in the body of this order.

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

With the above observations and directions these writ petitions are disposed of.

There shall be, however, 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)