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W.P.A. 2691 of 2017
(Samayun Seikh vs. Union of India & Ors.)

Mr. Arindam Das
Mrs. Rumeli Sarkar
.... For the Petitioner

Mr. Dipankar Das
.... For the NHAI

Affidavit of service filed on behalf of the petitioner and the report submitted by the National Highways Authority of India are taken on record.

None appears for the respondents despite service.

Mr. Chandi Charan De who is present in Court and usually appears for the State is requested to represent the State in this matter. His appointment be regularised by the office of the learned Legal Remembrancer.

The petitioner is directed to serve copy of the writ petition along with annexure thereto to Mr. De in course of this day.

Heard learned counsels for the parties.

It is contended on behalf of the petitioner that he is the owner of the plot in question, which was acquired by the

National Highways Authority of India. Despite objections raised by the petitioner, notice under Section 3(H)(2) of the National Highways Act, 1956 was issued to the petitioner though no opportunity of hearing was granted to him. The petitioner submits that since compensation was paid to him after coming into effect of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on 1st January, 2015, the petitioner is entitled to compensation under the said Act. The petitioner seeks to submit an application under Section 3G(5) of the Act of 1956 before the learned Arbitrator and prays 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 petitioner.

It is submitted on behalf of the National Highways Authority of India that since compensation was paid to the petitioner prior to 1st January, 2015, the Act of 2013 is not applicable in the present case.

It is not in dispute that the arbitral proceedings under Section 3G(5) of the Act was held by the learned Arbitrator and there is nothing on record to suggest that the notice of hearing was served upon the petitioner or the petitioner was given any opportunity of hearing by the learned arbitrator prior to declaration of award.

In view of the above, this Court is inclined to hold that since arbitral proceedings *prima facie* took place behind the

back of the petitioner and without affording him opportunity of hearing before the learned Arbitrator, the petitioner is not bound by the decision taken by the learned Arbitrator therein.

Upon consideration of the submission made on behalf of the parties, the writ petition is disposed of with liberty to the petitioner to file an application under Section 3 G(5) of the Act of 1956 before the learned Arbitrator within one month from date and the learned Arbitrator shall consider and dispose of the said application in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and consider whether the petitioner is entitled to payment of compensation under the Act of 2013, upon affording reasonable opportunity of hearing to the petitioner, in accordance with law, within a period of six months from the date of receipt of the application. The decision taken by the authority shall be communicated to the petitioner within one month thereof.

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 petitioner and the other interested persons and considering the relevant documents without being influenced by any observation which may have been made by this Court in this order.

The writ petition is thus disposed of.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)