

05.07.2022
Item No.07
Court No.6.
S. De

**M.A.T. 221 of 2019
With
I.A. No. CAN/2/2019
(Old No. CAN 3281 of 2019)**

**The State of West Bengal & Ors.
Vs
Sagar Dey & Ors.**

Mr. Susovan Sengupta,
Mr. Subir Pal,

...for the appellants/State.

Mr. Shamit Sanyal,
Ms. Manika Roy,

...for the respondent no.2&3.

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee,

...for the respondent no.1.

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

This appeal is directed against a judgment and order dated July 11, 2018 whereby W.P. 1275 (W) of 2018 was disposed of. The operative portion of the order under appeal reads as follows :-

“therefore, I hold that acquisition of land under the said Act of 1956 includes acquisition of the permanent structures on the said land, including buildings, and the compensation amount determined under Section 3G(1) of the Act of 1956 must also include in terms of what the competent authority determines under sub-

section (7), the fair market value of the permanent structures thereon, and a person aggrieved by the amount of compensation even in case of the amount or sum determined for the structure, can seek reference of that dispute before the arbitrator to be appointed under sub-section (5) of Section 3G and if he seeks such reference, the arbitrator is duty bound to decide the dispute and enhance or refuse to enhance the compensation even on that count, but is not entitled to refuse to accept such reference or refuse to consider such dispute.

In that view of the matter, the writ petition is allowed and the respondent no.2 is directed to accept the application/reference for arbitration sought to have been made by the petitioner for enhancement of the compensation in respect of the building and/or structure of the petitioner as stated in prayer (a) of the writ petition. If such application is made within 14 days from date of uploading a copy of this order on the website, then the respondent no.2 shall enter upon the reference and commence arbitration and complete the arbitration and make and publish its award in accordance with law after giving due opportunities to the parties to present their case, within a period of six months from the date of making

of such application and communicate a duly certified copy of its award, with reasons and the full order-sheet, to the writ petitioner and not a mere synoptic copy of the award, within 14 days from making and publishing its award.”

Land along with structures belonging to the writ petitioner/respondent was acquired under the provisions of the National Highways Act. Compensation was awarded to the writ petitioner separately in respect of the land and the structures. He was dissatisfied with the amount of compensation on both counts. He approached the learned Single Judge saying that he had filed applications for referring the matter to arbitrator as contemplated under Section 3G(5) of the National Highways Act. Although the application pertaining to the land was accepted, the application pertaining to the structures was not accepted on the alleged basis that “land did not include structures”.

The State disputes that the writ petitioner made any application for reference to arbitrator in respect of compensation awarded on account of structures.

The learned Single Judge, as noted above, allowed the writ application holding that land would include structures standing thereon and, therefore, if the owner of such structures is aggrieved by the

quantum of compensation awarded in respect of such structures, he was entitled to ask for reference to arbitration under Section 3G(5) of the Act. The learned Judge granted time to the writ petitioner to file an appropriate application and pass consequential orders. Being aggrieved, the State is before us by way of this appeal.

Mr. Sengupta, learned advocate appearing for the State takes serious exception to the first paragraph of the judgment under appeal. He says that the observations made in that paragraph are unwarranted and uncalled for since there was no application for reference of the matter to arbitration in respect of the structures. Mr. Roy, learned advocate appearing for the respondent no. 1 strongly opposes such submission.

We are not inclined to get into the controversy as to whether or not the writ petitioner made an application for reference of the matter to arbitration in so far as the structures in question are concerned. We are told that pursuant to liberty granted by the learned Single Judge such an application has since been filed. We are however of the view that the first paragraph of the judgment under appeal may be deleted. Accordingly, we direct that the first paragraph of the judgment under appeal be expunged.

As regards the remainder of the order under appeal, we do not see any infirmity therein. If the writ petitioner/respondent has filed an application pursuant to the liberty granted by the learned Single Judge, the same shall be carried to its logical conclusion, in accordance with law. It is desirable that if the application has been filed by the writ petitioner, the same may be disposed of at an early date and preferably within three months from the date of communication of this order to the concerned authorities.

Accordingly, MAT 221 of 2019 is disposed of along with the application being I.A. No. CAN/2/2019 (Old No. CAN/3281/2019)

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)