

WPA 21897 of 2019

**Aloke Kumar Chandra
Vs.
Union of India & Ors.**

**Mr. Kumar Jyoti Tewari
Mr. Tarun Jyoti Tewari
Ms. Raj Lakshmi Ghatak
Mr. Aniruddha Tewari**

...for the Petitioner

**Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu**

...for the State

Ms. Manika Roy

...for the NHAI

Petitioner is an owner of petrol pump which has been requisitioned and subsequently acquired by initiating LA case No. 23A/C/NH/10-11 in terms of the relevant provisions of National Highways Act, 1956 (hereinafter referred to as 'NH Act, 1956').

Petitioner is aggrieved by the decision of the competent authority passed in the aforementioned LA case wherein determination of compensation was made which is to be paid to the petitioner for acquiring petrol pump. According to the petitioner less amount has been quantified towards compensation by not treating the 'Petrol Pump' of the petitioner as 'Dokan'.

Mr. Kumar Jyoti Tewari,, learned advocate representing the petitioner has drawn attention of this Court to pages 71 and 72 of the writ petition wherein

for “Petrol Pump” and ‘Dokan’ the rate of compensation was fixed at Rs. 18,71,563/-. According to the petitioner the rate of compensation was identical in respect of “Petrol Pump” and ‘Dokan’ but subsequently the rate of compensation of ‘Dokan’ was enhanced from Rs. 18,71,563/- to Rs. 1,22,57,437/-. It is contended on behalf of the petitioner that since the petitioner’s petrol pump has been acquired he is entitled to get the compensation at the rate, which is applicable to ‘Dokan’.

Since the District Magistrate, Nadia being the respondent no. 3 while quantifying the compensation of the petitioner did not consider the petrol pump of the petitioner as ‘Dokan’ and the amount fixed towards compensation according to the petitioner was not similar to ‘Dokan’, the petitioner was compelled to file the writ petition being WPA 28360 of 2017 which was disposed of vide order dated 2nd September, 2019. It is submitted by Mr. Tewari that in view of the order passed by the coordinate Bench on 2nd September, 2019 the respondent no. 3 is required to take into consideration and treat the establishment of the petitioner as ‘Dokan’ and was required to pass an order pursuant to such direction passed by the coordinate Bench on the said writ petition. In terms of the order dated 2nd September, 2019 passed by the coordinate

Bench the respondent no. 3 passed an order on 22nd October, 2019 whereby claim of the petitioner was turned down on technical ground. Such order of the respondent no. 3 dated 22nd October, 2019 is under challenge in the present writ petition.

It has further been contended on behalf of the petitioner that the issue has already been decided by the coordinate Bench on 2nd September, 2019 wherein it has been specifically observed that petitioner is entitled to claim classification of 'Dokan' under the LA proceeding. Therefore, while taking decision afresh by the respondent no. 3 it is submitted that the respondent no. 3 is required to calculate the compensation amount based on such observation of the coordinate Bench which has not been done in the present case and accordingly the order of the respondent no. 3 cannot survive.

Ms. Manika Roy, learned advocate represents NHAI and Mr. Susovan Sengupta, learned advocate represents the State of West Bengal. Both the learned advocates representing the respondent authorities have jointly submitted upon placing reliance of Section 3G (5) and Section 3G (6) of NH Act, 1956 that in the event the amount determined by the competent authority is not acceptable to either of the parties to the LA proceeding the appropriate course left open to the aggrieved party

is to approach under Section 34 of the Arbitration and Conciliation Act, 1996; the respondent no. 3 has no authority to look into the issue of determination of compensation afresh. According to the respondents there is no infirmity in the order dated 22nd October, 2019 and both the learned advocates have defended such order passed by the respondent no. 3.

Mr. Sengupta, learned advocate has further submitted that the respondent no. 3 under the relevant provisions of NH Act, 1956 is not empowered to revisit his own decision which he has taken in the aforementioned LA case and the coordinate Bench while disposing of the first writ petition did not consider the relevant provisions of NH Act, 1956 therefore such direction of the coordinate Bench is not binding upon respondents.

Ms. Manika Roy, learned advocate representing the NHAI has submitted that 'Petrol Pump' and 'Dokan' are classified differently in the record of rights and the compensation amount determined by the respondent no. 3 in respect of the petrol pump of the petitioner has been rightly calculated and petrol pump of the petitioner cannot be treated at par with 'Dokan'.

This Court has heard the learned advocates appearing for the parties and perused the relevant documents available on record. In order to adjudicate

the issue involved in this writ petition this Court finds it fit to quote the relevant part of the order of the coordinate Bench dated 2nd September, 2019 below:-

“ Having heard the parties and considering the materials placed, this Court finds that the petitioner is entitled to claim the classification of Dokan under the LA proceeding. This Court also does not find the nature of issue raised by the petitioner in the present writ proceeding akin to a dispute within the purview of Section 3 (H) (4) of the 1956 Act.

With the above observations, the matter is remanded to the District Magistrate and Arbitrator/the respondent no. 3 to this petition to take steps not later than a period of three weeks from the date of communication of this order.

WP No. 28360 (W) of 2017 stands accordingly disposed of.”

The above order was passed by the coordinate Bench in presence of the learned advocates representing the petitioner, State-respondents and NHAI.

It is not a case of either of the respondents that any appeal has been preferred against the order dated 2nd September, 2019 passed by the coordinate Bench and accordingly the direction as contained in the said order dated 2nd September, 2019 has attained finality.

In the impugned order dated 22nd October, 2019 the respondent no. 3 instead of applying his mind on

the issue of quantum of compensation by treating the establishment of the petitioner as 'Dokan' as decided by the coordinate Bench simply rejected the contention of the petitioner on technical ground by observing that once the order is passed by the arbitrator the said arbitrator becomes *functus officio* and the remedy left open to the petitioner is provided under Section 34 of the Arbitration and Conciliation Act, 1996 against the arbitral award before the jurisdictional Court.

Since the coordinate Bench has already held on the previous writ petition on 2nd September, 2019 that the petitioner is entitled to claim the classification of 'Dokan' in the connected LA proceeding and this is not an issue akin to a dispute within the purview of Section 3(H)(4) of NH Act, 1956; such observation is binding upon the respondent no. 3 and instead of rejecting the prayer of the petitioner on technical ground the respondent no. 3 is required to proceed on the basis of the observation made by the coordinate Bench in the order dated 2nd September, 2019.

Accordingly, the order of the respondent no. 3 dated 22nd October, 2019 stands set aside and the respondent no. 3 is directed to revisit the issue strictly on the basis of the observation made by the coordinate Bench in the order dated 2nd September, 2019 and to pass a reasoned order on the quantum of compensation

to be paid to the petitioner within a period of twelve (12) weeks from the date of communication of this order.

With the above direction, writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)