

15. 02.12.2022
Ct. No.6
Tanmoy

MAT 1772 of 2022

**National Highway Authority of India
-Versus-
Aloke Kumar Chandra & Ors.**

**With
IA No: CAN/1/2022
With
IA No: CAN/2/2022**

Mr. Samit Sanyal, Adv.,
Ms. Manika Roy, Adv.

...for the appellant/NHAI.

Mr. Kumar Jyoti Tewari, Adv.,
Mr. Tarunjyoti Tewari, Adv.,
Ms. Rajlakshmi Ghatak, Adv.,
Mr. Aniruddha Tewari, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Susovan Sengupta, Adv.,
Mr. Manas Kumar Sadhu, Adv.

...for the State.

Affidavit of service filed in Court today be kept with
the records.

In Re: IA No: CAN/1/2022

This is an application for condonation of delay of one
hundred and eighty nine (189) days in filing the appeal, as
noted by the Stamp Reporter. Causes shown being
sufficient, the delay is condoned. The application being IA
No: CAN/1/2022 is accordingly disposed of.

In Re: MAT 1772 of 2022
With
IA No: CAN/2/2022

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

A judgment and order dated April 4, 2022, whereby the writ petition of the respondent no.1 herein being WPA 21897 of 2019 was disposed of, is the subject-matter of challenge in this appeal.

The respondent no.1/writ petitioner was the owner of a petrol pump. The petrol pump was initially requisitioned and thereafter acquired by initiating LA Case No. 23A/C/NH/10-11 under the National Highways Act, 1956. Compensation was duly determined for acquisition of the petrol pump. The writ petitioner was aggrieved with the quantum of compensation. According to him, earlier, 'Petrol Pump' and 'Dokan' were considered on the same footing and the rate of compensation for both 'Petrol Pump' and 'Dokan' was fixed at Rs.18,71,563/-. Subsequently, the compensation for 'Dokan' was enhanced to Rs.1,22,57,437/-. The grievance of the writ petitioner was that while determining compensation payable to him, his petrol pump was not considered to be a 'Dokan' and hence a lesser amount of compensation was determined for him.

With the aforesaid grievance the writ petitioner approached this Court by filing W.P. 28360 (W) of 2017. By an order dated September 2, 2019, a learned Judge of this

Court disposed of the writ petition. The operative portion of the said order reads as follows:-

“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.”

Pursuant to the said order, the District Magistrate/ Arbitrator, who was the respondent no.3 before the learned Single Judge, took up the matter and rejected the writ petitioner’s claim by an order dated October 22, 2019, the operative portion whereof reads as follows:-

“In the light of the above, I am of the opinion that once an arbitration proceeding was concluded, the Arbitrator cannot re-conduct arbitration proceeding on the same issue. An Arbitrator is entitled to decide quantum of compensation under the provision of the NH Act and the issue of compensation once decided and concluded, cannot be re-opened. Any land loser, who is aggrieved with the award passed by the Arbitrator, may invoke the remedial measure provided under Section 34 of the Arbitration and Conciliation Act, 1996 against such arbitral award before the Jurisdictional Court.

Therefore, the claim of the petitioner for enhancement of compensation with regard to petrol pump is disallowed and the case is disposed of.

The order of the Hon’ble High Court is thus complied with by affording the petitioner an opportunity of hearing.”

In effect, what the District Magistrate held is that after determination of the quantum of compensation, he has become *functus officio* and he did not have authority to re-open the issue. The only remedy of the writ petitioner is

in terms of Section 34 of the Arbitration and Conciliation Act, 1996.

That order of the District Magistrate was challenged by the writ petitioner in the present round of litigation by filing WPA 21897 of 2019.

The learned Single Judge heard the parties at length. The learned Judge recorded the submission made on behalf of the District Magistrate that the District Magistrate is not empowered to revisit his own decision. The learned Judge also recorded the submission made on behalf of National Highways Authority of India (NHAI) that 'Petrol Pump' and 'Dokan' are classified differently in the record-of-rights and the compensation amount for 'Petrol Pump' and 'Dokan' cannot be the same. The learned Judge noticed the order dated September 2, 2019, passed in the earlier writ petition. Admittedly, the said order has attained finality and is binding on the parties to that writ petition, not having been challenged before any higher forum by any of the parties. The learned Judge held and in our view rightly so, that in the earlier writ petition the issue has been decided and the District Magistrate is under a mandate to treat the 'Petrol Pump' of the writ petitioner as 'Dokan'. Hence, the District Magistrate could not have shirked his duty to revisit the issue in light of the observations made in the order dated September 2, 2019, passed in the earlier writ petition. The learned Judge quashed the District Magistrate's order dated October 22,

2019 and directed the District Magistrate 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.*” This order is under challenge before us.

We have not called upon the respondents’ Counsel to make submission.

We have heard learned Advocate for the appellant at length. We see no infirmity in the order under appeal. The issue as to whether or not the ‘Petrol Pump’ of the writ petitioner is to be treated as a ‘Dokan’ for the purpose of determining the amount of compensation payable to the writ petitioner, was decided by a learned Single Judge of this Court in the earlier writ petition by an order dated September 2, 2019. The said order was not appealed against by any of the parties. Accordingly, the issue decided by the said order is *res judicata*. Even if the appellant contends that the order is wrong in law, still it would be binding on the appellant and on a co-ordinate Bench in any subsequent proceeding having attained finality.

We are further told that the appellant has filed its written objection before the District Magistrate in the present round of hearing pursuant to the order impugned

before us. This is also another reason why we are not inclined to interfere with the order assailed before us.

There is no apparent reason to interfere with the order under challenge. The appeal being MAT 1772 of 2022 and the connected application being IA No: CAN/2/2022 accordingly fail and are dismissed.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)