

WPA 26256 of 2018

**Smt. Aparna Saha Chowdhury & Anr.
Vs.
Union of India & Ors.**

**Mr. Amalesh Ray
..for the Petitioners**

**Mr. Chandi Charan De, Ld. Addl. GP
Mr. Anirban Sarkar
..for the State**

**Ms. Manika Roy
...for the Respondent No. 3/ NHAI**

Today, the writ petition is taken up for hearing in presence of the learned advocates representing the writ petitioners, State-respondents and the concerned authority of National Highways Authority of India, being the respondent no. 3. Today, no one is representing the respondent nos. 6 to 11.

Matter pertains to payment of compensation based on award which has been passed under the relevant provisions of National Highways Act, 1956. At the relevant point of time due to pendency of Partition Suit being T.S. No. 111 of 1993 before the Civil Court the compensation could not be apportioned and released in favour of the writ petitioners as well as other co-sharers who are respondent nos. 6 to 11 as it has been pointed out by Mr. Amalesh Ray, learned advocate representing the petitioners. It has further been submitted that on behalf of the petitioners today during course of hearing by drawing attention of this Court to the final decree passed

by the Civil Judge, (Sr. Div.), Krishnanagar, Nadia, on Partition Suit being T.S. No. 111 of 1993 that the suit being finally decreed therefore there is no impediment in giving direction upon the appropriate authority for apportionment of compensation based on award for releasing the respective amounts in favour of the co-sharers including the petitioners and the private respondents and accordingly prayer has been made for payment of compensation to the co-sharers.

Ms. Manika Roy, learned advocate representing the National Highways Authority of India has submitted that the fund has already been allotted by the concerned authorities in favour of the State authorities for releasing the same by passing award and determination of compensation in favour of the interested parties. It has been candidly submitted on behalf of the respondent no. 3 that if the partition suit is decreed, in that event, appropriate authority can be directed to take necessary steps for payment of compensation in favour of the co-sharers.

Mr. Chandi Charan De, learned advocate representing the State-respondents has submitted that some of the awardees have been paid compensation but subsequently it was brought to the notice of the concerned authorities that the partition suit was pending which prevented the authorities to take necessary steps for payment of compensation to the writ petitioners and the private respondents being the co-sharers. It has also been submitted that reference is necessary under Section 3H(4) of the National Highways Act, 1956, if any dispute arises

or exists but in the present case since the partition suit has already been decreed vide a final decree dated 21st December, 2017 in the eye of law there is no existence of any dispute as contemplated under said Section 3H(4). Therefore, it has been submitted by Mr. De, that the issue can be referred to the Additional District Magistrate (L.A), Nadia, for taking decision on payment of compensation based on award which has already been passed to the writ petitioners as well as respondent nos. 6 to 11 being the co-sharers.

This Court has considered the submissions made by the parties and also perused the relevant documents available on record. It appears that there was a dispute subsisting *inter se* parties which has already been resolved vide a final decree dated 21st December, 2017 and it has been submitted on behalf of the writ petitioners that no appeal has been preferred against such final decree dated 21st December, 2017 by any of the parties to the Partition Suit being T.S. No. 111 of 1993.

It has been rightly submitted on behalf of the State-respondents that by virtue of the final decree dated 21st December, 2017 since the dispute amongst the co-sharers have already been settled therefore the “dispute” which has been referred to under Section 3H(4) of the National Highways Act, 1956 does not survive. Therefore, it is axiomatic to give direction upon the concerned respondent authority to take decision on payment of compensation based on award to the writ petitioners and the private respondents including other co-sharers, if any, and to make payment thereof.

Accordingly, the Additional District Magistrate (L.A.), Nadia, being the respondent no. 4 is directed to make payment of compensation to the writ petitioners as well as respondent nos. 6 to 11 and to other co-sharers, if any, upon taking note of the final decree dated 21st December, 2017 passed on Partition Suit being T.S. No. 111 of 1993, in the event no appeal is pending against such decree before the appropriate Court. Such exercise shall be carried out by the respondent no. 4 within a period of 16 (sixteen) weeks from the date of communication of this order.

It is made clear that before taking final steps for payment of compensation respondent no. 4 shall issue notice to all the co-sharers including the writ petitioners and the private respondents and grant opportunity of hearing to them. Steps taken by the respondent no. 4 shall be communicated to the interested parties within 2 (two) weeks thereafter.

With the above direction, the 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 on compliance of requisite formalities.

(Saugata Bhattacharyya, J.)