

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

The Hon'ble **Justice Arijit Banerjee**
And
The Hon'ble **Justice Kausik Chanda**

M.A.T. No.1520 of 2019
With
I.A. No. C.A.N. 2 of 2021

SRI GANESH CHANDRA GHOSH AND OTHERS
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS

AND

M.A.T. No.784 of 2020
With
I.A. No. C.A.N. 1 of 2020

SMT. MINOTI BISWAS AND OTHERS
-VERSUS-
STATE OF WEST BENGAL AND OTHERS

For the appellants : Mr. Partha Pratim Roy, Adv.,
Mr. Sarbananda Sanyal, Adv.,
Mr. Anirban Das, Adv.,
Mr. Dyutiman Banerjee, Adv.

For the State respondents : Mr. Chandi Charan De, Ld. A.G.P.,
 Mr. Supratim Dhar, Adv.,
 Mr. Anirban Sarkar, Adv.

For the N.H.A.I. : Mr. Shamit Sanyal, Adv.,
 Ms. Manika Roy, Adv.

Hearing concluded on : 05.04.2022

Judgment on : 07.09.2022

Kausik Chanda, J.:-

These two appeals involve similar facts and points of law and are taken up for hearing and disposal together. We first deal with M.A.T. No.1520 of 2019.

2. The writ petitioners/appellants approached the learned Single Judge, *inter alia*, with the following prayers:

“B).. A writ in the nature of Mandamus by commanding the respondents to hold the hearing of the Arbitration proceeding in connection with the LA Case being No.64A/NH/10-11 and publish the award thereof, determining the amount of compensation to be paid to the Petitioners;

C).. A writ in the nature of Mandamus commanding the Respondent Authorities to act in accordance with law and to grant and disburse appropriate compensation for acquisition of land of the Petitioners at the prevailing market value of the land along with

the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and S.O. 2368(E) issued by the Ministry of Rural Development of Government of India dated 28th August, 2015 and as per provisions of law as applicable immediately upon publication of such award of Arbitration Case in connection with L.A. Case being No.64A/NH/10-11;”

3. It is not in dispute that the lands of the writ petitioners/appellants situated at Mouza- Patuli, J.L. No.151, Ranaghat, Nadia were acquired by the Additional District Magistrate (Land Acquisition) and competent authority under the National Highways Act, 1956 for the widening of National Highway No.34 into four lanes by L.A. Case No.64A/NH/10-11.

4. The notification for acquisition of such lands under Section 3A of the National Highways Act, 1956 (in short “Act of 1956”) was published in the Official Gazette on December 15, 2009, and thereafter notification of vesting under Section 3D of the said Act of 1956 was published in the Official Gazette on August 23, 2010.

5. The appellants/writ petitioners in the writ petitions claimed that only in the year 2015, they were served with a notice dated June 11, 2015, to collect the compensation amount for such acquisition of lands. In the said notice, it was mentioned that in case the compensation was not acceptable, the writ petitioners might approach the arbitrator under Section 3G(5) of the said Act of 1956.

6. It was the further case of the writ petitioners/appellants that on the basis of the prayers and the objections of the writ petitioners and some other persons, whose lands were also acquired in connection with the said land acquisition case, an arbitration proceeding was initiated in terms of Section 3G(5) of the said Act of 1956. The appellants have alleged in the writ petitions that thereafter they did not receive any notice of arbitration. The respondents sat tight over the matter and withheld the arbitration proceeding.

7. The appellants claimed that they were entitled to get compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as per the fourth schedule of the said Act (in short "Act of 2013"). It has been pleaded in the writ petitions that no appropriate compensation had been released in favour of them and no award of arbitration pursuant to the petition filed by the appellants had been published.

8. It, however, appears from the order impugned dated June 21, 2019, that before the learned Single Judge the writ petitioners submitted that an award had been passed by the arbitrator without any notice to them and the copy of the award had also not been served upon them and the State also conceded that copy of the award was not served upon the appellants.

9. The learned Single Judge disposed of the writ petition directing the respondents to furnish a copy of the award to the writ petitioners within four weeks. Liberty was granted to the writ petitioners to challenge the award in

accordance with law before the appropriate forum provided under the Statute and to take all the points available to them.

10. Before us, it has been submitted by Mr. Partha Pratim Roy, learned advocate appearing on behalf of the writ petitioners/appellants that the learned Single Judge has failed to appreciate that the writ petitioners were never served with the notice of arbitration. The arbitration proceedings were held behind the back of the appellants. The appellants were not aware of the outcome of the arbitration proceedings since no copy of the award had ever been served upon them.

11. It has, further, been submitted by Mr. Roy that the appellants are entitled to get compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the competent authority, while determining the compensation amount under Section 3G(1) of the Act of 1956, did not take into account the components of compensation in terms of the Act of 2013.

12. It has been submitted by Mr. Roy that the appellants cannot be asked to take recourse to Section 34 of the Arbitration and Conciliation Act, 1996 in terms of Sub-section 6 of the Section 3G of the Act of 1956 since the re-determination of the compensation amount in terms of the Act of 2013 involves only arithmetical calculation and lacks adjudicative disposition. It has been further submitted by Mr. Roy that the writ petitioners are entitled to solatium in terms of the Act of 2013, which cannot be denied on the ground of

technicalities. Mr. Roy has relied upon the decisions reported at **(1991) 4 SCC 212 (*Narain Das Jain (since deceased) by LRS v. Agra Nagar Mahapalika, Agra*)**, **(2007) 2 SCC 341 (*Patel Joitaram Kalidas v. Spl. Land Acquisition Officer*)**, and **(2021) SCC OnLine SC 23 (*Tamil Nadu Housing Board v. Abdul Salam Sarkar*)**.

13. Mr. Shamit Sanyal, learned advocate appearing on behalf of the National Highways Authority of India, on the other hand, has submitted that the writ petitioners/appellants along with the other land owners filed an application before the statutory arbitrator in terms of Section 3G(5) of the Act of 1956, seeking enhancement of compensation. The statutory arbitrator after hearing the parties on merits enhanced the rates of all classes of acquired lands. In compliance with the award of the arbitrator, the enhanced amount of compensation for the entire Patuli mouza has been deposited in terms of Section 3H(6) of the Act of 1956 with the competent authority for further disbursement. The writ petitioners/appellants have received the initial compensation in terms of Section 3G(1) of the Act of 1956 before the arbitration and have also received the enhanced compensation in terms of Section 3H(2) of the said Act of 1956 after arbitration without any protest.

14. Mr. Sanyal argues that the learned Single Judge was justified in granting liberty to the writ petitioners/appellants to challenge the said arbitral award before the competent forum in terms of Section 3G(6) of the Act of 1956. There is an alternative efficacious statutory remedy available with the writ petitioners/appellants.

15. It has, further, been submitted that estimates prepared and approved by the competent authority cannot be reopened in terms of the guidelines dated December 7, 2015, issued by the Land and Land Reforms Department, Government of West Bengal.

16. In support of the proposition that grievance related to arbitral awards should not be entertained by the High Court in view of the alternative remedy under Section 34 of the Arbitration and Conciliation Act, 1996, he relied upon the judgments reported at **(2022) 1 SCC 75 (*Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited*)**, **(1980) 4 SCC 556 (*Rukmanibai Gupta (Smt) v. Collector, Jabalpur*)**, and **(2021) 9 SCC 1 (*Project Director, National Highways No.45 E and 220 National Highways Authority of India v. M. Hakeem*)**.

17. It is also the case of the National Highways Authority that Section 24(2) of the Act of 2013 is not applicable to the Act of 1956. In this regard, Mr. Sanyal has placed reliance upon a judgment of a Coordinate Bench of this Court passed in MAT 1129 of 2017 (*The Chairman, National Highways Authority of India & Anr. v. Abhimunya Mondal & Ors.*).

18. Since the controversy in this appeal relates to the award of the arbitrator passed in terms of Section 3G(5) of the Act of 1956, we directed the respondents to produce the bunch of documents pertaining to the relevant acquisition proceedings. In compliance with our order, the National Highways Authority has produced the relevant documents including the award dated

September 10, 2015, passed by the arbitrator. By placing reliance upon the said documents Mr. Sanyal has argued that the National Highways Authority, in this case, on December 31, 2014, vide Memo No.4602/NHAI/PIU-Krishnagar/W-2/I(A), deposited the entire compensation amount to the competent authority as determined in terms of Section 3G(1) of the Act of 1956, by the said authority.

19. We have already recorded that the appellants claimed that only in the month of June 2015, they were served with the notice dated June 11, 2015, for payment of compensation, and thereafter they wrote a letter to the Arbitrator for enhancement of the compensation amount. The documents disclosed by the National Highways Authority of India show that the land owners were given compensation in terms of the award of the competent authority only in the years 2015 and 2016.

20. The documents disclosed by the National Highways Authority suggest that on September 3, 2015, the District Magistrate, Nadia, who acted as arbitrator under Section 3G(5) of the Act of 1956, requested the Additional District Magistrate (Land Acquisition) and competent authority to arrange for the issuance of notices to the “petitioners” for appearing on September 10, 2015, at 1.15 p.m. at the Nadia Zillah Parishad Conference Hall, Krishnagar, Nadia to participate in the arbitration hearing.

21. The relevant award dated September 10, 2015, as disclosed by the National Highways Authority of India suggests that two hundred ninety-nine

land owners applied before the arbitrator for enhancement of compensation. On September 10, 2015, out of them, only ninety six land owners were present. Apart from the land owners in the said meeting, the General Manager (Technical) and Project Director, National Highways Authority of India, Krishnagar, Nadia, and the learned advocate of the National Highways Authority were present.

22. Only the submissions of three land owners out of the said ninety six were recorded by the arbitrator. After hearing the other parties present, the arbitrator revised the rate of the lands classified as Aush/Aman from Rs.2229244/- per acre to Rs.4500000/- per acre and the rate of lands classified as Bari/Viti was enhanced to Rs.5500000/- per acre from Rs.2346667/- per acre.

23. The operative part of the said award is as follows:-

“1] The rate of Aush/Aman class of land will be taken as Rs.4500000/- per acre instead of Rs.2229244/- per acre for Patuli Mouza.

2] The rate of Bari/Viti class of land will be taken as Rs.5500000/- per acre instead of Rs.2346667/- per acre.

3] All the rest awardees who have failed to submit arbitration petitions due to ignorance or otherwise but having the same classes of land as mentioned above will also be entitled to the arbitral award as a principle of natural justice.

Thus, Two Hundred Ninety Nine [299] arbitration petitions are disposed of.”

24. It is the specific case of the writ petitioners/appellants that no notice of arbitration was served upon them and the arbitral award was passed behind their back. The respondents have not been able to refute the said stand by producing any notice of arbitration served upon the writ petitioners.

25. The arbitrator was a statutory arbitrator under the Act of 1956. He was mandated by Section 3G(6) of the Act of 1956 to conduct the arbitration in terms of the Arbitration and Conciliation Act, 1996. The arbitration award itself reveals that in disposing of two hundred ninety-nine arbitration petitions in one day, and in a single hearing, the principle of natural justice was given a complete go-bye much less the compliance of the Arbitration and Conciliation Act, 1996.

26. In the aforesaid factual matrix, we are not ready to accept the argument of alternative remedy as advanced by Mr. Sanyal though we have no quarrel with the proposition of law laid down in the judgments relied upon by him. We are, therefore, not inclined to relegate the appellants to the remedies available under Section 34 of the Arbitration and Conciliation Act, 1996 in view of the flagrant violation of the principle of natural justice in passing the award in question by a statutory arbitrator.

27. Accordingly, the award dated September 10, 2015, passed by the arbitrator in connection with L.A. Case No.64A/NH/10-11 is set aside insofar as the writ petitioners are concerned.

28. We remand the matter back to the officer, who is presently authorised to act as an arbitrator appointed in terms of Section 3G (5) of the Act of 1956. The appellants will be at liberty to file a fresh petition within a period of one month from the date of this order before the arbitrator taking all points that may be available to them including the claim for enhanced compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. If such a petition is filed, the arbitrator shall conclude the arbitration proceedings and pass an award in compliance with the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of six months from the date of filing of the petition. We clarify that we have not gone into the merits of the appellants' claim for enhanced compensation in terms of the 2013 Act or otherwise.

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29. The facts involved in this appeal are similar to the facts involved in M.A.T. No.1520 of 2019. In this case, however, the learned Single Judge declined to entertain the writ petition by passing the following order:

“The petitioners say that because of some notifications, which have been given retrospective effect, the arbitral award passed is required to be modified.

The learned Advocate appearing for the petitioners submits that he has not challenged the arbitral award but the decision of the competent authority.

Thus Section 3G (5) of the National Highways Act, 1956 comes into play.

The learned Advocates representing the State as well as the National Highway Authority jointly submits by referring Section 3G (5) and (6) of the National Highways Act, 1956 that the provisions of Arbitration and Conciliation Act are applicable in the instant case.

In view of such statutory provisions, I hold that this proceeding is not maintainable before this Court and the writ application is, thus, dismissed.

However, dismissal of the instant writ petition shall not create any bar to the petitioners to take appropriate steps under the law, if available to them.

There will be no order as to costs.”

30. For the reasons recorded in our order passed in M.A.T. No.1520 of 2019, the order of the learned Single Judge is set aside with the similar directions as passed in the said appeal.

31. Accordingly, the appeals M.A.T. No.1520 of 2019 and M.A.T. No.784 of 2020 and the connected applications I.A. No. C.A.N.2 of 2021 and I.A. No. C.A.N.1 of 2020 are disposed of.

32. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)