

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 953 of 2019

Hasimara Industries Limited & Anr.

Versus

Union of India & Ors.

Mr. Saptansu Basu, Senior Advocate

Mr. Deepak Jain

Mr. Kumar Gupta

Mr. Sourav Ganguly

.....For the Petitioners

Mr. Bikramditya Ghosh

.....For the State/Respondent Nos. 4 & 5

Mr. Sudipto Kumar Mazumdar

Mr. Sourav Kar

.....For Union of India/Respondent No. 1

Mrs. Supriya Singh

.....For NHAI & Asian Highways/ Respondent Nos. 2 & 3

Heard on : 09.09.2022

Judgment on : 14.09.2022

Krishna Rao, J.:

This writ petition is directed against the Order passed by the Special Land Acquisition Officer and Competent Authority under National Highway Act, 1956, Jalpaiguri dt. 24.06.2019. In terms of the Lease Deed executed between the petitioner no. 1 and the State of West Bengal dt. 15.11.1995, the petitioner is in possession of the tea garden. As per the Lease Deed, the petitioner no. 1 is entitled to renewal of the lease for a further period of 30 years and to successive renewal for similar period. The National Highway Authority of India was constructing a SAARC Expressway, which was to connect Phuentsoling in Bhutan through Jaigaon in West Bengal and the said route was to be passed through the Satali tea garden.

On 17.04.2015, a notification under Section 3 (1) of the National Highway Act, 1956 was published for acquiring a portion of the tea garden, J.L. No. 20 mentioning about 20.01 hectares about 29.70 Acres for the purpose of building maintenance management and operation of National Highway bearing nos. 717, 31, 31C and 317A. The petitioners have submitted their objection to the said proposed acquisition on the ground that due to the said acquisition the livelihood of thousands of workers and family members of the tea garden workers will be badly affected. On receipt of the objection raised by the petitioners, LAP Case No.17, 18, 19, 20 and 21 of 201415 were initiated by the respondent no. 4. On 22.07.2015, the respondent no. 4 being the competent authority had rejected the objection made by the petitioner and on 14.10.2015, a notification was issued under Sub-Section (1) read with Sub-Section (2) of Section 3D of 1956 Act with respect of the proposed acquisition. A committee was constituted for the purpose of giving compensation packages for acquisition of the tea garden lands in West Bengal. By taking into consideration of various factors, the Committee has recommended the

compensation packages for acquisition of tea garden lands. As no compensation was determined by the competent authority with respect of the leasehold interest of the petitioners as well as the damage suffered by the petitioners on account of the acquisition and accordingly the petitioners have preferred a writ application before the Coordinate Bench of this Court being WP No. 4478 (W) of 2018 and the said writ petition was disposed of by the Coordinate Bench of this Court on 07.05.2018 by passing the following order:-

“Accordingly, the writ petition is disposed of directing the respondent no. 3 to consider the representation made to it both by petitioners and the Indian Tea Association pertaining to the acquired land of the petitioner and disposed of the same within six weeks from the communication of this order in accordance with law.”

In compliance of the aforesaid order, the respondent no. 4 had passed the impugned order.

Mr. Saptansu Basu, Learned Senior Advocate representing the petitioners submits that the impugned decision of the respondent no. 4 is contrary to Section 3G (1) of the 1956 Act. Section 3A to 3J of 1956 Act prescribes the procedure for acquisition of land and in terms of Section 3J, the Land Acquisition Act, 1984 does not applied. He further submits that Section 3J of the Act of the 1956 provides for method for determination of the amount payable as compensation.

Learned Senior Counsel further submits that the Memo dt. 28.07.1993 as relied by the respondent no. 4 has got no reasonable nexus for determination of compensation payable as per 1956 Act. It is further submitted that the petitioner as long term lessee had invested huge amount in the said land and has been occupying the same since for the long period and livelihood of the workers and the employees of the petitioner no. 1 depends upon the said tea garden. Learned Counsel further contended that the petitioner no. 1 as a long term lessee of the tea

garden land is entitled to receive compensation for acquisition not less than its market value. It is further contended that it is a mandatory duty on the part of the respondent no. 4 while determining compensation for the tea garden land the market value, damages sustained to the standing crops as well as damage for serving of such land from other lands is required to be taken into account.

Learned Counsel for the petitioners relied upon the judgment reported in (1994) 5 SCC 239 (Inder Parshad –versus- Union of India & Ors.):

“5. In this case admittedly the Government being the owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition. The contents of the award extracted hereinbefore clearly indicate that the Land Acquisition Collector could not determine compensation payable towards the leasehold interest held by the appellant. Being an owner the Government is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee its power to resume the land is subject to non-fulfilment of the terms and conditions of the lease by the lessee. So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances. Compensation becomes payable for the leasehold right or interest held by the lessee or grantee when the land is acquired. The point becomes clear from the following illustrations. Take a case where the Government granted lease of agricultural land on the annual payment of rent with a covenant that the Government is entitled to resume the land when needed for public purpose or as when the Government finds that the land is required for public purpose. In terms of the covenants, the Government is entitled to exercise its option to determine the lease though the lessee has been complying with the condition of payment of annual premium or rent and resume the land in accordance with terms of the grant. In that event the need to take recourse to acquisition and to make compensation does not arise. Take a case where the Government granted the lease of the open land with, permission to the lessee to construct a building for his quiet enjoyment with appropriate covenants and the lessee with permission constructed the building and by complying with the covenants of the lease was in quiet enjoyment. The selfsame property, when required for public purpose, the Government cannot unilaterally determine the lease and call upon the lessee to deliver the possession. Therefore, the Government is required to exercise the power of eminent domain by invoking the provisions under the [Land Acquisition Act](#) for getting such

land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine the total compensation, make an award and make a reference to the civil court under [Section 30](#) for decision on appointment. Exactly that is the situation on the facts of this case. Take another illustration. The Government grants a patta of its land subject to payment of land revenue. Later, the land is required for public purpose. The payment of land revenue is at par with the payment of land revenue payable by a private owner to the State. By grant of patta, the title has been vested in the grantee. Therefore, the grantee is entitled to the full compensation of the acquired land.”

Learned Counsel for the petitioners further relied upon the judgment reported in 2019 AIR CC 1692 (Raj) (National Highway Authority of India –versus- M/s. Amar Granites Pvt. Ltd. & Ors.) :

“19. *Coming to the availability of the remedy available under sub- section (5) of [Section 3G](#) of the Act before the arbitrator, suffice it to say that in the first instance, the compensation payable to the respondents taking into consideration the nature of their leasehold rights over the land in question was required to be determined by the Competent Authority and if it is determined that the respondents having limited ownership rights or only leasehold rights over the lands acquired, are not entitled to full compensation towards the value of the land and the dispute arises as to apportionment of the amount or any part thereof, as per the provisions of sub-section (4) of [Section 3H](#) of the Act, the dispute has to be referred by the Competent Authority to decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. In this view of the matter, in the considered opinion of this Court, in absence of determination of the compensation payable to the respondents for the leasehold rights over the land in question and the apportionment thereof, if any, the question of the respondents approaching arbitrator for determination of adequate compensation, does not arise.”*

Per contra, Learned Counsel for the respondent no. 4 submits that in terms of the order passed by the Coordinate Bench of this Court dt. 07.05.2018, the respondent no. 4 being the Special Land Acquisition Officer and competent authority have determined the compensation vide order dt. 24.06.2019. Learned Counsel for the respondent further submits that as the competent authority has determined the compensation, if the petitioner is not satisfied with the said determination, as per Section 3G (5) of the Act of 1956, the petitioner had to approach the Arbitrator. The Counsel for the respondents submits that the competent authority had rightly determined compensation on account of loss of tea bushes and shed trees in terms of the Memorandum dt. 28.07.1993 as the petitioner cannot claim compensation with respect of the value of the land as the petitioner is the lessee of the subject land.

Counsel for the respondent had relied upon the judgment reported in (2004) 10 SCC 745 and submits that the respondent no. 4 being the competent authority had rightly determined the compensation and thus the writ petition filed by the petitioner is liable to be dismissed.

Heard, the Learned Counsel for respective parties and perused the materials on record. Admittedly the petitioners are the lessee of the subject land and are in possession of the said land. The land has been acquired for construction of National Highway. Taking into consideration of various factors, the committee has recommended for the compensation package for acquisition of tea garden lands.

The respondent nos. 2 and 3 i.e. the National Highway Authority of India and Project Director, Asian Highway- 48, Project National Highway Authority of India have filed a joint report in the form of affidavit wherein it is mentioned that:

“3. I submit that the caption subject acquired area/land, which is the subject-matter of the case has been acquired for the development of Asian Highway No. 48 and the same is not being developed by the National Highway Authority of India.

4. I submit that the captioned subject acquired area/land which is the subject-matter of the case has not been acquired by the National Highway Authority of India and the same does not come under the administrative control/jurisdiction of the National Highway Authority of India.”

The judgment referred by the petitioner in the case of Inder Parshad (*supra*), the Hon’ble Ssupreme Court held that *“The Government grants a patta of its land subject to payment of land revenue. Later, the land is required for public purpose. The payment of land revenue is at par with the payment of land revenue payable by a private owner to the State. By grant of patta, the title has been vested in the grantee. Therefore, the grantee is entitled to the full compensation of the acquired land.”*

The judgment referred by the petitioner in the case of National Highway Authority of India (*supra*), the Hon’ble Rajasthan High Court held that the availability of remedy available under Sub-Section (5) of Section 3G of the Act before the Arbitrator, suffice it to say that in the first instance, the compensation payable to the respondent taking into consideration, the nature of their leasehold rights over the land in question was required to determine by the competent authority.

The judgment referred by the respondent in the case of Kiran Tandan (*supra*), the Hon’ble Supreme Court had relied upon the case referred by the petitioner *Inder Parshad (supra)* and as such the said case relied by the respondent is not applicable in the present case as the fact of this case is totally different from the case relied by the respondents.

This Court finds that the respondent no. 4 while passing the impugned order dt. 24.06.2019 has neither considered the recommendation of the Committee nor had considered the nature of the lease on the basis of which the petitioners are in possession of the property and were running the tea garden. The respondent no. 4 had passed the impugned order only on the basis of the Memo No. 2124-LA (II) dated 28.07.1993. At the time of hearing, none of the parties have placed the Lease Deed or the Memo relied by the respondent no. 4 before this Court.

This Court is of the view that the respondent no. 4 had passed the impugned order without considering the recommendation of the Committee, the stand taken by the respondent nos. 2 and 3 and the Lease Deed and thus the impugned Order dt. 24.06.2019 is set aside. The respondent no. 4 is directed to consider the case of the petitioner afresh for determination of the compensation pertaining to the acquired land of the petitioner after giving an opportunity of hearing to the interested party within a period of six weeks from the date of communication of the order.

WPA 953 of 2019 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)