

06
20.12.2022
Ct.No.10
b.das

In The Circuit Bench at Jalpaiguri

WPA No. 3397 of 2022

**Sushila Roy
Vs.
Union of India & Ors.**

Mr. Arindam Das
Ms. Rumeli Sarkar ...for the petitioner.

Mr. Ansar Mandal
Mr. Sougata Mitra ...for the State.

Ms. Manika Roy ...for the NHAI.

Affidavit of service filed by the petitioner is taken on record.

Heard learned counsels for the parties.

The petitioner claims to be the owner of the plot in Mouza-Chengpara-53, Block-Alipurduar, P.S. and District-Alipurduar which was acquired by the National Highway Authority of India. The petitioner was served with notice under Section 3H (2) of the National Highways Act, 1956 which indicates that the award was determined after 1st January, 2015.

The petitioner has made two-fold prayers in the writ petition:- firstly, direction upon the concerned authority to provide the petitioner with a copy of determination of award under Section 3G (1) of the Act of 1956; secondly, liberty to approach the learned Arbitrator under Section

3G(5) of the Act for enhancement of the compensation declared in favour of the petitioner.

The petitioner has also claimed compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 since, according to the petitioner, compensation was paid only after 1st January, 2015.

Learned counsel for the petitioner has placed reliance upon the order under Section 113 (Power to Remove Difficulties) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to extend benefits of compensation, rehabilitation and resettlement mentioned in First, Second and Third Schedules to the Acts mentioned in the Fourth Schedule of the Act dated 28th August, 2015 (annexure P-5 to the writ petition) in support of his contention.

It is submitted on behalf of the National Highway Authority of India that the award amount was deposited by the authority much prior to 1st January, 2015 and therefore, the case of the petitioner was not covered under the Act of 2013.

It is submitted on behalf of the State respondents that the authority may be directed to decide the grievance of the petitioner in accordance with law.

Learned counsel for the State respondents further candidly submits that copy of the determination of the award under Section 3G(1) of the Act of 1956 should be supplied to the petitioner.

In controverting the submission made on behalf of the petitioner, it is submitted on behalf of the State respondents that the circular dated 28th August, 2015 is not applicable to a proceeding under Section 3G(5) of the Act of 1956 since the said order was not made by the Parliament and has no binding effect.

The petitioner submitted a comprehensive representation before the concerned authority on 10th November, 2022, which has not been heeded to till date. The petitioner prays for a direction upon the concerned authority to treat the said representation as an application under Section 3G(5) of the Act of 1956 and consider the same within a stipulated time frame.

Upon consideration of the submission made on behalf of the parties and material on record, the writ petition is disposed of directing the Divisional Commissioner, Jalpaiguri and Arbitrator under the National Highways Act, 1956, being the 6th respondent herein, to treat the representation submitted by the petitioner dated 10th November, 2022 as an application under Section 3G(5) of the Act of 1956 and consider and dispose of the same within a period of six months from the

date of communication of this order after granting reasonable opportunity of hearing to all the interested parties including the petitioner, in accordance with law.

Copy of the arbitral award shall be provided to the petitioner within a week thereof.

It is made clear that this Court has not gone into the merits of the case and the learned Arbitrator shall be at liberty to deal with the matter independently and without being influenced by any observation which may have been made in this order.

The 8th respondent is directed to provide a copy of the calculation of the award under Section 3G(1) of the Act to the petitioner in terms of the submission made on behalf of the State respondents within one month from the date of communication of this order.

With the above directions, the writ petition being W.P.A. 3397 of 2022 is thus disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)