

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4629 of 2018

Rajkumar Agarwalla & Ors.

Petitioners

Mr. A.S. Nandy, Advocate

Vs.

***National Highway Authority of
India & Ors.***

Opposite Parties

Mr. U.C. Mohanty, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

15.12.2022

Order No.

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This matter is taken up through Hybrid mode.

2. Heard Mr. A.S. Nandy, learned counsel appearing for the petitioners and Mr. U.C. Mohanty, learned counsel appearing for the opposite party-NHAI.

3. The petitioners have filed this writ petition claiming interest @ 9% per annum on compensation amount including solatium from 07.02.2013 to 07.02.2014 and thereafter interest @ 15% per annum on the said compensation from 08.02.2014 to 01.01.2018, as the final payment was received by the petitioner on that date.

4. Mr. A.S. Nandy, learned counsel appearing for the petitioners contended that so far as determination of compensation amount is concerned, the petitioners have no grievance, as the petitioners have already received the amount, but there was delayed in disbursement of the compensation amount, which must carry some interest. Therefore, claiming interest for the delayed period, the petitioners have approached this Court by filing this

writ petition and it is contended that this Court has jurisdiction to entertain this writ petition to award interest for the delayed payment of the compensation.

5. Mr. U.C. Mohanty, learned counsel appearing for the opposite party-NHAI vehemently contended that this Court has no jurisdiction to entertain this writ petition for determination of interest, which is a disputed question of fact and that has to be decided by the competent authority, viz, the arbitrator, by invoking jurisdiction under Section-3-G of the National Highways Act, 1956, who is to be appointed by virtue of the notification to be issued by the Central Government.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court finds that admittedly the amount of compensation, as was determined by invoking jurisdiction under Sections 3-A to 3-H, has been paid to the petitioners in accordance with law. But fact remains, there has been delay in disbursement of the compensation amount, for which the petitioners claim interest @ 9% per annum for the period from 07.02.2013 to 07.02.2014 and thereafter @ 15% per annum on the said compensation amount from 08.02.2014 to 01.01.2018.

7. Section 3-G of the National Highways Act, 1956 states as follows:

“3G. Determination of amount payable as compensation.—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for

that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change”.

8. On perusal of the aforesaid provisions, it is made clear that where any land is acquired under this Act, the party shall be paid an amount which shall be determined by an order of the competent authority, and where the right of user or any right in the nature of an easement on, any land, is acquired under this Act, an amount

shall be paid to the owner, and any other person, whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition, an amount calculated at ten per cent, of the amount determined under sub-section (1) shall be paid for that land. In this case, the compensation amount, as was determined, has been disbursed to the petitioners including the amount of solatium but there is delay in disbursement of the same. Thereby, the petitioners claims interest on the delayed payment of compensation including solatium @ 9% per annum for the period from 07.02.2013 to 07.02.2014 and @ 15% for the period from 08.02.2014 to 01.01.2018, which has to be considered by the competent authority.

9. Therefore, so far as payment of interest is concerned, since it is a disputed question of fact, the competent authority can resolve the same by invoking the provisions contained in Sections 3-G to 3-H of the National Highways Act, 1956.

10. Therefore, this Court is not inclined to entertain this writ petition. However, liberty is granted to the petitioners to pursue their remedy before the appropriate forum.

11. With the above observation, the writ petition stands disposed of.

12. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok

(B. P. SATAPATHY)
JUDGE

