

Dd 08 30.08.2023

FMA 94 of 2019

***Shib Sankar Hazra & Ors.
Vs.
The State of West Bengal & Ors.***

*Ms. Sohini Chakraborty,
Mr. Falguni Maji, Advocates
... .. For the Appellants*

*Ms. Manika Roy, Advocate
... .. For the NHAI*

*Mr. Uttiya Ray,
Mr. Arnab Mandal, Advocates
... ..For the respondent nos. 4(a) to 4 (e)*

The appeal is directed against the judgment and order dated April 5, 2017 passed in WPA 2627(W) of 2003 by the learned single Judge.

By the impugned order, the learned single Judge held that, nature dispute that the petitioners raised is not comprehended within sub-section (5) of Section 3G of the National Highways Act, 1956 (in short the Act of 1956). The learned Trial Judge also held that, it would not be a fit and proper case where, at this distinct point of time, the writ Court in exercise of its extraordinary powers should direct the competent authority to refer the matter to the arbitrator.

Learned advocate appearing for the appellants submits that, an application was made in 2003 before the competent authority requiring the appointment of an arbitrator for the purpose of determining the amount

of compensation money to be awarded out of the total amount of compensation receivable, to the appellants.

Learned advocate appearing for the appellants submits that in the event, the application cannot be considered to be one made under Section 3G(5) of the Act of 1956 then, the application can be considered to be made under Section 3H(4) of the Act of 1956. Since the application was made within time, the competent authority should be directed to comply with the provisions of Section 3H(4) of the Act of 1956. The time spent by the appellants in litigation, should be directed to be deducted for the purpose of calculation of the period of limitation. According to her, since the application before the competent authority was made within time, there is no question of limitation. Moreover, quoting a wrong section will not deprive the litigant the benefit of law. It was incumbent on the authorities to apply the correct provisions of law and act, in accordance with law.

National Highway Authority of India (NHAI) and the private respondents are represented.

Learned advocate appearing for the NHAI submits that, there was no dispute with regard to the compensation paid. The dispute was essentially with regard to apportionment between the private parties. According to her, Section 3G(5) of the Act of 1956 is not attracted.

Learned advocate for the private respondent submits that, a considerable period of time elapsed from the date of disbursement of the compensation. At this late stage provisions of Section 3H(4) should not be invoked in the present case.

We find from the records that the appellants raised a dispute with regard to apportionment of compensation received. Compensation awarded was not disputed. Essentially, the quantum to be received by the private parties out of the compensation awarded, was in dispute. For such purpose, an application stated to be under Section 3G(5) of the Act of 1956 was made before the competent authority for referring the disputes for arbitration. Section 3H(4) of the Act of 1956 contemplates resolution of disputes arising with regard to the apportionment or any part thereof or to any person, the competent authority by reference of such dispute to the decision of the principal civil Court of original jurisdiction within the limit of whose jurisdiction the land was situated.

The application made by the appellants before the competent authority which was claimed to be under Section 3G(5) of the Act of 1956 was essentially one under Section 3H(4) of the Act of 1956. It is trite law that quoting a wrong section or a provision of law will not disentitle a person to the reliefs as prayed for as such person was entitled thereto in law.

In such circumstances, the competent authority will treat the application made by the appellants sought to be under Section 3G(5) of the Act of 1956 to be one under Section 3H(4) of the Act of 1956 and pass appropriate order with regard thereto within four weeks from the date of communication of this order.

We clarify that we did not enter into the merits of the claims between the private parties in the appeal in any manner whatsoever. We also clarify that we did not enter into the question of limitation with regard to the claim by the appellants under Section 3H(4). The

issue of limitation is kept open to be decided by the appropriate forum.

FMA 94 of 2019 is **disposed of** accordingly without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)