

03.04.2023
rc/ct.no.10
Item No.17

WPA No. 321 of 2019

Mr. Partha Pratim Roy ..for the petitioner

Mr. Chandi Charan De
Mrs. Chandana Ghoshfor the State

Mrs. Manika Roy
Mr. S.A.Munshi ...for the NHAI

On the prayer of the petitioner leave is granted to him to implead the Divisional Commissioner, Malda as respondent no. 7 in the writ petition.

The cause title of the writ petition be amended accordingly.

Report in the form of affidavit submitted by the National Highway Authority of India (in short, "NHAI") is taken on record.

Heard learned counsels for the parties.

The contention of the petitioner is that his land was acquired by the respondents vide LA Case No. NHAI-34-24/2009-10 for the purpose of widening the National Highway 34 and notice under Section 3H(2) of the National Highways Act, 1956 (hereinafter referred to as "the Act of 1956") was served upon the petitioner for payment of compensation for the land in question. Upon being aggrieved by the compensation in respect of the land assessed by the authority, the petitioner submitted an application under Section 3G(5) of the Act of 1956 which is

yet to be considered. However, no compensation was assessed by the authority for the structure of the petitioner standing on the land in question though the structure has been demolished by the authority.

The petitioner, by a representation submitted on June 24, 2013, requested the authority to assess the compensation payable to him for the structure standing on the plot in question but such representation has not been considered till date. The prayer of the petitioner is two fold:-

Firstly, for assessment and payment of compensation in respect of the structures standing on the plot in question; and

Secondly, for disposal of the arbitral proceedings under Section 3G(5) of the Act of 1956 upon considering the submission of the petitioner.

Placing reliance on the report in the form of affidavit submitted on behalf of the State-respondents, learned counsel for the State-respondents submits that though the award for land compensation in favour of the petitioner was declared on 22nd May, 2013 by the competent authority under the Act of 1956 and ADM (LA), Murshidabad, assessment of compensation in respect of the structure standing thereon was left out from the valuation sheet of structures prepared by the NHAI approved valuer. Pursuant to a prayer submitted by the petitioner, the concerned authority was requested for

measurement of the left out structure and valuation sheet in respect of the said structure was prepared on 7th December, 2017 and duly vetted by the PWD, Government of West Bengal. A supplementary estimate for compensation for the structure in favour of the petitioner was prepared and the NHAI Authority was requested to place necessary funds for the same. It is further submitted that the State-respondents are yet to receive funds from the NHAI for payment of structure compensation to the petitioner. The State authorities seeks to place the arbitration application of the petitioner before the concerned authority for consideration.

In their report in the form of affidavit, the NHAI contends that compensation with regard to the acquired properties including that of the petitioner was deposited by the NHAI with the competent authority vide a letter issued on 27th February, 2013 and application for enhancement of compensation in terms of Section 3G(5) of the Act of 1956 was disposed of by the learned Arbitrator by an arbitral award passed on 6th November, 2019. In the event the petitioner is aggrieved by the said award his recourse lies under Section 34 of the Arbitration and Conciliation Act, 1996 and not before the writ court.

It is not in dispute that compensation with regard to the land of the petitioner was assessed by the authority and notice under Section 3H(2) of the Act of 1956 was served upon the petitioner.

Being aggrieved by the said assessment the petitioner filed an application under Section 3G(5) of the Act of 1956 for enhancement of the amount on 11th August, 2017. Though it is submitted on behalf of the NHAI that arbitration was held in respect of the acquired land including that of the petitioner, the arbitral award passed on 6th November, 2019 indicates that one arbitration petition in LA Case no. 23/2009-10 and two arbitration petitions in LA Case No. 24/2009-10 were taken up for hearing. The award records that the three arbitration petitions were disposed of. It is crystal clear from the said award that the petition submitted by the petitioner was neither taken into consideration nor any notice of hearing was served upon the petitioner.

In the premises, this Court is inclined to hold that the application submitted by the petitioner under Section 3G(5) of the Act of 1956 not being considered till date, the competent authority being the Divisional Commissioner, Malda (Learned Arbitrator) be directed to deal with the application at the earliest.

Since admittedly no compensation has been assessed in respect of the structure of the petitioner standing on the plot in question, the competent authority, being the respondent no. 3 herein, be directed to serve notice under Section 3H(2) of the Act of 1956 upon the petitioner for such payment upon receipt of necessary funds from the NHAI.

In view of the above, the writ petition is disposed of directing the 7th respondent to consider and dispose of the application submitted by the petitioner under Section 3G(5) of the Act of 1956 within two months from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioner in accordance with law.

The decision taken by the authority shall be communicated to the petitioners within a week thereafter.

Since funds for the structure in question is yet to be released by the NHAI, the 5th respondent is directed to place necessary funds before the 3rd respondent within 7 days from the date of communication of this order.

The 3rd respondent is directed to serve notice under Section 3H(2) of the Act of 1956 upon the petitioner within two weeks from the date of receipt of the fund from NHAI.

With the above observations and directions this writ petition is disposed of.

There shall be, however, 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 furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)