

WPA 322 of 2019

Md. Oliullah Sekh & Ors.

Vs.

State of W.B. & Ors.

Mr. Partha Pratim Roy ...for the petitioners.

Ms. Manika Roy ...for NHAI.

Mr. Chandi Charan De
Mr. Anirban Sarkar ...for the State.

On prayer of the petitioners liberty is granted to implead the Divisional Commissioner, Malda, as respondent No.7 in the writ petition. The cause title of the writ petition be amended accordingly.

Heard learned counsels for the parties.

The petitioners claim to be recorded owners of the plot in question and submit that the said plot was acquired vide LA Case No. NHAI-NH-34-24/2009-2010 by the National Highways Authority of India for the purpose of widening the National Highway-34 and notice under Section 3H(2) National Highways Act, 1956 was served upon the petitioners for payment of compensation for the said land.

Being aggrieved by the quantum of compensation paid by the authority in respect of the land including structure, the petitioners submitted an application under Section 3G(5) of the Act of 1956 before the concerned

authority on 22nd August, 2017, which is yet to be considered.

The petitioners also seek to submit a comprehensive application under Section 3G(5) of the Act before the 7th respondent and pray for a direction upon the said respondent to consider the application at the earliest.

Placing reliance on the report in the form of affidavit submitted on behalf of the National Highways Authority of India, learned counsel for the Authority submits that arbitration was held in respect of LA Case No.23/2009-2010 and 24/2009-2010 and award was granted by the learned arbitrator by an order passed on 6th November, 2019.

Learned counsel further submits that in the event the petitioners are aggrieved by the said award, their recourse lies under Section 34 of the Arbitration and Conciliation Act, 1996 and not before the writ court and as such, the writ petition is not maintainable.

It is not in dispute that being aggrieved by the amount of compensation received for the land and structure acquired by the concerned authority, the petitioners submitted an application under Section 3G(5) of the Act of 1956 for enhancement of the same. Though learned counsel for the National Highways Authority of India submits that arbitration was held in respect of the entire acquired land including structure including that of the petitioners, there is nothing on record to indicate that

notice of arbitration was served upon the petitioners or opportunity of hearing was granted to them prior to passing such award.

Under such circumstances, this court is inclined to hold that since the petitioners were not granted an opportunity of being heard by the learned Arbitrator in course of the arbitration proceedings, the petitioners are not governed by the order passed therein.

In view of the above, the writ petition is disposed of with liberty to the petitioners to submit a comprehensive application under Section 3G(5) of the Act of 1956 before the 7th respondent within three weeks from date. The 7th respondent is directed to consider and dispose of the same within a period of two months from the date of receipt thereof upon affording reasonable opportunity of hearing to all the stakeholders including the petitioners, in accordance with law.

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

With the above observations and directions the writ petition being WPA 322 of 2019 is 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.)