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jdt.

18.07.2023
jb.

W.P.A. 1554 of 2023
(Smt. Swpana Bhattacharyya vs. Union of India & Ors.)

Mr. Jayak Kr. Gupta
Mr. Nandadulal Bandyopadhyay
.... For the Petitioner

Ms. Rini Bhattacharyya
.... For the DFCCI

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

None appears for the State respondents despite service.

Mr. Chandi Charan De who is present in Court and usually appears for the State is requested to represent the State in this matter along with a junior of his choice. The appointment of Mr. De, learned advocate and Mr. Anirban Sarkar, learned advocate be regularised by the office of the learned Legal Remembrancer. Copy of the writ petition along with annexure thereto be served upon Mr. De in course of the day.

Heard learned counsels for the parties.

The petitioner contends that she runs a medical shop in the plot in question which has been acquired by the railway authorities by virtue of a notification published on 14th August, 2015 for construction of railway project by the Eastern Dedicated Freight Corridor Corporation of India Limited. Though the owner of the land has received compensation for such acquisition, no compensation has

been paid to the petitioner for the shop room standing on the said land.

Pursuant to an order passed by this Court on September 26, 2022 in W.P.A. 12935 of 2022 directing the concerned authority to consider the representation submitted by the petitioner seeking compensation for shop room standing on the acquired plot, the concerned authority being the Additional District Magistrate (LA), Hooghly, the 6th respondent herein dealt with the representation submitted by the petitioner and turned down the request of the petitioner by an order passed on 2nd November, 2022. The said order is assailed in the writ petition.

It transpires from the order impugned that besides recording that as per provisions of prevailing norms of Government of West Bengal, second schedule and third schedule of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is not permissible for the purpose of determining compensation for the project affected people, no reasoning has been recorded in the said order for rejecting the prayer of the petitioner.

Section 20-F (3) of the Railways Act, 1989 enumerates 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 percent of the amount determined under sub-section (1), for that land.

It is not in dispute that the petitioner has her medical shop in the land in question which has been acquired by the railway authorities under the Railways Act, 1989.

In view of the above, this Court is inclined to hold that the order impugned is bereft of any reasoning and was passed without taking into consideration the relevant provisions of the Railways Act, 1989.

In the result, the order dated 2nd November, 2022 passed by the 6th respondent is set aside.

The 6th respondent is directed to revisit the issue upon affording reasonable opportunity of hearing to all the stake holders including the petitioner and in terms of the provisions laid down under Section 20 F (3) of the Railways Act, 1989 and pass a reasoned order, in accordance with law within one month from the date of communication of this order.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

The writ petition is thus disposed of.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)