

12.06.2023
rc/ct.no.10
Item No.114

WPA No. 3631 of 2017
Mahima Bibi
Versus
Union of India & Ors.

Mr. Arindam Das
Mrs. Priyanka Kundu ...for the petitioner

Mr. Ansar Mondal
Mrs. Srilekha Bhattacharyya ...for the State

Mr. Dipankar Dasfor the NHAI

Heard learned counsels for the parties.

The petitioner complains that her land was acquired by the State-respondents at the instance of the National Highway Authority of India (in short, “NHAI”) and compensation was paid to the petitioner after coming into effect of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the Act of 2013”). The petitioner claims to be entitled to compensation in terms of the Act of 2013. The petitioner seeks to submit an application under Section 3G(5) of the National Highways Act, 1956 (hereinafter referred to as “the Act of 1956”) before the learned Arbitrator and prays for a direction upon the learned Arbitrator to consider the said application in terms of the Act of 2013 as well as the Arbitration and Conciliation Act, 1996 upon affording reasonable opportunity of hearing to the petitioner.

Learned counsel for the NHAI submits that the entire amount of compensation was submitted by the authority before the State-respondents prior to January 01, 2015 and as such, the petitioner is not entitled to compensation under the Act of 2013.

Learned counsel for the State-respondents submits that the petitioner may file an application under Section 3G(5) of the Act of 1956 before the learned Arbitrator who may consider the same in accordance with law. The State-respondents undertake to serve a copy of the award under section 3G(5) of the Act of 1956 to the petitioner within one week from date.

Report in the form of affidavit submitted on behalf of the NHAI indicates that the arbitration proceedings was held under Section 3G(5) of the Act of 1956 by the learned Arbitrator and award was published on August 14, 2014. But there is nothing on record to suggest that the petitioner was served notice of the said arbitration or was granted an opportunity to participate in the said proceedings.

In view of the above, this Court is inclined to hold that the arbitral proceedings which prima facie took place without the participation of the petitioner is not applicable in case of the petitioner and the petitioner is not bound by the decision taken by the learned Arbitrator therein. The petitioner be permitted to file an application under Section 3G(5) of the Act of 1956 before the learned Arbitrator

within two weeks from the date of receipt of the copy of the award. The learned Arbitrator is directed to consider and dispose of the said application within three months from the date of receipt thereof upon affording reasonable opportunity of hearing to all the stakeholders including the petitioner, in accordance with law.

Copy of the award shall be served upon the petitioner within a week thereof.

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)