

15-06-2023
Court No.1
Sh/21.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

**MAT 20 of 2023
With
CAN 1 of 2023.**

Rabindra Nath Sarkar.
-Vs-
The Union of India & Ors.

Mr. Jagriti Mishra,
Mr. Subham Gupta,
Mr. Debayan Goswami,
Mr. Reshab Kumar,
Mr. Raj Kumar Mitra.

..For the Appellant.

Mr. sudipto Kumar Mazumder, DSGI,
Mr. Sourab Kar.

For the Union of India.

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh.

For the State.

Ms. Supriya Singh.

For the NHAI.

Ms. Suman Sehanabis (Mandal),
Mr. Tathagata Biswas.

For the respondent no.8.

We have heard the learned counsel appearing for the parties.

By consent of the parties the appeal and the application is taken up for hearing dispensing with all formalities and treating the same as day's list.

Learned counsel for the appellant submits that the learned single Judge has overlooked Section 3H(3) of the National Highway Act and could not have referred the said matter to the learned District Judge, Jalpaiguri invoking the provision of Section 3H(4) of the Act and determine the issue within a time frame.

It is further submitted that without determining the issue that the petitioner is a person interested under Section 3H(3) in respect of the amount deposited under Sub-section 1 of Section 3H of the said Act, the competent authority could not have sent the matter directly to the District Judge for determination.

Learned counsel for the writ petitioner/respondent and the Special Land Acquisition Officer however, supporting the said judgment submit that in view of the observation made by the learned Single Judge with regard to the complexity of the issue involved the competent authority is not a person who could decide and adjudicate the issues as regards apportionment and entitlement of the writ petitioner towards compensation payable.

The reason for sending the matter to the learned District Judge by invoking the provision of Section 3H(4) of the Act was that whether Sova Rani Sarkar was the daughter of Pareshnath Sarkar and whether on the death of Sova Rani Sarkar who inherited the share in respect of the property of the Pareshnath Sarkar by way of inheritance are the issue taken into consideration by the learned Single Judge in referring the matter to decide the said issue by invoking Section 3H(3) would apply when the issues involved are not complex and for which the determination of his status or legal right of a person are not involved and can be conveniently decided by the competent authority which can be decided on its merit.

In deciding whether the provision of Section 3H(4) is required to be invoked by the competent authority. The discretion is upon the competent authority. If the competent authority is not competent

to decide such complex legal issue then the appropriate course is to invoke Section 3H(4) of the said Act.

Section 3H(4) contemplates that if any dispute arises as to the apportionment of the amount to any person to whom the said is payable then it can be determined by the District Judge upon a reference being made by the competent authority.

It is convenience of the competent authority to decide such issue that should be taken into consideration in deciding whether a particular issue is required to be decided by the competent authority or is required to be sent to the District Judge. In fact, the co-ordinate Bench in the case of Dilip Dutta Vs. State of West Bengal & Ors reported in 2018 4 CHN 9;2018 SCC Online CAL 10580; (2018) 190 AIC: (2019 1 Cal LJ 164 has observed as follows;

" If the dispute cannot be resolved by the said Competent Authority, he shall immediately refer the matter to the District Judge, Nadia, invoking the provision of Section 3H(4) of the said Act of 1956 and the said District Judge shall dispose of such matter preferably within 6 (six) months but not later than 12 (twelve) months from the date of reference"

This dispute certainly cannot conveniently be adjudicated and decided by the competent authority under Section 3H(3) of the said Act.

Under such circumstances, the direction of the learned Single Bench following the ratio laid down in Dilip Dutta (supra) does not call for any interference.

The appeal and the application are accordingly disposed of without, however, any order as to costs.

All parties shall act on the server copies of this order duly downloaded in the official website of this Court.

(Raja Basu Chowdhury,J.) (Soumen Sen, J.)