

02.08.2023
A.P.
Item No.32

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

**WPA No. 3241 of 2022
M/s. Ranicherra Tea Company Limited
v/s.
State of West Bengal & Ors.**

Mr. Debanjan Das

...for the Petitioner

Mr. Hirak Barman

Mr. Pretom Das

... for the State.

Heard learned counsels for the parties.

It is not in dispute that the petitioner is a lessee in respect of the plot in question which was acquired by the respondents vide notification published on 19th January, 2017. Though the petitioner was paid compensation for the structure and trees in the plots, he was denied compensation for the leasehold land.

It is submitted on behalf of the petitioner that the petitioner being a lessee in respect of the plots in question is entitled to compensation in terms of section 3G(2) of The National Highways Act, 1956.

Learned counsel for the petitioner placed reliance on the authority in Inder Parshad v/s. Union of India and Others in (1994) 5 SCC 239, wherein the Hon'ble Court has observed as hereunder:-

“Being an owner the Govt. is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee, its power to resume the land is subject to non-fulfilment of the terms and conditions of the lease by the lessee. So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Govt. should get absolute title thereof free from all encumbrances. Compensation becomes payable for the lease hold right or interest held by the lessee or grantee when the land is acquired.”

A coordinate Bench of this Court, by a judgment dated 14th September, 2022 in W.P.A. 953 of 2019 in dealing with a similar issue has observed that the petitioner therein/lessee is entitled to a fresh determination for compensation pertaining to the acquired land of the lessee.

In the case in hand, the petitioner is admittedly the lessee in respect of the plots in question and has been denied compensation for the land by the authority. In view of the authorities referred to above as well as the provision laid down under section 3G(2) of the Act of 1956, this Court is inclined to hold that the petitioner is entitled to compensation/ proportionate share thereof in respect of the plots in question of which he is the lessee. Accordingly, the order passed by the Special Land Acquisition Officer, Jalpaiguri on 1st September, 2022 in so far as the petitioner's claim for compensation of leasehold land

has been turned down is set aside. The concerned authority being the 4th respondent herein, is directed to determine the compensation payable to the petitioner in respect of the land in question upon affording reasonable opportunity of hearing to all the stakeholders including the petitioner within one month from the date of communication of this order, in the light of the observation made in the body of this order.

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

Necessary consequential steps be taken by the authority within a month of determination of the compensation.

With the above observations and directions the writ petition being W.P.A. 3241 of 2022 is disposed of.

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

(Suvra Ghosh,J)