

February 19, 2024
(12) ARDR

WPA 260 of 2024
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CAN 1 of 2024

Pamela Sahoo
Vs.
The Union of India & ors.

Adv. Kallol Basu,
Adv. Samik Sarkar,
Adv. Atreya Chakraborty,
...for the petitioner.
Adv. Asok Bhowmik,
...for the respondent no.1.
Adv. Manika Roy,
Adv. Shinjita Ray,
...for the NHAI.
Adv. Chandi Charan De,
Adv. Reshma Chatterjee,
...for the State.

Heard learned counsels for the parties.

The grievance of the petitioner is two fold:-

Firstly, the petitioner is aggrieved by the compensation granted to her by the authority. Secondly, the notice issued upon the petitioner under Section 3E of the National Highways Act, 1956 is not in accordance with the provisions laid down under the Act.

Learned counsel for the petitioner submits that the notice impugned dated 29th December, 2023 directs the petitioner to vacate the land in question within three days of receipt of the notice whereas Section 3E of the Act of 1956 enumerates that the person in possession of the land ought to surrender or deliver possession thereof to the competent authority within sixty days of the service of notice. Learned counsel submits that if the authority

requires to take physical possession of the plot in question for public purpose, there is no option left for the authority but to issue a notice under Section 3E directing the person in possession to vacate the plot. Therefore, the term “may” used in the provision may be construed as “shall”.

Per contra, learned counsel for the National Highways Authority of India places reliance on clause 3.8 of the Manual of Guidelines On Land Acquisition for National Highways Under The National Highways Act, 1956 and submits that the period of sixty days is required to be calculated from the date of issuance of the payment notice upon the land losers. Learned counsel submits that payment notice was issued upon the land loser on 13th October, 2023 and the land loser/petitioner was required to vacate the plot within sixty days thereof. Also, issuance of notice under Section 3E is not mandatory and even without issuance of the same, the petitioner was required to vacate the plot within the period of sixty days which expired on 12th December, 2023. Learned counsel has placed reliance on an order passed by a coordinate Bench of this Court on 24th November, 2017 in WP 18322 (W) of 2017 in support of her contention.

It shall be useful to set out Section 3E(1) of the National Highways Act, 1956.

3E. Power to take possession. – (1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under Section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with

the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice”.

In terms of the said provision, if a notice under Section 3E is issued by the authority, such notice should direct the person in possession of the land in question to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice, that is, within sixty days of service of the notice under Section 3E of the Act of 1956. It is a fact that notice under Section 3E may not be served by the authority upon the land loser for vacating the plot in question. But at the same time, if such notice is issued, the same is required to be issued in terms of the provision laid down under the Act.

Clause 3.8 of the Circular referred to by learned counsel for the National Highways Authority of India deals with public notices for expediting the disbursement of compensation amount and calls upon the land owners/ persons interested in respect of the subject land to collect the compensation amount from the office of the CALA within a period of sixty days from the date of notice. The provision demonstrates in no uncertain terms that apart from issuance of notice to the land owner/person interested in terms of Section 3E(1) of the Act of 1956, public notice may also be issued under Section 3A(3) of the Act informing

the land owners about the announcement of the award by CALA. Therefore the period of sixty days as pointed out by the learned counsel is with regard to collection of compensation from the office of the CALA and not under the provision laid down under Section 3E of the Act.

Learned counsel has drawn the attention of the Court to a format of a public notice which is normally issued under Section 3A of the National Highways Authority of India Act, 1956 wherein the land owners are called upon to surrender or deliver possession of the subject land to the competent authority failing which possession of the land would be taken with police assistance on expiry of the period of sixty days. But unfortunately there is nothing on record to suggest that such public notice was issued at all by the authority.

In the order passed in WP 18322 (W) of 2017, the coordinate Bench has dealt with the power to take possession by the authority under Section 3E of the Act and has recorded that in the facts of the said case, Section 3E was not mandatory and might arise in other circumstances. The fact situation of the present case can be distinguished from that of the other matter and the ratio laid down therein has no manner of application in the present case.

Since the notice impugned has been admittedly issued under Section 3E of the Act, it should have been in compliance with the provision laid down therein. The provision directs the person in possession/petitioner to

deliver possession of the plot within sixty days of service of the notice. On the contrary, the notice directs the petitioner to vacate the plot within three days of receipt thereof.

In view of the above, this Court is inclined to hold that the notice impugned is *de hors* the provision laid down under Section 3E(1) of the Act of 1956.

The writ petition is accordingly, allowed. The notice issued on 29th December, 2023 is set aside.

However, the National Highways Authority of India shall be at liberty to issue fresh notice under Section 3E(1) of the Act to the petitioner in terms with the provision laid down therein.

Since the petitioner is unhappy with the compensation paid to her and intends to challenge the same under Section 3G(5) of the Act of 1956, such liberty is granted.

The connected application, being CAN 2 of 2024 is disposed of.

There shall however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)