

25.04.2024
Ct. no.654
Sl. No.10
sn

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 379 of 2024

Paban Mahato & Anr.
Vs.
Union of India & ors.

Mr. Ivan Roy
Mr. Nirupam Dutta
... for the petitioners
Ms. Manika Roy
..for the NHAI
Mr. Souvik Nandy
Mr. Tirthankar Achjariya
..for the U.O.I.
Mr. Sougata Mitra
Ms. Soma Chakraborty
...for the respdts.10-20
Mr. Chandi Charan De
Mr. Anirban Sarkar
Ms. Subhra Nag
..for the State

On the prayer of the learned advocate for petitioners, leave is granted to add the Additional District Magistrate and the Competent Authority under the National Highways Act, 1956 at Purulia, as added respondent no.21.

By the present writ petition, the writ petitioners press for consideration of their representation dated 6th November, 2023 by the competent authority.

The brief fact of the case is that the predecessor-in-interest of the petitioners and the private respondents, namely, late Fagu Mahato and Chamtu Mahato were the joint co-owners of the *Ejmali* land measuring about 54 satak comprised within C.S. Dag no.1641, R.S. Dag

no.1685, mouza Chakra, J.L. No. 29, Police Station Purulia(M) District Purulia. During the revisional settlement operation, the father of the respondent nos.17,18,19 and 20, namely, Handu Mahato got his name illegally recorded in the R.S. record of rights in respect of 54 satak of land. The petitioners are still enjoying the possession of the undivided *Ejmali* land. The brother of the petitioners filed a suit for declaration before the learned Civil Judge (Senior Division) at Purulia being Title Suit no.102 of 2017, which was subsequently withdrawn. The petitioners thereafter filed a suit for partition before the Court of learned Civil Judge (Senior Division) at Purulia being Title Suit No. 75 of 2022, which is still pending. The share of the co-sharer in the joint property is yet to be declared by the civil court. During hearing of the LA Case no. 12 of 2015/NH-32, objections were raised with regard to apportionment of the compensation amount on the ground of pendency of the suit for partition, however, that was not considered. The petitioners submitted several representations for redressal of their grievances, which has also not been acted upon. Hence, this writ petition.

Mr. Ivan Roy, learned advocate for the petitioners submits that the share of the parties to the partition suit has not yet been declared by the civil court. Until and unless the shares of the joint owners are declared in respect of the property-in-question, the apportionment of the compensation amount cannot be made. Such fact was

brought to the notice of the competent authority which was not considered. The petitioners made a representation on 6th November, 2023 for redressal of their grievance but till date the same has not been considered. Further it has been informed by the petitioners that the amount has been disbursed. He seeks for appropriate order directing the competent authorities to consider the representation dated 6th November, 2023.

Ms. Manika Roy, learned advocate for the respondents-NHAI submits that as per Section 3H(4) of the National Highways Act, 1956 in the event the amount has already been deposited before the private respondents, the only recourse left to the petitioners is to file an application for consideration by a principal civil court of original jurisdiction.

Mr. Chandi Charan De, learned Additional Government Pleader submits that the representation of the petitioners may be sent to the competent authority for consideration.

Mr. Sougata Mitra, learned advocate for the respondent nos.10 to 20 submits that a civil suit for partition is pending by and between the parties.

During hearing, no documents has been placed before this Court to show that the amount has been disbursed to the private respondents. It is not in dispute that the petitioners by several representations have raised their grievance with regard to the pendency of the partition suit as well as alleged illegal recording in the

R.S. record of rights by the predecessor-in-interest of the private respondents. Section 3H(4) provides that if any dispute arises as to the apportionment of the amount or any part thereof or any person to whom the same or any party thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within limits of whose jurisdiction, the land is situated.

In view of such express provisions, the Additional District Magistrate and the Competent Authority under the National Highways Act, 1956 at Purulia, being the added respondent no.21 is directed to consider and dispose of the representation of the petitioners dated 6th November, 2023 upon hearing all concerned including the petitioners and private respondents and upon such hearing and satisfaction shall act in terms of Section 3H(4) of the National Highways Act, 1956 within a period of three months from the date of communication of this order.

The result of such disposal be communicated to the petitioners within a week thereof.

Learned advocate-on-record for the petitioners is directed to communicate this order to the Additional District Magistrate and the Competent Authority under the National Highways Act, 1956 at Purulia, being the added respondent no.21.

It is made clear that this Court has not gone into the merits of the case and all points are kept open for consideration by the respective authorities.

With the above directions, this writ petition being **WPA 379 of 2024** stands disposed of along with all connected applications, if any.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)