

WPA 8093 OF 2024

Sariful Islam Molla & Ors.

Vs.

Union of India & Ors.

Mr. Rafiqul Islam
Ms. Manika Sarkar.

... For the Petitioners

Ms. Manika Roy
Ms. Shinjita Ray
Ms. Ankita Chowdhury.

... For the Respondent
Nos. 2 & 3, NHAI

Mr. Chandi Charan De
Mr. Anirban Sarkar.

... For the State

Affidavit-of-service, filed in Court today, is taken on record.

The land of the petitioners was acquired at the instance of the National Highways Authority of India way back in **2009** by virtue of the provisions laid down under the **National Highways Authority of India Act, 1956** (for short the 1956 Act). The requiring body was the National Highways Authority. The acquiring authority was the State.

The compensation for acquisition was determined by the jurisdictional competent authority, the respondent no.5. The petitioners being aggrieved by the said quantum of compensation applied for arbitration under **Section 3G(5)** of the said 1956 Act.

The learned arbitrator passed its award dated **April 3, 2017** at **page 268** to the writ petition, whereunder the compensation was enhanced in favour of the petitioners.

Being aggrieved with the said arbitral award, the National Highways Authority had applied under **Section 34** of the **Arbitration and Conciliation Act, 1996** before the jurisdictional civil court at Barasat seeking setting aside of the said arbitral award, **Annexure-P5 at page 286** to the writ petition.

Mr. Rafiqul Islam, learned advocate appearing for the petitioners referring to the representation dated **February 21, 2024, Annexure-P8 at page 328** to the writ petition submits that, the representation was made challenging the **Section 34** decision before the respondent no.2. The same has not been considered. Hence, this writ petition.

Ms. Manika Roy, learned counsel appears for the respondent nos. 2 and 3 submits that, the appropriate proceeding should be an appeal under **Section 37** of the **Arbitration and Conciliation Act, 1996** and not the writ petition. Hence, this writ petition is totally misconceived and liable to be dismissed at the threshold.

Mr. Chandi Charan De, learned Additional Government Pleader adopts the submissions made on behalf of the National Highways Authority.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears

from the relevant claim made in the writ petition that, the petitioners in effect have challenged the **Section 34** order fixing the compensation payable to the petitioners.

Sub-Section (5) to Sub-Section (7) of Section 3G of the 1956 Act specifically provides for remedy in terms of the **Arbitration and Conciliation Act, 1996** if the determination of compensation is not accepted by the land losers. The inadequacy of compensation can only be challenged under the procedure laid down under the said Arbitration Act and not otherwise. Once an order is passed setting aside an award under **Section 34** of the arbitration Act by the jurisdictional civil court, the same is appealable under **Section 37** of the Arbitration Act and no writ petition is maintainable.

In view of the foregoing discussions and reasons this Court is of the firm and considered opinion that, this writ petition is totally devoid of any merit, misconceived and should be dismissed *in limine*.

Resultantly, this writ petition, **WPA 8093 of 2024** stands dismissed, without any order as to costs.

However, it is made clear that, this Court has not gone into the merits of the claim of the petitioners.

The petitioners shall be at liberty to initiate appropriate proceeding in accordance with law if such proceeding is otherwise maintainable.

(Aniruddha Roy, J.)