

06.05.2024
Item No.12
Court No.6.
S. De

FMA 35 of 2022
With
I.A. No.CAN/1/2021

Dr. Ajit Kumar Singh.
Vs.
The Union of India & Ors.

Mrs. Susmita Saha Dutta,
Mr. Niladri Saha,
Ms. Madhurima Basu,
...for the appellant.

Ms. Manika Roy,
....for the N.H.A.I.
Mr. Chandi Charan De, Ld Addl.Govt. Pleader,
Ms. Rashmi Rahman,
...for the State respondents.

A judgment and order dated July 27, 2001, whereby the appellant's writ petition being WPA 10817 of 2021 was dismissed by a learned Judge of this Court, is under challenge in this appeal at the instance of the writ petitioner.

Although, the learned Judge records that the writ petitioner's prayer is for enhancement of compensation for acquisition of land by the State authorities, the same does not appear to be correct recording. The prayer in the writ petition is for a direction on the State authorities to acquire the land of the writ petitioner which, according to him, has become unusable by reason of change of course of Bora river which has been caused by shifting of a particular highway bridge.

On behalf of the State authorities it was pointed out that the writ petitioner has filed a civil suit before the competent Court seeking similar reliefs.

On behalf of the writ petitioner it was clarified that the civil suit has been withdrawn by the writ petitioner.

On behalf of National Highway Authority of India it was submitted that no portion of the writ petitioner's land has been utilized for shifting of the concerned bridge.

On behalf of the Union of India, it was submitted that question of compensation would only arise if any portion of the writ petitioner's land has been acquired.

Noting the arguments of the parties, the learned Judge dismissed the writ petition with the following observations :

"I have heard the parties. I am of the view that there is nothing on record to demonstrate that any portion of the petitioner's land has been acquired by the State respondents. The question of compensation or enhancement of compensation can only arise if any portion of the petitioner's premises has been acquired by the State respondents."

Accordingly, I am of the view that there is no merit in the writ petitioner and the same is liable to be dismissed.

WPA 10817 of 2021 is dismissed, however, there will be no order as to costs.

Liberty is granted to the petitioner to take whatever remedy if so advised in accordance with law in respect of any grievances that the petitioner may have.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Ms. Saha Dutta, learned advocate appearing for the appellant/writ petitioner drew our attention to certain communications issued by the respondent authorities in respect of her submission that by reason of shifting of the concerned bridge, the course of Bora river was diverted resulting in complete inundation of the writ petitioner's land. Since the land has become completely unusable, the respondent authorities are under obligation to acquire the same following due process of law.

We are afraid that the case of the appellant/writ petitioner involves disputed questions of fact. The writ Court is not the convenient or appropriate forum for

resolution of such dispute. We are of the view that the learned Judge did not commit any error by refusing to interfere. We see no reason to interfere with the judgment under appeal.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

FMA 35 of 2022 is disposed of along with the application being I.A. No. CAN/1/2021.

However, this will not prevent the appellant/writ petitioner from making appropriate representation to the respondent authorities. If such representation is made, the concerned authority shall decide the same in accordance with law by passing a reasoned order as expeditiously as possible, without being influenced by any observation in this order or in the order that is challenged before us.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)