

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

WPA 19649 of 2024

Rumela Sahoo

Vs.

The Union of India & Ors.

For the Petitioner:

**Mr. Kallol Basu, Adv.,
Mr. Samik Sarkar, Adv.,
Mr. Atreya Chakraborty, Adv.,
Mr. Ayushman Dasgupta, Adv.**

For the UOI:

**Mr. Soumak Bera, Adv.,
Mr. Pralay Bhattacharyya, Adv.**

For NHAI:

Ms. Manika Roy, Adv.

For the State Respondents:

**Mr. Soumitra Bandyopadhyay, Adv.,
Mr. Priyabrata Batabyal, Adv.**

Heard on:

06.08.2024

Judgment on:

13.08.2024

ANIRUDDHA ROY, J.:

Facts:

1. Rumela and Pamela are two sisters. This writ petition has been filed by Rumela. She claims that by virtue of a registered gift executed on May 26, 2017 in her favour, she became the absolute owner of a residential flat (for short, **the flat**) measuring a super build-up area for about 1084 sq. ft. on the second floor of a four storeyed building situated at R.S. Dag No. 315/974 (part) under R.S. Khaitan No.15, A.R. Dag No. 450, under L.R. Khaitan No. 569, Mouza-Jagacha, J.L. No. 6, P.S.: Jagacha, District:

Howrah, as more fully and particularly described in paragraph 2 of the writ petition.

2. The petitioner claims to have rented out the said flat in favour of her sister Pamela who is occupying the same for commercial purpose.
3. For the purpose of widening of National Highway, **NH-117** (for short, the national highway) to a six lane highway, a notification was issued on January 10, 2022 (for short, the 3A Notification) published in the Official Gazette of India under **Sections 3A and 3A(3) of The National Highways Act, 1956** (for short, 1956 Act) for acquisition of portions of lands. The notification was also published in the local newspaper. From the said 3A Notification the petitioner came to learn that the portion of land was proposed to be acquired included the land on which the premises of the petitioner is situated.
4. Following the procedure of law the petitioner, as an interested person within the meaning of **Section 3G(3) of the 1956 Act**, was invited to participate in the hearing before the competent authority on August 16, 2022 and the petitioner has submitted her necessary application/objection before the competent authority, **Annexure P-1 at page 22** to the writ petition.
5. After hearing the petitioner the competent authority under the said 1956 Act made and published an award for compensation payable to the petitioner and the same was communicated to the petitioner by a notice dated **October 13, 2023** bearing award serial no. 170 crystalizing a compensation for a sum of **Rs.36,64,410/-** payable to the petitioner, **Annexure P-2 at page 85** to the writ petition. The petitioner has received and accepted the compensation and the compensation amount was credited to the bank

account of the petitioner by the authority through electronic mode of transfer.

6. Being aggrieved and dissatisfied with the compensation quantum the petitioner submitted a representation dated **November 21, 2023** before the competent authority **Annexure P-3** at **page 86** to the writ petition.
7. The objections of the petitioner against the quantum of award compensation, as pleaded in the writ petition, are extracted below:

“8. Your petitioner states that vide a representation dated 21st November 2023, addressed to the Competent Authority under the National Highways Act, 1956, the petitioner conveyed her dissatisfaction and disapproval regarding the amount of compensation awarded inasmuch as the true market value of the said flat and the building was not considered at all by the Competent Authority and the said Authority also did not consider the loss of earning from rent i.e., at a commercial rate, which the petitioner would suffer as a result of such acquisition. Furthermore, the petitioner in the said representation inter alia had also mentioned that the compensation awarded by the Competent Authority was being received by the petitioner without prejudice to the right to seek enhancement of such award.

A photocopy of the representation dated 21st November, 2023 has been annexed herewith and marked as 'Annexure P-3'.

9. Your petitioner states that from the said notice dated 13.10.2023 it transpires that the acquisition proceeding has been done and the compensation has been awarded by ignoring the commercial nature of the premises. It is pertinent to mention here that award has been awarded considering nature and character of the plot as 'Suna' thereby completely ignoring the fact that the said land was in fact a 'Bastu' land.

10. Your petitioner states that the amount of compensation decided by the Competent Authority is grossly unjustified given fact that the petitioner in earning her livelihood from rent at commercial rate. The compensation has been awarded by blatantly ignoring the considerations stipulated under the National Highways Act, 1956 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. Your petitioner states that insofar as the valuation of land is concerned, the payment notice dated 13th October, 2023, identifies the subject land in terms of its erstwhile R.S. Dag Number and identifies the land in the nature and character of 'Suna', thereby completely and illegally ignoring the fact of conversion of the said land to 'Bastu' and thereafter to 'Commercial' which is evident from the building plan duly sanctioned by the Howrah Municipal Corporation vide BMR No. 164 dated 1st October 2015. Such mischaracterisation has also contributed to an erroneous calculation of the market value of the subject land.

A photocopy of the building plan dated 1st October 2015 has been annexed herewith and marked as 'Annexure P-4'.

24. Your petitioner states that petitioner is entitled to more compensation than what has been awarded by the respondent authorities concerned and the compensation so awarded is arbitrary as the same does not take into consideration the actual area and also the nature and character of the building in question.

25. Your petitioner submits that in the event, this Hon'ble Court does not direct the Competent Authority to reevaluate the quantum of compensation payable to the petitioner upon due consideration of all aspects appurtenant to the acquisition, the petitioner shall suffer irreparable loss and injury. The inadequate quantum of compensation awarded to the petitioner is an affront to the constitutional guarantee of right to live with dignity under Article 21 of the Constitution of India and the fundamental right to freedom of choice of profession guaranteed under Article 19 of the Constitution of India. Moreover, the payment notice dated 13th October 2023, reflects non-application of mind on part of the Competent Authority”.

8. The said representation of the petitioner dated November 21, 2023 since was not considered, the petitioner submitted an application before the respondent no.6.
9. Subsequently a notice dated **December 29, 2023, Annexure P-5** at **page 89** to the writ petition, was found to be pasted by the respondent no.6 issued in the name of the petitioner along with other owners of the premises on the wall of the premises whereunder the owners including the petitioner

were asked to vacate subject land within a period of three days from the date of receipt of the said notice.

10. **Pamela** challenged the said notice dated **December 29, 2023** in **WPA 260 of 2024** but **Rumela** did not challenge the same. The writ petition filed by Pamela was disposed of by a coordinate bench by its order dated **February 19, 2024 Annexure P-6** at **page 91** to the writ petition. The said notice dated December 29, 2023 was set aside and the National Highway Authority was granted liberty to issue fresh notice upon **Pamela** under **Section 3E (1) of the 1956 Act**. **Pamela** was granted liberty to challenge the award of compensation, since she was aggrieved with the compensation, under **Section 3G (5)** of the said **1956 Act**.
11. On or about July 27, 2024 the petitioner found a notice dated **June 5, 2024, Annexure P-7** at **page 96** to the writ petition, pasted on the wall of the premises whereunder **Pamela** was directed to vacate the premises but no notice was issued in the name of the petitioner. On or about July 28, 2024 number of persons came to be the men and agents of National Highway Authority and threatened the petitioner for eviction from the premises on or before August 6, 2024 on the plea that the timeframe of 60 days mentioned in the notice pasted on the wall of the premises would expire then.
12. In the above circumstance the petitioner filed this writ petition on or about August 2, 2024, praying for the following reliefs:

“a) Leave may be granted to move the instant application as ex-parte, dispensing with the requirements under Rule 26 of the Writ Rules;

b) A writ of and/or in the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns not to evict the petitioner and further not to demolish the building in question without serving proper eviction notice upon the petitioner.

c) A Writ of and/or in the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith cancel and/or withdraw and/or set aside and/or rescind the notice dated 5th June, 2024.

d) A Writ of and/or the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith set aside the payment notice and undertake a fresh evaluation of the compensation payable to the petitioner in light of the extant statutory provisions under the National Highways Act, 1956, and the Act of 2013 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

e) A Writ of and/or the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith cancel and/or withdraw and/or set aside and/or rescind the notice to vacate dated 5th June, 2024.

f) A Writ of and/or the nature of Mandamus commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to forthwith refrain from giving any further effect to the notice to vacate dated 5th June, 2024.

g) of A Writ of and/or in the nature Certiorari directing the respondents concerned and/or their men, agents, servants and/or assigns and/or appointees to immediately certify and produce before this Hon'ble Court all documents and records so that conscionable justice be done upon perusal of the same.

h) RULE NISI in terms of prayers

(b) to (f) above;

i) Injunction restraining the respondent authorities concerned and/or their men, servants, agents and/or assigns to not take any steps without giving the notice in the manner as stipulated by the National Highways Act, 1956.

j) Injunction restraining the respondent authorities concerned and/or their men, servants, agents and/or assigns to not take

any steps pursuant to the notice to vacate dated 5th June, 2024.

k) Ad-interim order(s) in terms of prayer (i) and (j) above;

l) Costs thereto; of and incidentals

m) And such other or further order or orders, direction or directions as Your Lordships may deem fit and proper”.

13. An extreme urgency being pleaded on behalf of the petitioner, the writ petition was taken up for consideration. The writ petition was heard in presence of the parties, when the respondent no.1 to 3 and 4 to 8 were duly represented through their learned respective counsel.
14. Considering the public purpose involved for widening the National Highway and since pure questions of law were raised on behalf of the petitioner with reference to the relevant facts already on record, this court was of the view that there was no necessity for keeping the writ petition pending for hearing it on affidavits. This Court accordingly proceeds for disposal of the writ petition on the basis of the existing records and the parties also agreed for the same.

Submissions:

15. Mr. Kallol Basu learned counsel appearing for the petitioner submits that **Section 3E(1) of the 1956 Act** specifically provides for notices to be given in writing to the owners as well as any other person who may be in possession of the subject land under acquisition for surrender for delivery of possession to the competent authority or any person duly authorized by it in this behalf within 60 days of notice. No such notice was served upon the petitioner seeking eviction of the petitioner after setting aside the said previous notice dated December 29, 2023 by the coordinate bench. Without

serving any such notice the National Highway Authorities threatened the petitioner for her eviction on the strength of the said notice dated June 5, 2024 issued in the name of Pamela and not in the name of the petitioner, Rumela.

16. Mr. Basu learned counsel submits that the previous notice dated December 29, 2023 ceased to exist upon the same being set aside by the coordinate bench. The respondent authorities have attempted to evict the petitioner without due process of law and without giving the mandatory notice as contemplated under the statute with a time frame of sixty days to vacate the premises. The petitioner being the lawful owner of the premises in question, should have been given notice as per the mandate of law prior to taking steps for eviction of the petitioner.
17. Learned counsel for the petitioner submits that the petitioner is eligible for more compensation than what has been awarded by the respondent authorities and the compensation awarded to the petitioner is arbitrary, without taking into consideration of the actual area and also the nature and character of the building in question.
18. Mr. Basu learned counsel for the petitioner then referring to a **Removal of Difficulties Order** issued by the Government of India, Ministry of Road, Transport and Highways bearing No. **NH-11011/30/2015-LA** submits that operation of the provisions of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (for short, **Fair Compensation Act**), which came into effect from January 01, 2014 has been given effect in respect of the enactments specified in the Fourth Schedule therein which, inter alia, includes the said

1956 Act, with effect from January 01, 2015 in compliance of **Sub-Section (3) to Section 105 of the Fair Compensation Act**. He then submits the moment the provisions of Fair Compensation Act is made applicable to the said Act of 1956, the provisions for determination of compensation payable to the land losers mentioned in the said Fair Compensation Act shall also apply. Learned counsel for the petitioner then refers to the provisions laid down under Chapter IV to the Right to Fair Compensation Act and submits that the provisions laid down under Section 31 to 42 thereunder shall also apply while determining compensation payable to the land loser. Consequently he submits that the provisions under the second and third schedule to the said Fair Compensation Act should also have to taken into account while determining the compensation payable to the land losers.

19. With a specific reference to Section 38 of the Fair Compensation Act learned counsel for the petitioner submits that the Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation, resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and settlement entitlements listed in the second schedule commencing from the date of the award made under Section 30. He submits that since the full payment of compensation as well as rehabilitation and settlement entitlements have not been paid and tendered to the petitioner in terms of Section 38 of the Right to Fair Compensation Act, the action of the competent authority, Highway Authority in issuing the notice to evict the petitioner dated June 5, 2024 is bad in law and wholly without jurisdiction.

20. Mr. Basu then submits that the issue relating to adequate payment and compensation of land losers and their rehabilitation and resettlement cannot be postponed. After considering the entire scheme of the Fair Compensation Act, it is submitted that it is the statutory obligation of the Collector and his responsibility for ensuring that the rehabilitation and resettlement process is completed in all its aspects before dispossessing the land losers. In support, he has relied upon a decision of the Division Bench of the High Court of Telangana ***In the matter of: Merugu Narsaiah & Ors. Vs. State of Telangana rep. by its Principal Secretary & Ors., reported at 2020 SCC OnLine TS 536.***
21. Mr. Basu learned counsel for the petitioner submits that so long the correct and rightful compensation in accordance with law is not paid to the land losers, the possession of land cannot be taken under acquisition process from the land losers and the acquisition process shall not come to an end. Since the acquisition process, as in the facts of this case, has not come to an end as the correct compensation has not been paid to the petitioner in accordance with law, the petitioner has a right to challenge the commencement of the acquisition proceeding initiated by the National Highway Authority in exercise of its power under Section 3A of the 1956 Act. He submits that the entire acquisition process commencing from Section 3A of the 1956 Act shall have to travel till the correct compensation is paid and then only the possession of land can be taken over under acquisition. When the appropriate compensation in law is not paid to the land loser, as in the instant case, the entire acquisition process fails as the same suffers from serious infirmity in law. He claims that the entire acquisition process is bad

in law, though the petitioner has received compensation with protest and challenged the same before the competent authority, as no estoppel runs against the statute.

22. Learned counsel for the petitioner then submits that a prior notice informing the bearer of the right to deprive them is right to property is right to itself; a linear extension of the right to know embedded in Article 19(1)(a) of the Constitution of India. The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes as in the 1956 Act and the Fair Compensation Act in the instant case reflect this right. In large number of decisions, the constitutional courts have independently recognized the right to notice before any process of acquisition is commenced following the right to a meaningful and effective prior notice of acquisition, is the right of property bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham. Referring to the impugned notice dated June 5, 2024 it is submitted that, no notice was served upon the petitioner according to the provisions of Section 38 of the Fair Compensation Act. He submits steps taken for possession from the petitioner is, therefore, wholly without jurisdiction and in violation of statutory provision. In support, Mr. Basu refers to a decision of the Hon'ble Supreme Court ***In the matter of: Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah & Ors., reported at 2024 SCC OnLine SC 968.***

23. In the light of the above submissions, Mr. Basu learned counsel for the petitioner prays for issuance of mandamus in terms of the reliefs claimed in the writ petition.
24. Ms. Manika Roy learned counsel appearing for the National Highway Authority of India (for short, National Highway Authority) referring to the reliefs claimed in the writ petition submits that the principal claim of the petitioner is for enhancement of compensation already awarded to her and also received by her. She submits that since the petitioner has accepted and received the compensation awarded to her, the petitioner can challenge the quantum of compensation by way of arbitration as provided under Sub-Sections (5) and (6) to Section 3G of the said 1956 Act. There is no other method prescribed under the statute to challenge the compensation quantum.
25. Learned counsel for the National Highway Authority refers to the provisions from a Manual Guidelines On Land Acquisition for National Highways, under The National Highways Act, 1956 (for short, the Land Acquisition Manual). Referring to **Chapter V** which deals with the **Second and third schedule** of the Fair Compensation Act, she submits that the provisions of the Fair Compensation Act relating to the determination of compensation in accordance with the first schedule, rehabilitation and resettlement in accordance with the second schedule and infrastructure amenities in accordance with the third schedule, shall apply to all cases of land acquisition under the enactments specified in the fourth schedule to the said Fair Compensation Act which, inter alia, includes the 1956 Act. She further submits that the law would apply when government acquires land

for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for project, more than 1000 acres in rural areas or more than 50 acres in urban areas. The land acquisition provision would apply to the area to be acquired but the rehabilitation and resettlements provisions would apply to the entire project area even when private company approaches government for partial acquisition for public purpose.

26. Ms. Manika Roy learned counsel for the National Highway Authority submits that there is a statutory remedy provided for under the 1956 Act by way of arbitration when a land loser is aggrieved with the quantum of compensation. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the state and/or its agency/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, High Court should be extremely careful and circumspect in exercising its discretion while entertaining such petitions and/or while granting stay in such matters. In support, she had relied upon a decision of the Hon'ble Supreme Court ***In the matter of: National High Speed Rail Corporation Limited vs. Montecarlo Limited & Anr., reported at (2022) 6 SCC 401.***

27. Learned counsel for the National Highway Authority then submits that since the construction of road is an infrastructure project and keeping in view the

intent of legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India. In support, she has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: N.G. Projects Limited vs. Vinod Kumar Jain & Ors. Reported at (2022) 6 SCC 127.***

28. Ms. Roy then referring to Section 41 from Specific relief Act, 1963 submits that when equally efficacious relief can be obtained by any other usual mode of proceeding except in case of breach of trust, the order of injunction is to be refused and cannot be granted. Learned counsel further submits that when the petitioner is aggrieved with the quantum of compensation offered to her, the right of the petitioner to protest the same or seek enhanced compensation will not entitle the petitioner to resist the highway authority to demolish the petitioners building or any structure on the land in question. In support, she has relied upon an order of the coordinate bench dated **December 23, 2015** ***In the matter of: Smt. Bela Das vs. The National Highways Authority of India & Ors., rendered in WP 30214 (w) of 2015.***

29. Ms. Manika Roy learned counsel further submits that when the first notice was issued in the name of both the sisters i.e. Rumela and Pamela dated December 29, 2023, Pamela challenged the same and got it set aside under the order dated February 19, 2024 passed by a coordinate bench and Pamela intended to challenge the award under Section 3G(5) of the said 1956 Act. Despite knowledge of the said notice and having received the same

this writ petitioner, namely, Rumela did not challenge the same. She submits that, the said previous notice dated December 29, 2023 was set aside at the instance on Pamela and since Rumela did not challenge it, the same remains in full force and existence against Rumela being the present petitioner. Referring to the reliefs claimed in prayer (c) , (e) and (f) to the writ petition learned counsel submits that this notice was issued in the name of Pamela and, therefore, this petitioner, namely, Rumela cannot seek cancellation of the same. She submits this writ petition is totally frivolous, vexatious, mala fide and devoid of any merit and as such, is liable to be dismissed in limine.

30. Mr. Soumitra Bandyopadhyay learned State counsel appearing for the State respondents, at the outset, has adopted the submissions made by Ms. Roy Learned Counsel appearing for the National Highway Authority. In addition, he submits that the requiring body was the National Highway Authority and the acquiring authority was the State. Following the relevant provisions of the 1956 Act the State has acted and there is no illegality in the action of the State respondents.
31. Learned State counsel also submits that this writ petition is totally devoid of any merit and a frivolous litigation with a mala fide intent to stall the acquisition process in respect of a National Project of public interest. He prays for dismissal of the writ petition in limine.
32. Mr. Kallol Basu learned counsel for the petitioner **in reply** submits that, the petitioner has challenged the impugned action of the National Highway Authority while quantifying the compensation contending that the relevant provisions of the said fair compensation act was not considered and since

the action of the respondent authorities was de hors the statutory provisions and the respondent authorities fail to exercise its jurisdiction within the statute while quantifying the compensation payable to the petitioner, there is no requirement to proceed for arbitration in terms of the provisions of the 1956 Act and writ petition is maintainable. He submits that since the respondent authorities are proceeding to dispossess the petitioner and to demolish the dwelling house of the petitioner without following the due process of law, such action affects the petitioner's right to property and personal liberty as guaranteed under the Constitution of India, writ petition is maintainable. He further submits that the decisions cited by the learned counsel on behalf of the National Highway Authority are the general propositions of law. ***In the matter of: N.G. Projects Limited (supra)*** the decision was rendered by the Hon'ble Supreme Court arising out of a tender process and not for demolition of the property of a citizen. Hence the ratio has no application in the facts of this case. In the instant case the National Highway Authority has proceeded to demolish the dwelling house of the petitioner without following the due process of law and without completing the acquisition process.

Decision:

33. After considering the rival contentions of the parties and upon perusal of materials on record, at the threshold, this Court thinks it fit to narrate few admitted facts. The land was acquired for widening National Highway, NH-117, which is a public purpose. Previously a notice dated December 29, 2023 was issued upon both Pamela and Rumela asking them to vacate the land with structure. Pamela only challenged the said notice and Rumela did

not. The notice was set aside by the Coordinate Bench's order dated February 19, 2024 when liberty was granted to the National Highway Authority 'to issue fresh notice under Section 3E (1) of the Act to the **petitioner** in terms with the provisions laid down therein. The expression was used "**petitioner**" in WPA 260 of 2024 was Pamela. The compensation awarded was declared on October 9, 2023. On June 5, 2024 the notice, impugned in this writ petition, was issued in the name of **Pamela** and not in the name of Rumela, though the said notice has been impugned by **Rumela** in this writ petition. Under the said notice it appears that despite compensation being declared, the land was not vacated and **sixty days** time was granted from the date of receipt of the said notice to surrender and deliver the possession of the land. The compensation awarded on account of acquisition of land has been paid to this petitioner, namely, Rumela and the same has been accepted by her in November, 2023. The rent receipts at page 81 to the writ petition shows Rumela has rented out her portion of the structure in favour of one Gitanjali Hotel (Pamela).

34. The averments made in the writ petition, the grounds of challenge and the reliefs claimed in the writ petition clearly show that the petitioner intends to challenge the quantum of compensation already received by the petitioner. The petitioner has further contended that, the respondent authorities should forthwith set aside the payment notice and undertake a fair evaluation of compensation payable to the petitioner in the light of the extant statutory provisions under the said 1956 Act and the said Fair Compensation Act as claimed in **Prayer (d)** of the writ petition. The petitioner further claims setting aside of the said impugned notice dated

June 5, 2024, which was issued in the name of Pamela. **Sub-Sections (5) and (6) to Section 3G** specifically provides that if the amount determined by the competent authority for compensation is not acceptable to the parties the amount shall, on an application by the parties, be determined by the arbitrator to be appointed by the central government and subject to the provisions of the 1956 Act the provisions of the **Arbitration and Conciliation Act, 1996** shall apply to every arbitration under the said 1956 Act.

35. **Sub-Section (1) to Section 105** of the fair compensation Act provides that subject to **Sub-Section (3)**, the provisions of the Fair Compensation Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule to the Act. **Sub-Section (2)** provides that subject to Sub-Section (2) of Section 106 the Central Government by notification omit or add to any of the enactments specified in the Fourth Schedule to the said Fair Compensation Act. **Sub-Section (3)** to Section 105 of the Act provides that the Central Government shall by notification, within one year from the date of commencement of the Fair Compensation Act direct that any of the provisions of the said Fair Compensation Act relating to the **Determination of Compensation** in accordance with the First Schedule and Rehabilitation and Resettlement specified in the Second and Third Schedules shall apply to the cases of Land Acquisition under the enactments specified in the Fourth Schedule of the Fair Compensation Act which, inter alia, includes the said 1956 Act. The Central Government in exercise of powers conferred under Section 105 of the Fair Compensation Act issued the **Notification bearing No. S.O. 1430 (E) dated February 19, 2015** with the provisions that the

Fair Compensation Act shall apply to the acquisition of land for National Highway under the said 1956 Act. This being clear, if any acquisition of land takes place under the said 1956 Act and that solatium and interest would be payable under the said Fair Compensation Act to persons whose lands are acquired for the purpose of National Highway. It is clear that even the government is of the view when for **Determining Compensation** for acquisition of land under the 1956 Act provisions are borrowed from the Fair Compensation Act. Therefore, if the compensation is not to the satisfaction of the petitioner as to its adequacy, and if she is aggrieved with the quantum of compensation of award paid to her on the plea that the relevant provisions of the Fair Compensation Act while **Determining Compensation** was not taken into account and considered, the appropriate remedy for the petitioner is to invoke arbitration in terms of Section 3G (5) and (6) of the 1956 Act.

36. In the facts of the instant case two separate stages can be defined. **Firstly**, the acquisition proceeding which had admittedly travelled up to the payment of compensation. **Secondly**, the challenge of the petitioner as to the alleged inadequacy of the compensation received by her. The admitted position is till the time of receiving compensation the petitioner has not challenged the acquisition proceeding at any stage since its inception when the National Highway Authority invoked the provisions under Section 3A of the 1956 Act. Even in the instant writ petition the reliefs claimed by the petitioner is merely for alleged inadequacy of compensation. The petitioner, therefore, has accepted the acquisition proceeding but at the highest has not accepted the quantum of compensation. Moreover when there is no

challenge to the acquisition proceeding which was initiated in aid of the public purpose, inadequacy of compensation or any violation of procedure while quantifying the award of compensation cannot be a ground to quash the entire acquisition proceeding. Section 38 of the Fair Compensation Act deals with the **power to take possession** of land to be acquired. This provision provides that the collector shall take possession of land after ensuring that full payment of compensation as well as Rehabilitation and Resettlement Entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of Rehabilitation and Resettlement entitlement listed in the Second Schedule to the said Fair Compensation Act commencing from the date of the award made under Section 30 of the said Act. The Collector shall be responsible for ensuring that the Rehabilitation and Resettlement process is completed in all its aspects before displacing the affected families. Section 38, in its meaningful reading, therefore, deals with the **power to take possession and not for determination of the quantum of compensation**. To exercise the power under Section 38 of the Fair Compensation Act, the precondition is making and publishing an award under Section 30 of the Fair Compensation Act. The provisions of the Fair Compensation Act have been borrowed by virtue of Fourth Schedule to the said Act in exercise of power under Section 105 of the Act, only for the restricted purpose for **Determining Fair Compensation** for the land losers in case of acquisition under the 1956 Act.

37. From a meaningful, harmonious and conjoint reading of the provisions laid down under both 1956 Act and the Fair Compensation Act, this Court is of

the firm view that, save and except to **determine** and quantify the quantum of compensation and for no other purpose, the provisions of the Fair Compensation Act shall apply in case of land acquisition under the 1956 Act. There has been no amendment taken place in 1956 Act to the extent of application of the said Fair Compensation Act in case of an acquisition under the 1956 Act. By virtue of the said central government notification **bearing no. S.O. 1430(E) dated February 19, 2015** the provision of the Fair Compensation Act was applied for **Determining Compensation**. When there is an acquisition proceeding initiated by virtue of Section 3A of the 1956 Act, the same shall proceed strictly in accordance with the said 1956 Act but for **determination** of quantum of compensation, provisions shall be borrowed from the said Fair Compensation Act. Thus, when the acquisition proceeding has commenced under the 1956 Act, the possession of the subject land shall have to be taken following the procedure laid down under the said 1956 Act only and not under the provisions of Section 38 of the Fair Compensation Act.

38. From a further meaningful reading of the relevant provisions under the said Fair Compensation Act including the Second and Third Schedule thereunder, this Court is of the considered view that, while determining the compensation payable under the 1956 Act by applying the provisions of the said Fair Compensation Act, several fact finding enquiries are required to be carried out, if necessary by adducing evidence and by properly constituted witness action. **Sub-Section (5), (6) and (7) to Section 3G of the 1956 Act** provides for arbitration which shall proceed in accordance with the provisions laid down under the **Arbitration and Conciliation Act, 1996** (for

short, the Arbitration Act). The Arbitration Act shall apply with its full force and effect when a land loser challenges the quantum of award in terms of **Sub-Section 5 and 6 to Section 3G of the 1956 Act**. Even when the land loser is further aggrieved with the arbitral award determining compensation, then the remedy to such land loser will lie under Section 34 of the Arbitration Act seeking setting aside of such award. The Arbitration Act itself is a complete code. The rights and remedies both are prescribed thereunder. The Arbitration Act and its procedure permits a detail fact finding enquiry by way of adducing evidence and if necessary, by witness action. The case made out in the writ petition and the reliefs claimed thereunder, as quoted above, would show that the petitioner was aggrieved with the quantum of award as to its inadequacy, inter alia, by not applying the provisions of the said Fair Compensation Act as discussed above. Since various fact finding enquiries are required to be made, the reliefs claimed in the writ petition cannot be granted by this Constitutional Court in exercise of its jurisdiction and authority under Article 226 of the Constitution of India.

39. The jurisdictional error as argued by the learned counsel for the petitioner on the part of the competent authority while exercising power under Section 38 of the Fair Compensation Act is of no substance at all, since power to take possession of land to be acquired by the collector in exercise of its authority under Section 38 of the Fair Compensation Act has no relevance or application in the case of acquisition of land under the 1956 Act, as already discussed above. Inasmuch as, the impugned notice dated June 5, 2024 though was issued in the name of Pamela alone and not in the name of Rumela, the instant petitioner, even if, Rumela challenges the same, on

the face of the said notice it appears that the same was issued under Section 3E(1) of the 1956 Act by the Jurisdictional Competent Authority under the Act. There is no jurisdictional error committed by the competent authority in issuing the said notice. Therefore, there is no jurisdictional error on the part of the competent authority in proceeding to take possession of the land of the petitioner under the 1956 Act.

40. Legal propositions are only authoritative insofar they are relevant to the facts in issue in a case. The ratio decidendi, which is binding authority, must be read in the light of the facts of the case and the issue considered. It is neither desirable nor permissible to pick out a word or sentence from the judgment of the Court, divorced from the context of question under consideration and treated it to be the complete law declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which are before the Court.
41. ***In the matter of: Bimal Kumar Shah & Ors.(supra)*** , relied upon by the learned counsel for the petitioner, the acquisition proceeding initiated by the Kolkata Municipal Corporation in exercise of its power under Section 352(a) of the **Kolkata Municipal Corporation Act, 1980** was challenged and quashing of the acquisition was prayed for. In the facts of the instant case the acquisition was never challenged by the petitioner. On the contrary the petitioner has accepted the compensation and through this writ petition the petitioner seeks to challenge the inadequacy of compensation. The petitioner has also submitted an application before the competent authority challenging the quantum of compensation and the same is lying as such.

The further prayer of the petitioner in this writ petition is that the compensation shall have to be revised by applying provisions of the said Fair Compensation Act. When the acquisition proceeding was challenged, the Hon'ble Supreme Court held prior notice informing the bearer of the right that the State intends to deprive them, of the right to property is a right in itself. Hence the ratio laid down by the Hon'ble Supreme Court ***In the matter of: Bimal Kumar Shah & Ors.(supra)*** has no application on the facts and circumstances of this case.

42. ***In the matter of: Merugu Narsaiah & Ors.(supra)*** the High Court at Telangana held that the provisions of the said Fair Compensation Act are strictly to be followed in case of the displacement of the petitioners therein from their respective lands. The contention of the petitioners therein was that the respondent authorities resorted to coercive tactics and forced them to sign the consent award offering arbitrary price for their lands which had no bearing to the market value of the land in the villages. In the instant case, the petitioner has accepted the acquisition proceeding held under the said 1956 Act by not challenging the same at any point of time and moreover the petitioner has accepted the compensation but challenges its inadequacy. To maintain such challenge the petitioner in the instant case has a specific statutory remedy under the Arbitration Act as provided in Sub-Section (5) and (6) to Section 3G of the said 1956 Act. In the event, the petitioner applies for arbitration in accordance with law, the applicability of the relevant provisions of the Fair Compensation Act shall be considered by the arbitrator only then. Thus, the ratio laid down by the Telangana High Court has no application in the facts of the instant writ petition.

43. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that this writ petition is totally devoid of any merit, frivolous in nature and should be dismissed.
44. The notice date **June 5, 2024, Annexure P-7 at page 96** to the writ petition has not been interfered with.
45. Accordingly, the interim order passed on **August 6, 2024** stands **discharged** and **vacated**.
46. Resultantly, this writ petition **WPA 19649 of 2024** stands **dismissed**, without any order as to costs.
47. However, if the petitioner shall apply for arbitral reference under the provisions of Sub-Section (5) and (6) to Section 3G of the said 1956 Act challenging the determination of compensation, the same shall proceed in accordance with law. The arbitral tribunal/arbitrator shall decide the extent of application of the Fair Compensation Act in the facts of the instant case of the petitioner and shall proceed to arrive at to a logical conclusion of the arbitral reference, as expeditiously as possible, strictly in accordance with law.

(Aniruddha Roy, J.)

Later:

Mr. Kallol Basu learned counsel appearing for the petitioner prays for stay of operation of this judgment for a limited period.

Such prayer is considered and rejected.

(Aniruddha Roy, J.)