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27.06.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 24925 of 2023

Adarsh Kumar Ram
Vs.
Union of India & Ors.

Mr. Srijib Chakraborty
Mr. Arindam Das
Ms. Rupsa Sreemani
Ms. Priyanka Lutra
Ms. Sudipa Mandi
...for the petitioner

Mr. Chandi Charan De, learned AGP
Ms. Sahina Sumi
...for the State

Ms. Sahina Sumi
...for the Regional Officer,
Ministry of Road,
Transport and Highway

By consent of all the parties, the matter is
taken up for hearing.

It is submitted on behalf of the petitioner that
an interim order dated October 18, 2023 which has
been repeatedly extended is due to expire. Thus, the
same be extended.

The State is unrepresented despite notice. Mr.
Chandi Charan De, Advocate, who usually appears
on behalf of the State-respondent, is requested to
appear on behalf of the State. A copy of the writ
petition is handed over to him. The services of Mr.

De be regularized by the Legal Remembrancer. Mr. De raises the issue of maintainability and submits that the writ petition is liable to be dismissed.

It is submitted on behalf of the State respondent that the instant petition is not maintainable in view of the specific statutory embargo under Section 3G of the National Highways Act, 1956. Accordingly, the petitioner has an alternative remedy and the petition is liable to be dismissed.

Mr. Dhiraj Trivedi, Learned DSGI, on behalf of the Regional Officer, Ministry of Road, Transport and Highway submits that the interim order is causing severe and irreparable injury and is liable to be vacated. He also submits that this Court has no jurisdiction to entertain this petition and that the Regional Highway Authority were deliberately and intentionally not originally impleaded in the writ petition as filed.

On behalf of the petitioner, Mr. Chakraborty argues that the interim order ought to be extended and there is no ground warranting dismissal of the writ petition.

It is submitted on behalf of the petitioner that there is no question of maintainability since the impugned order has been passed in contravention of law and de hors the provisions of the National Highways Act, 1956 read with the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013). For convenience, the relevant provisions of the National Highways Act, 1956 are set out below:

3G. Determination of amount payable as compensation. – 1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

Significantly, in the writ petition it is averred as follows:

“8. Your petitioner states that the NHAI has not issued any award copy under section 3G(1) of the National Highway Act, 1956 till date. The petitioner from the notice dated 30/11/206 came to know that the said land was being acquired as per notification dated 28.10.2016 and hence the petitioner is entitled to all kinds of benefit as per Schedule I, II and III of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 but as the award copy had not been supplied to the petitioner as per

section 3G(1) of the National Highways Act 1956 the petitioner till date is not being able to understand the details how the Competent Authority had determined the award in respect of the petitioner. It is submitted that after several representations/requests oral as well as written the petitioner did not receive any award copy from the concerned authority.

9. Your petitioner states that the petitioner had approached before the Arbitrator by filing an application dated 18.04.2018 U/S 3G(5) of the National Highways Act, 1956 praying for enhancement the amount of compensation which were offered by the competent authority without supplying the copy of the award and hence it is submitted that the said calculation was done without proper verification of the nature of the plot and without surveying the market value of these acquired land. It is submitted that the Competent Authority is bound to consider the provision of section 3G(7) as that's the mandatory statutory provision which is required to be reflected in the award and the land loser are entitled to the said benefits but the petitioner submits that the same had not been considered by the Competent Authority."

On behalf of the petitioner, it is submitted that the award for compensation has not been passed in accordance with law and is without jurisdiction. In passing the impugned award, the relevant and necessary components for calculation of compensation as stipulated in the First, Second

and Third Schedule of the Act of 2013 have not been taken into consideration.

These components are mandatory and ought to have been considered before passing of the award. Accordingly, the entire award is vitiated in law. There has also been no compliance with Section 3G sub-section 7 of the National Highways Act, 1956.

On a perusal of the writ petition and submissions made on behalf of the parties it is an admitted position that an award under Section 3G(1) of the National Highways Act, 1956 has been passed and the compensation amount has already been paid to the petitioner. Therefore the petitioner has full knowledge of the said award and has also filed an application under Section 3G(5) of the Act of 1956 praying for enhancement of compensation in terms of Act of 2013.

In view of the above indisputable and admitted position, the statutory embargo under Section 3G(5) of the Act has been triggered. The only remedy of the petitioner in challenging the award is to be determined by the Arbitrator to be appointed by the Central Government. This is the clear mandate of the section.

Under Article 226 of the Constitution, the High Court, has a discretion to entertain or not to entertain a writ petition. However, the High Court has imposed upon itself certain restrictions one of

which is that if an effective and efficacious remedy is available, the High Court would not ordinarily exercise jurisdiction. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. Although the High Court may still exercise its writ jurisdiction in spite of availability of the alternative remedy, depending upon the relevant and appropriate facts of case in the following three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged, however, the petitioners case does not attract any of the above exceptions.

In view of the clear statutory embargo, the petitioner has an effective alternative and efficacious remedy and there are no exceptional circumstances in warranting this Court to entertain the petition.

In such circumstances, there is no ground for extension of the interim order.

WPA 24925 of 2023 stands dismissed on the ground of maintainability.

Interim order, if any, stands vacated.

Liberty is granted to the petitioner to take necessary steps as may be advised in accordance with law.

(Ravi Krishan Kapur, J.)