

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 27796 of 2024

Basanti Bhaumik
Vs.
The Union of India & Ors.

For the petitioner : Mr. Sabyasachi Chatterjee
Mr. Badrul Karim
Mr. Kiran Sk
Mr. Sarajit Roy
Mr. Aritra Ghosh
Ms. Monalisa Sinha

For respondent Nos.1-3 : Mr. Rabindra Nath Bag
Ms. Indrani Chakraborty

For respondent No. 4-8 : Mr. Rajarshi Basu
Mr. S. T. Mina

Heard on : November 21, 2024

Judgment on : November 21, 2024

Aniruddha Roy, J. :

Facts:

1. The writ petitioner is a land loser whose land has been acquired for construction and expansion of **National Highway, NH-117**. The petitioner has received compensation as per the compensation assessed by the appropriate authority to an extent of **Rs.2,31,16,576/-** as would be evident

from **annexure P-8** at **page 62** to the writ petition. The petitioner for enhancement of compensation has already invoked the provisions laid down under **Sub-section 5 to Section 3G of the National Highways Act, 1956 (for short, the said 1956 Act)** read with **Sub-Section 6** and the arbitration is pending before the learned Arbitrator appointed by the competent authority.

2. Meanwhile the petitioner has travelled this Court by way of Article 226 of the Constitution of India. The first writ petition being **W.P.A. 28021 of 2023** has been disposed of by a co-ordinate Bench by its order dated **December 22, 2023, annexure P-13** at **page 73** to the writ petition. By an order dated **January 18, 2024, annexure P-14** at **page 75** to the writ petition the said previous order dated **December 22, 2023** was modified to the extent mentioned therein. The second writ petition being **W.P.A. 18475 of 2024** was filed by the petitioner which was disposed of by a co-ordinate bench by its order dated **September 13, 2024, annexure P-15** at **page 77** to the writ petition. The co-ordinate Bench observed that, there was no scope to pass any order in the writ petition as prayed for therein but granted liberty upon the petitioner to approach the Arbitrator with a prayer for appointment of a surveyor to measure the construction once again.

3. The petitioner applied for appointment of surveyor before the learned Arbitrator on **November 3, 2024**. The said application is pending before the learned Arbitrator.

4. Learned Arbitrator passed an order on **November 6, 2024, annexure P-16** at **page 99** to the writ petition. The order shows that on behalf of the petitioner/claimant a prayer was made for injunction upon the National Highway Authority not to demolish the scheduled property till re-measurement of the same. The order does not show the fate of the prayer for injunction made by the petitioner.
5. The relevant observations of the leaned Arbitrator from the said order dated **November 6, 2024** is quoted below:

“ Ld. Advocate on behalf of the Project Director PIU-Kolkata, NHAI appears and states that no statement of claim as per Order of the Ld. Arbitrator dated 05.02.2024 has been received from the Claimant till date. Further, She states, after 07 months, the petitioner filed a Writ Petition before the Hon’ble High Court, Calcutta surprising that hearing is going on at Arbitrator, this is misleading. Measurements of structure have been vetted by P.W.D., if there is any arithmetical mistake in calculation, correction may be done but we have objection regarding re-measurement of structure.

Addl. L.A.O,(HIT), Howrah on behalf of the Competent Authority under N.H. Act, 1956 & Spl. L.A.O(HIT), Howrah appears and submits written statement of defence on the petition filed by the Claimant. No statement of claim has been received from the Claimant till date as per order of the Ld. Arbitrator dated 05.02.2024.

Representative of the Competent Authority also stated that Ld. Advocate of the Claimant has mentioned regarding some arithmetical mistakes in calculation of the structure-value but the structure cannot be re-measured as it was done in presence of the representatives of the Competent Authority, PWD, NHAI and others.

After hearing all the parties, the Claimant is directed to serve the statement of claim to the Competent Authority and the Project Director, PIU-Kolkata, NHAI immediately. Further, all submissions made today regarding discrepancies in valuation of structure should be made in writing and placed at this end by 18.11.2024 with copy of the same to the Competent Authority under NH Act, 1956 & Spl.L.A.O(HIT), Howrah and Project Director, PIU-Kolkata, NHAI.

The Competent Authority under NH Act, 1956 & Spl.L.A.O(HIT), Howrah and Project Director, PIU – Kolkata, NHAI both are directed to submit statement of defence along with all documents of survey regarding measurement of the structure at this end by 25.11.2024 with copy of the same to the Claimant.

Next dated of hearing is fixed on 29.11.2024 at 4.00 P.M.”

6. The next date is fixed on **November 29, 2024** for arbitration.
7. National Highway authorities have started the demolition work of the existing old structure during pendency of the said application for re-measurement of the property for quantifying the correct compensation

payable to the petitioner in accordance with law. In support, the petitioner annexed several photographs **annexure P-17** at **pages 101 till 104** to the writ petition. The petitioner submitted a representation through electronic mail before the National Highway Authority on **November 19, 2024, annexure P-17** at **page 105** to the writ petition requesting the National Highway Authority not to carry out any demolition work since the application for re-measurement of the property is pending.

8. In the facts situation, this Court at the outset, has raised the point of maintainability of this writ petition in view of the arbitration provisions laid down under the said **1956 Act**, which has already been invoked.

Submissions:

9. Mr. Sabyasachi Chatterjee, learned counsel appearing for the petitioner submits that, since the National Highway Authority is in the process of demolition work, as would be evident from the said photographs referred to above and the application for re-measurement of the property is pending before the learned Arbitrator, in the event, the property is demolished in the meantime, the said application seeking re-measurement of the property will be infructuous and there shall be no scope for re-assessment of the compensation payable to the petitioner in accordance with law. Learned counsel for the petitioner submits that, admittedly the property has been acquired and the compensation already assessed has been received by the petitioner without prejudice to their rights and contentions but when the property is acquired the compensation has to be assessed in accordance with

law payable to the petitioner. In assessing the compensation, the authority has failed to follow the prescription of law and accordingly the compensation was un-just and wrong and the petitioner claims more compensation. Through this writ petition the petitioner prays for stay of the process of demolition till the arbitral reference is disposed of along with a prayer for restraining the National Highway Authority for taking physical possession of the land from the petitioner until disposal of the arbitration reference. Consequential reliefs are also claimed.

10. Learned counsel for the petitioner submits that, though the petitioner has invoked the arbitration provisions in terms of **sub-Sections (5) and (6) to Section 3G of the 1956 Act** but in view of an extraordinary situation as the National Highway Authority has been proceeding in a hot haste with a bad faith and *mala fide* to demolish the existing construction pending the arbitral reference, if such demolition is allowed there shall be no scope for re-assessment of the compensation as there will be no scope for re-measurement of the original structure which has been acquired. In view of such extraordinary situation he submits that, an immediate restraint order is warranted to be passed as prayed for in the writ petition by this Court in exercise of its power under Article 226 of the Constitution of India. He submits that, the arbitration proceeding provided under the said **1956 Act** is an alternative remedy which cannot stand in the way for this Constitutional Court to entertain this writ petition and adjudicate the same, and of course

to pass an interim order as prayed for therein. In support, he has relied upon the following decisions of the Hon'ble Supreme Court:

(i) In the matter of: Bhaven Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Another reported at (2022) 1 Supreme Court Cases 75;

(ii) In the matter of: Lalit Mohan Vs. M/S. National Agricultural Co. Federation of India Ltd. dated October 1, 2024 rendered in W.P.(C) 13833/2024, CM APPL. 57948-57949/2024;

(iii) In the matter of: Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited & Anr. reported at (2020) 15 Supreme Court Cases 706.

11. Learned counsel for the petitioner further submits that, there was no time left to the petitioner to apply before the appropriate forum under the **Arbitration and Conciliation Act, 1996** (for short the Arbitration Act) and the arbitral remedy provided under the said **1956 Act** is not efficacious. Hence this writ petition is maintainable.

12. Mr. Chatterjee further submits that, considering the said extraordinary circumstance as described above and the bad faith on the part of the National Highway Authority, this Constitutional Court is armed with enormous power to protect the individual petitioner from such situation. Hence this writ petition is maintainable.

13. Mr. Rabindranath Bag, learned counsel appearing for respondent Nos. 1 to 3 submits that, the petitioner has already accepted the compensation and has challenged the same before the arbitral proceeding and has been participating in the arbitration proceeding. He submits that, in view of the provisions laid down under **sub-Sections (5) and (6) to Section 3G of the 1956 Act** recourse is available under the Arbitration Act to the petitioner and this writ petition under Article 226 of the Constitution of India is not maintainable. Referring to the said representation dated **November 19, 2024** learned counsel for the respondents submits that, the allegations made against the National Highway Authority for tampering of evidence by demolishing the existing structure is totally baseless and frivolous. He further denies the allegations made against the personnel of National Highway Authority against their moral turpitude.

14. Learned counsel for the respondents further submits that, he has not received any instruction from his client whether demolition work as alleged by the petitioner has been commenced or in the process but from the statements made in the said representation dated **November 19, 2024** he submits that, the demolition work might not have been commenced.

Decision :

15. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the admitted fact is the land has been acquired and the petitioner has received the assessed compensation with protest and the petitioner applied for enhancement of

compensation by invoking the provisions under **sub-Sections (5) and (6) to Section 3G of the 1956 Act**. The arbitral reference is admittedly pending before the arbitrator and the next date is fixed **November 29, 2024**. The measurement of the property has been directed to be completed by the surveyor by **November 25, 2024**, as would be evident from the said order dated **November 6, 2024** passed by the learned arbitral tribunal.

16. On a plain reading of **sub-Sections (5) and (6) to Section 3G of the 1956 Act** which clearly shows that, if the amount determined by the competent authority against the acquisition of the property is not acceptable to 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. The Arbitrator has been appointed. Reference is on progress. **Sub-Section (6) to Section 3G** provides that, subject to provisions of the said **1956 Act**, the provisions of the Arbitration Act shall apply to every arbitration under the said **1956 Act**. This clearly shows that, the provisions are borrowed from the Arbitration Act for the adjudication of the arbitral reference which has already been commenced under the said **1956 Act**. The law is well settled that, the Arbitration Act itself is a **self-contained code/statute**. This statute provides for both rights and remedies. During pendency of the Arbitration, **Section 9** of the Arbitration Act provides a right to the party to apply for preservation of the subject-matter of the arbitration or for any other interim relief touching the subject-matter of the pending reference until an award is passed in the reference is put to execution. **Section 17** of the

Arbitration Act provides a party to the arbitration to apply for an interim relief before the arbitrator.

17. Considering the nature of relief claimed in the writ petition this Court is of the firm view that, appropriate statutory remedies are available to the petitioner under the said Arbitration Act. From a combined and conjoint reading of the relevant provisions of both the said **1956 Act** and the Arbitration Act, as already discussed above, this Court is also of the firm view that, Arbitration Act provides for the appropriate and efficacious remedy to the petitioner in the facts of this case to seek appropriate protection over and in respect of the subject-matter of the arbitration, which is the land in question, already acquired.

18. Considering the claims of the petitioner in the writ petition and from the statements made on behalf of the petitioner, this Court is also of the view that, the surveyor has already been appointed who shall cause the survey and file its report by **November 25, 2024** where several fact finding inquiries are required to be made by the surveyor and only on that basis the reassessment of compensation will be possible, if any. This constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not a fact finding court and the proceeding before this Court is summary in nature. Therefore, it cannot and should not be contended that, the claim for re-assessment of compensation, if any, can be adjudicated by a Writ Court and the arbitration remedy provided under **sub-Sections (5) and (6) to Section 3G of the 1956 Act** is an alternative remedy. Thus, the

arbitration remedy provided in **1956 Act** not being an alternative but being the appropriate and actual remedy, this Court in exercise of its authority under Article 226 of the Constitution of India shall and should not entertain the claim made by the petitioner for re-assessment of her compensation, if any.

19. **In the matter of: Bhaven Construction (Supra)**, the writ petition was entertained because there was a claim which ought to have been adjudicated under the local law of State enactment of Gujarat and there was conflict between the said State enactment and Arbitration Act. The Hon'ble Supreme Court further held that, it is therefore prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. In the facts of this case, there is no conflict between the Central Acts *i.e.* the **1956 Act** and the Arbitration Act. The provisions from Arbitration Act are borrowed and incorporated in the said **1956 Act** which otherwise is a complete code as already discussed above. For these reasons the ratio laid down **In the matter of : Bhaven Construction (Supra)** has no application in the facts of this case and on the contrary the observations support the contention of the respondents in the instant writ petition.

20. **In the matter of: Lalit Mohan (Supra)**, the writ petition was dismissed where the Hon'ble Supreme Court held that provisions under **Articles 226 and 227 of the Constitution of India** cannot be invoked where orders are already passed by the arbitral tribunal which are

procedural in nature. In the facts of the instant writ petition, substantive order has been passed in favour of the petitioner for causing the re-measurement of the property and to file a report by the surveyor by **November 25, 2024**. Even then if the petitioner is aggrieved, he has a remedy under the Arbitration Act for the claim made in the writ petition. Thus, the ratio laid down **In the matter of: Lalit Mohan (Supra)** has no application in the facts and circumstance of this case.

21. **In the matter of: Deep Industries Limited (Supra)**, the proceeding arose under Article 227 of the Constitution of India. In the facts of this case arbitration proceeding is the appropriate proceeding considering the claim of the petitioner in the writ petition as already discussed above. Therefore, the ratio decided **In the matter of: Deep Industries Limited (Supra)** has no application in the facts and circumstances of this case.

22. If a strong case has been made out showing an extraordinary circumstance and bad faith on the part of the **Article 12** authority, normally a constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution of India may interfere, though the remedy under Article 226 of the Constitution of India is equitable and the restriction on the Court is self-imposed to exercise its discretion and jurisdiction. If an extraordinary case or bad faith is established, the same may give rise to a very strong *prima facie* case and a balance of convenience in favour of the applicant to obtain an order of injunction or to maintain a writ petition. In the instant case, the petitioner has already availed of the arbitration remedy in terms of the **1956**

Act read with the Arbitration Act and provisions are there in the Arbitration Act where the petitioner can apply for necessary interim relief and the extraordinary circumstance and bad faith as alleged by the petitioner, if any, can be established beyond doubt before the arbitration Court or before the Arbitrator, the same would also give rise to a strong *prima facie* case and the balance of convenience may warrant to pass an appropriate interim order under the provisions of the Arbitration Act, for which the jurisdiction of this Constitutional Court in exercise of its power under Article 226 of the Constitution of India, is not at all required to be invoked and/or cannot be invoked.

23. Since, the writ petition has been decided on the point of maintainability, calling upon the parties to file affidavits is not required, as the pendency of this writ petition will not serve any fruitful purpose in view of the urgency shown by the petitioner. Hence, this Court has proceeded to deal with this writ petition for disposal at this stage.

24. In view of the foregoing reasons and discussions, this writ petition **WPA 27796 of 2024** stands **dismissed**, without any order as to costs.

25. It is made clear that, this Court has not gone into the merits of the claims of the petitioner mentioned in the writ petition and the petitioner shall be at liberty to apply before the appropriate forum under the Arbitration Act in accordance with law and to raise all her claims there.

26. In the event, the petitioner files appropriate proceeding under the Arbitration Act before the appropriate forum for any interim relief, such

forum shall deal with and dispose of the said interim prayer of the petitioner positively within a period of **seven days** from the date of filing of the said proceeding without being influenced by observation made by this Court, if any. Such proceeding shall be disposed of by the appropriate forum under the Arbitration Act on its own merit in accordance with law.

27. If the demolition work has not yet been commenced, then the National Highways Authority, if commences the same shall do so upon a prior notice of **seven days** to the petitioner.

28. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)