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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA/152/2024

MRIDULA MODAK
VS
THE STATE OF WEST BENGAL AND ORS

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Ms. Mrinmoyee Das
Mr. Rajkumar Mitra
...For the Petitioner.

Mr. Deborshi Dhar
... for the private respondent.

Ms. Supriya Singh
... for NHAI.

Mr. Nabankur Paul
Mr. Sandip Guha Roy
..For the State.

The petitioner is aggrieved by the order dated September 25, 2023 passed by the Special Land Acquisition Officer, Teesta Barrage Project, Siliguri whereby despite noticing that there is a dispute with regard to ownership of the land the authority decided that one of the parties will be entitled to the award whereas the other will not.

The land in question was acquired under the National Highways Act, 1956. The subject land was allotted in favour of the predecessor-in-interest of the petitioner and the private respondent. On the death of the original allottee, the private respondent managed to obtain patta in respect of a portion of the said land. Admittedly, there are four heirs of the original allottee

who has since expired. Apart from the petitioner and the private respondent there are two other co-owners of the subject land.

The respondent authority found that the private respondent was in possession of a portion of the land but, according to the respondent authority, the petitioner failed to show the specific area which is under her possession.

The Special Land Acquisition Officer in the impugned order records that, due to dispute over the ownership of land, status report of RS Plot No. 246 was sought for from the Sub-Divisional Officer, Siliguri. It was mentioned in the report by the SDO, Siliguri that the private respondent held freehold title in respect of 0.065 acre of land.

The Special Land Acquisition Officer found that there is a separate LR khatian in respect of the private respondent and upon verification of the RR Patta the said authority opined that the private respondent was entitled to the award in respect of 0.008 acre of acquired land. The petitioner was not found eligible to receive compensation on acquisition of the subject land.

Learned advocate representing the petitioner submits that since the land in question was not partitioned by metes and bounds, the respondent authority could not have come to the specific finding that the private respondent would be entitled to compensation whereas the petitioner, even though one of the co-owners of the subject land, would not be entitled to receive compensation.

Reliance has been placed on Section 3H(4) of the National Highways Act, 1956.

Reliance has also been placed on the judgment delivered by the High Court of Bombay, Bench at Aurangabad in the matter of ***Arun s/o Trimbakrao Lokare v. The State of Maharashtra & Ors. decided on June 29, 2017 reported in 2017 0 Supreme (Bom) 795 paragraphs 16 & 17.***

Learned advocate representing the private respondent submits that a portion of the land is already recorded in favour of the private respondent and patta has also been issued in his favour. The patta granted in favour of the private respondent specifically mentions the boundaries thereof. The portion of the land which the private respondent is occupying has been acquired for construction of the National Highway. It is specifically submitted that the land of the petitioner has not been acquired and, as such, the petitioner will not be entitled to receive compensation.

Learned advocate the State respondents submits that as the petitioner failed to produce any document and further failed to identify the particular portion over which the petitioner has possession, accordingly, the respondent authority decided to grant compensation in favour of the private respondent as he was able to identify the area in his possession which was acquired for the construction of the Highway.

Upon hearing the parties and upon perusal of the materials on record it appears that the land in question was originally allotted in favour of one Smt. Indu Rekha Mondal. The petitioner and the private respondent are the heirs and legal representatives of the said allottee. The parties agree that the land has not been partitioned by metes and bounds. On the death of the original

allottee the land in question devolved upon the legal heirs and representatives in equal shares. It could not be ascertained as to how a portion of the said land was carved out in favour of the private respondent for the purpose of allotment of patta in his favour.

There is no document to show that the land was partitioned by metes and bounds and there has been identification of the shares amongst the heirs and legal representatives of the deceased land owner.

The petitioner may not be in actual possession of the land and the petitioner may not be able to identify the portion in her possession but the same does not imply that the right of the petitioner to claim compensation if a portion of the land is acquired gets extinguished. Even if a portion of the land in question is acquired, then the compensation in respect of the acquired land is liable to be shared by the co-owners of the subject property, particularly because the land has not been partitioned by metes and bounds. In a joint property all the co-owners have equal right upon every inch of the said property. Not remaining in possession does not imply that the petitioner loses the ownership or the title of the subject property.

The Special Land Acquisition Officer opined that there was a dispute with regard to the ownership of land, but despite observing the dispute, decided to publish the award and assess compensation in favour of one of the parties depriving the others. The same is not tenable.

Section 3H(4) of the National Highways Act, 1956 lays down that if any dispute arises as to the apportionment of the amount or any part thereof, or to any person to whom the same or any part thereof is

payable, the Competent Authority shall refer the dispute to the decision of the principal civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

In the instant case, admittedly there is a dispute with regard to the quantum of land and the apportionment of the amount and to whom the same is payable.

In such a situation, the Competent Authority ought to have referred the dispute to the principal civil Court of original jurisdiction within whose limits the land is situated. The authority ought not to have decided to grant compensation in favour only one of the parties.

In Arun (supra) the Court relied upon the aforesaid provision of Section 3H(4) and held that whenever there is a dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the principal civil Court of original jurisdiction.

In view of the above, the impugned order passed by the Special Land Acquisition Officer dated September 25, 2023 is liable to set aside and is accordingly set aside.

The Special Land Acquisition Officer is directed to refer the dispute to the principal civil Court of original jurisdiction at the earliest.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)