

20.05.2024
Sl. No.19
tkm

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

MAT 55 of 2023
CAN 1 of 2023

In re : Khuki Bala Sarkar

...appellant

Mr. Supratick Shyamal

Mr. Alokesh Dalai

Ms. Smita Sinha Mitra

... .. for the appellant

Ms. Suman Sehanabis

Mr. T Bisws

Ms. A Deb

... .. for respondent no. 1

Mr. Nabankur Paul

Ms. Rima Sarkar

... .. for respondent nos. 2 to 5

Mr. Arjun Chowdhury

Mr. P Dutta Chowdhury

... .. for respondent no. 7

Ms. Supriya Singh

... .. for NHAI

1. Defects are minor and may be ignored.
2. Having considered the averments made in the application for condonation of delay, delay in preferring the appeal, is condoned.
3. CAN 1 of 2023 is allowed.
4. By common judgment and order, two writ petitions being WPA 1028 of 2022 and WPA 1228 of 2022 were disposed of. Appellant is the mother of writ petitioner in WPA 1028 of 2022. Both of them claimed that they are owners of the land which had been acquired by National

Highway Authority of India (hereinafter referred to NHAI) for expanding NH 31, a lifeline to the northeastern States. By the impugned order, both the writ petitions were disposed of by referring the dispute before the learned district Judge, Jalpaiguri for apportionment of compensation awarded by respondent NHAI between the appellant and respondent no. 7 (petitioner in WPA 1228 of 2022). Respondent no. 7 was also directed to deposit compensation amount received by him in respect of 14 decimals of acquired land before the district Judge and the said amount was directed to be kept in an interest bearing amount of any nationalized bank till disposal of the reference.

5. Respondent no. 7 (petitioner in WPA 1228 of 2022) unsuccessfully appealed against the said order before a coordinate Bench.
6. The coordinate Bench by judgment and order dated 15.6.2023 upheld the decision of the learned single Judge in view of the law declared in *Dilip Dutta vs. State of West Bengal*.
7. Learned counsel for the appellant strenuously argues respondent no. 7 is not entitled to any portion of the compensation amount. This issue requires to be decided by this court.
8. Learned counsel for the State and NHAI contend issue with regard to apportionment of

compensation if any, is to be appreciated by the learned district Judge.

9. We are in wholesome agreement with the submissions made by the respondent State/NHAI.

10. Section 3H(4) of National Highways Act inter alia reads as follows :

“(4) 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.”

11. Indubitably, the aforesaid provision empowers the district Judge to adjudicate any dispute relating to apportionment of the compensation amount fixed under the Act.

12. In light of the aforesaid, we are of the considered view the internecine dispute between the appellant and the private respondent no. 7 falls squarely within the jurisdiction of the district Judge. Learned single Judge had rightly referred the matter to the said judicial authority for adjudication.

13. Learned counsel for respondent no. 7 submits the order impugned is unclear with regard to portion of the land in respect of which compensation awarded is to be deposited before the district Judge.
14. Learned counsel for the appellant does not dispute this contention.
15. Learned counsel for respondent State submits they may be permitted to submit a list of the lands acquired and the compensation paid with regard to each parcel of land before the district Judge.
16. In light of aforesaid submission, we direct respondent/State to submit a list of the parcels of land acquired before the district Judge and the compensation paid with regard to each parcel. Learned district Judge shall look into the aforesaid materials and other documents as the Judge may deem fit and proper and direct respondent no. 7 to deposit maximum compensation amount received with regard to 14 decimals of the total acquired land and the said respondent shall deposit the said amount within four weeks from such determination. Upon deposit of the said amount, the same shall be kept in an interest bearing account of any nationalized bank as directed by the learned single Bench.

17. The entire reference shall be disposed of within
18 months from the date of reference.

18. With the aforesaid directions MAT 55 of 2023 is
disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)