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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4858/2024 & CM APPL. 19865/2024 (FOR DIRECTIONS)

RAJPAL SINGH YADAVPetitioner
Through: Mr. Kaushal Yadav and Mr.
Nandlal Kr. Mishra, Advs.
versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Avnish Singh, SPC with
Mr. Aakash Meena, Adv. for R-
1.
Mr. Santosh Kumar, SC with
Mr. Devansh Malhotra and Ms.
Nidhi Rani, Advs. for
respondent/NHAI.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
13.11.2024

1. The present writ petition has been preferred seeking the following reliefs:-

“A. Issue a writ order or direction in the nature of mandamus directing the respondent No.1 to 4 to release the compensation for the acquired land of the petitioner measuring 0.179 Hec. comprising of Gata No.144/0.0358, situated on NH-91 of Village Gangapur, Mohammadpur, Kurawali, District Mainpuri, U.P. in terms of order dated 22.12.2022 of the learned District Judge, Mainpuri passed in appeal number 63/2022.

B. Issue a writ order or direction in the nature of mandamus directing the respondent No.1 to 4 to pay the interest to the petitioner on delayed release of the compensation to the petitioner in terms of provisions of section 12 and 80 of the Act of 2013 from 30.06.2018 till its actual release in favour of the petitioner.



C. Pass such other and further orders as this Hon'ble Court may deem fit and proper.”

2. As is manifest from the above, the petitioner seeks release of compensation in terms of the order dated 22 December 2022 passed by the District Judge, Mainpuri. The aforesaid judgment came to be rendered on a petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 which had come to be instituted by the writ petitioner aggrieved by the determination of compensation under Section 3G of the National Highways Act, 1956 [**“1956 Act”**].
3. The grievance of the petitioner was that although and according to them, the land which was acquired and had been put to commercial use, the compensation had been awarded treating it to be agricultural.
4. Dealing with the aforesaid challenge, the District Judge on the Section 34 petition observed as follows:

“7. It is clear from the perusal of case number 2268/2019 that in his application submitted by the applicant before opposite party No.1, the applicant has clearly mentioned that the applicant is a owner of one half share of the land at Gata No.144/0.5470 hectare as recorded on account number 150 of crop year 1421 to 1426 and the same is mutated in Khatauni of year 1421 to 1426 Fasli at Khata No.150 of Village Gangapur, Muammadpur, Tehsil Kurawali. The above land of the applicant has been declared industrial land by the Additional District Magistrate Mainpuri in case No.18/05 Rajpal Sindh vs State on 07.04.2005 under Section 143 of the Uttar Pradesh Zamindari Abolition Act, on which his petrol pump has been established for almost 20 years back. The above acquired land of the applicant is commercial land and therefore the applicant be granted the compensation as per the rates fixed for commercial land and by fixing the compensation at agriculture rate of his commercial law, a great prejudice is caused to his rights. In the above case the applicant has also filed the Khatauni wherein the land of applicant is stated to be declared as commercial land in case No.18/2005, Rajpal Singh Vs. State in this context the order passed in order of arbitrator dated 13.12.2019 is perused. The arbitrator opposite party No.1 in his order has stated that on the call the applicant alongwith his counsel appeared. In his order the arbitrator has not given any findings on the issue that as to why the land of the applicant for the purposes of compensation is treated as



agriculture land, when the land of the applicant is commercial land and a petrol pump is existing there of the applicant. In this regard the award passed by the land acquisition authority is also perused passed in case No.33/2018 and from the perusal of the same it appears that for all the lands the compensation is decided in accordance of agriculture rates.

8. Thus, from the perusal of the award passed in case No.33/2018 and the case No.2268/2019 presented before opposite party No.1 against the same, it is clear that the objection raised by the applicant that his acquired land in the year 2005 under Section 143 of Uttar Pradesh Zamindari Abolition Act was declared as Industrial land, is not considered it. Therefore, in such a situation the award dated 31.12.2019 is liable to be set aside.”

5. The Section 34 petition ultimately came to be allowed in the following terms:

“This case is under Section 34 Arbitration and Conciliation Act 1996 is accepted, the order dated 31.12.2019 passed by Arbitrator NHAI Collector/District Magistrate Mainpuri in case No.02268/2019 is set aside.”

6. Undisputedly against the aforesaid order, the National Highway Authority of India [“NHAI”] has instituted a challenge before the Allahabad High Court and which remains pending. However, and notwithstanding the pendency of that appeal at the behest of the NHAI, the issue which arises is whether the petitioner is entitled to the reliefs as framed.

7. As is manifest from the reading of the judgment rendered by the District Judge, although the original award was set aside, no further relief in monetary terms was either framed or granted. Consequently, the petitioner would be left with no option but to commence the process of determination as contemplated under Section 3G afresh. Section 3G as appearing in the 1956 Act reads as follows:

“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.



(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the



land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

8. It becomes apparent from a reading of that provision that if the amount determined by the Competent Authority is found to be unacceptable, the party concerned is entitled to initiate proceedings for arbitration and for the Arbitral Tribunal to determine whether the compensation as computed is liable to be enhanced.

9. Post the order of the District Judge dated 22 December 2022 that process is yet to be initiated by the writ petitioner.

10. Accordingly, and while we find ourselves unable to grant the reliefs as prayed for, we accord liberty to the writ petitioner to initiate proceedings as contemplated under Section 3G of the 1956 Act. Any claim that may be laid before the designated arbitrator of the NHAI exercising territorial jurisdiction over the land which was acquired, may be examined and disposed of with due expedition and in accordance with law.

11. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J

DHARMESH SHARMA, J

NOVEMBER 13, 2024/g