

S/L 8
10.04.2025
Court. No. 19
Suwayan

WPA 17466 of 2023

**Nanigopal Das
Vs.
Union of India & Ors.**

*Mr. Arindam Das
Mr. Snehasish Ghosh*

...for the petitioner.

*Mr. Chandi Charan De, AGP
Mr. Anirban Sarkar*

...for the State.

*Ms. Manika Roy
Ms. Ankita Chowdhury
Mr. Atanu Sur*

...for the NHAI.

1. In the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically against the respondent no. 7 for quashing and/or setting aside the entire proceeding vide LA Case No. 54A/NH/10-11 as conducted in terms of the provisions of the National Highways Act, 1956 (hereinafter referred to as the 'said Act of 1956' in short) along with other ancillary reliefs.
2. In course of his submission Mr. Das, learned Advocate for the writ petitioner at the very outset draws attention of this Court to the provision of Section 3G of the said Act of 1956. It is submitted by Mr. Das that the amount of compensation as has been received by the writ petitioner pursuant to the aforementioned LA case was exceptionally low and thus the said compensation as awarded by the

competent authority under Section 3G(1) of the said Act of 1956 was received by the writ petitioner under protest. It is further submitted that in paragraph no. 8 of the instant writ petition it has been stated by the writ petitioner on affidavit that as on this day the writ petitioner has not received the copy of the said award from the respondent no. 7 who is the competent authority under Section 3G(1) of the said Act of 1956.

3. It is further submitted by Mr. Das that while passing the award the respondent no. 7 being the competent authority under the said Act of 1956 had failed to visualize the parameters for fixing compensation as has been mentioned in Section 3G(7) Clauses (a) to (d). It is further submitted by Mr. Das that in view of the prevailing guideline the respondent no. 7 is duty bound to fix the compensation in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the said Act of 2013). It is submitted further that the respondent no. 7/authority most erroneously calculated the compensation under the provisions of the Act of 1956 without giving any adherence to the recent guideline for fixing compensation under the said Act of 2013 since according to the writ petitioner the award was declared after the cut-off date that is 01.01.2015.
4. On being asked by this Court Mr. Das submits before this Court that though under Section 3G(5) of the said

Act of 1956 there is a provision for arbitration in the event the amount determined by the competent authority is not acceptable either by the land loser or by the National Highway Authority but according to Mr. Das the scope of arbitration is not at all wide and the arbitrator cannot pass an award considering the provision of Section 3G(7) of the said Act of 1956.

5. *Per contra*, Mr. Roy, learned Advocate for the respondent nos. 2, 3 and 4 that is the National Highway Authority and its functionaries draws attention of this Court to the report as submitted before this Court and as affirmed on 13.12.2023. It is submitted by Ms. Roy that the quantum of award as has been determined by the respondent no. 7 is adequate and in respect of the Mouzas under acquisition the compensation has been paid and disbursed in respect of the majority of land holding under acquisition on or before 31.12.2014 and, therefore, there is no scope to assess the compensation in terms of the provision of the said Act of 2013.

6. In course of his submission Mr. De, learned AGP appearing on behalf of the respondents/State and its functionaries also draws attention of this Court to paragraph no. 7 of the instant writ petition. It is submitted by Mr. De that from paragraph no. 7 of the instant writ petition it would reveal that the present writ petitioner has already availed the remedy under Section 3G(5) of the said Act of 1956 that is by

approaching before the arbitrator. It is thus submitted by Mr. De that since the writ petitioner has already availed the alternative remedy and since the arbitrator has not passed any award under Section 3G(5) of the said Act of 1956 as yet. There is hardly any scope to interfere with the award as determined by the respondent no. 7 who is the competent authority under Section 3G(1) of the said Act of 1956. It is further submitted by Mr. De that the instant writ petition is premature and is thus liable to be dismissed.

7. On careful consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties at length this Court considers that for effective adjudication of the instant *lis* the provision of the Section 3G of the said Act of 1956 is required to be looked into and the same is quoted hereinbelow in verbatim:

“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 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 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 serving of such land from other land;

(c) the damage, if any, sustained by the persons 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. On perusal of the provision of Section 3G of the said Act of 1956 it reveals that it is the intention of the legislature that in the event a land is acquired under the provisions of the said Act of 1956 the initial responsibility to determine the award is upon the competent authority. It is not in dispute that as per the prevailing guideline the provisions of the said Act of 2013 will apply while determining the amount of compensation under Section 3G(1) of the said Act of 1956 with a rider that the provisions of the first Schedule, as well as Section 30(3) of the Act of 2013 will be applicable only in a case where compensation has not been paid in respect of majority of the land holding under acquisition as on 31.12.2014.
9. At this juncture, if I again look to the provisions of Section 3G of the said Act of 1956 it appears to this Court that Section 3G(5) of the said Act of 1956 made

it clear that in the event the amount determined by the competent authority is not acceptable to either of the parties that is the land loser and the National Highway Authority the amount shall be determined on an application either by the said two parties by an arbitrator to be appointed by the Central Government by passing an award.

10. Though in course of his submission Mr. Das, learned Advocate appearing on behalf writ petitioner strongly contended that the scope of the arbitration and/or power of the arbitrator under Section 3G(5) of the said Act of 1956 is very limited, however, such submission of Mr. Das is not acceptable to this Court in view of the fact that Section 3G(7) clearly postulates that the arbitrator as appointed under Section 3G(5) is also duty bound to take into consideration the various parameters as has been mentioned in Clauses (a) to (d) of the said Sub-Section.

11. This Court thus considers that there is ample opportunity on behalf of the writ petitioner to approach the arbitrator under Section 3G(5) of the said Act of 1956.

12. This Court thus considers that the instant writ petition is premature and cannot be entertained at least at this stage. However, since there lies a confusion as to whether the writ petitioner at all received the copy of the award as passed by the respondent no. 7 this Court while disposing the

instant writ petition directs the respondent no. 7 to provide the writ petitioner a copy of the award as passed by him in respect of the writ petitioner positively within thirty working days from the date of communication of the server copy of this order.

13. Liberty is given to the writ petitioner to approach the arbitrator under Section 3G(5) under the said Act of 1956 afresh within a period of thirty working days from the date of receipt of copy of the said award and in the event such an approach is made by the writ petitioner it will be presumed that delay, if there be any, in preferring an application before the arbitrator has been condoned and the earlier application, if there be any, on the part of the writ petitioner has become infructuous and redundant.

14. It is further clarified that in the event the writ petitioner approaches the arbitrator afresh as indicated hereinabove, the arbitrator under Section 3G(5) of the said Act of 1956 shall proceed with the said arbitration holding that no previous arbitration application has been filed before him by the writ petitioner challenging the compensation as granted by the respondent no. 7.

15. Liberty is given to the learned Advocate for the writ petitioner to communicate the server copy of this order to the respondent no. 7 forthwith.

16. Respondent no. 7 is directed to act on the server copy of this order.

17. With the aforementioned observation, the instant writ petition being WPA 17466 of 2023 is disposed of.
18. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)