

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 21413 of 2024

Santosh Kumar Saha and others
-Vs-
The State of West Bengal and others

For the Petitioners:

Mr. Partha Pratim Roy
Mr. Anirban Das
Mr. Dyutiman Banerjee
Mr. Samrat Chakraborty

For the State:

Mr. Chandi Charan Dey, AGP
Mrs. Reshma Chatterjee

For the respondent nos.5&6

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

Hearing concluded on:

08.04.2025.

Judgment on:

08.04.2025.

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition the writ petitioners have prayed for issuance of writ of mandamus for quashing and/or setting aside the order dated 24.01.2024 as passed by the respondent no. 2 herein whereby and whereunder the said respondent no. 2 found no scope for further enhancement of compensation as disbursed to the writ petitioners as per the order of the competent authority (hereinafter referred to as

‘CALA’ in short) under Section 3G of the National Highways Act, 1956 (hereinafter referred to as the said Act of 1956) and/or by the arbitrator under Section 3G(5) of the said Act of 1956 in accordance with the first schedule 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).

2. In course of his argument Mr. Roy at the very outset draws attention of this Court to the various provisions of the said Act of 1956 namely, Sections 3D, 3F, 3G, 3H and 3J of the said Act of 1956. Attention of this Court to the provision of Section 105 of the said Act of 2013.

3. At this juncture Mr. Roy draws attention of this Court to page nos. 96 to 110 of the instant writ petition being a copy of the guideline dated 28.12.2017 (hereinafter referred to as the “said guideline” in short) as issued by the Joint Secretary, Government of India, Ministry of Road Transport and Highways addressed to the different authorities including the Chief Secretaries to all State Governments/Administrators of Union Territories. Drawing attention to Clause 4 of the said guideline it is submitted by Mr. Roy that by issuing the said guideline the applicability of the Fourth Schedule of the said Act of 2013 in respect of the said Act of 1956 has been reminded to the various authorities pursuant to various ordinances followed by issuance of the RFCTLARR (Removal of Difficulties) Order, 2015 vide notification dated 28th August, 2015.

4. It is submitted by Mr. Roy that with the publication of the notification of the said Order it has been made clear that the provisions relating to determination of compensation in accordance with the first Schedule of the said Act of 2013 has been made applicable in respect of the said Act of 1956. At this juncture Mr. Roy took me to Clause 4.6 of the said guideline the relevant portions of which is quoted hereinbelow:

“4.6 Date of determination of market value of land

(i)

(ii)

(iii) *By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act, 1956 with effect from 01.01.2015. As such, the following is clarified;*

(c) All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.

(d) In cases, where the land acquisition process was initiated and award of compensation under Section 3G had also been announced before 01.01.2015 but the full amount of Award had not been deposited by the acquiring agency with CALA, the compensation amount would be liable to be determined in accordance with the First Schedule w.e.f. 01.01.2015.

(e) In cases, where the process of acquisition of land stood completed (i.e. Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the CALA, and compensation paid to the landowners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process

would be deemed to have been completed and settled. Such cases would not be re-opened.”

5. Mr. Roy also draws attention of this Court to Clause 5 of the said guideline. It is submitted by Mr. Roy that the Clause 5 of the said guideline stipulates regarding payment of additional amount calculated at the rate of 12 per cent of the market value in terms of Section 30 (3) of the said Act of 2013.

6. This Court considers that Clause 5.5 of the said guideline is also required to be looked into for proper adjudication of the controversy as involved in the instant writ petition and the same is also quoted hereinbelow in verbatim:

“5.5 However, a harmonious reading of all the related provisions of the REFTLARR Act, the pronouncements of the Courts on payment of compensation under Section 23(1A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894 in respect of land acquired under the NH Act, 1956, read with Section 105(3) of the RFCTLARR Act, 2013, especially when the market value has to be reckoned as on the date of issue of Section 3A of the NH Act, would go to show that payment of ‘amount’ of 12% on the market value of land from the date of publication of Section 3A of the NH Act, 1956 till the announcement of award under Section 3G or taking possession of land whichever is earlier, is payable.”

7. In course of his argument Mr. Roy draws attention of this Court to page nos. 354 to 356 of the instant writ petition being a server copy of the order dated 18.07.2023 as passed by a co-ordinate Bench in WPA 7722 of 2021. It is submitted that while disposing the said writ petition, the said

co-ordinate Bench granted liberty to the present writ petitioners to submit a comprehensive representation before the respondent no. 2 therein within a stipulated period and the said respondent no. 2 therein was directed to consider and dispose of the representation of the writ petitioners also within a stipulated period.

8. At this juncture, Mr. Roy draws attention of this Court to the order under challenge a copy of which has been annexed at page nos. 359 to 366 of the instant writ petition. It is submitted on behalf of the writ petitioners that the respondent no. 2 herein while passing the order under challenge has failed to visualize the true spirit of the said guideline and thus misdirected himself in coming to a conclusion that the writ petitioners are not entitled to enhanced compensation in terms of the first Schedule of the said Act of 2013 irrespective of the fact that the writ petitioners have not challenged the quantum of award as passed by CALA as well as by the arbitrator. It is submitted by Mr. Roy that in the event the respondent no. 2 had considered the representation of the writ petitioners in its proper perspective the respondent no. 2 ought to have come to a finding that the writ petitioners are entitled to solatium equivalent to 100 per cent market value of the land together with 12 per cent interest on such market value under Section 30(3) of the said Act of 2013.

9. At this juncture, Mr. Roy draws attention of this Court to the report as submitted by the respondent/State as affirmed on 25.02.2025.

Drawing attention to the annexures to such report more specifically at page no. 13 of such report it is submitted that from the said page no. 13 of the said report it would reveal that in respect of 'Itla Mouza' that is where the properties of the writ petitioners were situated the award was declared after 31.12.2014 and actually the award was declared in respect of 'Itla Mouza' on 31.03.2015. It is submitted that in view of the fact that in respect of 'Itla Mouza' since the award by the CALA was announced on 31.03.2015 that is after 31.12.2014 the beneficial effect of Clause 4.6 (iii) (c) of the said guideline ought to have been granted in favour of the writ petitioners.

10. In course of his submission Mr. Roy places his reliance upon the reported decision of *Narain Das Jain (since deceased) by Lrs. Vs. Agra Nagar Mahapalika, Agra* reported in (1991) 4 SCC 212. It is thus submitted by Mr. Roy that reliefs may be granted to the writ petitioners in terms of the prayers made in the instant writ petition.

11. *Per contra*, Ms. Roy, learned Advocate appearing on behalf of the respondent nos. 5 and 6 and its functionaries also places her reliance upon Section 3G of the said Act of 1956. It is submitted by Ms. Roy that since on behalf of the writ petitioners the award as declared by CALA has been challenged in an arbitration under Section 3G(5) of the said Act of 1956 and in view of the fact that the said arbitrator has passed an award and also in view of the fact that no steps have been taken by the writ petitioners for challenging the said award of the arbitrator as per the

provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act of 1996), the said award as passed by the arbitrator has reached its finality and, therefore, by no stretch of imagination it can be said that there is at all any scope to interfere with the said award by increasing the quantum of compensation in a judicial review since the writ petitioners had an alternative remedy but he had not availed such remedy.

12. In her next limb of submission Ms. Roy draws attention of this Court to page nos. 33 and 34 of the report as submitted by the respondent nos. 5 and 6 and as affirmed on March 6, 2025. It is submitted by Ms. Roy that on conjoint perusal of the page nos. 33 and 34 of the said report dated March 6, 2025 it would reveal that in respect most of the Mouzas particulars of which have been given in the second column of the said two pages disbursement of compensation was completed prior to 31.12.2014.

13. At this juncture, Ms. Roy took me to paragraph no. 25 of the instant writ petition *vis-à-vis* page nos. 9 and 10 of the said report dated March 6, 2025. It is argued by Ms. Roy that the relevant portion of the said guideline namely; Clause 4.6 (iii) have been quoted in page nos. 9 and 10 of the said report wherefrom it would reveal that as per the said guideline in cases of land acquisition where awards has not been announced under Section 3G of the said Act of 1956 till 31.12.2014 or where such awards have been announced but compensation had not been

paid in respect of majority of the land holdings under acquisition as on 31.12.2014 the compensation would be payable in accordance with the first Schedule of the said Act of 2013.

14. It is submitted by Ms. Roy that in the event the said relevant Clause No.4.6 (iii) of the said guideline is considered in the perspective of the order under challenge it would reveal from the internal page nos. 4 to 7 of the order under challenge that in respect of the majority of the land holding under acquisition compensation has been disbursed prior to the cut off date that is before 31.12.2014.

15. It is further submitted by Ms. Roy that in the event Clause 4.6 (iii) (d) and (e) are also considered in the perspective of the facts and circumstances of the instant writ petition, it would again reveal that the writ petitioners are not entitled to relief as prayed for. While drawing attention to page no.10 of the said report dated 06.03.2025, it is further argued by Ms. Roy that from the said page No.10, it would reveal that in connection with relevant land acquisition process, compensation has been announced and disbursed in respect of 57 moujas out of 78 moujas that is in respect of the 'majority of the land holding' under acquisition under Section 3G(1) of the Act of 1956 prior to the cut off date of 01.01.2015.

16. It is thus submitted by Mr. Roy that the instant writ petition may be dismissed.

17. In course of his submission Mr. Dey, learned Additional Government Pleader appearing for the State respondent and its

functionaries also draws attention of this court to Section 3G of the said Act of 1956.

18. It is submitted by Mr. Roy, that a Co-ordinate Bench while passing the order dated 18.07.2023 in WPA 7722 of 2021 did not give any definite finding with regard to the actual entitlement of the writ petitioner regarding the statutory relief as claimed for pursuant to the said guidelines. While referring to the order under challenge, Mr. Dey submits before this court that since the award as passed by CALA and the enhanced award as passed by the arbitrator under Section 3G(5) of the said Act of 1956 have already attained finality, the writ petitioner is not entitled to any enhanced compensation as prayed for.

19. It is further submitted by Mr. Dey that in page no.364 of the instant writ petition, being a part of the order under challenge the respondent no.2 has rightly come to a finding as to why the beneficial provision of the said guidelines is not applicable to the present writ petitioners.

20. It is further submitted by Mr. Dey that in the order under challenge the respondent No.2/authority rightly noticed that the writ petitioners are also not entitled any further amount of compensation as per the provisions of Clause 4.6(iii)(e) of the said guideline. Mr. Dey thus submits that it is a fit case for the dismissal of the instant writ petition.

21. On careful consideration of the entire materials as placed before this court and after hearing learned counsels for the contending parties, this court considers that for effective adjudication of the instant *lis*, the

provision of Section 3G of the said Act of 1956 is required to be looked into. Section 3G of the said Act of 1956 is quoted below in verbatim.

“3G. Determination of amount payable as compensation.-

1.
2.
3.
4.
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.”

22. At this juncture, this court proposes to look to the said guideline which has been annexed at page nos.96 to 110 of the instant writ petition. In the foregoing paragraph of the instant judgment, this court has already dealt with the different clauses of the said guidelines and in considered view of this court for effective determination of the matter in dispute Clause 4.6 of the said guidelines is required to be looked into which has been quoted paragraph 4 of the instant judgement.

23. On careful perusal of the Clause 4.6 (iii) (c), (d) and (e) of the said guideline, it appears to this court that the said guideline clearly indicates that the first, second and third schedule of the Act of 2013 have been

made applicable in respect of the said Act of 1956 with effect from 01.01.2015 with some riders which have been mentioned in Sub-clauses (c), (d) and (e) of Clause 4.6 of the said guideline.

24. At this juncture, if I look to the sub-clause (c) of Clause 4.6 (iii) once again, it appears that the said guideline clearly clarifies that the benefit of first schedule of the said Act of 2013 will apply in case of land acquisition under the Act of 1956 where the awards have not been announced under Section 3G of the said Act of 1956 till 31.12.2014 or where such award had been announced but compensation had not been paid in respect of the majority of the land holding under acquisition as on 31.12.2014.

25. This court has noticed a line in Sub-clause (c) under the following words : *“in respect of majority of the land holding under acquisition as on 31.12.2014”*. It thus appears to this court that while issuing the said guideline, the Joint Secretary of the Government of India, Ministry of Road, Transport and Highways, made it clear that the said underlined portion has got its applicability in respect of both the cases, namely, (a) all cases of land acquisition where the awards have not been announced under Section 3G of the said Act of 1956 till 31.12.2014, or (b) where such awards had been announced but compensation had not been paid.

26. It thus appears to this court that the underlined portion of the said sub-clause (c) applies in respect of the previous portion as well as the later portion as quoted hereinabove.

27. At this juncture, if I look to page nos.13 and 14 of the report of the State as affirmed on 25.02.2025, it would reveal that in respect of the land of the writ petitioners situated at 'Itla mouza', the award under Section 3G of the said Act of 1956 was passed after 31.12.2014, i.e, more specifically on 31.03.2015.

28. At this juncture, if I once again look to the internal page nos.4, 5, 6 and 7 of the order under challenge, it reveals to this court that in respect of the majority of the land holding under acquisition as on 31.12.2014 the awards have been announced and compensation has been paid prior to the cut off date, i.e., 31.12.2014. In view of such, this court finds sufficient force in the submissions of Ms. Roy and Mr. Dey that though in respect of mouza Itla, award was declared after 31.12.2014 more specifically on 31.03.2015, but in respect of the majority of the land holding under self-same acquisition process, awards have been declared either on or before 31.12.2014.

29. As rightly pointed by Mr. Dey, learned AGP for the State, if I look to Clause 4.6 (iii) (e) of the said guideline, it again appears to this court that **in respect of the majority of the land under acquisition** the process of acquisition has been completed by passing of the award by CALA and by deposit of the amount by the acquiring body with the CALA and disbursement of compensation to the land owners on or before the cut off date that is 31.12.2014 and thus as per the said guideline, those cases cannot be reopened any further.

30. In absence of any perversity in the order under challenge, this court finds very little scope to interfere with the order impugned.

31. The reported decision of *Narain Das Jain vs. Agra Nagar Mahapalika*, Agra reported in (1991) 4 SCC 212 as cited from the side of the writ petitioners, in considered view of this court has got no manner of application in the instant *lis* since the said reported decision deals with a different subject and thus the said reported decision is distinguishable from the facts and circumstances of the instant writ petition.

32. In view of the discussion made hereinabove, this court thus finds no infirmity in the order under challenge, in view of the fact the respondent no.2 acted in accordance with Clause 4.5 (iii) of the said guideline.

33. The instant writ petition is thus devoid of any merit and is thus dismissed.

34. There shall be however no order as to costs.

35. Urgent photostat certified copy of this judgement, if applied for, be supplied upon compliance of all necessary formalities.

(PARTHA SARATHI SEN, J.)