

(2024) 03 GAU CK 0043

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5396 Of 2023

Achyut Kr Gohain

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

National Highways Act, 1956 — Section 3A, 3D, 3G(5), 3G(1), 3G(2), 19G

Citation : (2024) 03 GAU CK 0043

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : A. Buragohain, C. Baruah

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. Buragohain, learned counsel for the petitioner. Also heard Mr. C. Baruah, learned Standing Counsel for the NHIDCL representing the respondent No. 3.

2. Assailing an order dated 08.07.2023 issued by the General Manager (P), NHIDCL, PMU-Dibrugarh (respondent No. 3) rejecting the claim made by the petitioner for payment of compensation for acquiring the land, the present writ petition is filed.

3. The brief facts of the case is that by a Notification dated 15.09.2014, the land of the petitioner measuring an area of 1 Bigha 3 Katha 18 Lessa covered by Dag No. 103 at village 108, Khowang FS Grant, under Mouza-Moran in the district of Dibrugarh was acquired for construction of four laning National Highways-37 in the stretch of Demow to Dibrugarh. Accordingly, compensation with regard to zirat has already been paid to the petitioner.

4. The award under Section 19G of the National Highways Act, 1956 was also passed by the competent authorities. In terms of the aforesaid award, the petitioner was granted compensation against the value of land under acquisition, 100% solatium on the amount in accordance with the Right to Fair Compensation

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, the Act of 2013) and additional compensation @ 12% per annum on the market value of the land under the Act of 2013 and some other statutory payments.

5. However, by the impugned order dated 08.07.2023, the National Highways Authorities has declined to pay compensation against land value on the ground that in similar cases, such prayer for compensation has been rejected in terms of the guidelines of the NHIDCL inasmuch as it is the case of the National Highway Authorities that this were recorded as Government land in terms of Notification issued under Section 3A and 3D of the N.H. Act, 1956.

6. Section 3G(5) of the N.H.Act, 1956 prescribes that if the amount determined by the competent authority under Sub Section 1 or Sub Section 2 of Section 3G 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.

7. From the aforesaid, it is clear that Section 3G(5) of the N.H.Act, 1956, provides a grievance redressal mechanism for any grievance arising out of an award before the Arbitrator to be appointed by the Central Government.

8. Thus, its is clear that once an award is passed, either under Sub Section 1 or Sub Section 2 of Section 3G of the N.H.Act, 1956, by a competent authority, if either of the party is not satisfied with such award, the only option left is to approach the authority of the arbitrator under Sub Section 5 of Section 3G of the N.H. Act, 1956.

9. From the prescription of Section 3G of the N.H.Act, 1956, it is clear that the NHIDCL is not empowered to pass any order or to take any decision denying to pay the compensation as awarded by the competent authority except approaching the arbitrator as discussed hereinabove.

10. The National Highways Authorities, in the considered opinion of the Court, in the scheme of the Act, after an award is passed, shall have no right to sit over such award, except approaching the arbitrator in terms of Sub Section 5 of Section 3G of the N. H. Act, 1956.

11. That being the position, the impugned order dated 08.07.2023 which amounts to a decision not to abide by the award of the competent authority is not sustainable under law inasmuch as the National Highways Authority as discussed hereinabove, shall have no right to sit over the award dated 20.12.2022.Accordingly, the impugned order dated 08.07.2023 is set aside and quashed.

12. While parting with record, it is made clear that that this order shall not be a bar for the NHIDCL to pursue the remedy available to it.

13. In view of the aforesaid discussions and reasons, this writ petition stands

disposed of. Parties to bear their own cost.