

(2019) 03 MP CK 0139

In the Madhya Pradesh High Court

Case No : Writ Petitions Nos. 3992, 17983, 17990, 17993, 20787, 25400, 26126
Of 2018 1160, 4048, 5048 Of 2019

Anil Tiwari

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

National Highways (Manner Of Depositing The Amount By The Central Government;
Making Requisite Funds Available To The Competent Authority For Acquisition Of Land)
Rules, 2019 — Rule 3(i)(b), 3(iv)
National Highways Act, 1956 — Section 3D, 3G(5), 3G(6), 3H(5)
Arbitration And Conciliation Act, 1996 — Section 33, 34

Citation : (2019) 03 MP CK 0139

Hon'ble Judges : R.S. Jha, J;Sanjay Dwivedi, J

Bench : Division Bench

Advocate : Vinod Mishra, Mohd. Wajid Hyder, Sooraj Bajpai, Dharmendra Soni,
Prateek Dubey, Himanshu Mishra, Vikram Singh, Mohan Sausarkar, K.N. Pethia,
Atul Nema, Swapnil Sohgaure

Final Decision : Disposed Off

Judgement

All these petitions have been filed by the petitioners claiming identical relief of a direction to the respondent National Highway Authority of India or the M.P. Road Development Corporation to immediately disburse the compensation, as awarded/enhanced by the Arbitrator in his award, passed under Section 3G(5) of the National Highways Act, 1956 (hereinafter referred to as "the Act of 1956").

The learned counsel appearing for the petitioners submit that the respondents NHA or the M.P. Road Development Corporation, as the case may be, has acquired their lands under the National Highways Act for the purposes of widening the National Highways and State Highways and the compensation in respect of the lands of the petitioners has been determined by the competent authority.

It is stated that in these cases, the matters have also been taken up either by

the petitioners or the NHA or Road Development Corporation before the Arbitrator who has also determined the compensation under Section 3G (5) of the Act of 1956. It is submitted that Section 3H (5) of the Act of 1956 statutorily requires that in cases where the Arbitrator determines the amount of compensation in excess of the amount determined by the competent authority, the Arbitrator may award interest @ 9% per annum on such excess amount from the date of taking possession under Section 3D till the date of actual deposit.

The learned counsel for the petitioners have further submitted that in such cases, the Central Government has notified rules known as the National Highways (Manner of depositing the amount by the Central Government with the competent authority for acquisition of land) Rules, 1998 (hereinafter referred to as "the Rules of 1998"), which statutorily requires the National Highways Authority to deposit the enhanced amount of compensation within seven days of determination made by the Arbitrator with the competent authority.

The learned counsel for the petitioners submit that inspite of the aforesaid statutory provisions and inspite of an award been passed by the Arbitrator in favour of the petitioners, the respondent National Highway Authority or the Road Development Corporation, as the case may be, has not disbursed the amount awarded to the petitioners who still await the amount inspite of the fact that their lands have been taken away by the authorities for the purposes of widening of the Highways and construction thereon has also been made by them.

The learned counsel for the petitioners submit that in such circumstances, the respondent authorities be directed to immediately disburse the amount of compensation to the petitioners.

The learned counsel appearing for the National Highways Authority and the M.P. Road Development Corporation per contra submit that in all these cases, the amount required to be deposited by them with the competent authority prior to taking up acquisition proceedings, has already been deposited by them. It is submitted that in some cases, like the ones that have come up before this Court, the amount determined by the competent authority has been enhanced by the Arbitrator. It is submitted that in such cases, the Arbitrator is empowered to award interest @ 9% per annum on the enhanced amount to the claimants from the date of taking over possession under Section 3D of the Act of 1956 till the date of actual deposit of the amount. It is submitted that in some cases, the petitioners have forcefully retained possession inspite of the amount being deposited and awards being passed.

It is further submitted that the amount has infact got to be disbursed by the competent authority and not by the National Highways Authority or the Road Development Corporation and is also subject to further proceedings being taken up by the NHA or the Road Development Corporation against the award passed by the Arbitrator before the competent forum under Sections 33 and 34 of the Arbitration and Conciliation Act, 1996, as provided under Section 3G(6) of the

Act of 1956.

It is also pointed out that the Rules of 1998, regarding disbursement of the amount relied upon by the petitioners have been repealed and superseded by notification dated 18.1.2019 published in the Gazette of India (Extraordinary) and new rules namely the National Highways (Manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019 (hereinafter referred to as "the Rules of 2019"), have been notified which being procedural are applicable to all cases including that of the petitioners. It is submitted that as per the said procedure notified under the Rules for disbursement of the amount, the NHAI or the acquiring authority is required to deposit the amount enhanced by the Arbitrator within 30 days of communication of the award unless such award has been further challenged by either of the aggrieved parties.

It is further pointed out that as per the provisions of Rules 3(i)(b) and 3(iv) of the Rules of 2019, the competent authority is, in turn, enjoined with the duty to disburse the compensation amount to the landowners or the persons interested therein preferably by electronically crediting the said amount into their respective bank accounts. It is submitted that in such circumstances and in view of the provisions of the Rules of 2019, as the National Highways Authority has taken up proceedings under Sections 33 and 34 of the Arbitration and Conciliation Act, 1996, against most of the awards that are subject matter of the writ petitions, therefore, the relief as prayed for by the petitioners cannot be granted.

It is submitted that quite apart from the aforesaid, in view of the provisions of Section 3G(6) of the Act of 1956, as the provisions of the Arbitration and Conciliation Act, 1996 have also been made applicable, the appropriate remedy of the petitioners for recovering the amount is to initiate proceedings for execution as prescribed and provided under the provisions of the Arbitration and Conciliation Act, 1996 and in such circumstances, as statutory efficacious remedy is available to the petitioners, the petitions be dismissed.

Ordinarily, we would have simply disposed of these petitions granting liberty to the petitioners to take up execution proceedings, as entertaining such petitions, inspite of the efficacious statutory alternative remedy would render the statutory provisions superfluous and otios and would result in reducing this Court to an execution Court as a replacement of the statutorily prescribed forum.

However, we have taken up these matters as the Court is flooded with cases filed by claimants who have not received the amount of compensation for one reason or the other. We have also taken into consideration the rival submissions of the learned counsel for the parties. In the circumstances, we think it appropriate to dispose of the present petitions by making following observations:-

1. That, as per the provisions of the National Highways Act, the NHAI/Road Development Corporation, as the case may be, is required to deposit the amount necessary for initiating compensation proceedings as required by the Act to the

competent authority. On their doing so, proceedings under the Act are required to be taken up and as the amount has been deposited by the NHAI/Road Development Corporation, possession in terms of Section 3D can be directly taken over for the purposes of construction/widening of National Highways/State Highways. The competent authority is enjoined with the duty to expeditiously take up proceedings for determination of compensation after taking all aspects into consideration in accordance with the procedure prescribed under the Act and determine the same as early as possible.

2. Either of the parties, aggrieved with the determination of compensation amount by the competent authority, is required to approach the Arbitrator under Section 3G(5) of the Act who in turn is required to decide the arbitration proceedings by either confirming the amount determined by the competent authority or enhancing the same, in accordance with law.

3. The Arbitrator while passing the award is entitled to award interest @ 9% per annum to the claimant on the enhanced amount from the date of taking over possession under Section 3D till the date of actual payment.

4. In accordance with the Rules of 2019, the NHAI/Road Development Corporation, as the case may be, is thereafter, required to deposit the enhanced amount with the competent authority within 30 days from the date of communication of the Arbitrator's award unless such award has been further challenged by either of the aggrieved parties under the provisions of the Arbitration and Conciliation Act, 1996.

5. Apart from the cases covered by Rule 3(i)(b) of the Rules of 2019, the competent authority is required to disburse the compensation amount to the landowners or the claimants, as the case may be, preferably by electronically crediting the said amount into their respective bank accounts. It is, however, made clear that this is not an automatic or a mechanical exercise and the competent authority, in such cases, has the power to determine the identity of the claimant or any other technical or legal issue required or necessary to be considered by the competent authority before releasing or disbursing the amount.

6. In cases, apart from those cases where proceedings before the competent Court as contemplated under Rule 3(i)(b) of the Rules of 2019 are taken by any of the aggrieved party, the amount deposited by the NHAI/Road Development Corporation with the competent authority is not disbursed to the claimant, he is entitled to take up proceedings for execution against the authorities in terms of the provisions of the Arbitration and Conciliation Act, 1996, which have been incorporated in the provisions of the National Highways Act, 1956, by way of Section 3G(6). It goes without saying that in such cases, if ultimately the proceedings taken up by the NHAI or the Road Development Corporation are dismissed, the NHAI or the Road Development Corporation, as the case may, may in appropriate cases, be liable to pay interest in terms of the statutory provisions contained in Section 3H(5) of the National Highways Act, 1956.

7. Apart from the cases falling in the above category and in addition thereto, in case, the payment of compensation is not made to the claimant for no legally permissible reason or interest is required to be paid to the claimant due to delay on account of any fault on the part of the officers of the NHAI/Road Development Corporation or the competent authority, as the case may be, either deliberately or otherwise, the higher authorities of the NHAI, the M.P Road Development Corporation or the State Government would be at liberty to recover the same from the officer responsible for the delay and laches, if so advised.

In view of the above analysis of the statutory provisions, we dispose of all these petitions filed before us and grant liberty to the parties to take up proceedings as contemplated under the provisions of law in respect of their grievances.

In view of the fact that this Court is flooded with several petitions claiming disbursement of the amount, while disposing of the petitions, the respondents namely the NHAI, Road Development Corporation and the competent authority are directed to take expeditious steps to disburse the amount of compensation to the claimants in all cases where there is either no dispute or no other legal impediment in doing so. The aforesaid exercise shall be undertaken by the authorities expeditiously and immediate steps to mitigate the grievances of the landowners shall be taken up by them.

It is pointed out by the learned counsel appearing for the respondents NHAI and the Road Development Corporation that they have filed certain applications before the Arbitrator for correction in the award.

It is directed that the Arbitrator shall take up such applications, if any, filed by the parties and expeditiously decide the same, preferably within a period of one month from the date of filing of such applications.

With the aforesaid observations/directions, the petitions filed by the petitioners stands disposed of.

Certified copy as per rules.