
(2016) 08 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4035 of 2016 Connected with Writ Petition Nos. 4023, 4025, 4027, 4030, 4033, 6414, 6415, 6416, 6425, 6426, 6438, 6440, 6442, 6443, 6590, 9123, 9124, 9125, 37124 and 37125 of 2016

Asha Ram

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33
Railways Act, 1989 — Section 20E, 20F

Citation : (2016) 8 ADJ 324 : (2016) 6 AILLJ 506 : (2016) 5 AllWC 4960 : (2016) 118 ALR 442 : (2016) 133 RD 432

Hon'ble Judges : Tarun Agarwala and Vipin Sinha, JJ.

Bench : Division Bench

Advocate : Pradeep Kumar and Praveen Kumar, Advocates, for the Appellant; Rahul Agarwal and Sudhir Bharti, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—We have heard Sri Pradeep Kumar along with Sri Praveen Kumar, the learned counsels for the petitioners and Sri Rahul Agrawal, Advocate along with Sri Sudhir Bharti, the learned counsels for the Railways.

2. This group of writ petitions involves a common question of law and, accordingly, all the writ petitions are being decided together. For facility, the facts of Writ Petition No. 4035 of 2016 is being taken into consideration.

3. It transpires that the land was acquired for Special Rail Project East Dedicated Freight Corridor, that was being constructed by the Ministry of Railways, Union of India. For the aforesaid purpose, various tracts of land were acquired under the Railways Act, 1989(hereinafter referred to as the Act). The petitioners' land being plot no. 178 measuring 0.7770 hectares was also acquired, pursuant to a notification dated 03.11.2010 issued under Section 20E of the Act. Possession

was taken and thereafter compensation was determined by means of an award dated 26.08.2011 issued under Section 20F of the Act, whereby the petitioners were awarded a sum of Rs. 9,95,560/- towards compensation.

4. The petitioners, being aggrieved by the determination of the compensation, filed an objection no. 34/2012-13 under Section 20F(6) before the Arbitrator. The Arbitrator, after considering the objection, partly accepted the contention of the petitioners holding that the land is within 200 meters of abadi and, accordingly, directed the Chief Project Manager of the Dedicated Freight Corridor to redetermine the compensation in the light of the observation made therein.

5. According to the petitioners, as per the order of the Arbitrator, the petitioners are entitled to Rs.2,00,65,255/- along with 12% interest as compensation taking the rate of land as per the circle rate.

6. Since the amount, as per the calculation made by the petitioners, was not released by the respondents, the present writ petition was filed praying that a writ of mandamus be issued commanding the respondents to pay Rs. 2,00,65,255/- along with 12% interest pursuant to the order of the Arbitrator dated 03.02.2014.

7. The respondents have filed a counter affidavit contending that, as per the calculation chart prepared by them, the petitioners are only entitled to Rs. 23,38,560/- towards compensation. In paragraph 6 of the Counter Affidavit the respondents have contended that the petitioners have received two cheques of a sum of Rs. 7,75,520/- each.

8. Sri Rahul Agrawal, the learned counsel for the respondents contended that during the pendency of the writ petition the entire amount has been paid to the petitioners. It was also contended that the petitioners, being aggrieved by the award of the Arbitrator, filed an objection under Section 33 of the Arbitration and Conciliation Act and, therefore, the writ petition should be dismissed.

9. Sri Pradeep Kumar, the learned counsel for the petitioners however submitted that the objection filed under Section 33 of the Arbitration and Conciliation Act was withdrawn and there is no application pending as on date.

10. Be that as it may. We have perused the order of the Arbitrator dated 03.02.2014. We find that once the Arbitrator has accepted the contention of the petitioners in part, as raised by them in their objection, the Arbitrator should have proceeded to determine the amount of compensation instead of directing the Chief Project Manager, Dedicated Freight Corridor Corporation of India Ltd., Kanpur to redetermine the amount. In this regard Section 20F(6) of the Act reads as under:

"(6) If the amount determined by the competent authority under sub-section (1) or as the case may be sub-section (3) 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 in such manner as may

be prescribed."

11. A perusal of the aforesaid provision indicates that if the amount determined by the competent authority under sub-section (1) or as the case may be under sub-section (3) is not accepted by either of the parties, the amount shall, on an application by either of the parties, be determined by the Arbitrator. The word "shall" is of importance, which indicates a mandatory tenor in the provision. In the instant case the petitioner did not accept the amount awarded by the competent authority under Section 20F(1) of the Act and filed an application under Section 20F(6) of the Act. The Arbitrator was required to determine the amount, which in the instant case has not been done. The Arbitrator instead has relegated the determination of the compensation to the Chief Project Manager, who in any case was not competent to determine the compensation under Section 20F(1) of the Act.

12. We, accordingly, allow the writ petitions and quash that part of the order dated 03.02.2014 passed by the Arbitrator by which it directs the Chief Project Manager of the Dedicated Freight Corridor Corporation India Limited to determine the amount of compensation in terms of the observations made in the order. We remit the matter to the Arbitrator with the direction to calculate the compensation in terms of the observations made in the order within six weeks from the date of production of a certified copy of this order after hearing all parties concerned. In the event, the Arbitrator considers the order of the Additional District Magistrate dated 11.04.2014 while calculating the compensation, it would be open to the petitioners to raise such objection as advised.

13. By an order dated 10.08.2016 we had directed the respondents to produce the bank drafts of the compensation, which was admittedly payable by the respondents. The bank drafts in favour of the petitioners have been produced before the Court. We direct the respondents to deposit these bank drafts before the Arbitrator on or before 05.09.2016. The necessary formalities of handing over the bank drafts to the petitioners will be done by the Arbitrator and the necessary drafts would be handed over to the petitioners within a week thereafter upon completion of necessary formalities.