

(2019) 09 CAL CK 0148

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 18053 (W) Of 2019

Chaitanya Saha & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

National Highway Act, 1956 — Section 3D(2), 3E
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 3G(2), 3H(2), 3G(5), 3G(6), 24, 24(2), 105
Control Of National Highways (Land And Traffic) Act, 2002 — Section 26(2)

Citation : (2019) 09 CAL CK 0148

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Srijib Chakraborty, Md. B. Israil, Kanchan Gupta, Kaushik Chanda, Suransh Chawdhary, Manika Roy, Soumitra Bandyopadhyay, Priyabrata Batabyal

Judgement

Shampa Sarkar, J

This petition has been mentioned on an urgent basis as the petitioners who are 17 in number are aggrieved by memo dated September 6, 2019, issued by the Highway Administrator-cum-Project Director. By the said order the representation of the petitioners were disposed of and the prayers of the petitioners made therein were rejected.

The representation contained three allegations: a) the notices for removal of structure were issued in violation of Section 3E of the National Highway Act, 1956 (hereinafter referred to as the said Act); b) that the compensation should be paid in terms of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Right to Fair Compensation Act, 2013); c) that there was no provision under the law by which the authorities could make public announcements with regard to acquisition of such land; d) that there has been violation of natural justice as the petitioners were not heard in terms of Section

3G(2) of the said Act.

The order impugned to this writ petition categorically deals with each and every allegations raised by the petitioners. With regard to the first contention of the petitioners the authority had observed that the notice for removal of unauthorised occupants was issued under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002. The authority also observed that service of notice under Section 3E of the said Act was not a pre-condition for taking physical possession of the acquired land and the legal position had been settled by this Court in the matter of Muntajul Haque and Others v/s NHAI and Others bearing W.P. No. 18322 (W) of 2017. The authority has held that the power to take physical possession of the acquired land in terms of Section 3E of the said Act arose on the happening of two situations:

- a) The land was required to have vested under Section 3D(2) of the said Act; and
- b) The compensation, as determined by the authority was required to be deposited with the disbursing authorities.

With regard to the second contention that the compensation should be calculated in terms of Section 24(2) of the Right to Fair Compensation Act, 2013, the authority has observed that Section 24 made it abundantly clear that the provision of the said Act would not apply to enactments relating to acquisitions made as specified in the Fourth Schedule. The lands of the petitioners have been acquired under the said Act which is an Act in the Fourth Schedule. As specified in Section 105 of the Right to Fair Compensation Act, 2013, the exception that had been made to this provision was by making First, Second and Third Schedule of the Right to Fair Compensation Act, 2013 applicable to acquisitions under the said Act.

A Division Bench of this Hon'ble Court had already settled the issue in the matter of NHAI vs. Abhimanyu Mondal in MAT 1129 of 2017. The observation of the Hon'ble Division Bench was as follows:

"In a proceeding initiated under the National Highways Act, 1956, there cannot be any question of application of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in the factual context of the instant case."

It may also be noted that one of the persons, namely Abhimanyu Mondal who was a respondent in MAT No. 1129 of 2017 had challenged the above-mentioned order dated 14.09.2017 of the Division Bench of the Hon'ble High Court of Calcutta before the Hon'ble Supreme Court of India, by way of a Special Leave Petition bearing No. 35309-35310 of 2017 and the Hon'ble Supreme Court has further settled the said legal position vide order dated 22.12.2017 as follows:-

"We do not find any ground to interfere with the impugned orders dated 14.09.2017 passed by the Hon'ble Division Bench of Calcutta High Court. The Special Leave Petitions are accordingly dismissed."

With regard to the violation of principles of natural justice and the method of public announcement as adopted during the acquisition proceedings, the authority has held that such public announcements were in addition to the procedure adopted by the authorities under the Act. That notices were also served by speed post and personal service was also effected along with publication in two news papers, namely, the Times of India and the Ananda Bazar Patrika.

The learned advocate for the petitioners submit that the authority ought to have intimated the petitioners about the compensation awarded and the deposit of the amount before the competent authority was an illegal deposit in view of the decision of the Hon'ble Apex Court in *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others*, reported in (2014) 3 SCC 183. He also submits that the quantum of compensation was not calculated in terms of the Right to Fair Compensation Act, 2013 and if the structures were demolished before the petitioners approach the arbitrator under Section 3G (5), then the arbitrator would not be able to assess the structural value of the premises and would not be in a position to calculate the correct compensation payable.

Mr. Chanda, learned Additional Solicitor General, submits that the amount of compensation was deposited with the competent authority. Notices were also issued under Section 3H(2) to the lawful owners, some of whom have already received compensation amount. A chart of compensation made has also been handed up from which it appears that some of the petitioners namely, Chaitanya Saha, Sahadeb Mondal, Abhimunya Mondal and Sunil Mondal among others had received some payments.

All these persons along with the petitioners have joined in this writ petition on the ground that they have a common cause of action. If some of the petitioners have received payments or part payments of the compensation, it is prima facie difficult for the Court to accept the contention that the compensation with regard to the acquisition proceeding for construction of the national highway had not been awarded or declared.

Section 3G(5) and (6) of the said Act provides a mechanism by which the petitioners can pray for enhancement of the compensation before an arbitrator.

Thus, even if the petitioners contend that the Right to Fair Compensation Act, 2013 should be applicable and the compensation awarded under the said Act was insufficient or inadequate, the petitioners are always at liberty to approach the appropriate authority under the said Act and the arbitrator would decide the said contention in accordance with law and the settled legal principles.

Moreover inadequacy in the compensation cannot be a ground, in my opinion, to pass an interim order in favour of the petitioners under the aforesaid fact situation, restraining the authorities from implementing the project which is for public purpose and the same is being monitored by a Division Bench of this Court in a public interest litigation. The balance of convenience and inconvenience is in

not restraining the authorities from acting and proceeding in accordance with law. Documents have been produced by the authorities before this Court which show that compensation was deposited with the competent authority against L.A. Cases. One of such cases was in relation to the lands claimed by the petitioners. An amount of Rs.4, 27, 72, 488.00 was deposited against the L.A. Cases by which the lands including the lands of the petitioners were acquired by the highway authorities. An additional amount was also deposited pursuant to decision in the arbitration invoked by some of the aggrieved parties.

Under such circumstances, I do not find any reason to pass an interim protection. If the petitioners are aggrieved with the quantum of compensation they are at liberty to proceed in accordance with law. The petitioners will be at liberty to produce photographs of the structures with the measurements before the arbitrator. The petitioner will be allowed to take the photographs and take measurements and building plans if any, before the arbitrator. If the petitioners approach the arbitrator, they would be allowed to produce such documents and building plans etc. with regard to the structures and measurements of the land. The owners of the lands acquired, who have filed this writ petition will be at liberty to approach the competent authority for their individual copies of the award. The awardees will be entitled to approach the arbitrator.

The allegations of non-service of notices under 3G(2), breach of principles of natural justice, applicability of Right to Fair Compensation, 2013 Act and legality of the deposit made with the disbursing authority, will be decided after exchange of affidavits. Let affidavit-in-opposition be filed within four weeks, reply thereto, if any, be filed within a week thereafter.

The Court declines to pass an interim order also on the ground that some of the writ petitioners have already approached this Court for enhancement of the compensation paid with regard to the same acquisition proceeding which is under challenge in this writ petition. Some of writ petitioners also have approached this Court on an earlier occasion challenging the non-payment of compensation to them with regard to the same acquisition proceeding which is now challenged before this Court in this writ petition and those writ petitions are pending.

Let this matter appear before the appropriate bench.