

(2020) 08 DEL CK 0087

In the Delhi High Court

Case No : Civil Writ Petition No. 1179 Of 2019

Manju Arora

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

National Highways Act, 1956 — Section 3A, 3D, 3G, 3G(1), 3G(5)
Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2020) 08 DEL CK 0087

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Rajesh Yadav, Ripudaman Bhardwaj, Padma Priya, Dhruv Nayar,
Yeeshu Jain, Jyoti Tyagi

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

W.P. (C) 1179/2019, C.M. Appl. No.13801/2020 (for ad-interim ex-parte stay/
direction)

1. This petition was filed with the following prayers: -

â??(a) issue a writ of certiorari or any other appropriate writ order or direction in
the nature thereof, thereby quashing the determination

of the amount payable as compensation (award) bearing No.02/2018/NHAI,
passed by the Respondent No.3, the Competent Authority for

Land Acquisition (CALA), dated 18.12.2018, under Section 3G(1) of the National
Highways Act, 1956, in respect of land of the Petitioner

bearing Survey/Khasra No.424/1, measuring 2107 square meters (area in
hectare being 0.2107), Village Rangpuri, Tehsil Vasant Vihar,

New Delhi;

(b) issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondent No.3,

the Competent Authority for Land Acquisition (CALA) to conduct a fresh determination of amount payable as compensation and pass a fresh

award under Section 3G(1) of the NH Act, treating the land of the Petitioner bearing Survey/Khasra No.424/1, measuring 2107 square

meters (area in hectare being 0.2107), Village Rangpuri, Tehsil Vasant Vihar, New Delhi, as 'urban land' and its user as

'commercial/residential';

(c) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the appointment of

District Magistrate, District New Delhi, by the Central Government, as an Arbitrator under Section 3 G(5) of the NH Act.â??

2. The petition came up first before this Court on 4th February, 2019, by order of which date, the further proceedings before the Arbitrator appointed

under Section 3G(5) of the National Highways Act,1956 were stayed and which order was made absolute on 19th February, 2020 and is continuing till

now.

3. The petition was adjourned from time to time and the pleadings have been completed.

4. On 1stJuly, 2020, CM Appln.13801/2020 of the petitioner for interim relief, seeking to restrain the respondents from taking over possession of the

land in occupation of the petitioner and with respect whereto acquisition proceedings under the National Highways Act had been undertaken,came up

before this Court, when noticing that the challenge in the petition was only quantum of compensation and not to acquisition, orders were passed

for delivery of possession and we are today informed that the possession of the land stands delivered. By the same order of 1st July, 2020, the petition

was posted for hearing for today, as already scheduled,via virtual hearing.

5. The counsel for the petitioner, at the outset, has contended that another petition namely, W.P. (C) 9372/2018 titled Moti Lal Bothra (HUF) Through:

Karta Shri Moti Lal Bothra v. Office Of The Competent Authority (Land Acquisition) Under The National Highways Act, 1956 & Ors.,also

challenging the appointment of the District Magistrate as the Arbitrator, under Section 3G(5) of the National Highways Act,was also scheduled to be

listed for today, but has not been listed for hearing, in the absence of an order therefor virtual hearing. It is contended that the petitioner in that writ

petition has filed certain replies received to the queries under the Right to Information Act, 2005 and which help the case of the petitioner herein also

and the present petition be also thus ordered to be taken up on whichever date W.P. (C) 9372/2018 stands adjourned, as per the general notification

during the pandemic in this regard.

6. The counsel for the respondent No.2 National Highways Authority of India (NHAI) has opposed the request of adjournment contending that the

arbitration proceedings are held up. It is further stated that the question of the challenge to the District Magistrate acting as Arbitrator under Section

3G(5) of the National Highways Act has already been negated in *Anubhav Chand Kathuria v. Union of India*, 2019 SCC OnLine Del 7307 (DB,) in

which also the counsel for the petitioner herein was the counsel for the petitioners and the said judgment has attained finality. It is thus contended that

as far as the prayer in the present petition challenging the nomination by the Central Government of the District Magistrate, to act as Arbitrator is

concerned, in view of the judgment in *Anubhav Kathuria* supra, does not survive.

7. We have in the circumstances proceeded to hear the counsel for the petitioners.

8. The counsel for the petitioner has contended that the land of the petitioner with respect where to notification under Section 3A of the National

Highways Act was issued, was being used by the petitioner for operating a petrol pump, after obtaining permissions from all the authorities concerned

and was thus being put to commercial use; however in Section 3A notification, the same was described as agricultural. It is further contended that the

petitioner preferred W.P.(C)6117/2018 impugning the Section 3A notification inter alia on the said ground and which writ petition was disposed of vide

order dated 30th May, 2018, Annexure P-3 to this petition, with a direction that notwithstanding the description of the subject land as agricultural in the

notification dated 12th January, 2018, the petitioner will be at liberty to contend that because the subject land was used for commercial purposes, the

compensation, if any payable to her, should be the same that ought to be paid qua a commercial property. It is argued that notwithstanding the said

direction, the respondent No. 3 Competent Authority for Land Acquisition (CALA)

under the National Highways Act, while passing Section 3G

notification (award), has not correctly dealt with the said objection of the petitioner and Section 3G notification (award), to the extent holding that the land remained agricultural notwithstanding being put to use as a petrol pump, is erroneous and liable to be set aside with a direction to the respondent

No. 3 CALA to re-determine the compensation, treating the land as commercial.

9. We have enquired from the counsel for the petitioner, whether not it is open to the petitioner to raise the said question before the Arbitrator under

Section 3G(5) of the National Highways Act.

10. The counsel for the petitioner states that though it is so open to the petitioner, but since the arbitration under Section 3G(5) is subject to the

provisions of the Arbitration and Conciliation Act, 1996 and the remedy against the Award in the said arbitration, under Section 34 of the Arbitration

Act is of limited scope, it is not an equally efficacious remedy and is not an alternative remedy owing where to, this Court should refuse to exercise the

writ jurisdiction. Attention is invited by the counsel for the petitioner to *Sudesh Solanki Vs. Delhi Development Authority* 2012 SCC OnLine Del 5999

(DB); *Gur Pratap Singh Vs. Union of India* 2004 (111) DLT 25; *Lt. Governor of Delhi Vs. Gurpratap Singh* 2004 (113) DLT 690 (DB;); *Sanraj Farms*

Private Limited Vs. Charan Singh & Another 2019 SCC OnLine Del 1074; *1 Hari Chand Vs. Union of India* (2001) 91 DLT 602 (DB;); *Delhi*

Development Authority Vs. Land Acquisition Collector & Others, 2006 SCC Online Del 44; *3 and Competent Authority Vs. Barangore Jute Factory*

and Others, (2005) 13 SCC 477, to show that Section 3G notification (award), in computing the compensation, treating the land as agricultural, is

contrary to the direction in the order dated 30th May, 2018 in W.P. (C) 6117/2018 earlier filed by the petitioner.

11. However, once we have shown our disinclination to entertain the challenge to the Section 3G determination in the writ jurisdiction owing to the

remedy of arbitration available, the counsel for the petitioner, drawing attention to paragraphs 20, 23 and 28 of *Anubhav Kathuria* supra, where the

counsels for NHA and CALA had conceded that the powers of the Arbitrator are the same as of the CALA and all questions, as urged before

CALA, can also be urged before the Arbitrator, has not pressed the said aspect further. For this reason, we do not deem it apposite to detail the

arguments of the counsel for the petitioner before us in this regard or to deal with the same.

12. As aforesaid, the challenge to the District Magistrate as Arbitrator, has already been negated.

13. The counsel for the respondent No. 2NHAI, in addition to Anubhav Kathuriasupra has also drawn attention to Vishwasrao Dattatray Kachare Vs.

Union of India 2017 SCC OnLine Bom 45,1 Surendra Kumar Chhabda Vs. State of Chattisgarh MANU/CG/0693/2017 and National Highways

Authority of India Vs. Sayedabad Tea Company Ltd. & Ors., 2019 SCC Online SC 110, to contend that therein also, the Courts have held that since

the appointment of Arbitrator under Section 3G(5) of the National Highways Act is by Central Government and not by NHAI, which has acquired the

land, the appointment of Arbitrator by the Central Government is not bad under the Arbitration and Conciliation Act and merely because the District

Magistrate has been appointed as the Arbitrator, there is no presumption that would be biased in favour of NHAI.

14. We thus dispose of this petition, declining the reliefs claimed in prayer paragraphs in terms of Anubhav Kathuriasupra and by clarifying that the

disposal of this petition and the description of the land as agricultural in Sections 3A, 3D and 3G notifications, would not come in the way of the

petitioner contending in the arbitration proceedings under Section 3G(5) of the National Highways Act, that the land is commercial and that the

petitioner is entitled to compensation at commercial and not agricultural rates, and by reiterating the statements of the counsels for the NHAI and

CALA as contended in Anubhav Kathuriasupra, that they would not object to such claim of the petitioner on the ground of Arbitrator not having the

jurisdiction to go into the said question.

15. The counsel for the petitioner has also stated that the husband of the petitioner is a 1971 War Veteran and is not being released the

compensation already deposited, for frivolous reasons and is being harassed.

16. Ms. Jyoti Tyagi, Advocate for the respondent No. 3 CALA to ensure that the compensation already deposited is released to the petitioner without

any further delay. The counsel for the petitioner, if faces any difficulty, may contact Ms. Jyoti Tyagi Advocate in this regard.

17. At this stage, Ms. Jyoti Tyagi Advocate states that the compensation has not

been released because a claim therefor has also been made by Indian Oil Corporation and the respondent No. 3 CALA has sought clarification from the respondent No. 2 NHAI, which has not been received as yet.

18. Ms.Padma Priya Advocate for the respondent No. 2 NHAI to also ensure that the decision, if any on the clarification sought, if not already furnished, is furnished at the earliest.

19. The petition is disposed of.