

(2024) 04 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1634 Of 2022, Civil Miscellaneous No. 4589 Of 2022

Tirath Ram And Others

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

National Highways Act, 1956 — Section 3G, 3G(3), 3G(5)

Citation : (2024) 04 J&K CK 0005

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Nirmal Kotwal, Monika Kohli, Vipin Gandotra

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. Through the medium of present petition, the petitioners have challenged order dated 29.12.2021 passed by respondent No. 3, so far as it pertains to determination of amount of compensation in terms of Section 3G(3) of the National Highways Act, 1956 (hereinafter to be referred as "the Act of 1956"). The petitioners have also sought a direction upon respondent No. 3 to comply with the provisions contained in Section 3G of the Act of 1956 and determine the amount of compensation as per market value of the land and release the same in favour of the petitioners alongwith interest @ 12% per annum.

2. As per the case of the petitioners, their land situated at Sarore Adda, village Patti, Tehsil Bari Brahmana, District Samba has been acquired by the respondents for construction of Highway. It has been submitted that the acquisition proceedings conducted by the respondents are contrary to the provisions contained in the Act of 1956, inasmuch as, no notice in terms of the provision contained in Section 3G(3) of the Act of 1956 has been published in the newspapers. It has been further submitted that as per the impugned order,

notices under Section 3G(3) of the Act of 1956 were published in the Daily Excelsior and Amar Ujala on 08.12.2021 but the fact of the matter remains that no such notices were published in the aforesaid newspapers on the said date. It has also been contended that the compensation assessed by the competent authority i.e. respondent No. 3 is not as per the market value of the land and this has caused serious prejudice to the rights of the petitioners.

3. Reply to the writ petition has been filed by the indenting department, respondent Nos. 1, 2 and 4 as also by respondent Nos. 3 and 5. In their reply, respondent Nos. 1, 2 & 4 have submitted that the petitioners have concealed from this Court the fact that the villagers of the village Patti Tehsil Bari Brahamana had filed writ petition bearing WP(C) 870/2022 in representative capacity before the this Court challenging the proceedings with regard to acquisition of the land for construction of Delhi-Katra Expressway in District Samba. The said writ petition came to be dismissed by the Division Bench of this Court in terms of order dated 21.04.2022. It has been contended that the petitioners, who happen to be the residents of the same village, cannot file the instant writ petition individually that too by suppressing the fact relating to dismissal of the earlier writ petition. On merits, respondent Nos. 1, 2 & 4 have submitted that there is no error or illegality in the acquisition proceedings and that the proceedings have been conducted strictly in accordance with the provisions contained in the Act of 1956. It has been further submitted that no rights of the petitioners have been infringed and that adequate compensation has been awarded in favour of the land owners. It has also been contended that in case the petitioners feel dissatisfied with the amount of compensation awarded in their favour, they have the alternative remedy of seeking appointment of an Arbitrator in terms of sub section (5) of Section 3G of the Act of 1956.

4. The competent authority, the Deputy Commissioner, Samba has filed a separate reply to the writ petition on behalf of respondent Nos. 3 & 5. In their reply, respondent Nos. 3 and 5 have, besides raising preliminary objections with regard to the maintainability of the writ petition on account of dismissal of the earlier writ petition filed by the villagers of village, Sarore Adda (Patti), contended that the proceedings of acquisition of the land in question have been conducted strictly in accordance with the provisions contained in the Act of 1956. They have also contended that if the petitioners are aggrieved of the quantum of compensation assessed by the competent authority, the only remedy available with them is to seek arbitration in accordance with the provisions of Act of 1956. It has been further averred that the notice has been published in two local newspapers, Daily Excelsior and Amar Ujala and in fact some of the villagers have also filed their objections, which were considered by the competent authority and found to be without merit. Lastly, it has been contended that adequate compensation has been assessed in respect of the acquired land and there is no ground to interfere with the impugned order passed by the competent authority.

5. I have heard learned counsel for the parties and perused the record of the case.

6. So far as question as regards the legality of the acquisition proceedings is concerned, the same has been subject matter of determination in the earlier writ petition bearing WP(C) No. 870/2022, in which, the villagers of the village to which the petitioners belong, were party in representative capacity. The said writ petition has been decided by the Division Bench of this Court in terms of order dated 21.04.2022. The Division Bench after noticing the relevant provisions of the National Highways Act, 1956 and considering the facts of the case as well as record of the acquisition proceedings, came to the conclusion that the entire procedure prescribed under the Act has been followed by the competent authority and that there is no error or illegality in acquisition of the land. In the light of the aforesaid findings of the larger Bench of this Court on the issue of procedure relating to the acquisition that has been followed in the instant case, the same cannot be reopened by this Court in the present writ petition.

7. Apart from the above, if we have a look at the provisions contained in Section 3G(3) of the Act of 1956, it provides that before proceeding to determine the amount of compensation, the competent authority has to give a public notice, to be published in two local newspapers inviting claims from all persons interested in the land to be acquired. According to the respondents, the requisite notices have been published in the Daily Excelsior and Amar Ujala dated 08.12.2021, which is being disputed by the petitioners. The petitioners in their writ petition have submitted that their grievance is limited to the extent of fixation of quantum of compensation payable to them because according to them, they were not heard before passing the impugned order, which constitutes a violation of the provision contained in Section 3G(3) of the Act of 1956.

8. Having regard to the fact that the grievance of the petitioners is limited to the quantum of compensation awarded in their favour in terms of the impugned order, the same can be taken care of, if they avail the remedy of appointment of a Arbitrator in terms of sub section (5) of Section 3G of the Act of 1956. Even if the petitioners have not filed the objections in terms of sub-section (3) of Section 3G of the Act, for whatsoever reasons, still then they have a right to avail the remedy of seeking appointment of the Arbitrator for the purpose of assessing the adequate compensation. Thus, even if it is assumed that notice under section 3G(3) of the Act of 1956 was not published in the newspapers still then grievance of the petitioners can be taken care of by the Arbitrator. Mere non filing of objections in terms of Section 3G(3) of the Act of 1956, would not disentitle the petitioners from seeking a higher amount of compensation before the Arbitrator. In fact, the learned counsel for the petitioners during the course of arguments has submitted that the Arbitrator has already been appointed.

9. In view of the above, the writ petition is disposed of with a liberty to the petitioners to approach the Arbitrator with their claims for enhancement of compensation. Needless to mention that the Arbitrator shall consider the claims

of the petitioners in accordance with law most expeditiously.