Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 485 of 2026

Hasimara Industries Limited & Anr.
Vs.
Union of India & Ors.

For the petitioners	:	Mr. Saptangsu Basu, Sr. Advocate Mr. Kumar Gupta, Advocate Mr. DeepakJain, Advocate Mr. Sourav Ganguly, Advocate Ms. Rishita Chakraborty, Advocate
For the State	:	Mr. Subir Kr. Saha, Advocate and AGP
For the respondent No. 2:		Ms. Supriya Singh, Advocate
Heard on	:	06.04.2026
Judgment on	:	06.04.2026.

Raja Basu Chowdhury, J. (Oral):

1. The present writ petition has been filed, inter alia, for a declaration that the respondent nos. 1 and 2 are not entitled to challenge and/or question the determination and apportionment of compensation made by the competent authority vide order dated 7th July, 2023, having regard to the provisions of Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Arbitration Act").

2. This matter has a checkered history. The petitioner No. 1 is engaged in the business of manufacture of tea and is, inter alia, the owner of a tea garden known as Satali Tea Garden situated at Kalchini, Jalpaiguri presently in the District of Alipurduar (formally part of Jalpaiguri District). According to the petitioners, the garden is more than 100 years old. The petitioners still further contend that with the coming into effect of the West Bengal Estate Acquisition Act, 1953 (hereinafter referred to as the 1953 Act), the petitioner No. 1 was entitled to and had retained the land comprised in the tea garden to such extent as in the opinion of the State Government was necessary. Such fact would morefully corroborate from the order of retention dated 27th September, 2022 which has been disclosed in the writ petition. According to the petitioners, having regard to the provisions contained in Rule 4(A) of the West Bengal Estate Acquisition Rules, 1953 (hereinafter referred to as the "said Rules"), the land in the tea garden are held in terms of the conditions as set forth in schedule F to the said Rules whereunder a lessee is entitled to hold the land in the garden for a period of 30 years with right of successive renewals. The petitioners would contend that the lease is perpetual in nature and the land can only be resumed if, the land is not used for tea garden.

3. The petitioners' case further proceeds on the premise that a portion of the land to the extent of 22.4 acers was sought to be acquired under the provisions of the National Highways Act, 1956 (hereinafter

referred to as 1956 Act) for the purpose of building, maintenance and operation of National Highway bearing nos. 717, 31, 31C and 317A (being part of Asian Highway No.48). Following the aforesaid, acquisition cases being LAP case Nos. 17, 18, 19, 20 and 21 of 2014-15 were initiated by the Special Land Acquisition Collector being the respondent No. 3 herein while acting in his capacity as competent authority under the 1956 Act.

4. According to the petitioners, the respondent No. 3 vide its order dated 19th July, 2016 determined the amount of compensation payable in respect of the said acquisition cases.

5. Mr. Basu, learned sr. advocate representing the petitioners by drawing attention of this Court to page-89 of the writ petition would submit that the compensation that was awarded in favour of the petitioners was, however, limited to the tea bush and the shed trees only. According to the petitioners, the petitioners accepted the amount so determined without prejudice to its rights and contentions as would corroborate from the endorsement made on the copy of the said order which has also been annexed to the petition.

6. It is also the petitioners' case that following the above, the possession of the aforesaid land was taken over by the Special Land Acquisition Officer being the competent authority under the 1956 Act and was made over to the respondent No. 2. Such fact would

corroborate from the document dated 9th August, 2016 appearing at page 91 of the writ petition.

7. Being aggrieved, with regard to the determination of entitlement of the petitioners being limited to the tea bushes and shed trees, the petitioners had moved a writ petition before this Court which was registered as WP 4478 (w) of 2018. By an order dated 7th May, 2018, a co-ordinate Bench of this Court upon hearing the parties and noting that several representations had been made before the competent authority under the 1956 Act, directed the respondent No. 3 to dispose of the representations within 6 weeks from the date of communication of the order and to communicate the decision within 2 weeks thereafter.

8. In furtherance thereto, the respondent No. 3 by an order dated 24th June, 2019, wrongly recorded at the heading of the order-sheet as 7th February, 2019, decided the representations by holding that the petitioners were only entitled to claim on account of tea bushes and shed trees and that the petitioners were not entitled to compensation on account of land value.

9. Being aggrieved by such determination, the petitioners approached this Court in extraordinary writ jurisdiction which was registered as WPA 953 of 2019. By a judgment and order dated 14th September, 2022, this Court was, *inter alia*, pleased to dispose of the same by observing as follows:

> "*This Court finds that the respondent no. 4 while passing the impugned order dt. 24.06.2019 has*

neither considered the recommendation of the Committee nor had considered the nature of the lease on the basis of which the petitioners are in possession of the property and were running the tea garden. The respondent no. 4 had passed the impugned order only on the basis of the Memo No. 2124-LA (II) dated 28.07.1993. At the time of hearing, none of the parties have placed the Lease Deed or the Memo relied by the respondent no. 4 before this Court.

This Court is of the view that the respondent no. 4 had passed the impugned order without considering the recommendation of the Committee, the stand taken by the respondent nos. 2 and 3 and the Lease Deed and thus the impugned Order dt. 24.06.2019 is set aside. The respondent no. 4 is directed to consider the case of the petitioner a fresh for determination the compensation pertaining to the acquired land of the petitioner after giving an opportunity of hearing to the interested party within a period of six weeks from the date of communication of the order."

10. Following the aforesaid, the respondent No. 3 made a fresh determination, and determined that the petitioners in the facts of the case were also entitled to the share of the land compensation representing the leasehold interest and accordingly, taking into consideration all factors was of the view that it would be fair if 40% of the sum arrived at adding the market value of the land together with 100% solatium and other additional compensation under Right

to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is given, the petitioners' interest would be adequate to represent the interest of the lessee in the schedule plot. Needless to note that while making such determination, the respondent No. 3 also enhanced the market value of the land and other components based on which the determination was made.

11. It is a matter of record that the respondent No. 2 being the project director of the requiring body was aggrieved by this determination and by invoking the provisions of Section 3G(5) of the 1956 Act, sought for adjudication of the determination by seeking setting aside of the determination made on 7th July, 2023, through arbitration. Following the aforesaid the petitioners by communication dated 29th December, 2023 were notified of referral of disputes to arbitration in terms of the provisions contained in the 1956 Act. Although, the parties have filed objections and counter objections, the matter is yet to be adjudicated by the arbitrator. In the interregnum, according to the petitioners, the provisions of Section 29A(1) of the Arbitration Act, intervened.

12. The petitioners contend that having regard to the provisions contained in Section 29A(1) read with 29A(4) of the Arbitration Act, the Arbitrator is no longer competent to continue with the arbitral proceedings and has become a functus officio, and having regard thereto, the respondent number nos.2 and 3 with whom the deposit

of the compensation amount has already been made in consonance with the 1956 Act cannot withhold the same any longer and should forthwith disburse the same in favour of the petitioners having regard to the determination dated 7th July 2023 made by the respondent no.3.

13. Mr. Basu, learned senior Advocate in this context has placed before this court the provisions of the 1956 Act and would submit that right to possession is only permissible when the amount is not only deposited in terms of Section 3H of the 1956 Act upon being determined under Section 3G but only when an offer is made to the owners to receive the compensation so determined. In the instant case, according to him, originally a compensation to the tune of Rs.33,79,70,251/- was determined which amount has incidentally been deposited by the respondent no.2 with the respondent no.3. The payment made to the petitioners vide order dated 22nd June, 2016 which was accepted by the petitioners without prejudice on 19th July, 2016, is based on this determination. According to him, much water has flowed thereafter. Although, the petitioners were initially denied the right to be entitled to the share in the land, such wrong has been rectified by an order dated 7th July, 2023 passed by the respondent no.3. However, while doing so, the determination of the amount of land value forming the basis of compensation payable has also been enhanced. Although, the respondent no.2 had raised a dispute in terms of section 3G(5) of the 1956 Act, such

dispute remains unadjudicated and having regard to the provisions contained in Section 29A(1) read with 29A(4) of the Arbitration Act, the Arbitrator has become a functus officio and no further proceedings can be proceeded since, the respondent no.2 has failed to take any steps to get the time extended. In context with the above, he has placed reliance on the judgment delivered by the Division Bench of the Allahabad High Court in the case of ***Suryadev Pathak v. Union of India and Others***, reported in **2025 SCC OnLine All 7896**, the judgment delivered by the Bombay High Court in the case of ***Rural Infrastructure Development Private Limited v. Land Acquisition Officer and Subdivision Officer and Others***, reported in **2025 SCC OnLine Bombay 5003**. He has also placed before this Court the judgment delivered by the Bombay High Court in the case of ***National Highway Authority of India through its Project Director – Amrish Mankar v. Suresh Pandharinath Matre and Others***, reported in **2026 SCC OnLine Bom 2063** and would submit that although in the aforesaid judgment, the learned Judge of the Bombay High Court has held that the provisions of Section 29A of the Arbitration Act are not applicable to an arbitration conducted under Section 3G(5) of the 1956 Act, however, the said judgment is per incuriam as the same does not consider the judgment delivered by the Bombay High Court in the case of ***Rural Infrastructure Development Private Limited*** (supra). He next argues that once, a determination is

made, the scheme of the 1956 Act does not authorize the respondent no.3 to withhold the said determination or for the respondent no.2 as the project director of the requiring body to request the respondent no.3, the acquiring body to withhold the determination of the amount of compensation already made. In support of his aforesaid contention, reliance has been placed on the judgment delivered in the case of ***T. Younis vs. Special Land Acquisition Officer and Another***, reported in **2023 SCC OnLine Kar 130**. In the light of the submissions aforesaid, it is submitted that a mandamus should be issued directing the respondent no.3 to forthwith take steps and disburse the compensation already determined by the respondent no.3 vide its order dated 7th July, 2023.

14. *Per contra*, Ms. Singh. Learned Advocate representing the respondent no.2 would submit that the writ petition is pre-mature. According to her, though the facts noted hereinabove are not disputed, the issue with regard to determination of the amount of compensation, is at large before the Arbitrator exercising jurisdiction. According to her, by reasons of default of the petitioners, the Arbitrator could not complete the proceedings. She submits that petitioners had raised the objection as regards continuance of the arbitration proceeding on 5th March, 2026. The Arbitrator thereafter has not fixed any date for hearing though, the petition filed by the petitioners has been made over to the

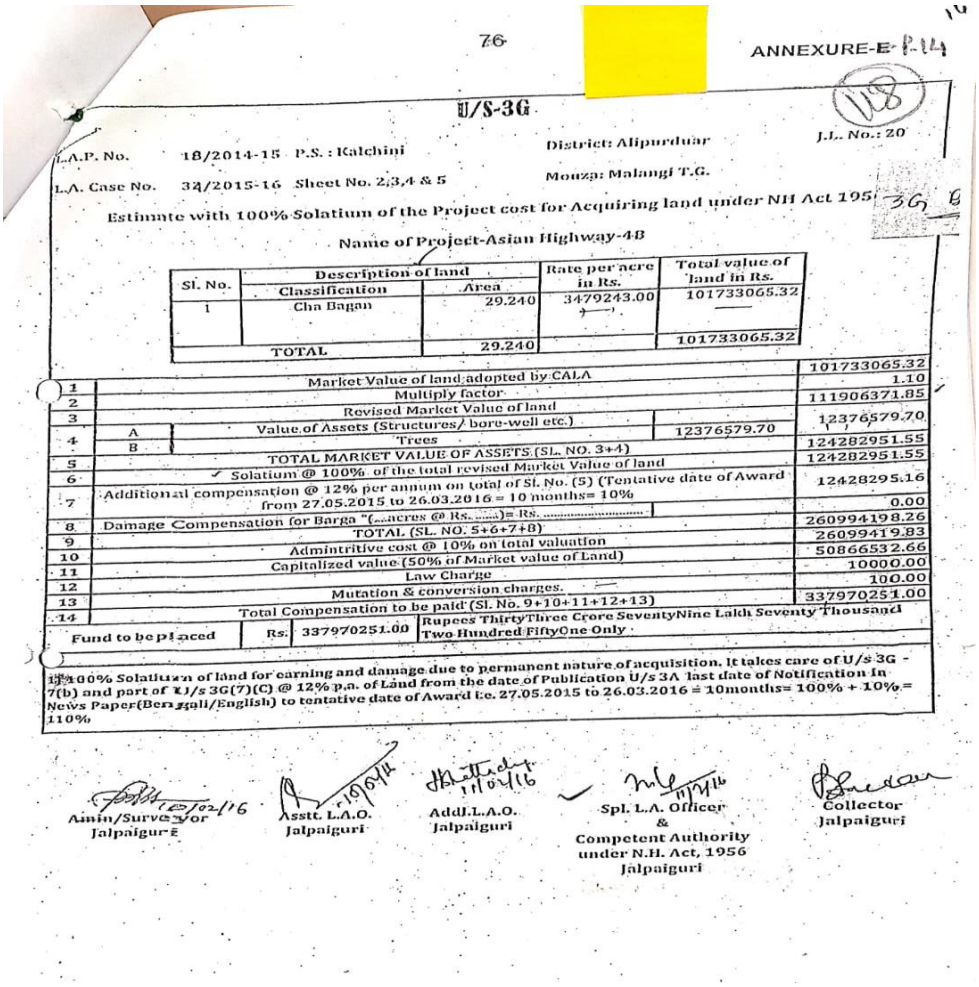
respondent no.2 for a response and the respondent no.2 has already filed a response in this regard with the Arbitrator. In response to a specific query from the Court, she would submit that she is not aware of any subsequent development before the Arbitrator. She has, however, drawn the attention of this Court to the provisions of the 1956 Act, in particular Section 3G(5) thereof. According to her, since the statute provides for a mechanism for adjudication of the disputes as regards the amount of compensation to be determined by a specified officer under the said 1956 Act, there is no scope for the provisions of Section 29A of the Arbitration Act to apply. According to her, if such was the case then, the provisions of the 1956 Act would be rendered nugatory. It is still further submitted that there is saving clause provided in Section 3G(6) of the 1956 Act, which specifically provides that the provisions of the said Arbitration Act, shall be subject to the provisions of the 1956 Act. According to her, since the 1956 Act provides for the determination of compensation to be made by an authority under the 1956 Act, any departure therefrom, by invoking the provision of Section 29A of the Arbitration Act is not permissible. In support of her contention, she submits that this aspect has been considered in the judgment delivered by the Bombay High Court in the case of ***National Highway Authority of India through its Project Director – Amrish Mankar*** (supra), as

such, at this stage when the Arbitrator is in seisin, this Court should not exercise jurisdiction.

15. Heard the learned advocates appearing for the respective parties and considered the materials on record. The undisputed facts have already been noted hereinabove. To reiterate, the petitioners were permitted to retain certain lands under the provisions of the 1953 Act. Such retention was through execution of a lease deed on the terms and conditions as set forth in Schedule 'F' of the said Rules. Going by the lease deed it would transpire that the lessee is entitled to renewal of the lease for a further period of 30 years, and successive renewals for similar periods subject to other terms and conditions morefully indicated therein. It is also a matter of record that the lands which were permitted to be retained by the State Government forms the subject matter of acquisition proceedings initiated by the respondent no.3 at the instance of the respondent no. 2, in LAP Case 17, 18, 19, 20 and 21, of 2014-15. Following the above, a determination was made by the respondent no.3 as would morefully corroborated from page 118 of the writ petition.

16. It would, however, transpire from the record that the petitioners were only permitted compensation to the extent to tea bush and shed trees. The relevant portion of the determination of the compensation made by the respondent no.3 and the amount of compensation disbursed in favour of the petitioners by order dated 22nd June, 2026 which was accepted by the petitioners without

prejudice to their right would corroborate from the two separate memos which are extracted hereinbelow:



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ANNEXURE-E P-14

U/S-3G

L.A.P. No. 18/2014-15 P.S. : Kalchini District: Alipurduar J.L. No.: 20

L.A. Case No. 32/2015-16 Sheet No. 2,3,4 & 5 Mouza: Malangi T.G.

Estimate with 100% Solatium of the Project cost for Acquiring land under NH Act 1956

Name of Project-Asian Highway-4B

Sl. No.	Description of land		Rate per acre in Rs.	Total value of land in Rs.
	Classification	Area		
1	Cha Bagan	29.240	3479243.00	101733065.32
	TOTAL	29.240		101733065.32

1	Market Value of land adopted by CALA			101733065.32
2	Multiply factor			1.10
3	Revised Market Value of land			111906371.85
4 A	Value of Assets (Structures/ bore-well etc.)		12376579.70	12376579.70
4 B	Trees			124282951.55
5	TOTAL MARKET VALUE OF ASSETS (Sl. NO. 3+4)			124282951.55
6	Solatium @ 100% of the total revised Market Value of land			12428295.16
7	Additional compensation @ 12% per annum on total of Sl. No. (5) (Tentative date of Award from 27.05.2015 to 26.03.2016 = 10 months= 10%			0.00
8	Damage Compensation for Barga "(...acres @ Rs. .....)= Rs.			260994198.26
9	TOTAL (Sl. NO. 5+6+7+8)			26099419.83
10	Admintritive cost @ 10% on total valuation			50866532.66
11	Capitalized value (50% of Market value of Land)			10000.00
12	Law Charge			100.00
13	Mutation & conversion charges.			337970251.00
14	Total Compensation to be paid (Sl. No. 9+10+11+12+13)			
Fund to be placed	Rs. 337970251.00	Rupees ThirtyThree Crore SeventyNine Lakh Seventy Thousand Two Hundred FiftyOne Only		

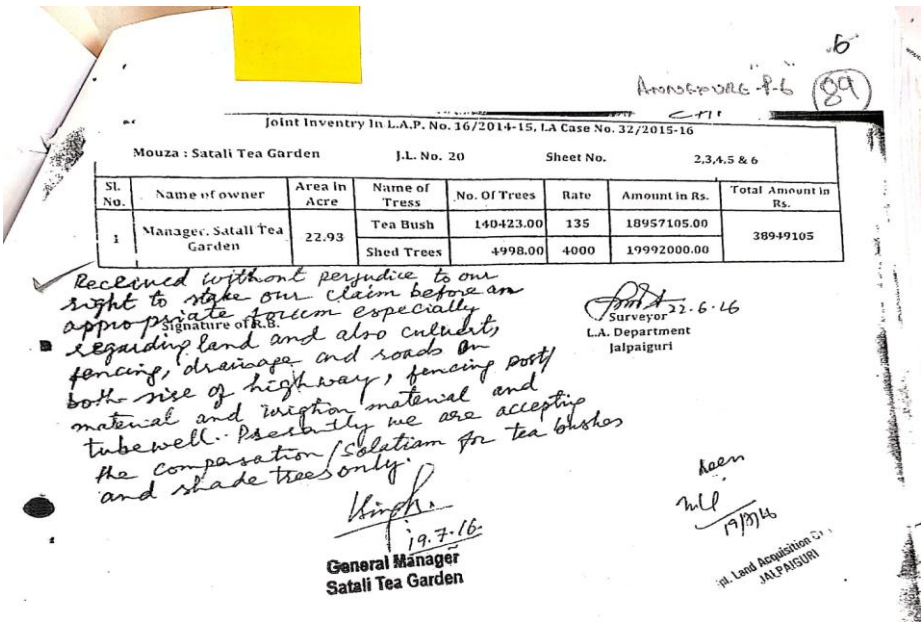
100% Solatium of land for earning and damage due to permanent nature of acquisition. It takes care of U/s 3G - 7(b) and part of U/s 3G(7)(C) @ 12% p.a. of Land from the date of Publication U/s 3A last date of Notification in News Paper(Bengali/English) to tentative date of Award i.e. 27.05.2015 to 26.03.2016 = 10months= 100% + 10%.= 110%

Asstt. L.A.O. Jalpaiguri

Addl.L.A.O. Jalpaiguri

Spl. L.A. Officer & Competent Authority under N.H. Act, 1956 Jalpaiguri

Collector Jalpaiguri



ANNEXURE-P-6 (89)

Joint Inventry In L.A.P. No. 16/2014-15, LA Case No. 32/2015-16

Mouza : Satali Tea Garden J.L. No. 20 Sheet No. 2,3,4,5 & 6

Sl. No.	Name of owner	Area in Acre	Name of Tress	No. Of Trees	Rate	Amount in Rs.	Total Amount in Rs.
1	Manager, Satali Tea Garden	22.93	Tea Bush	140423.00	135	18957105.00	38949105
			Shed Trees	4998.00	4000	19992000.00	

Received without prejudice to our right to stake our claim before an appropriate forum especially regarding land and also culverts, fencing, drainage and roads on both side of highway, fencing post material and irrigation material and tubewell. Presently we are accepting the compensation/Solatium for tea bushes and shade trees only.

Signature of R.S.

19.7.16

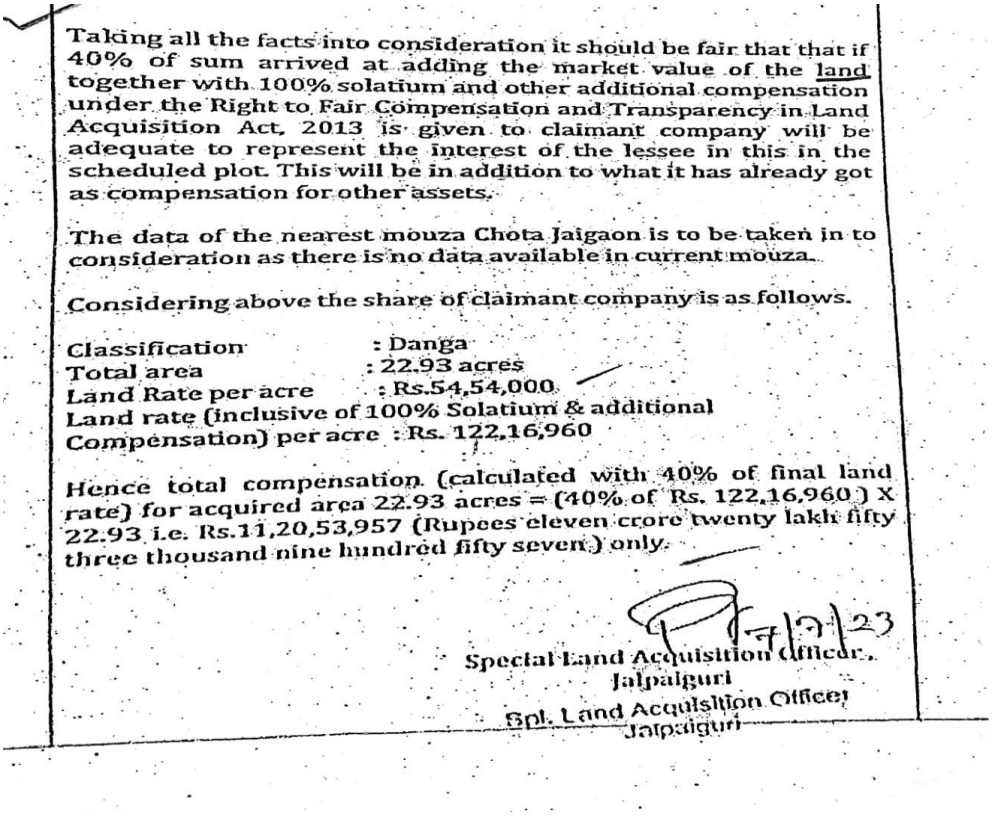
General Manager Satali Tea Garden

22.6.46

Surveyor L.A. Department Jalpaiguri

Addl. Land Acquisition Officer JALPAIGURI

17. The petitioners always held out that they are entitled to the compensation in the land, and had accordingly, approached this Court in a writ petition. Initially, by an order dated 7th May, 2018 a Coordinate Bench of this Court had directed the respondent no.3 to consider the representation. Though, such representation was considered by order dated 24th June, 2019, however, since, the petitioners were aggrieved, the petitioners once again approached this Court in WPA 953 of 2019. By an order dated 14th September, 2022 a Coordinate Bench of this Court had disposed of such writ petition by noting that the order passed was without considering the nature of lease deed on the basis of which the petitioners are in possession of the property and are running the tea garden and accordingly, directed fresh determination. It is in furtherance thereto, by an order dated 7th July, 2023 the respondent no.3 decided that the petitioners are entitled 40 per cent of the sum arrived at adding the market value of the land together with 100 per cent solatium and other additional compensation under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and held that the same should be adequate to represent the interest of the lessee in the schedule plot. To morefully appreciate the operative portion, the said order is extracted hereinbelow:



Taking all the facts into consideration it should be fair that that if 40% of sum arrived at adding the market value of the land together with 100% solatium and other additional compensation under the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 is given to claimant company will be adequate to represent the interest of the lessee in this in the scheduled plot. This will be in addition to what it has already got as compensation for other assets.

The data of the nearest mouza Chota Jaigaon is to be taken in to consideration as there is no data available in current mouza.

Considering above the share of claimant company is as follows.

Classification : Danga
Total area : 22.93 acres
Land Rate per acre : Rs.54,54,000
Land rate (inclusive of 100% Solatium & additional Compensation) per acre : Rs. 122,16,960

Hence total compensation (calculated with 40% of final land rate) for acquired area 22.93 acres = (40% of Rs. 122,16,960) X 22.93 i.e. Rs.11,20,53,957 (Rupees eleven crore twenty lakh fifty three thousand nine hundred fifty seven) only.

7/7/23
Special Land Acquisition Officer,
Jalpaiguri
Spl. Land Acquisition Officer
Jalpaiguri

18. As would appear from the above while doing so the respondent no.3 also enhanced the market value of the land based on which the determination was made. Challenging the above determination, the respondent no.2 had invoked the provisions of Section 3G(5) of the 1956 Act and sought for determination of the said amount by way of an arbitration, by seeking setting aside of the order dated 7th July, 2023. This proceeding has however, not attained finality and has been interjected, according to the petitioners, by reasons of Section 29A of the Arbitration Act. To morefully appreciate the same, it is relevant to note the provisions of Section 3G of the 1956 Act, the same is extracted herein below:

> ***"3G. Determination of amount payable as compensation.—****(1) Where any land is acquired under this*

Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) 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—

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
*(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.***"**

19. As would appear from the above, the determination of the amount of compensation by the competent authority in terms of sub section 1 or 2 is required to be undertaken at the first instance. If such determination is not acceptable by either of the parties in such event either of such parties has the right to make an application to seek redetermination by an arbitrator to be appointed by the Central Government. Sub-section (6) of Section 3G of the said 1956 Act as noted above provides that subject to the provisions of 1956 Act, the provisions of Arbitration Act shall apply, in other words unless any contrary intent is provided for in the 1956 Act, the Arbitration Act shall apply. In the instant case, the issue that falls for consideration is whether having regarding the provisions contained in Section 3G(5) and 3G(6) of the 1956 Act, whether the provisions of Section 29A of the Arbitration Act takes a back seat. It must be noted that the Arbitration and Conciliation Act is a self-contained Code though the same gives privacy to the agreement of

the parties. The same also provides for the mechanism for appointment of an arbitrator, if the parties are unable to agree to appointment. It provides that in case the parties fail to arrive at a consensus in appointing an arbitrator at the first instance, the said gap may be filled up by the said Act in the manner provided in Section 11 of the Arbitration Act. In this context, to morefully appreciate the said section, the same is extracted hereinbelow:

> ***"11. Appointment of arbitrators.—(****1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.*
>
> *(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.*
>
> *(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.*
>
> *[(3-A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under Section 43-I, for the purposes of this Act:*
>
> *Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:*

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.]

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be.]

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree [17]*[the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).]*

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take the

necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6-A) [Omitted by Act 33 of 2019]

[(6-B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]

(7) [Omitted by Act 33 of 2019]

[(8) [The arbitral institution referred to in sub-sections (4), (5) and (6)], before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of Section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, [the arbitral institution designated by the Supreme Court] may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) [Omitted by Act 33 of 2019]

[(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed

of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

*Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.].***"**

20. This apart, the Scheme of the Arbitration Act not only provides for the challenge of an arbitral tribunal but also provides for the termination of mandate and substitution of arbitrator on such termination of mandate as morefully noted in Section 15 thereof. To morefully appreciated the same, relevant section is extracted hereinbelow:

"15. Termination of mandate and substitution of arbitrator.—*(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—*

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held maybe repeated at the discretion of the arbitral tribunal.

> *(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.*"

21. As would appear from the legislative intent in Section 15(2), the same provides that where the mandate of an arbitrator terminates, a suitable arbitrator would be appointed according to the rules that were applicable for him to be replaced. This provision in fact gives privacy to the agreement of the parties. It may however, be noted that the Arbitration Act, also provides for a time limit within which an arbitrator shall conclude the proceeding. Such time limit has been provided for in Section 29A of the Arbitration Act, to morefully appreciate the same, the relevant section is extracted hereinbelow:

> "*[**29-A. Time limit for arbitral award**.—[(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:*
>
> *Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.]*
>
> *(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay:

[Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

22. The parties are ad idem that in the instant case, the initial time limit as provided in Section 29A of the Arbitration Act has expired though, the applicability of the provisions of Section 29A is disputed by the respondent no.2. I find in the instant case, the respondent no.2 has chosen not to either seek mutual extension of time or to make an application for extension of time in terms of the said Act. In this context, I may note that the specific issue had come up for consideration before the Bombay High Court in the Case of ***Rural Infrastructure Development Pvt. Ltd.*** (supra).

23. In the said case which arose out of a reference to the Divisional Commissioner, Konkan who had been designated as an arbitrator under Section 19B(8) of the State Highways Act, and despite expiry of period no award having been passed within the statutory timeline subsequently, beyond the statutory period provided for under the Arbitration Act, and without notice and consent and

without approval of extension of mandate of the arbitrator, or change of arbitrator, the arbitrator was altered by issuing a notification. Subsequently, once again by notification the arbitrator was altered by the State Government as the proceedings remained pending. It is at that stage, three petitions were filed by invoking the provisions of Section 29A of the Arbitration Act read with Section 11 of the Arbitration Act. It is in those facts the Bombay High Court by taking note of the provisions of Section 19B of the State Highways Act and by noting the judgment delivered in the case of ***National Highways Authority of India v. Sayedabad Tea Company Ltd.,*** reported in **(2020) 15 SCC 161** which was delivered in connection with the 1956 Act has observed in paragraphs 36 and 37 that there is no conflict in the State Highways Act with the requirement to complete the Arbitration within the statutory time frame of Section 29A of the Arbitration Act as such if, the arbitral proceedings are not completed within the timeline provided for under Section 29A, the provisions of Section 29A of the Arbitration Act would stand attracted and consequentially in paragraph 60 of the judgment summarized its observations which are noted herein below:

> *"**Summary of Conclusions:***
>
> ***60**. To summarize:*
>
> *(a) The appointment of an arbitrator under the State Highways Act has to be made by the State Government in exercise of the powers under Section 19-B(8) of the State Highways Act;*

(b) The aforesaid provisions constitute the Arbitration Agreement between the parties in terms of Section 2(4) of the Arbitration Act;

(c) Once the Arbitral Tribunal is so appointed, the provisions of the Arbitration Act would apply to the conduct of the arbitration;

(d) There is no conflict between the State Highways Act and the Arbitration Act in the matter of the period of mandate of the Arbitral Tribunal, and therefore the "subject to" provision in Section 19B(9) does not result in ouster of Section 29A of the Arbitration Act;

(e) The mandate of the Arbitral Tribunal would therefore expire in line with the timelines stipulated in Section 29A of the Arbitration Act;

(f) Unlike Section 15 of the Arbitration Act, the substitution under Section 29A of the Arbitration Act is not linked to the process of the original appointment, which is a reference consciously made by Parliament under Section 11 as well as Section 15(2) of the Arbitration Act, but has refrained from providing so under Section 29A of the Arbitration Act. Therefore, when the mandate of the Arbitral Tribunal expires, the arbitrator may indeed be substituted by the Court having jurisdiction under Section 29A of the Arbitration Act;

(g) The substitution under Section 29A of the Arbitration Act is well aligned with and subserves the conscious legislative policy choice made by amending the State Highways Act to introduce Section 19B(8) and Section 19B(9) to bring compensation-related disputes within the scope of expeditious resolution by way of arbitration;

(h) In the result, the power to substitute the Arbitral Tribunal by invoking the provisions of Section 29A(6) of the Arbitration Act remains intact in the "Court" with jurisdiction under Section 29A read with Section 2(1)(e) of the Arbitration Act;

> *(i) In the facts of this case, the bundle of facts, the proving or disproving of which would be essential for adjudication, lies entirely outside Mumbai. The Divisional Commissioner, Konkan and the Divisional Commissioner, Nashik as the Arbitral Tribunal have their seat outside Mumbai. Any meetings of the Arbitral Tribunal held in Mumbai is purely a matter of convenience, which made Mumbai the venue for those hearings, and not the seat of the arbitration; and*
> *(j) Therefore, the Petitioners shall be entitled to file these Petitions before the jurisdictional court that is responsive to the definition of "Court" under Section 2(1)(e) of the Arbitration Act, and such Court may grant substitution in exercise of its powers under Section 29A of the Arbitration Act in accordance with the law declared above."*

24. As would appear from the above Judgment, the Bombay High Court while noting the provisions of Sections 11 and 15 of the Arbitration Act has held that the substitution of Arbitrator under Section 29A of the Arbitration Act is not linked to the process of the original appointment, which is a reference consciously made by the Parliament under Section 11 as well as Section 15(2) of the Arbitration Act, but has reframed from providing so under Section 29A of the Arbitration Act. Following the above, it was held that when the mandate of the arbitral tribunal expires the arbitrator may indeed be substituted by the Court having jurisdiction under Section 29A of the Arbitration Act. This aspect with respect, has not been considered by the learned Judge of Bombay High Court in the case of ***National Highway Authority of India through its Project***

Director – Amrish Mankar (supra). In the said Judgment, the learned Judge in paragraph 48 has only observed as follows:

> **"***The application of Section 29A of the Arbitration and Conciliation Act, 1996 to arbitrations conducted under the National Highways Act, 1956 would render the statutory scheme of appointment of arbitrators and conduct of proceedings of the arbitrator under the National Highways Act unworkable. Under the scheme of Section 3G(5) of the National Highways Act, the Central Government appoints an "officer" for a particular region to act as the arbitrator. The appointment is not of a specifically named individual in each case rather, the designated office for that region acts as the Arbitral Tribunal for all matters arising within that region. Consequently, the arbitration is attached to the office and not to the individual occupying that office. When the incumbent officer is transferred or otherwise ceases to hold that office, the successor who assumes the office automatically functions as the arbitrator in the matters pertaining to that Region. In such a statutory framework, the application of Section 29A of the Arbitration and Conciliation Act, 1996, which contemplates extension of the mandate of a specific arbitrator and substitution of the arbitrator by the Court, becomes impracticable. Since the arbitration under the National Highways Act is conducted by the incumbent officer holding the designated office, the concept of substitution of an arbitrator for the purpose of extension of mandate under Section 29A would be inconsistent with the statutory scheme. Therefore, the application of Section 29A to arbitrations under the National Highways Act*

would, per se, render the arbitration mechanism under the NH Act unworkable."

25. Having regard to the above and noting that the legislature has consciously delinked the substitution of Arbitrator under Section 29A of the Arbitration Act from the process of original appointment, I am unable to accept the finding rendered by the learned judge in the above case. Accordingly for reasons noted above, I am of the view that Section 29A of the Arbitration Act stands attracted to an arbitral proceeding initiated by invoking Section 3G(5) of the 1956 Act, and the timeline for completion of Arbitration under the Arbitration Act is not inconsistent with the provisions of the 1956 Act.

26. Coming back to the case at hand, I find that the provisions of Section 3E of the 1956 Act makes it amply clear that once, a declaration has been made under Section 3D and on the publication of such declaration, the land vests in the Central Government and the amount determined by the competent authority under Section 3G with respect to such land is required to be deposited under sub-Section (1) of Section 3H with the competent authority. In the instant case, although, the initial determination of the amount of compensation pertaining to the entire land was deposited with the respondent No. 3, the respondent No. 3 had only disbursed the entitlement to the petitioners to the extent of tea bushes and shed trees as would corroborate from the order dated 22nd June, 2016. The petitioners had repeatedly challenged such disbursal on the

ground that the petitioners were also entitled to compensation of the amount already determined in respect of the land as well. Such determination was finally made by the respondent No. 3 vide its order dated 7th July, 2023. At the same time, it must not be lost sight of that while passing the above order the respondent No. 3 had also enhanced the market value of the land. Since, the determination of the amount payable as compensation was also enhanced apart from the entitlement of the petitioners to the extent of 40% of the value of land as aforesaid, the respondent No. 2 had invoked Section 3G(5) of the 1956 Act as noted above. The said proceeding remains unconcluded. As of today, the respondent No. 2 has not taken out any application under the provisions of Section 29A of the Arbitration Act. At the same time, the right of the said respondent to seek extension of time through the process of Court cannot be interfered with at least at this stage.

27. Though the parties are ad idem on the issue that no steps have been taken by the said respondents to invoke the provisions of Section 29A of the Arbitration Act, as such in my view, if the respondent No. 2 has chosen not take any steps, the respondent No. 2 cannot be permitted to deny the petitioners the minimum entitlement of compensation for compulsory acquisition of land which has been done by invoking the provisions of the 1956 Act. Since, the determination has already been made and since, as of today there appears to be no challenge to such determination, I am

of the view that the respondent No. 3 must on the basis of the determination of the amount of compensation already made, take immediate steps and disburse the amount already determined in favour of the petitioners on an expeditious basis, as law does not authorize the respondent no.3 to withhold the same or for the respondent no.2 to request the respondent no.3 not to disburse the same.

28. At this stage, Ms. Singh, learned advocate representing the respondent No. 2 would submit that considering the peculiar facts, the respondent No. 2 would be interested to apply for extension by making an application under Section 29A of the Arbitration Act and as such some time is necessary. Having regard thereto, I am of the view that the above direction for payment shall remain stayed for a period of 8 weeks from date.

29. With the above observations and directions, the writ petition is disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Raja Basu Chowdhury, J.)

Sayandeep/akg/sb
A.R. (Court)