



21.02.2020.
Item No. 52

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI.**

**C.A.N. 1 of 2019
in
F.A. 5 of 2019**

**Terai Tea Company Limited
Vs.
Union of India and others.**

**Mr. Sagar Bandyopadhyay.
... for the appellant.**

**Mr. Rajdeep Biswas.
... for the Union of India.**

In this first appeal preferred against an arbitral award dated 3rd April 2019 passed by Justice Prabir Kumar Samanta (Retired) determining compensation under Section 8 of the Requisition and Acquisition of Immovable Property Act, 1952, the appellant has filed an application for a direction on the Union of India to forthwith pay to the appellant the awarded amount without prejudice to the rights and contentions of the appellant in the appeal. The submission made on behalf of the appellant is that the Union of India has not challenged the award. Hence, the award is binding on the Union of India. There can be no legitimate reason for the Union to withhold payment of such amount.

It is submitted on behalf of the appellant that the appeal has been preferred against portions of the award being aggrieved by non-consideration of certain aspects by the learned Arbitrator. However,



the award, in so far as the same is in favour of the appellant, is naturally not assailed by the appellant.

Learned Counsel for the Union of India, with reference to the affidavit filed on its behalf submits that the appellant having itself challenged the award cannot ask for disbursal of any amount under the award. This amounts to blowing hot and cold. The appellant cannot take any advantage of the award which the appellant itself has challenged.

We have considered the rival contentions of the parties. The fact remains that the property of the appellant had been requisitioned by the Union of India. This happened way back in 1962/1963. The Learned Arbitral Tribunal constituted under Section 8 of the 1952 Act has made an award in favour of the appellant. The time period of three months was stipulated in the award for payment of the awarded amount by the Union of India to the appellant. Such time period has long elapsed. The appellant has filed this appeal for enhancement of the awarded amount. It is aggrieved by the alleged failure on the part of the learned Arbitrator to take into consideration the value of certain things like trees etc. on the property in question and the appellant is also aggrieved by the interest component of the award as determined by the learned Arbitrator. The appellant is not challenging the principal amounts awarded on account of rent compensation which are Rs.10,97,15,489/- and Rs.6,50,196/-.

The Central Government has admittedly not assailed the award. This would indicate that it has no grievance regarding the award and the same is acceptable to it. Ten months have passed since the award was made and published. No steps have been taken or could be demonstrated to have been taken by the Government for challenging the award. Also,



admittedly nothing has been paid to the appellant under the award. Since the Central Government has accepted the award, we find no reason to refuse the prayer of the appellant on this application.

In a similar case, by an order dated 15th November 2016 passed in CAN 7775 of 2018 in FAT 390 of 2015 (Abhijit Tea Company Private Limited vs. Union of India & Anr.), a Co-ordinate Bench of this Court had allowed the appellant's prayer for a direction on the Union of India to pay the principal amount awarded under Section 8 of the 1952 Act since the Union of India had not challenge the award.

Accordingly, we direct the Union of India, Ministry of Defence, to pay to the appellant either by bank draft or account payee cheque drawn in favour of the appellant the sums of Rs. 10,97,15,489/- and Rs.6,50,196/- within six weeks from the date of communication of this order. It is made clear that the appellant shall be entitled to receive the aforesaid amount without prejudice to its rights and contentions in the pending appeal.

Let the records of the Arbitral Tribunal be called for immediately. After receipt of the records the department shall intimate the appellant who shall prepare requisite number of paper books for the purpose of hearing of the appeal.

CAN 1 of 2019 is accordingly disposed of.

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(Abhijit Gangopadhyay, J.)

(Arijit Banerjee, J.)