



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Appeal No.39 of 2024

Decided on: 29th May, 2024

Hari Singh

.....**Appellant**

Versus

National Highways Authority of India

.....**Respondent**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the Appellant: Mr. Yudhbir Singh Thakur, Advocate.

For the Respondent: Ms. Shreya Chauhan, Advocate.

Jyotsna Rewal Dua, Judge

The Landowner remained successful before the learned Arbitrator in his petition filed under Section 3G(5) of the National Highways Act. The compensation for his acquired land was enhanced. The appeal preferred by the respondent-National Highway Authority of India under Section 34 of the Arbitration and Conciliation Act was however allowed by the learned District Judge primarily on the ground that mandate of the Arbitrator to pass the award had elapsed at the time of pronouncement of award and there had been no extension in time by the competent Court. Aggrieved, the landlord has preferred this appeal.

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

2. Facts:-

2(i). Certain parcels of land owned by the appellant were acquired by the Central Government for building (four laning etc.), maintenance, management and operation of NH-21 on the stretch of land from kilometer 126.500 to kilometer 188.917 (Bilaspur-Ner Chowk). The Competent Authority, Land Acquisition passed the award on 19.10.2013. Not satisfied with compensation amount, the appellant applied under Section 3G(5) of the National Highways Act, 1956 for enhancement of the compensation. The petition was instituted on 02.01.2016. Learned Arbitrator passed the award on 22.12.2017 and enhanced the compensation.

2(ii). Respondent-National Highway Authority of India (in short 'NHAI') invoking Section 34 of the Arbitration and Conciliation Act (hereinafter to be referred as 'the Act'), moved the Court of learned District Judge, Mandi against the award passed by the learned Arbitrator by preferring the petition on 07.05.2018. Learned District Judge vide his order dated 04.12.2021, allowed the appeal and set aside the award passed by the learned Arbitrator on 22.12.2017. The award was set aside on the ground that the Arbitrator had erred in proceeding with the matter after expiry of one year without taking consent or without seeking an

extension from the Court as required under Section 29A of the Act. The relevant portion from the order passed by the learned District Judge reads as under:-

“18. In view of the above, the learned Arbitrator had erred in proceeding with the matter after the expiry of one year without taking consent or without seeking an extension from the Court as required under Section 29A of Arbitration and Conciliation Act. Hence, this point is answered in the affirmative.

19. In view of the above, the present application is allowed and an award dated 22.12.2017 passed by the learned Arbitrator is set aside. However, this will not prevent any of the parties from applying for the extension of time, if otherwise legally admissible. Original order be placed in Arbitration Pet. No.101 of 2018 and authenticated copy thereof be placed in the other consolidated Arbitration petition(s). Memo of costs be prepared. The record of the learned Arbitrator along with a copy of this judgment be returned and the record of this Court, after due completion, be consigned to the record room.”

Feeling aggrieved against the above observations made by the learned District Judge and also against setting aside of the award passed by the learned Arbitrator, the landowner has instituted this appeal under Section 37 of the Act.

3. Heard learned counsel on both sides and considered the case file.

4. Consideration:-

4(i). Section 29A of the Act as it existed in the year 2016 (brought into force with effect from 23.10.2015 by Act 3 of 2016-2015 Amending Act) reads as under:-

“29A. Time limit for arbitral award.—

- (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. Explanation.- For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.*
- (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 subsection (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.

- (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.”

As per Section 29A(1) of the Act, the award has to be made within a period of 12 months from the date the Arbitral Tribunal enters upon the reference. Section 29A(3) provides for extension of the period specified in Sub-section (1) for a further period not exceeding six months by the consent of the parties. While deciding **Arbitration Appeal No.17 of 2023 (Balak Ram and others Versus NHAI)** alongwith connected matters on 31.07.2023, it has been held that consent of parties envisaged under Section 29A(3) of the 2015 Arbitration & Conciliation Act for extending the arbitral period need not necessarily be either express or in writing. There can be a deemed consent, an implied consent of the parties, which can be gathered from their acts and conduct. Acquiescence of the parties in proceeding with the arbitration case beyond twelve months without raising any objection to the continuation of the proceeding does amount to consent.

4(ii). In the instant case, however, the petition under Section 3G of the National Highways Act was preferred before the learned Arbitrator on 02.01.2016 and the award was passed on 22.12.2017, i.e. after a period of 12+6+5 months (approximately). Therefore, even if it is to be

assumed that the parties had consented to the continuation of the arbitration proceedings beyond period of 12 months, then also such consent could cover up the period of six months beyond the period of 12 months. The award was passed five months (approximately) beyond the period of 18 months. The delay in passing the award, therefore, will not fall within the ambit of Section 29A(3) of the Act.

4(iii). In such a situation, for coming to the aid of the landowner, who is seeking to enhance the compensation awarded by the competent authority, recourse can be made to Section 29A(4) of the Act, which provides for extension of time by the Court for passing the award by the Arbitrator after the expiry of the specified/extended period of arbitration. Landowner cannot be left high and dry for no fault of his. Mere fact that his petition under Section 3G(5) of the National Highways Act was not decided by the Statutory Authority within the prescribed/extended period, should not foreclose his right to seek enhancement in compensation, more particularly, when Section 29A(4) of the Act empowers the Court to extend the mandate of the Arbitrator in deserving cases. Powers under Section 29A(4) of the Act are exercisable either prior to or after the expiry of period specified or extended. Reference can also be made in this regard to a decision rendered on 10.01.2024 in

OMP(M) No.219 of 2023 (Rajinder Kumar Versus National Highway Authority of India and another),

wherein it was held that right to property is a Constitutional right under Article 300A of the Constitution of India, therefore, the landowner cannot be deprived of his property except in accordance with law. He has a right to be adequately compensated for his land, which has been acquired as per law.

The aforesaid decision, in turn, was based upon a judgment rendered on 13.06.2023 in **Arbitration Appeal No.9 of 2023 (Rattan Chand and another Versus National Highways Authority of India and another). SLP(C) No.21144 of 2023** preferred against the aforesaid decision was dismissed by the Hon'ble Apex Court on 06.10.2023.

5. In view of above, this appeal is partly allowed. The matter is remanded to the learned Arbitrator for afresh adjudication. His mandate for pronouncing the award is extended by **31.12.2024**, as mutually agreed between the parties. Learned Arbitrator shall decide the matter afresh, but on the strength of pleadings and material already available on record. The parties, through their learned counsel, are directed to appear before the learned Arbitrator on **25.06.2024**.

The appeal stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

May 29, 2024
Mukesh

Jyotsna Rewal Dua
Judge

High Court of H.P.