

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 1

ARBITRATION APPEAL No. 394 OF 2022

NATIONAL HIGHWAYS AUTHORITY OF INDIA

v.

RAMPYARI AND ANOTHER

For the Appellant : Mr. Pranjal Mehrotra, Advocate
For the Respondent : Mr. Manish Kumar Jain, Advocate

Last heard on May 21, 2024
Judgement on May 27, 2024

HON'BLE SHEKHAR B. SARAF, J.

1. This is an appeal filed by the National Highways Authority of India (hereinafter referred to as 'the appellant') under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') challenging the order dated January 14, 2020 passed by District and Session Judge, Lalitpur under Section 34 of the Act.

FACTS

2. I have laid down the factual matrix leading to the instant appeal below:

- (a) The present case involves the acquisition of land of Arazi No. 1004/4 measuring 0.020 hectare situated at village Lakhanpura, Tehsil and District Lalitpur for widening of National Highway No. 26 for commercial purposes.
- (b) On November 2, 2013, Competent Authority/Special Land Acquisition Officer, Lalitpur granted the compensation in respect of the acquired land at the rate of Rs.9,88,000/- per hectare (Rs.98.8/- per

square meter).

- (c) The land in question belonged to Smt. Rampyari (respondent No. 1), who filed an application before District Magistrate/Arbitrator under Section 3G (5) of the National Highway Act, 1956 (hereinafter referred to as 'the Act of 1956') against the order of compensation passed by the Competent Authority/Special Land Acquisition Officer, Lalitpur on the ground that the awarded compensation was incorrect, one-sided and undervalued.
- (d) On August 28, 2015, the Arbitrator passed the award in the matter and enhanced the amount of compensation from Rs.98.8/- per square meter to Rs.2500/- per square meter.
- (e) Against the award passed by the Arbitrator, the appellant filed an application under Section 34 of the Act before the District and Session Judge, Lalitpur, who vide judgment and order dated January 14, 2020, rejected the application filed by the appellant and upheld the award passed by the Arbitrator.
- (f) Being aggrieved by the judgment and order dated January 14, 2020 passed by the District and Session Judge, Lalitpur, the appellant has preferred the instant appeal before this Court.

CONTENTIONS OF THE APPELLANT

- 3. Sri Pranjal Mehrotra, learned counsel appearing on behalf of the appellant has made the following submissions:
 - a) Section 3G(7)(a) of the Act of 1956 provides that the Competent Authority, as well as, the Arbitrator shall take into consideration the market value of the land on the date of publication of the notification under Section 3A of the Act of 1956 while determining the compensation.
 - b) The acquired land was evidently recorded as Agricultural Land in the revenue records on the date of publication of the 3A Notification and

the Competent Authority had correctly awarded the compensation on the agricultural rate of Rs.9,88,000/- per hectare.

- c) The Arbitrator while passing the award dated August 28, 2015 had recorded a categorical finding that there is no error on the part of the Competent Authority in determining compensation on the basis of the market value of effective stamp rate on the date of publication of the 3A Notification, according to the stamp rate list the then agricultural rate had been determined as Rs.9,88,000/- per hectare. Further, the respondent No. 1 had not produced any evidence on record to prove that any commercial/residential activities were going on in the acquired land on the date of publication of the 3A Notification. Still, the Arbitrator acted with patent illegality enhancing the compensation @ Rs.2500/- per square meter only on the basis of some examples produced by the respondent No. 1 of some other institutions.
- d) Once the Arbitrator had admitted in the Arbitral Award that the Competent Authority had correctly determined the compensation on the basis of the stamp rate on the date of publication of the 3A Notification, then there was no occasion for him to illegally enhance the compensation at the rate of Rs.2500/- per square meter.
- e) There is no finding in the Arbitral Award dated 28.8.2015 as to how the Arbitrator arrived @ Rs.2500/- per square meter. The Arbitrator, only on the basis of his opinion, has enhanced the compensation @ Rs.2500/- per square meter without any basis/any rate list etc.
- f) The rate of Rs.2500/- per square meter, as determined by the Arbitrator, is not in accordance with Section 26 the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013. The Arbitrator has not discussed in detail the examples of other institutions produced by the respondent No. 1, rather has only in one line enhanced the compensation to Rs.2500/- per square meter only on the basis of the aforesaid examples.

- g) The 3A Notification was published on 26.04.2011, and the Arbitrator declared the Award dated 28.8.2015 considering the alleged potential value of the acquired land after a gap of more than 5 years from the aforesaid date of 3A Notification, in view of the situation of nearby area had been changed, without recording any finding regarding the relevance/connection of the aforesaid examples of other institutions produced by the opposite party/respondent to the aforesaid date of 3A Notification.
- h) The Arbitrator is the District Magistrate, who himself revises the circle rate of the District from time to time for collection of stamp duty to Government. The Competent Authority had correctly determined the compensation on the basis of the effective stamp rate on the date of publication of the 3A Notification, which was issued by the Arbitrator himself. However, the Arbitrator while declaring the Arbitral Award acted with patent illegality enhancing the compensation @ Rs.2500/- per square meter.
- i) The appellants had taken a specific objection before the Arbitrator that the opposite party/respondent No. 1 had already accepted the compensation at the agricultural rate, and in the circumstances, it was not open for the respondent No. 1 to approach the Arbitrator challenging the rate of compensation. However, the Arbitrator acted with patent illegality in not recording any finding on the aforesaid objection taken by the appellants.
- j) To buttress his arguments, counsel for the appellant has relied upon the judgment of the Supreme Court in case of **Prakashwati (Smt) v. Chief Controlling Revenue Authority, Board of Revenue, U.P.** reported in (1996) 4 SCC 657 and judgments of the division Bench of this Court in cases of **Navin Tyagi v. Union of India** reported in 2013 SCC OnLine All 10549, **Kishore Chandra Agarwal v. State of U.P.** reported in 2007 SCC OnLine All 2358 and **Junaid Ahmed Khan**

And 2 Others v. National Highways Authority Of India And 2 Others (WRIT - C No. - 30595 of 2021 decided on 28.1.2023).

CONTENTIONS OF THE RESPONDENT

4. Sri Manish Kumar Jain, learned counsel appearing on behalf of the respondent has made the following submissions:

- (a) The Ministry of Shipping, road Transport & Highways had issued notification under Section 3E of the Act of 1956 and in the Schedule of the notification, the Arazi 1004/4 area 0.020 hectare was mentioned to be situated in Abadi.
- (b) It is proved by Khasra which has been produced by Respondent No.1 that in Arazi No.1004/4 total area is 0.020 hectare wherein 0.005 hectare is an abadi and in rest of the area boundary is situated.
- (c) The acquired land of Arazi No.1004/4 measuring 0.020 hectare/200 sq. meter (196 square meter is a small piece) and in rest 0.005 hectare, abadi is situated which is proved by Khasra. Therefore, in this plot agricultural activity cannot be performed. In spite of the fact that in Schedule under Section 3E, acquired land is an abadi, the competent authority has given compensation as per agricultural rate which is highly arbitrary.
- (d) The acquired land is situated on the main road (National Highway). Therefore, it is natural that residential plot on main road are generally used as commercial during course of time.
- (e) The Arbitrator has given commercial compensation according to circle rate of year 2012-14. According to circle rate, the non agricultural rate is Rs.1400/- per square meter and commercial rate shall be two times of non agricultural rate (as mentioned in para no.7 and 18 of the circle rate) which becomes Rs.2800/- per square meter

whereas only Rs.2500/- per square meter commercial compensation has been given to the respondent No. 1.

(f) If an agricultural land is used for abadi or commercial purpose, it is not necessary to obtain certificate under Section 143 of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950. Therefore, if agricultural land commercial/residential is not even declared then compensation can be given at the rate of commercial/residential.

(g) To buttress his arguments, counsel for the respondent has relied upon the judgments of the Supreme Court in **Mala v. State of Punjab** reported in (2023) 9 SCC 315 and **U.P. Awam Vikash Parishad v. Asha Ram** reported in (2021) 17 SCC 289 and judgment of a coordinate bench of this Court in **Chandra Jota v. Deputy Director of Consolidation** reported in 2007 SCC OnLine All 2221.

ANALYSSIS AND CONCLUSION

5. I have heard the counsel appearing for the parties and perused the material on record.

6. Upon a perusal of the award passed by the Arbitrator, it can be seen that the Arbitrator noted that the date of publication of the notification under Section 3A of the Act of 1956, is the essential date for determining the market value of the acquired land. The Competent Authority had utilized the stamp rate list effective on this date to ascertain the compensation, fixing it at Rs.9,88,000 per hectare based on the agricultural classification of the land. The Arbitrator also noted that the respondent No. 1 did not provide substantive evidence to demonstrate any commercial activity on the acquired land at the time of the 3A Notification. Nonetheless, the respondent No. 1 submitted examples of other institutions, arguing that the potential value of the land, even if classified as agricultural, was higher than the agricultural rate.

7. Despite the absence of direct evidence of commercial use, the

Arbitrator noted that the land has potential value being situated on a main road (National Highway) and deserves a higher compensation rate. He concluded that residential plots on main roads are often utilized for commercial purposes over the time, thereby enhancing their value beyond their agricultural classification. Consequently, the compensation was determined @ Rs.2500 per square meter, considering this potential commercial use.

8. In the judgment passed by the District Judge, Lalitpur under Section 34 of the Act, the Arbitrator's rationale was deemed reasonable and not patently illegal. The decision to compensate based on potential use aligns with principles of fair compensation, taking into account the land's potential use and location. The Arbitrator's award was found to be neither against the fundamental policy of Indian law nor unjust or immoral. The District Judge concluded that the applicants (National Highways Authority of India and others) failed to demonstrate that the Arbitrator's award dated August 28, 2015 was patently illegal, against public policy or fundamentally unfair. Consequently, the application filed by the appellant was dismissed and the award passed by the Arbitrator was upheld.

9. In the present case, the appellant is arguing that the competent authority took into his consideration the market value of the land on the date of publication of the notification under Section 3A, which is proper and in accordance with the provision of sub Section 7 of Section 3-G of the Act of 1956. However, it is clear from the record that this thing was specifically noted by the Arbitrator and only thereafter, he passed the Arbitral Award based on the potentiality of the land.

10. The Hon'ble Apex Court in case of **U.P. Awas Evam Vikash Parishad v. Asha Ram** reported in **(2021) 17 SCC 289** has emphasized that the market value of land shall be determined by a combination of its current state, inherent advantages, and its potential for future development, considering a variety of factors such as location, existing amenities, and proximity to development areas. The Court further observed that ignoring the time gap between different notifications and relying on valuations from a different period can

lead to inaccurate and unjust compensation assessments. Relevant Paragraphs of the judgment are extracted below:

“26. The relationship between the market value of land and its potentiality has also been discussed by this Court [Atma Singh v. State of Haryana, (2008) 2 SCC 568: (2008) 1 SCC (Civ) 621] wherein it was observed that : (Atma Singh case [Atma Singh v. State of Haryana, (2008) 2 SCC 568 : (2008) 1 SCC (Civ) 621] , SCC p. 572, paras 4-5)

“4. ... The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. ...

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration.”

29. The potentiality of the acquired land is one of the primary factors to be taken into consideration to determine the market value of the land. Potentiality refers to the capacity or possibility for changing or developing into the state of actuality. The market value of a property has to be determined while having due regard to its existing conditions with all the existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not primarily depends upon its condition, situation, use to which it is put or its reasonable capability of being put and also its proximity to residential, commercial or industrial areas/institutions. The existing amenities like water, electricity as well as the possibility of their further extension, for instance whether near about town is developing or has prospects of development have to be taken into consideration. It also depends upon the connectivity and the overall development of the area.

41. The compensation determined on the basis of a notification five years later cannot be a yardstick for determining compensation of the land which is subject-matter of present acquisition years earlier. Still further, the High Court was not justified in observing that gaps of few years in the notification have been ignored by this Court. In fact, on the contrary, the High Court has failed to note that the date of notification for the acquisition of land for the benefit of the Parishad is five years earlier than those in the judgments relied upon by the High Court.”

11. It is further argued by the appellants in the case at hand that the Arbitrator did not record any reasons in the arbitral award passed by him as to how he enhanced the compensation rate in respect of the land in question.

12. The Supreme Court in case of **Dyna Technologies Private Limited v. Crompton Greaves Limited** reported in **(2019) 20 SCC 1** has held that the passing of a reasoned award is not an empty formulation under the Arbitration Act. Further, the requirements of a reasoned order are that the reasons should be proper, intelligible and adequate. The Court further highlighted that the award can be challenged under Section 34 of the Act only when there is a complete perversity in the reasoning. Further, the power vested under Section 34(4) can be utilized in the case where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise. Relevant paragraphs of the judgment are extracted below:

“35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

36. At this juncture it must be noted that the legislative intention of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.

38. It may be noted that when the High Court concluded that there was

no reasoned award, then the award ceased to exist and the Court was functus officio under Section 34 of the Arbitration Act for hearing the challenge to the award under the provisions of Section 34 and come to a conclusion that the arbitration award was not in terms of the agreement. In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course. However, the High Court analysed the case on merits, but, for different reasons and we need not go into the validity of the High Court's interference.”

13. It is clear from the records of the case that the Arbitrator, keeping in mind the potentiality of the land and its proximity to the main road enhanced the compensation rate and the learned District Judge also affirmed the award on the ground that the plots situated on the main roads are generally used for commercial purposes meaning thereby the land's potentiality taken into consideration by the Arbitrator has no illegality.

14. It can be noted that the respondent No. 1's land is a small piece of land (200 square meter) and it is evident from this fact that such a small piece of land can not be used for agricultural purposes. Further, the situation of the land (its proximity to the main road) suggests that the land in question has commercial potentiality.

15. All the arguments raised by the appellants has been dealt by the learned District Judge and I find no patent illegality in the judgment passed by him.

16. A division bench of this Court in **Union Of India Through Garrison Engineer v. Ms Satendra Nath Sanjeev Kumar Architect, Contractors/Builders, Civil Engineers And Colonisers (Appeal Under Section 37 Of Arbitration And Conciliation Act 1996 No. - 182 of 2024 decided on 23.4.2024)** has held that the scope of interference in appellate proceedings under Section 37 of the Act is limited to the grounds available under Section 34 for challenging the award. An arbitral award should not be set aside unless it is vitiated by "patent illegality" on the face of the record. It is important to note that an award should not be set aside merely on the grounds of erroneous application of law or appreciation of evidence. Furthermore, interference is not warranted when the interpretation provided by the arbitrator is a plausible one. Relevant para is extracted below:

“15. Notably, the scope of interference in appellate proceedings under Section 37 of the Act stands bracketed to the grounds which are available under Section 34 for challenging the award. The award is not required to be set aside until and unless it is vitiated by "patent illegality" appearing on the face of the record with a caveat that the award should not be set aside merely on the ground of erroneous application of law or by appreciation of evidence. Nonetheless, it is also not permissible to interfere, particularly, when the interpretation is a plausible one. The Hon'ble Apex Court has reiterated the aforesaid principal of law in the case of MMTC Ltd. v. Vendanata Ltd. reported in (2019) 4 SCC 163, SSANGYONG ENGINEERING AND CONSTRUCTION COMPANY LIMITED v. NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI), reported in (2019) 15 SCC 131, UHL Power Company Ltd. v. State of Himachal Pradesh reported in (2022) 4 SCC 116 and S.V. Samudram v. State of Karnataka & Anr. in Civil Appeal No. 8067 of 2019 decided on 04.01.2024.”

17. In light of the above discussion, I find no illegality in the order dated January 14, 2020 passed by the learned District Judge, Lalitpur. Hence, the same requires no interference by this Court.

18. Accordingly, the instant appeal fails and is dismissed.

27.05.2024

Kuldeep

(Shekhar B. Saraf, J.)