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THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:109223
Court No. 40

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. – 210 of 2023

SMT. SAVITRI DEVI

v.

UNION OF INDIA AND OTHERS

For the Appellant : Mr. Rahul Agarwal and Ms. Akashi Agarwal, Advocates

For the Respondents : Mr. Vaibhav Tripahti, Advocate

Last heard on: May 29, 2024
Judgement on: July 5, 2024

HON'BLE SHEKHAR B. SARAF, J.

1. The instant application under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been preferred by Smt. Savitri Devi (hereinafter referred to as the 'Appellant') against the order dated October 21, 2022 passed by the Additional District Judge, Basti under Section 34 of the Act.

FACTS

2. I have laid down the factual matrix of the instant case below:

   a. Appellant was the owner of plot number 294 (later re-numbered as plot number 323) having an area of 0.038 ha, located in Mauja Madwanagar, District Basti. The aforesaid plot, along with the

residential building standing thereon, was acquired for construction of National Highway No. 28 under the National Highways Act, 1956 (hereinafter referred to as the 'NH Act, 1956').

b. The total value of the plot and building was computed at Rs. 14,87,493.70/-, out of which the value of the building/house was determined at Rs. 8,44,440/-, the value of trees, hand-pipe etc. was determine at Rs. 27,203/- while the value of the land was determined at Rs. 4,80,624/- by treating it to be agricultural land. Additional compensation of 10% of the value was payable on these components.

c. The amount of Rs. 14,87,493.70/- was paid on December 2, 2008 to the Appellant. Aggrieved by the said valuation, the Appellant submitted an application before the District Magistrate on February 15, 2008. After receiving the said application, the District Magistrate directed the Special Land Acquisition Officer (hereinafter referred to as the 'SLAO') to examine the matter and take necessary action.

d. The SLAO on February 23, 2008, directed the Provincial Block PWD, Basti to inspect the site and send a fresh valuation report. The Executive Engineer, PWD, after examining the valuation report, calculated the total cost of the building as Rs. 19,27,003/- as per the PWD schedule rate dated January 1, 2006.

e. The SLAO, on August 14, 2008, wrote a letter to the Executive Engineer, PWD to submit the valuation report to the building standing on the land of the Appellant in the year 2008, to which the Executive Engineer of PWD estimated the value of the building to be Rs. 23,37,500/- in terms of the PWD Schedule Rate dated June 15, 2008.

f. The SLAO vide order dated September 23, 2008 held that both the reports sent by the PWD were contradictory to each other. The SLAO eventually held that because the construction of the

National Highway was being conducted by the NHAI, therefore the valuation of the Project Director, NHAI would be considered to be appropriate one.

g. Aggrieved by the order dated September 23, 2008, the Appellant approached the District Magistrate, Basti and filed an application for arbitration under Section 3G(5) of the NH Act, 1956.

h. The Arbitrator vide order dated December 11, 2008, re-determined the valuation of the building only, and awarded Rs. 18,67,881/- to the Appellant towards the value of the building.

i. NHAI, being aggrieved by the award of enhanced compensation of Rs. 18,67,881/- moved an application under Section 34 of the Act before the Court of Additional District Judge under Section 34 of the Act challenging the order dated December 11, 2008. The Appellant also challenged the order dated December 11, 2008 under Section 34 of the Act.

j. The Court of Additional District Judge, dismissed the application preferred by the NHAI and the Appellant vide order dated October 21, 2022.

k. Aggrieved by the order of the Additional District Judge dated October 21, 2022, the Appellant has preferred the instant application under Section 37 of the Act before this Court.

CONTENTIONS BY THE APPELLANT

3. The learned counsel appearing on behalf of the Appellant has made the following submissions before this Court:

a. The impugned order suffers from patent illegality. Hon'ble Supreme Court in ***Ssanyong Engineering and Construction Co. Ltd. -v- NHAI*** reported in **(2019) 15 SCC 131** held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

b. The Hon'ble Supreme Court in **National Highways Authority of India -v- Nagaraju alias Cheluvaiah and Anr.** reported in **(2022) 15 SCC 1** has held that in such cases while examining the award in the limited scope under Section 34 of the Act, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of Section 31(3) of the Act and amount to patent illegality.

c. In the instant case, the Arbitrator even after recording the arguments advanced by the Appellant regarding the valuation of the land, only awarded the compensation for the building.

d. The Learned Lower Court overlooked the fact that though the scope of Section 34 is limited, yet the Court has to take note as to whether the evidence available on record has been adverted to by the arbitrator, whether all submissions of the parties have been dealt with on merits by the arbitrator and findings returned thereon. As such it is submitted that both the award passed by the Arbitrator as also the order impugned passed by the Learned Lower Court suffer from patent illegality, attracting the applicability of Section 37 of the Act.

e. In 2011, the land in question was valued at Rs. 4,04,920/- by treating it to be a residential property. This value was computed as per the prevailing circle rate of Rs. 2,000/- per square meter for residential land. However, after 6 years, the land was valued at Rs. 1,26,48,000/- per hectare considering it to be an agricultural land. Since 1 hectare has 10,000 sq. mtrs., the value comes to Rs. 1,264.80 per sq. mtr. of land.

f. The value of land barring an exceptional situation (not shown to exist in the instant case), only appreciates and does not come down. The very fact that the land of the appellant had a building standing thereon demonstrates that it was not being put to

agricultural use, but was used for residential purposes by the Appellant. It was not a large tract of land with the building standing on one corner and the rest of the land being utilized for the agricultural purposes. Being a small parcel of land, it was not possible to carry out any agricultural activity over the land which abutted the building, particularly when, it stood at the intersection of two roads.

g. As submitted earlier, neither the District Magistrate in the award, nor the Learned Lower Court below, has returned any finding that the land of the Appellant was not situated at the intersection of two roads as contended or the exemplar of adjoining land was for any reason not acceptable and could not apply to value the land of the Appellant.

h. The Hon'ble Supreme Court in **Union of India -v- Tarsem Singh and Ors.** reported in **(2019) 9 SCC 304** held that solatium and interest would be granted for cases between 1997 and 2015 even though plea regarding the payment of solatium and interest may not have been taken in Section 34 petitions filed under the Act by the landowners and such arbitration awards not providing for solatium and interest.

i. The declaration in **Tarsem Singh (supra)** by the Hon'ble Supreme Court is of general application. If the principle of law laid down in **Tarsem Singh (supra)** was to be confined to the cases before the Hon'ble Supreme Court and decided alongside **Tarsem Singh (supra)**, or applied prospectively, it would render the decision to be of merely academic importance and confined to decision inter-partes.

j. It is a settled law that unless the Hon'ble Supreme Court so expressly declares, its decisions are not applicable prospectively, but cover the whole sphere of cases that are pending as on the date of the declaration of law by the Hon'ble Supreme Court. It may also be noted that the Land Acquisition Act, 1894 was repealed

and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and as such, w.e.f. January 1, 2015 the provisions of the new Act of 2013 were made applicable to all acquisitions carried out under the NH Act, 1956. If the decision in **Tarsem Singh (supra)** were not to apply to pending proceedings, it would mean that the judgment is applicable only **inter-partes** as there would be no other case arising subsequent to 2019 where the benefit of Land Acquisition Act, 1894 on account of the inconsistencies of the Land Acquisition Act, 1894 can be claimed.

k. The Hon'ble Supreme Court in **Sunita Mehra -v- Union of India** reported in **(2019) 17 SCC 672** held that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in **Golden Iron & Steel Forging -v- Union of India** that is March 28, 2008. Concluded cases should not be opened as propounded by the Hon'ble Supreme Court. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

l. It may be noted that the judgment of the Punjab & Haryana High Court in **Golden Iron and Steel Forging (supra)** had struck down Section 3G and 3J of the NH Act, 1956 as arbitrary and irrational and violative of Article 14 of the Constitution of India, as they denied payment of solatium and interest. The judgment further held that land owners compulsorily divested of the property under the NH Act, 1956 would henceforth be entitled to solatium and interest, as envisaged under Section 23 and Section 28 of the NH Act, 1956.

m. The Hon'ble Supreme Court in **Kusum Ingots and Alloys Ltd. -v- Union of India and Ors.** reported in **(2004) 6 SCC 254** has observed that any order passed in a writ petition filed in any High

Court questioning the constitutionality of a Parliamentary Act will have effect throughout the territory of India. The NH Act, 1956 being a parliamentary enactment, the declaration of law in **Golden Iron and Steel Forging (supra)** by the Punjab and Haryana High Court on March 28, 2008 would apply to the instant proceedings as well.

n. Applying the dicta of the Hon'ble Supreme Court in **Sunita Mehra (supra)** is yet another reason as to why the declaration of law made in **Tarsem Singh (supra)** would benefit the Appellant in the instant case. Accordingly, apart from the claims made by the Appellant, the Appellant would be entitled to the benefit of Section 23(1A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894.

o. Under Section 23(1A) of the Act, the Appellant would be entitled for interest @12% per annum from the date of publication of initial acquisition notification till the date of the award or of taking possession (whichever is earlier). Under Section 23(2) of the Land Acquisition Act, 1894, the Appellant would be entitled to solatium @30% of the award amount as opposed to 10% under the provisions of the NH Act, 1956. Under Section 28 of the Land Acquisition Act, 1894, the Appellant would be entitled to receive interest @9% per annum for the first year from the date on which possession was taken and @15% per annum from the 2nd year from which the possession of the land was taken.

p. Based on the aforesaid, it is prayed that this Court may be allow the instant appeal with costs and direct the Arbitrator to re-determine the compensation payable to the Appellant.

CONTENTIONS BY THE RESPONDENT NO. 3

4. Learned counsel appearing for the Respondent No. 3 has made the following submissions before this Court:

a. It is necessary to bring on record that **Golden Iron (supra)** has been clarified by the Hon'ble Supreme Court in **Sunita Mehra -v-**

Union of India reported in **2016 SCC OnLine SC 1128**. The Hon'ble Supreme Court held that the award of solatium and interest would be made effective only to the proceedings pending on the date of **Golden Iron (supra)** and concluded cases cannot be reopened. It is noteworthy to mention here that **Sunita Mehra (supra)** has also been relied upon and referred in **Tarsem Singh (supra)**. However, despite reference to the cut-off date/reopening of pending cases, no specific finding has been given in **Tarsem Singh (supra)** with regard to the fate of the cases where the compensation already stands deposited by the NHAI. Such a judgment cannot give any fresh cause of action to the landowners who have never challenged the compensation awarded on the ground of non-grant of solatium and interest.

b. It is trite law that the law only helps the vigilant. Any person, having slept over their rights due to which valuable rights have accrued to the other side, cannot later seek to raise claims. It is a well settled principle of law embodied in the maxim *'interest reipublicaeut sit finis litium'* which means the interest of the State lies in that there should be a limitation to law suits. It is further a cardinal principle of law that *'Vigilantibus non dormeintubus jura subveniunt'*. This principle has been followed by Courts in a catena of judgments that law helps the vigilant and not those who have slept over their rights.

c. Appellant is trying to mislead this Court by praying for solatium and interest thereof. It is pertinent to mention here that the proceeding of the land acquisition was completed in the year 2009 and the Appellant have received the amount of compensation, Therefore, there is no occasion for granting of solatium and other benefit.

d. The valuation report dated November 27, 2008 was never served upon the answering respondent and the appointment of the Independent Valuer was objected to by the answering respondent

at each stage of the proceeding as the report was prepared in a mechanical manner by a private valuer which was prepared for the sole benefit of the Appellant and the PWD had only certified the said report on per item basis. The answering respondent had objected to the same before the Arbitrator, but it was not considered. The Arbitrator, and the Learned Lower Court, have overlooked facts, available documents and submissions of the answering respondents and have erroneously decided the matter.

ANALYSIS

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

6. For better adjudication of the issue at hand, I have divided the instant judgment into two issues:

ISSUE NO. 1

Whether there is any patent illegality or perversity in the Arbitral Award dated December 11, 2008 or the order of the Learned Lower Court under Section 34 of the Act dated November 21, 2022 which would warrant the exercise of this Court's power under Section 37 of the Act?

ISSUE NO. 2

Whether the benefit of Hon'ble Supreme Court's judgment in **Tarsem Singh (supra)** can be claimed by the Appellant?

ISSUE NO. 1

7. Since the Arbitral Award in the instant case dates back to December 11, 2008, the law as applicable then will have to be applied that is the Act without any of its amendment. Section 34 of the Act originally allowed for an award to be set aside if it was found to be against the public policy of India.

8. Hon'ble Supreme Court in its judgment in **Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.**, reported in, **(2003) 5 SCC 705** espoused that the phrase "public policy of India" must be accorded a wider and not a narrower meaning. Furthermore, the Supreme Court also outlined the grounds on which a court can set aside an arbitral award under Section 34 of the Act. Relevant paragraphs have been extracted below:

> "*28. From this discussion it would be clear that the phrase "public policy of India" is not required to be given a narrower meaning. As stated earlier, the said term is susceptible of narrower or wider meaning depending upon the object and purpose of the legislation. Hence, the award which is passed in contravention of Sections 24, 28 or 31 could be set aside. In addition to Section 34, Section 13(5) of the Act also provides that constitution of the Arbitral Tribunal could also be challenged by a party. Similarly, Section 16 provides that a party aggrieved by the decision of the Arbitral Tribunal with regard to its jurisdiction could challenge such arbitral award under Section 34. In any case, it is for Parliament to provide for limited or wider jurisdiction to the court in case where award is challenged. But in such cases, there is no reason to give narrower meaning to the term "public policy of India" as contended by learned Senior Counsel Mr Dave. In our view, wider meaning is required to be given so as to prevent frustration of legislation and justice. This Court in Rattan Chand Hira Chand v. Askar Nawaz Jung [(1991) 3 SCC 67] observed thus: (SCC pp. 76-77, para 17)*
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> > *"17. ... It cannot be disputed that a contract which has a tendency to injure public interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. ... The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society."*
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> *(emphasis supplied)*
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> *29. Learned Senior Counsel Mr Dave submitted that the purpose of giving limited jurisdiction to the court is obvious and is to see that*

the disputes are resolved at the earliest by giving finality to the award passed by the forum chosen by the parties. As against this, learned Senior Counsel Mr Desai submitted that in the present system even the arbitral proceedings are delayed on one or the other ground including the ground that the arbitrator is not free and the matters are not disposed of for months together. He submitted that the legislature has not provided any time-limit for passing of the award and this indicates that the contention raised by the learned counsel for the respondent has no bearing in interpreting Section 34.

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31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) ***in addition, if it is patently illegal.***

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. *Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."*

(Emphasis Added)

9. In **Associate Builders -v- DDA** reported in **(2015) 3 SCC 49**, the Supreme Court propounded on the meaning of patent illegality and regarded it as the fourth head of public policy. Relevant paragraphs are extracted below:

"***Patent Illegality***

40. We now come to the fourth head of public policy, namely, patent illegality. It must be remembered that under the Explanation to

Section 34(2)(b), an award is said to be in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption. This ground is perhaps the earliest ground on which courts in England set aside awards under English law. Added to this ground (in 1802) is the ground that an arbitral award would be set aside if there were an error of law by the arbitrator. This is explained by Denning, L.J. in R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw [(1952) 1 All ER 122 : (1952) 1 KB 338 (CA)] : (All ER p. 130 D-E : KB p. 351)

> *"Leaving now the statutory tribunals, I turn to the awards of the arbitrators. The Court of King's Bench never interfered by certiorari with the award of an arbitrator, because it was a private tribunal and not subject to the prerogative writs. If the award was not made a rule of court, the only course available to an aggrieved party was to resist an action on the award or to file a bill in equity. If the award was made a rule of court, a motion could be made to the court to set it aside for misconduct of the arbitrator on the ground that it was procured by corruption or other undue means (see Statutes 9 and 10 Will. III, C. 15). At one time an award could not be upset on the ground of error of law by the arbitrator because that could not be said to be misconduct or undue means, but ultimately it was held in Kent v. Elstob [(1802) 3 East 18 : 102 ER 502] , that an award could be set aside for error of law on the face of it. This was regretted by Williams, J., in Hodgkinson v. Fernie [(1857) 3 CB (NS) 189 : 140 ER 712] , but is now well established."*

41. This, in turn, led to the famous principle laid down in Champsey Bhara Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd. [AIR 1923 PC 66 : (1922-23) 50 IA 324 : 1923 AC 480 : 1923 All ER Rep 235 (PC)] , where the Privy Council referred to Hodgkinson [(1857) 3 CB (NS) 189 : 140 ER 712] and then laid down:

> *"The law on the subject has never been more clearly stated than by Williams, J. in Hodgkinson v. Fernie [(1857) 3 CB (NS) 189 : 140 ER 712] : [CB(NS) p. 202 : ER p. 717]*
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> *'The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact. ... The only exceptions*

to that rule are cases where the award is the result of corruption or fraud, and one other, which, though it is to be regretted, is now, I think firmly established viz. where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.'

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Now the regret expressed by Williams, J. in Hodgkinson v. Fernie [(1857) 3 CB (NS) 189 : 140 ER 712] has been repeated by more than one learned Judge, and it is certainly not to be desired that the exception should be in any way extended. An error in law on the face of the award means, in Their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound. Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made. The only way that the learned Judges have arrived at finding what the mistake was is by saying: 'Inasmuch as the arbitrators awarded so and so, and inasmuch as the letter shows that the buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting Rule 52.' But they were entitled to give their own interpretation to Rule 52 or any other article, and the award will stand unless, on the face of it they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound. Upon this point, therefore, Their Lordships think that the judgment of Pratt, J. was right and the conclusion of the learned Judges of the Court of Appeal [Jivraj Baloo Spg. and Wvg. Co. Ltd. v. Champsey Bhara and Co., ILR (1920) 44 Bom 780. The judgment of Pratt, J. may be referred to at ILR p. 787.] erroneous."

This judgment has been consistently followed in India to test awards under Section 30 of the Arbitration Act, 1940.

42. In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

> *"28.Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India— (a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"*

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

> *"28.Rules applicable to substance of dispute.—*
>
> *(1) ...*
>
> *(2) ...*
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> *(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."*

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

10. What emerges from above is that public policy can encompass a wide range of principles, including justice, equity, and morality. In arbitration, invoking public policy aims to prevent arbitral awards from violating these fundamental principles, thereby maintaining the integrity of the legal system. However, applying public policy in arbitration is inherently complex and subjective, as its definition can vary based on the context of each case. Therefore, courts must carefully balance upholding public policy with

respecting party autonomy and the finality of arbitration when using this ground to set aside awards.

11. Challenging arbitral awards on the basis of public policy is difficult due to its inherent complexity and subjectivity. While this flexibility can be advantageous in addressing severe cases where awards violate fundamental principles of justice or morality, it also allows for judicial intervention based on unclear or poorly defined notions of public policy.

12. Despite these challenges, public policy remains essential in protecting the integrity and legitimacy of the arbitration process. It acts as a safeguard against arbitral awards that are fundamentally unjust or that violate core principles of justice. To mitigate the risks associated with its application, courts must adopt a careful and principled approach when determining if an arbitral award conflicts with public policy.

13. In the instant case, it has been contended by the Appellant that despite recording the arguments advanced by the Appellant regarding the valuation of land, the Arbitrator awarded compensation for building only. The concept of patent illegality, in the context of arbitral awards, refers to an evident and manifest error that goes to the very root of the matter. It implies a fundamental flaw that is apparent on the face of the record and affects the substantive rights of the parties. The failure of an arbitral tribunal to consider an issue raised by the parties, without providing reasons, constitutes such a flaw.

14. When an arbitral tribunal fails to consider an issue raised by the parties and provides no reason for such omission, it creates a situation where the affected party is left without a clear understanding of why their argument was disregarded. This lack of reasoning can lead to a perception of arbitrariness and bias, further eroding the credibility of the arbitral award. In such cases, the affected party is left with no option but to challenge the award on the grounds of patent illegality.

15. In the context of the present case, the Appellant's arguments regarding the valuation of land were crucial to determining the appropriate compensation. By ignoring these arguments and awarding compensation

only for the building, the Arbitrator not only failed to address a critical issue but also potentially deprived the Appellant of a fair and just resolution.

16. The failure to provide reasons for not considering an issue raised by the parties also raises concerns about the potential for arbitrariness in the arbitral process. Arbitral tribunals are expected to exercise their discretion judiciously and in accordance with the principles of natural justice. When a tribunal disregards an issue without providing reasons, it creates an impression of partiality or neglect, which can seriously damage the credibility of the arbitration process. The parties to arbitration expect a fair hearing, where their arguments are duly considered and reasoned decisions are made. Any deviation from this expectation erodes the trust that parties place in the arbitral process and undermines the efficacy of arbitration as a dispute resolution mechanism.

17. In light of the aforesaid Issue No.1 is answered as follows:

> "The Arbitral Award dated December 11, 2008 suffers from patent illegality to the limited aspect of non-consideration of compensation for land as raised by the Appellant. Section 34 Court having overlooked this error, warrants interference by this Court under Section 37 of the Act."

ISSUE NO. 2

18. It has been argued by the Appellant that the judgment in **Tarsem Singh (supra)** will apply to all pending cases. Furthermore, it has been argued that unless expressly specified, the judgments of the Hon'ble Supreme Court cover the whole sphere of cases that are pending as on the date of the declaration of the judgment.

19. In many legal systems, including India, the default position is that the judgments of the Hon'ble Supreme Court apply to all cases pending as on the date of declaration unless expressly stated otherwise. This principle is rooted in the notion that the Court's role is to interpret the law as it has always been, rather than create new law. Therefore, when the Hon'ble Supreme Court declares a particular interpretation of a statute or a constitutional provision, it is considered to have always been the correct

interpretation. However, the Hon'ble Supreme Court has also developed the doctrine of prospective overruling, which allows it to limit the application of a new judgment to future cases only.

20. When the Hon'ble Supreme Court interprets a statute or constitutional provision, it clarifies the meaning and scope of the law as it should always have been understood. Therefore, applying this interpretation to all pending cases aligns with the notion that the Court's interpretation was always the correct one, even if it had not been previously articulated. The principle that the judgments of the Hon'ble Supreme Court apply to all pending cases also promotes fairness to litigants. Individuals and entities involved in legal disputes have a legitimate expectation that the law, as interpreted by the Hon'ble Supreme Court, will be applied to their cases. Denying them the benefit of a new judgment could result in unjust outcomes, particularly if the previous interpretation was found to be erroneous.

21. Coming to the judgment in **Tarsem Singh (supra)**, it was espoused by the Hon'ble Supreme Court that the provisions of the Land Acquisition Act as far as solatium and interest are concerned will apply to acquisitions under the National Highways Act. The Hon'ble Supreme Court also noted the submission of the Government that solatium and interest should be granted even in cases that arise between 1997 and 2015. Relevant paragraph is extracted below:

> *"52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to*

> *acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed."*

22. The Hon'ble Supreme Court in **P.V. George -v- State of Kerala** reported in **(2007) 3 SCC 557** clarified that the doctrine of prospective overruling will not apply unless specified expressly. Relevant paragraphs are expressed below:

> *"19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.*
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> ***
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> *29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."*

23. Making a reference to its judgment in **P.V. George (supra)**, the Hon'ble Supreme Court in **Manoj Parihar -v- State of J&K** reported in **(2022) 14 SCC 72** reiterated that a declaration of law by the Hon'ble Supreme Court will have retrospective effect. Relevant paragraphs are extracted below:

> *"26. What was done in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V. George v. State of Kerala [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , this Court held that "the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically".*
>
> *27. This Court was conscious of the fact, as could be seen from para 19 of the Report in P.V. George [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , that when the doctrine of stare decisis is not adhered to, a change in the law may*

> *adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term."*

24. In **Tarsem Singh (supra)**, the Hon'ble Supreme Court had struck down certain provisions of Section 3-J of the NHAI Act as unconstitutional. Recently, in **CBI -v- R.R. Kishore**, reported in **2023 SCC OnLine SC 1146,** a Constitution Bench of the Hon'ble Supreme Court held that whenever a law is declared unconstitutional, it is held to be void ab initio. Relevant paragraph is extract below:

> *"96. From the above discussion, it is crystal clear that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void ab initio, still born, unenforceable and non est in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. Thus, the declaration made by the Constitution Bench in the case of Subramanian Swamy (supra) will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003."*

25. What emerges from the aforesaid is that the law laid down by the Hon'ble Supreme Court in **Tarsem Singh (supra)** which declared that the provisions of the Land Acquisition Act concerning solatium and interest are to be applied to acquisitions made under the National Highways Act will apply to all pending cases where the arbitration process has not concluded since there is no specification in **Tarsem Singh (supra)** contrary to the same. Any departure from retrospective application and applicability of the doctrine of prospective overruling must be clearly articulated as laid down in **P.V. George (supra)**. The same was reiterated in **Manoj Parihar (supra)**. These judgments collectively reinforce the principle that the Hon'ble Supreme Court's judgments are inherently retrospective unless specified to the contrary, ensuring that all affected parties benefit from the Hon'ble Supreme Court's authoritative interpretations, thereby promoting uniformity and justice across the judicial spectrum.

26. The principle of unconstitutionality being void ab initio implies that the legal landscape is retroactively altered to reflect the Hon'ble Supreme Court's interpretation, thereby nullifying any actions or decisions based on

the now-invalidated provision. This reinforces the importance of retrospective application, ensuring that justice is served by rectifying past injustices perpetuated under the unconstitutional provision. By applying the provisions of the Land Acquisition Act concerning solatium and interest to acquisitions under the National Highways Act, the Hon'ble Supreme Court ensured that affected landowners receive fair compensation.

27. However, since the arbitration in the instant case concluded on December 11, 2008, and the judgment in **Tarsem Singh (supra**) was delivered later on, the Appellant cannot claim solatium or interest on account of **Tarsem Singh (supra)**. Opening concluded arbitrations would be akin to opening a Pandora's box. The case of **Tarsem Singh (supra)** introduced specific interpretations and guidelines that impacted the awarding of solatium and interest. However, applying these guidelines retroactively to arbitrations that concluded prior to the judgment would create an untenable situation. The arbitrators, the parties, and the legal community operate within the legal framework and judicial precedents available at the time of the arbitration. Imposing future judicial decisions on past arbitrations would disrupt the stability and predictability that arbitration aims to provide.

28. If parties were allowed to reopen concluded arbitrations based on new judicial rulings, it would lead to a flood of claims seeking to modify or overturn arbitral awards. Moreover, the retroactive application of judicial decisions to arbitral awards would create legal and procedural chaos. Arbitrators make decisions based on the legal framework and precedents available at the time of the arbitration. Expecting them to foresee and apply future judicial decisions is unreasonable and impractical. Such a practice would erode the confidence that parties have in arbitration as a reliable and predictable method of dispute resolution. When an arbitrator passes an award correctly based on the law in existence at the time of the proceedings, the said findings cannot be held to be patently illegal on the ground of a subsequent Apex Court ruling. Holding such a finding to be patently illegal would in fact be against the public policy of India.

29. In light of the above, Issue No. 2 is answered as follows:

> "Given that the Arbitration in the instant case concluded on December 11, 2008 and the Hon'ble Supreme Court's judgment in **Tarsem Singh (supra)** was delivered later, the Appellant cannot be allowed to claim solatium or interest on account of **Tarsem Singh (supra)**."

CONCLUSION AND DIRECTION

30. In light of the aforesaid discussion and law, it becomes apparent that the judgment of the Learned Lower Court dated October 21, 2022 cannot be sustained. Furthermore, the Arbitral Award dated December 11, 2008 suffers from patent illegality as far as non-consideration of the compensation for land is concerned and is accordingly set aside to that limited extent only. The instant matter is remitted back to the Arbitrator with a direction to recalculate the compensation to be paid to the Appellant for land in accordance with the law.

31. With the above directions, the instant appeal under Section 37 of the Act is disposed of. There shall be no order as to the costs.

05.07.2024
Kuldeep

(Shekhar B. Saraf, J.)