

Neutral Citation No. - 2024:AHC:165809

RESERVED

Court No. - 2

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 17 of 2022

Appellant :- Vivek Nayak (Died) And Another

Respondent :- The Arbitrator / Collector Aligarh And 3 Others

Counsel for Appellant :- Badri Kant Shukla,Manu Saxena

Counsel for Respondent :- Prabha Shankar Mishra,Pranjal Mehrotra,Vinay Mishra

WITH

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 20 of 2022

Appellant :- Om Prakash Nayak

Respondent :- The Arbitrator / Collector Aligarh And Another

Counsel for Appellant :- Badri Kant Shukla,Manu Saxena

Counsel for Respondent :- Pranjal Mehrotra

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Manu Saxena, along with Shri Badri Kant Shukla, learned counsel for the appellants, Shri Pranjal Mehrotra, learned counsel for respondent no. 2 and Shri Prabha Shankar Mishra, learned counsel for respondent nos. 3 & 4.
2. Since the issues involved in these appeals are similar, therefore, the same are being decided by the common order with the consent of the learned counsel for the parties. Appeal No. 17 of 2022 is taken as a leading case for deciding the controversy involved in these appeals.

Appeal No. 17 of 2022

3. The instant appeal has been filed against the impugned order dated 27.09.2013 passed by the Arbitrator/Collector, Aligarh as well as the judgement & decree dated 15.01.2022 & 21.01.2022 passed

by the Additional District Judge, Court No. 3, Aligarh in Arbitration Case No. 80 of 2013.

4. Learned counsel for the appellants submits that vide notification dated 10.06.2012, objections were invited for acquisition of land near Ghaziabad – Aligarh section, pursuant to which the appellants filed objection. Subsequently, the award was passed by the Special Land Acquisition Officer determining the compensation. Aggrieved by the said award, an application was filed before the Arbitrator/Collector, Aligarh was filed by the appellants; wherein, six issues were framed. He further submits that the land in question was purchased by the appellants vide registered sale deed dated 13.07.2010 for commercial purpose; wherein, a factory under the name & style of M/s Om Pure Water Bottling Plant was constructed. On the application of the appellants, the Arbitrator, vide impugned order dated 29.09.2013, modified the award passed by the competent authority and determining the compensation. Aggrieved by the said order, the appellants preferred Arbitration Case No. 80/2013 before the Additional District Judge, Court No. 3, Aligarh, which has been dismissed vide impugned judgement dated 15.01.2022.
5. Learned counsel for the appellants submits that the competent authority/ Special Land Acquisition Officer has not considered the market value while determining the award as according to section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as, '**the Act of 2013**'), the compensation has to be determined on the market or circle rate, whichever is higher, based on the best exemplars of previous three years, but the courts below have not applied their legal and judicial mind while determining the compensation. He further submits that no exemplar has been taken into consideration before determining the market value of the land and even the nature of the land and

development in the vicinity of the area were also not taken into consideration while passing the impugned orders. In support of his submissions, he has placed reliance on the judgements of *Associate Builders Vs. Delhi Development Authority* [(2015) 3 SCC 49], *National Highways Authority of India Vs. P. Nagaraju @ Cheluvaiah & Another* [(2022) 15 SCC 1] and *Manoj Parihar & Others Vs. State of Jammu & Kashmir & Others* [(2022) 14 SCC 72].

6. He further submits that the appellants have been deprived of legitimate claim of solatium and interest as per the Apex Court judgement in the case of *Union of India Vs. Tarsem Singh* [2019 (9) SCC 304]. He further submits that the court below ought to have allowed the solatium and interest. He prays for allowing the appeals.
7. Per contra, Shri Pranjal Mehrotra, learned counsel for the respondent no. 2 submits that the Special Land Acquisition Officer, Aligarh, vide award dated 07.05.2013, has determined the rate of the land after taking into consideration the prevailing market rates at the time of publication of notification under section 3 (A) of the National Highways Act dated 10.06.2012. He further submits that the sale deeds, circle rates, valuation report in respect of the assets situated on the property, geographical location, etc. were appropriately considered by the competent authority while passing the award. He further submits that the Arbitrator, vide impugned award dated 27.09.2013, enhanced the compensation awarded by the competent authority. He further submits that as per section 3(G)(7)(a) of the National Highways Act, the market value of the land as on the date of publication of the notification under section 3-A of the said Act would ;be considered by the Arbitrator while determining the compensation and in the instant case, the compensation was decided by the Arbitrator as per the aforesaid provisions. He further submits that

the District Judge has passed a reasoned order exhaustively considering the averments of the appellants, as also the limited grounds for interference provided under section 34 of the Arbitration & Conciliation Act.

8. He further submits that it is trite law that modification of arbitral award is not permissible under the scheme of the Arbitration & Conciliation Act, as has been held by the Hon'ble Apex Court in *National Highway Authority of India Vs. M. Hakeem* [(2021) 9 SCC 1]; wherein, it has been held that the Courts while entertaining the sections 34 & 37 application/appeal, are not empowered to modify the arbitral award. In the case in hand, the prayer for enhancement of compensation would directly lead to modification of arbitral award. He further submits that the appellants have failed to establish the criteria under the public policy as settled by the Apex Court in the case of *Associate Builders Vs. DDA* [(2015) 3 SCC 49]; wherein, it has been held that unless the approach of the Arbitrator is found to be arbitrary or capricious, no interference to the arbitral award can be made under the public policy ground.
9. He further submits that by the impugned orders, the latest circle rates as well as the compensation has been determined for recent acquisitions in respect of Yamuna Expressway, dedicated freight corridor as well as the National Highway No. 91 were adequately considered while determining the compensation. He further submits that the arbitral award can be set aside only when the grounds provided under section 34 of the Arbitration & Conciliation Act are fulfilled. He further submits that the Supreme Court in the case of *UHL Power Co. Limited Vs. State of Himachal Pradesh* [(2022) 4 SCC 116] has held that the jurisdiction conferred on courts under section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under section 37 of the said Act, the jurisdiction of an

appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In support of his contention, he further relied upon the judgement of the Apex Court in *MMTC Ltd. Vs. Vedanta Ltd.* [(2019) 4 SCC 163] and Delhi High Court in *DCM Ltd. Vs. Aggarwal Developers Pvt. Ltd. & Others* [2023 SCC OnLine Del 7014).

10. He further submits that in the case of *Smt. Savitri Devi Vs. Union of India* [2024 SCC OnLine All 3343], this Court has held that no solatium or interest as provided under the Act of 2013 can be claimed in respect of matters wherein arbitral award determining the compensation amount has been passed. He further submits that the above – noted case is squarely not applicable to the present dispute as the arbitral award herein dates back to 27.09.2013 and the judgement of *Union of India Vs. Tarsem Singh* [2019 (9) SCC 304] was delivered much later in 2019 and therefore, the appellants cannot claim award of solatium and interest as provided under the Act of 2013 relying on the judgement in *Tarsem Singh* (supra). He prays for dismissal of the appeals.
11. After hearing learned counsel for the parties, the Court has perused the records.
12. The records show that the award was passed after considering the materials available on record. Learned counsel for the appellants has argued that the proper compensation has not been awarded to the appellants as the property in question is of commercial nature, but while awarding the compensation, due consideration was given. A finding of fact has been recorded in the impugned order at paragraph no. 14, which reads as under:

“ 14- धारा 34 (2) मध्यस्थता एवं सुलह अधिनियम 1996 के अन्तर्गत कतिपय व्यक्तियों में ही प्रश्नगत मध्यस्थ निर्णय दिनांकित 27.09.2013 को निरस्त किया जा सकता है। प्रार्थी विवेक नायक

(दौरान विचारण मृतक) द्वारा विधिक वारिसान ने कोई भी ऐसी परिस्थिति इंगित नहीं की है कि मध्यस्थता एवं सुलह अधिनियम की धारा- 34 (2) क (1) के अन्तर्गत अथवा धारा- 34 (2) क (3) के अन्तर्गत आने वाली परिस्थिति सृजित हो। प्रश्नगत मध्यस्थता निर्णय दिनांकित 27.09.2013 के सम्बन्ध में इस न्यायालय की अधिकारिता सिर्फ अधीक्षण क्षेत्राधिकार तक सीमित है। प्रश्नगत मध्यस्थ निर्णय को उसी सूरत में निरस्त किया जा सकता है जब कि धारा- 34 (2) क (1) से (5) तक की परिस्थितियाँ सृजित हों प्रस्तुत मामले के समस्त तथ्य एवं परिस्थितियों में प्रार्थी विवेक नायक विवेक नायक (दौरान विचारण मृतक) द्वारा विधिक वारिसान को समुचित नोटिस देकर सुनवाई का अवसर प्रदान करते हुए एवं मध्यस्थ के समक्ष की गई याचना के समतुल्य प्रतिकर स्वीकार किया गया है। ऐसे में प्रार्थी विवेक नायक विवेक नायक (दौरान विचारण मृतक) द्वारा विधिक वारिसान का वाद हाजा धारा- 34 मध्यस्थता एवं सुलह अधिनियम- 1996 के अन्तर्गत पोषणीय भी नहीं है। ”

13. Bare perusal of the record shows that the order was passed after due consideration. The said finding of fact has not been assailed in the present appeal. Further, a detailed reason has been assigned for not granting compensation as per the commercial rate. If two views were possible, the Tribunal has taken one view and on the said basis, the order cannot be challenged, unless & until, the parties are able to show that the order is patently illegal or arbitrary.

14. Recently, the Apex Court in the case of **Punjab State Civil Supplies Corporation Ltd. & Another Vs. M/s Sanman Rice Mills & Others** [arising out of SLP (C) No. 27699/2018, decided on 27.09.2024] has held as under:-

“11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.

12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K.Ahuja*,⁴ it has been observed as under:

"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In *Dyna Technology Private Limited v. Crompton Greaves Limited*⁵, the court observed as under:

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.

Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of MMTC Limited v. Vedanta Limited,⁶ it has been held as under:

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking⁷ referring to MMTC Limited (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the

courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

19. In *Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani*⁸, a Division Bench of this Court followed and reiterated the principle laid down in the case of *MMTC Limited (supra)* and *UHL Power Company Limited v. State of Himachal Pradesh*⁹. It quoted and highlighted paragraph 16 of the latter judgment which extensively relies upon *MMTC Limited (supra)*. It reads as under:

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words: (SCC pp. 166- 67, para 11)

"11. As far as Section 34 is concerned, the position is well- settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award.

Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 All E.R. 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean

contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred.

The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.

Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.

22. In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act.

Therefore, the award was rightly upheld by the court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the arbitral tribunal, is no ground to set aside the award.”

15. Further, the record shows that for the first time, a ground has been taken for payment of solatium and interest in the memo of appeal, which cannot be permissible as the said ground has been taken after the order of the Apex Court in the case of **Tarsem Singh** (supra). The record further shows that the award was passed on 27.09.2013; whereas, the Apex Court judgement came into light in the year 2019. In other words, the judgement in the case of **Tarsem Singh** (supra) came much later, almost after six years.

16. This Court in the case of **Smt. Savitri Devi** (supra) has held as under:-

“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)."

17. Therefore, the case-laws cited on behalf of the appellants are of no aid to them.
18. In view of the aforesaid facts & circumstances of the case, as also the law laid down by this Court as well as the Apex Court, this Court finds no merit in these appeals.
19. Both these appeals are hereby dismissed.
20. The lower court records be returned back.

Order Date :-18/10/2024

Amit Mishra