

Case No. ARB/162/2024

PPBBT010080292024



Presented on : 17-07-2024

Registered on : 17-07-2024

Decided on : 24-02-2025

**IN THE COURT OF
Additional District Judge, Bathinda
Presided Over by Sh. Rajiv Kalra (PB0098)**

ARB/162/2024

1. Union of India, Ministry of Road, Transport and Highways, (Development of Road, Transport and Highways), Transport Bhawan, Parliament Street, New Delhi, through its Secretary;
2. National Highway Authority of India, through its Chairman, Road Transport and National Highway (NHDP-IVA) Transport Bhawan, Parliament Street, New Delhi-110001
3. Project Director, National Highway Authority of India, (Ministry of Road, Transport and Highways, Government of India) through Project Implementation Unit, Bathinda Toll Plaza Premises, on Bathinda Malout Highway (NH-07), Village Balluana, Tehsil & District Bathinda Punjab.

All through authorised signatory, National Highway Authority of India, Ministry of Road, Transport and Highways, Government of India, Project Implementation Unit, Bathinda now Camp office at Toll Plaza Premises, on Bathinda Malout Highway (NH-07), Village Balluana, Tehsil & District Bathinda Punjab

.....Objectors / petitioners

VERSUS

1. Karamjit Singh son of Kartar Singh son of Bharpur Singh;
2. Jagdeep Kaur w/o Karamjit Singh son of Kartar Singh;
3. Bhupinder Singh son of Karamjit Singh son of Kartar Singh;
All resident of Village Dhan Singh Khanna, Tehsil and District Bathinda.
4. Sukhjinder Singh Sidhu son of Karamjit Singh son of Kartar Singh
resident of Village Dhan Singh Khanna, Tehsil and District Bathinda through his GPA Karamjit Singh son of Kartar Singh
resident of Village Dhan Singh Khanna, Tehsil and District Bathinda;
5. Gurshan Singh minor son of Bhupinder Singh son of Karamjit Singh through his Bhupinder Singh son of Karamjit Singh son of

Kartar Singh resident of Village Dhan Singh Khanna, Tehsil and District Bathinda.

6. Gurviraj Singh Sidhu minor son of Sukhjinder Singh Sidhu son of Karamjit Singh through his father Sukhjinder Singh Sidhu son of Karamjit Singh son of Kartar Singh resident of Village Dhan Singh Khanna, Tehsil and District Bathinda through his GPA Karamjit Singh son of Kartar Singh resident of Village Dhan Singh Khanna, Tehsil and District Bathinda

.....Respondent (landowner)

7. Divisional Commissioner, Faridkot Division, Faridkot cum Arbitrator, (appointed under Provisions of National Highway Act 1956)
8. Competent Authority Land Acquisition (CALA) cum- District Revenue Officer (DRO) Bathinda, Tehsil and District Bathinda; (competent authority under National Highway Act, 1956).

.....Respondents

OBJECTION UNDER SECTION 34 OF ARBITRATION & CONCILIATION ACT, 1996

Notification for acquisition of land for National Highway-754A under Section 3A published on 22/12/2020 and after notification under Section 3D, the CALA award passed on 12/07/2021 under Section 3G of the National Highways Act, 1956.

Acquired land: a piece of land comprised in khasra no. 215/1(15-8) situated in revenue estate of village Dhan Singh Khana (District Bathinda).

Arbitration award dated 21/03/2024 passed in *Karamjit Singh and ors v. Union of India & others*, ARBI/103/23 of 14/02/2023 by the Sole Arbitrator -cum- Commissioner, Faridkot Division at Faridkot.

Present: Sh. H.K. Aggarwal, Advocate for petitioners.
Respondents no.1 to 6 exparte

O R D E R

(Delivered on 24-02-2025)

1) A short question arises during hearing of the present objection petition and other connected objection petitions, filed under Section 34 of the Arbitration & Conciliation Act, 1966, about territorial jurisdiction of Court at Bathinda since the arbitral award under challenge was passed at Faridkot by the Commissioner, Faridkot Division, Faridkot.

2) The Government of India has acquired land in various villages for National Highway-754A including land of village Dhan Singh Khana situated in District Bathinda and the Competent Authority Land Acquisition (in short, 'CALA') has passed award at Bathinda. Feeling dissatisfied with the CALA award, the landowner/s filed statutory arbitration reference before the Commissioner, Faridkot Division, Faridkot, and the arbitral award was passed at Faridkot.

3) The present objection petition and connected objection petitions are filed by Union of India and certain landowners against the arbitral award in Court situated at Bathinda. In the present and connected objection petitions, a preliminary issue regarding territorial jurisdiction is raised, as follows:

Whether the court at Bathinda has territorial jurisdiction to adjudicate the objection petition preferred against the arbitral award passed at Faridkot by the Commissioner, Faridkot Division, Faridkot?

It is requisite to address such preliminary issue before adverting to adjudication of merits of the petition.

4) I have heard and considered the submissions on this aspect.

5) There is no dispute between the parties about lack of any arbitration agreement between the NHAI and landowners and the question arise about the territorial jurisdiction for filing objection petition under Section 34 of the Arbitration & Conciliation Act, 1996.

6) Let us first go through the statutory provisions of the Arbitration & Conciliation Act, 1966, and Section 2 defines the principal Civil Court of original jurisdiction, and it reads as follows:

2. Definitions. - (1) In this Part, unless the context otherwise requires, -

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having, jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(2) This Part shall apply where the place of arbitration is in India.

Similarly, Section 20 of the Arbitration & Conciliation Act, 1996, defines the “place” of arbitration and it reads as follows:

20. Place of arbitration. –

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in Sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

- (3) Notwithstanding Sub-section (1) or Sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

Sub-section (4) of Section 31 of the Act 1996 mandated the reference of date and place of arbitration and it reads as follows:

31. Form and contents of arbitral award. -

- (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.

7) The Hon'ble Constitution Bench of Supreme Court in *Bharat Aluminum Company v. Kaiser Aluminum Technical Services Inc.*, (2012) 9 SCC 552 : MANU/SC/0722/2012, has elaborated the concept of "seat" and the relevant part is reproduced below:

"We are of the opinion, the term "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". The term "subject-matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned Counsel for the Appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat

of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order Under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order Under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located. [para 96]

A plain reading of Section 20 leaves no room for doubt that where the place of arbitration is in India, the parties are free to agree to any "place" or "seat" within India, be it Delhi, Mumbai, etc. In the absence of the parties' agreement thereto, Section 20(2) authorises the tribunal to determine the place/seat of such arbitration. Section 20(3) enables the tribunal to meet at any place for conducting hearings at a place of convenience in matters such as consultations among its members for hearing witnesses, experts or the parties.”

8) It is being argued that the Faridkot was merely “venue” of arbitral proceedings and not “seat” of arbitration and the Commissioner, Faridkot Division, Faridkot, was designated Sole Arbitrator by virtue of such authority who has jurisdiction over Bathinda district as well. Probably this aspect relating to “venue” and “seat” has been set at rest by the Hon’ble Supreme Court in *Bharat Aluminum Co. v. Kaiser Aluminum*

Technical Services Inc., (2012) 9 SCC 552, and the relevant part is reproduced below:

“The fixation of the most convenient "venue" is taken care of by Section 20(3). Section 20 has to be read in the context of Section 2(2), which places a threshold limitation on the applicability of Part I, where the place of arbitration is in India. Therefore, Section 20 would also not support the submission of the extra-territorial applicability of Part I, as canvassed by the learned Counsel for the appellants, so far as purely domestic arbitration is concerned.”

9) The *ratio decidendi* laid in *Reliance Industries Ltd. v. Union of India*, (2014) 7 SCC 603, makes it clear that "juridical seat" is nothing but the "legal place" of arbitration.

10) Now reverting to the facts of the present case, where the arbitral proceedings were held at Faridkot and these proceedings were culminated at Faridkot. There is no material to prove that either of the party has raised any objection against the “venue” of arbitration proceedings being Faridkot and in the absence of any written agreement between the parties, such “venue” has become “juridical seat” of arbitration. In such circumstances, the exclusive domain of the Court at Faridkot being supervisory control over arbitration proceedings cannot be ousted or to give jurisdiction to Court at Bathinda.

11) The previous legal precedents were examined by the Hon’ble Supreme Court in *BGS SGS SOMA JV vs. NHPC Limited*, MANU/SC/1715/2019, and the following observation was given:

“On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue"

of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a Clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of Rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."

12) Hon'ble Kerala High Court in its recent decision dated 13/02/2023 rendered in *Southern Railway v. M R Ramakrishnan*, OP(C) NO. 3115 OF 2018, has dealt with almost similar facts, where the matter pertained to a dispute between the Southern Railway and the licensee of a fruit and tea stall at Wadakkancherry Railway Station in Thrissur District regarding the licence fee payable. An Arbitrator was appointed by the Hon'ble High Court and sittings were held by the Arbitrator at Ernakulam

and an arbitral award was passed. The parties had not agreed on the place of arbitration and hence the Arbitrator decided on Ernakulam as the place of arbitration. The Arbitral award was challenged by the respondent under Section 34 of the Act before the Ernakulam District Court. The petitioner objected to the jurisdiction of the District Court, Ernakulam to entertain the application. However, the District Court held that it has territorial jurisdiction to entertain the application. Against the order of the district court, the petitioner had approached the Hon'ble High Court. The Hon'ble Court held that, the parties had not agreed on a place of arbitration and the Arbitral Tribunal had determined the "seat" or "place" of arbitration to be Ernakulam. Hence, the District Court, Ernakulam, alone has jurisdiction to entertain an application under Section 34 of the Arbitration Act, 1996, the Hon'ble Court concluded.

13) In *Omparkash v. Vijay Dwarkadas Varma*, 2020(6) RAJ 668 (Bombay) (Nagpur Bench), the Hon'ble Court held that in the absence of fixed seat of arbitration being specified in arbitration clause, this can be ascertained from the conduct of the parties also. In that case, both parties appeared and participated in arbitration proceedings held at Nagpur without any objection. The award was signed and pronounced at Nagpur. In such eventuality, the Hon'ble Court held that the court at Nagpur has exclusive jurisdiction to hear objection under Section 34 of Act 1996.

14) Similar decision was rendered by Hon'ble Madhya Pradesh High Court in *Madhya Pradesh Road Development Corporation v. Baisakhu alias Sadhu*, AIR 2021 Madhya Pradesh 125, wherein the case

was of compulsory acquisition for widening of National Highway and there was no arbitration agreement between the parties. The Central Government appointed Commissioner of Jabalpur as Arbitrator for determining compensation and both parties participated in arbitration proceedings before Commissioner, Jabalpur. The Hon'ble Court held that the seat and venue of arbitration proceedings were at Jabalpur and the application before Civil Court at another station was not proper since it would lie before Court at Jabalpur.

15) Similar decisions about exclusive jurisdiction in the light of “seat” of arbitration have been rendered in:

- a) *Samsung India Electronics Private Limited v. Enn Enn Corporation Limited*, AIR 2023 Delhi 272,
- b) *Ms. Bygging India Limited v. Ms. Bharat Heavy Electricals Limited*, 2023(296) DLT 96 (Delhi),
- c) *Inland Waterways Authority of India v. Reach Dredging Ltd. (RDL) and Gayatri Projects Pvt. Limited (JV)*, 2023(5) ArbiLR 163 (Delhi),
- d) *Utpal Datta v. RailTel Corporation of India Limited*, Delhi, AIR 2024 Tripura 3,
- e) *Sanjay Kumar Verma v. Planning and Infrastructural Development Consultants Pvt. Limited*, 2024 NCDHC 99 (Delhi),
- f) *Babu Ram v. Tata Project Limited (J&K)*, Law Finder Doc Id # 2495089, and
- g) *Jinofer Kawasji Bhujwala v. Bahadur Sanjana*, 2024(1) ArbiLR 370 (Gujarat).

16) The facts and circumstances of the present case are analyzed on the touchstone of *ratio decidendi* laid in various decisions by Hon'ble Supreme Court and Hon'ble Higher Courts, and in the present case, there

was no express agreement between the parties about “seat” of arbitration. The parties appeared and participated in arbitration proceedings held at Faridkot. The arbitration award was signed and pronounced at Faridkot. Thus, the Civil Court at Faridkot got exclusive jurisdiction to adjudicate the petition filed under Section 34 of the Act 1996.

17) While advocating for territorial jurisdiction at Bathinda, the learned counsel has relied upon judgments passed by the Hon’ble Punjab & Haryana High Court in various transfer petitions concerning Patiala and Barnala. Those decisions were rendered in the light of policy framed by the NHAI, one of parties of the litigation, and such policy decision was subject to compliance of Section 42 of the Act 1996. In those cases, the matter related to “venue” and “seat” of arbitration and “exclusive domain of Civil Court” were not considered in the light of well-established principle of law as enunciated in various legal precedents referred above. Thus, such decision is not applicable to present set of circumstances being dealt with by this Court.

18) While summing up discussion, the Civil Court at Bathinda lacks jurisdiction to deal with petition arising out of Section 34 of the Arbitration & Conciliation Act, 1996, since the arbitral award was signed and pronounced at Faridkot, which was seat of arbitration. With these observations, the preliminary issue framed by this court is decided.

19) The original petition with requisite endorsement, as per law, be returned. The reply filed by opposite party as well as original documents relied upon by the parties be also returned. However, the

copies of pleadings and documents be retained on the file. The petitioners are at liberty to present the objection petition before the court of competent jurisdiction.

20) The requisitioned arbitration record be returned.

21) After due compliance, judicial papers be consigned.

PRONOUNCED IN OPEN COURT ON 24th FEBRUARY 2025.

RAJIV KALRA (PB0098)
Additional District Judge, Bathinda

Typed by manju,
Stenographer Grade-I