

In the Court of Charanjeet Arora,
Additional District Judge, Jalandhar.
(UID No.PB0178)

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CNR No.PBJL010061112022  
CIS No.ARB/361/2022  
Date of institution: 25.5.2022.  
Decided on: 04.12.2023.

1) Union of India, through its Secretary, Ministry of Road Transport and Highways, New Delhi; and

2) Project Director, National Highway Authority of India, NHAI-PIU-Jalandhar, 44-A, Kalia Colony, Jalandhar.....(Petitioners)

Versus

1) Maninder Singh son of Jagtar Singh;

2) Bhagwant Singh son of Amar Singh;

Both resident of Village Kurala Kalan, Tehsil Dasuya, District Hoshiarpur.

3) Commissioner-cum-Arbitrator, Jalandhar Division, Rajinder Nagar, Jalandhar (Punjab); and

4) Competent Authority-cum-Land Acquisition Collector SDM, Dasuya, District Hoshiarpur.....(Respondents)

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| <p>Petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended vide the Arbitration and Conciliation (Amendment) Ordinance Act, 2015 for setting aside the Arbitration Award dated 23.12.2021 (in the Case MA No.11 of 2014) made by the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.</p> |
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Present: Shri Abhilaksh Gaind, Advocate for the petitioners.  
Sh.Rajesh Khanna, Advocate for respondents Nos.1 & 2

**ORDER**

Under disposal by means of this order is a petition filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 as amended vide the Arbitration and Conciliation (Amendment) Act, 2015 wherein they have assailed the Arbitral Award dated 23.12.2021 passed by performa respondent No.3 with regard to assessment of compensation in

respect of acquired property of respondents Nos.1 and 2 situated in the revenue estate of Village Kurala Kalan, Tehsil Dasuya, District Hoshiarpur.

2. The factual matrix as can be gathered from the records of the case is that for the purpose of widening/four laning maintenance, management and operation of the National Highway No.15, the Government of India with intent to acquire the landed property of different persons including that of the present respondents Nos.1 and 2 in the area of Village Kurala Kalan, Tehsil Dasuya, District Hoshiarpur, issued a notification under Section 3-A of the National Highways Act, 1956 on **24.12.2004** and after disposal of the objections against such notification, if any preferred by the land-owners, notification under Section 3-D of the Act *ibid* was issued on **11.7.2005** thereby declaring that the land specified in the schedule of the said notification should be acquired for the purpose aforesaid. This was followed by invitation for claims from the land owners which were duly considered by the competent authority Land Acquisition Collector and considering all the relevant aspects, the compensation of the acquired land had been assessed by the Competent Authority vide Award dated **08.04.2008**.

3. However, feeling dis-satisfied by the amount of compensation so awarded and paid to the land owners, the respondents Nos.1 & 2 invoked Section 3-G(5) of the National Highways Act, 1956 by filing an application before the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar with a prayer for enhancement of the compensation keeping in view the prevailing and fair market value of the acquired land. The learned arbitrator passed an Award initially on **20.11.2020**. However, the matter having been agitated by way of petition under Section 34 of the Arbitration and Conciliation Act, 1996, the Award so passed by the arbitrator was set aside by the Court of the then Additional District Judge, Jalandhar vide Judgment dated **02.01.2014** and the case was remanded back to the Commissioner, Jalandhar Division-cum-Arbitrator for decision afresh.

4. After the case was remanded by the Court as noted above, the parties caused appearance before the arbitrator but the respondent failed to file any reply to the application despite various opportunities. Thus, after

affording due opportunity to the parties to present their case and taking into consideration all the relevant aspects and considering the evidence as brought on record before him, the learned arbitrator passed the impugned Award dated **23.12.2021** and the rate of the acquired land has been re-determined and re-assessed at the rate of Rs.1,25,000/- per marla irrespective of the nature of land. Besides this, interest at the rate of 9% p.a. for the first year and 15% p.a. for the subsequent period alongwith solatium at the rate of 30% and additional compensation at the rate of 12% per annum from the date of publication of the notification under Section 3-A upto the date of Award of CALA or the date of taking possession of the land whichever is earlier, has been awarded in favour of the land owners. It is now the said Award of the arbitrator which is under challenge in this objection petition and the petitioners have prayed for setting aside of the Award with the submissions that the arbitrator, in a stark departure from the established principles, has not gone into discovery of the land rates as were prevalent at the time of acquisition and erred while assessing the value of the acquired land without any cogent evidence in support of such assessment. The Award is also claimed to be non-speaking and bad in the eyes of law as according to respondents, the subject matter of dispute is not capable of settlement by the arbitrator and it contains the decision on merits beyond the scope of submissions to the arbitration. It is contended that the arbitrator has only relied upon allegedly similarly situated cases to arrive at a subjective valuation which is quite contrary to the established principles of law. According to further version of the petitioners, the Award passed by the arbitrator exhibits a range of perverse reasoning and is patently illegally as there is no appreciation of evidence and the computation of compensation amount is not corroborated by any relevant substantive document. The interest as awarded by the arbitrator is also stated to be not tenable being punitive in nature for no fault on the part of the petitioners who paid the amount of compensation immediately on being assessed by the competent authority. Award of additional compensation under Section 23(1-A) of the Land Acquisition Act, 1894 has also been questioned by the petitioners while contending that the said provisions of law are not at all applicable to the acquisitions under the National Highways Act. The

enhancement of land rate by the arbitrator is contended to be arbitrary, excessive without jurisdiction and against the law and facts and the Award in totality is said to be perverse and patently illegally. Accordingly, they have made a prayer for setting aside the arbitral Award under challenge.

5. On being put to notice of the petition, the respondents No.1 & 2 caused appearance and filed their joint Written reply wherein they raised various Preliminary objections as to maintainability of the petition. It is contended that the petitioners are estopped from filing the petition and have no cause of action to file the petition. On Merits, the arbitral award has been defected to be based upon material evidence and fair value of the land has been assessed by the arbitrator which has already been upheld upto the Hon’ble High Court. Similarly, the benefit of additional compensation is claimed to have been granted in the light of Judgment passed by the Hon’ble Supreme Court in the case of Union of India Versus Tarsem Singh’ decided on 19.9.2019. Thus, according to the respondent, no fault can be found with the Award now under challenge in which also the same rate of land as has been upheld by the Hon’ble High Court, has been awarded. It is thus contended that no illegality can be said to have been committed by the arbitrator and the objection petition has been filed only to delay the execution proceedings and to prevent the land owners from enjoying the fruits of the Award passed in their favour. Thus, defending the Award as passed by the arbitrator, the respondents at last made a prayer for dismissal of the objection petition.

6. The records of the arbitral proceedings were also requisitioned from the office of respondent No.3 and on receipt of such records, I have heard the learned counsels for the parties and have perused the records of the case carefully.

7. Taking up first the contention of the petitioners with regard to the dispute being beyond the scope of arbitration, suffice it to note that Section 3-G(5) of the National Highways Act, 1956 as amended in 1997 specifically provides for adjudication of dispute through arbitration in the event of either the landowners or the acquiring authority feeling aggrieved by the price of the land assessed by CALA and since the dispute involved in

the case hand squarely falls within the ambit of the said provision of law, the objection of the objectors in this regard is totally mis-conceived and has to be repelled and stands repelled accordingly.

8. As has already been taken note of while discussing factual matrix of the case, the land belonging to the respondents which stood acquired by the petitioners is situated in Village Kurala Kalan, District Hoshiarpur and upon a petition under Section 3(G) of the National Highways Act, 1956 filed by the landowners, the arbitrator has enhanced the amount of compensation as assessed by the Competent Authority-cum-Land Acquisition Collector and the enhanced compensation has been assessed at the rate of Rs.1,25,000/- per Marla irrespective of the nature of the land and it is the said enhancement of land price coupled with grant of statutory benefits in the shape of additional compensation, solatium and interest which has now been assailed by the petitioners in their objection petition. However, for the reasons to be followed, I find no merit or substance in the objection petition filed by the petitioners.

9. As regards the assessment of land rate/value at the rate abovesaid is concerned, the said rate of land awarded in respect of the land acquired out of the same Village i.e. Kurala Kalan has already been upheld and confirmed by the Hon'ble High Court while deciding a bunch of FAOs i.e. FAO No.8722 of 2014 titled as "Government of India and another V/s Jit Singh", FAO No.8001 of 2014 titled as "Union of India and another V/s Tarsem Singh and others", FAO No.8619 of 2014 titled as "Government of India and another V/s Tarlochan Singh and others", and FAO No.8035 of 2015 titled as "Union of India and another V/s Jasbir Chand and others", decided on 30.3.2016. Thus, when the rate of land already determined in respect of the same Village has already been confirmed and upheld by the Hon'ble High Court, could the arbitrator in any manner allow any other rate on either side than the one allowed by the Hon'ble High Court. This being the situation, how can the arbitrator be said to have committed any illegality while allowing the compensation at the land rate of Rs.1,25,000/- per Marla. As a result, the objection raised by the

petitioners in this regard is found to be unsustainable and stands repelled accordingly.

10. The petitioners have also assailed the benefit of easement money, additional compensation under Sec.23(1-A) of the Land Acquisition Act, 1894, solatium and interest as has been allowed by the arbitrator while passing the Award under challenge and have contended that the said benefits are not permissible and not payable to the land owners. On the other hand, the learned counsel for the contesting respondents has argued that the said benefits have been granted by the arbitrator keeping in view the provisions of Land Acquisition Act, 1894 the provisions whereof with regard to payment of interest and solatium were made applicable to the acquisitions under the National Highways Act, 1956 also by virtue of Judgment passed by our own Hon’ble High Court in the case of **‘Golden Iron and Steel Forging Versus Union of India’** reported as **2011(4) Recent Civil Reports Page 375.** He thus contended that there is no illegality or violation of any law or the public policy of India warranting any interference in the Arbitral Award passed by the arbitrator and the objection petition may be dismissed.

11. As far as award of solatium at the rate of 30% and award of interest at the rate of 9% p.a. for the first year from the date of taking possession and 15% p.a. for rest of the period is concerned, it is worth while to take note of the fact that these benefits are the outcome of the provisions as contained in Section 23(2) and 28 of the Land Acquisition, 1894, which were initially inapplicable to the acquisitions under the National Highways Act, 1956 by virtue of Section 3(J) thereof. However, while rendering a Judgment in a CWP titled as **‘Golden Iron and Steel Forging Versus Union of India’ (supra)**, the Division Bench of our own Hon’ble High Court struck down Section 3-J of the National Highways Act, 1956 as arbitrary, irrational and violative of Article 14 of the Constitution as far as they deny payment of solatium and interest and that in respect of all the acquisitions made under the National Highways Act, 1956 solatium and interest will have to be granted in terms of Section 23(2) and Sec.28 of the Land Acquisition Act, 1894. While Section 23(2) of the LAA, 1894

pertains to grant of solatium to the land owners, Section 28 of the said Act pertains to grant of interest at the rate of 9% p.a. for the first year from the date of taking possession of the acquired land and at the rate of 15% for the subsequent period. As a result, no interference in this regard is also warranted by this Court and the Award qua these benefits deserves to be upheld.

12. However, as regards the award of additional compensation at the rate of 12% p.a. as provided under Sec23(1-A) of the Land Acquisition Act, 1894 is concerned, it is worth while to note that the said provision of law was never made applicable to the acquisitions under the National Highways Act, 1956. The arbitrator has however awarded the said additional compensation at the rate of 12% p.a. also while relying upon a Judgment rendered by Hon’ble Supreme Court of India in the case of ‘Union of India Versus Tarsem Singh and others’ decided on 19.9.2019 whereby benefits payable under Sec.23(1-A) of the Land Acquisition Act, 1894 were also made payable to the acquisitions under the National Highways Act, 1956. However, in a subsequent decision rendered by the Hon’ble Supreme Court while deciding a Miscellaneous Application Diary No.2572 of 2020 in the case of ‘National Highway Authority of India Versus Tehal Singh and others’ clarified that Section 23(1-A) as was included in the Judgment of ‘Tarsem Singh (supra)’ was infact not present before any authority or the court on the facts of these cases and accordingly the expression/word “(1-A) and” occurring in Paragraph No.41 of the Judgment in the main case was ordered to be deleted. This being the situation, the position as it existed after passing of Judgment in the case of ‘Golden iron (supra)’ got reverted and only the benefits of solatium under Sec.23(2) and interest payable under Sec.28 of the Land Acquisition Act, 1894 can be said to be payable to the landowners. As a result, the Award in the considered view of this Court needs to be modified to the extent Award of additional compensation at the rate of 12% p.a. as provided by Section 23(1-A) of LAA, 1894 is concerned since the said provision of law has not been made applicable to the acquisitions under the National Highways Act.

13. Accordingly, taking into consideration all the aspects of the case and in the light of discussion hereinabove, I am of the considered view that except for modification of the arbitral Award only with regard to award of additional compensation at the rate of 12% p.a. by holding the said benefits to be not payable to the landowners, the petitioners have failed to make out any ground warranting any interference with the impugned Award dated **23.12.2021**. Hence, with the said modifications qua award of easement money and additional compensation by holding the said benefit to be not payable to the land-owners, the objection petition filed by the petitioners is hereby dismissed. Memo of costs be prepared and the file be consigned to the Record Room.

Pronounced:  
**04.12.2023**

(Charanjeet Arora)  
Additional District Judge, Jalandhar.  
UID No.PB0178

**Memo of costs**

| <b><u>Nature of cost.</u></b>  | <b><u>Petitioner</u></b> | <b><u>Respondent</u></b> |
|--------------------------------|--------------------------|--------------------------|
| Court fee stamp on petition    | Rs.300-00                | Rs.00-00                 |
| Court fee on Power of Attorney | Rs. 10-00                | Rs.10-00                 |
| Process fee                    | Rs. 50-00                | Rs.00-00                 |
| Subsistence for witnesses      | Rs. 00-00                | Rs.00-00                 |
| Misc.expenses                  | Rs. 00-00                | Rs.00-00                 |
| <b>Total:</b>                  | <b>Rs.360-00</b>         | <b>Rs.10-00</b>          |

Given under my hand and seal of the Court, this 04<sup>th</sup> day of December, 2023.

(Charanjeet Arora)  
Additional District Judge, Jalandhar.  
(UID No.PB0178)