

In the Court of Paras Doger, District Judge, Mandi, District Mandi, H.P.

CIS Registration No.	: 866 of 2024
CIS CNR No.	: HPMA01-003227-2024
Arbitration Act No.	: 866 of 2024
CIS Filing No.	: 1853 of 2024
Date of Filing.	: 14.08.2024
Date of decision	: 24.12.2025

The Highway Administrator & Project Director, PIU, Gutkar, Mandi, Tehsil and District Mandi, H.P.

Now Varun Chari aged 36 years S/o Sh. Suresh Kumar Chari, duly authorized signatory, presently working as Project Director, National Highway Authority of India, Project Implementation Unit Mandi, Bagla, Muhal Chakkar, P.O. Nagchala, Tehsil Balh, District Mandi, H.P. 175021.

...Applicant.

Versus

1. Smt. Promila Devi W/o Sh. Ranjeet Singh, R/o Village Jaterh, Tehsil and District Kullu, H.P.
2. The Land Acquisition Officer, National Highway Authority of India, Pandoh, District Mandi, H.P.
3. The Collector Kullu, District Kullu, H.P.

...Respondents.

APPLICATION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996, SEEKING SETTING ASIDE THE IMPUGNED AWARD DATED 20.11.2023 PASSED BY LEARNED ARBITRATOR-CUM-DIVISIONAL COMMISSIONER, MANDI, DISTT. MANDI, H.P.

For the Applicant	: Smt. Sunita Verma, Ld. Vice Adv.
For Respondent No.1	: Sh. Lal Singh, Ld. Advocate.
For Respondent No.2 & 3	: Sh. Vinod Bhardwaj, Ld. D.A.

J U D G M E N T

By way of the present application under Section 34 of the Arbitration and Conciliation Act, 1996, the applicant (Highway

Administrator and Project Director) has assailed the award dated 20.11.2023, passed by learned Arbitrator-cum-Divisional Commissioner, Mandi Division Mandi, H.P., exercising the power of Arbitrator under the National Highways Act, 1956. (For the sake of convenience the parties hereinafter be referred to as “NHAI”, “landowners” and “Competent Authority” and National Highways Act shall be referred to as “Act of 1956” and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall be referred to as “Act of 2013”).

2. In brief, the facts giving rise to the present application are that the Central Government through the Ministry of Roads, Transport and Highways had issued a notification which was published in the Official Gazette of the Government of India on 18.05.2016 under section 3A (1) of the Act of 1956 declaring the intention to acquire the land for the public purpose of widening/ four laning, maintenance, management and operation of National Highway No. 21 on the stretch of land from Nerchowk to Manali section in village Jaterh, Tehsil and District Kullu and in this regard notification S.O. NO.1786 (E) dated 18.05.2016 was issued in the Gazette of India on 18.05.2016 and the substance of the said notification was duly published in the daily newspaper on 03.06.2016 which was in wide circulation in the locality. Thereafter declaration under section 3D of the Act of 1956 was issued in the Official Gazette of the Government of India vide notification S.O. No.3469 dated 17.11.2016 and the substance of the said notification was also published in daily newspapers which were in wide circulation in the locality on 25.11.2016. Thereafter, the competent authority Land Acquisition Officer, vide award No.61 dated 26.12.2017 awarded compensation @ Rs.4,936- per

square meter along with other statutory benefits.

3. Thereafter, being aggrieved by the award of the Competent Authority dated 26.12.2017, the respondent/landowner filed claim applications under section 3G(5) of the Act of 1956 before the Ld. Arbitrator, Mandi for enhancement of the compensation of the acquired land, as awarded by the Competent Authority and the Ld. Arbitrator vide impugned order dated 20.11.2023 partly allowed the application of the landowner and thereby the landowners were held entitled to a market value of the acquired land at the rate of ₹7,490/- per square meter instead of what has been awarded by the Competent Authority and also held entitled them to all the statutory benefits contained under section 30(1) and 30(3) of the Act No.30 of 2013 and interest @ 9% for the first year and 15% per annum thereafter as the case may be in accordance with law on the amount of compensation.

4. Feeling dis-satisfied, the applicant - NHAI preferred the present application for setting-aside the impugned award passed by the learned Arbitrator on the premise that the Ld. Arbitrator has wrongly and illegally enhanced the compensation by adopting the formula alien to law. It is submitted that in order to seek enhancement, the respondents relied upon a solitary sale deed dated 27.01.2015 Ext.P5. The Competent Authority in its award dated 26.12.2017 had relied upon 23 number of sale deeds executed between 2013 to 2016, but the Ld. Arbitrator in the impugned award on its own referred to 7 sale deeds of the year 2015 which were taken by the Competent Authority to determine the compensation. It is submitted that without there being any pleadings on record, added the sale price of the solitary sale deed No.175/2015 dated 27.01.2015 in the average sale price of 23 sale deeds and determined the compensation @ ₹7,490/- per

square meter. It is submitted that as per section 26(1)(b) of the Act of 2013, the solitary sale deed produced by the respondent could not have been taken into consideration in determining the market value of the acquired land. It is submitted that the award suffers from patent illegality, therefore, the award is liable to be dismissed. It is submitted that the Ld. Arbitrator did not follow the substantive law in force while passing the impugned award. It is submitted that section 26 of the Act of 2013 provides the manner to be adopted by the Collector or Ld. Arbitrator to determine the market value of the acquired land which has not been followed by the Ld. Arbitrator.

5. It is submitted that the impugned award is non speaking award and unreasoned. It is submitted that even if for the sake of arguments, the methodology adopted by the Ld. Arbitrator is to be accepted (though specifically denied), even then the Ld. Arbitrator has not given any reason as to how by adding the solitary sale deed into the list of average sale price of 23 sale deeds, the market value of the acquired land came to ₹7,490/- per square meter. It is submitted that the impugned award is completely flawed and if the total number of sale prices are divided by the total number of sale deeds, the value comes to ₹2479.65217 per square meter. It is submitted that the Competent Authority had rightly arrived at a figure of ₹2,480/- per square meter i.e. average of sale price of 23 sale deeds.

6. It is submitted that the Award of the Ld. Arbitrator is patently illegal as the compensation has been enhanced by relying on factors beyond those enumerated under section 26 of the Act of 2013, which is in violation of the mandatory provisions of section 28(1)(a) of the Act of 1996, which mandates that while

deciding the disputes between the parties, the arbitral tribunal is bound to take into consideration the substantive law for the time being in force in India.

7. It is submitted that the award lacks reasoning as to how the lands are comparable in nature. It is submitted that while determining the market value and awarding compensation of the acquired land, the Ld. Arbitrator did not taken into consideration the various relevant factors, such as, the natural composition of land, adaptability, advantages, purpose for which land can be utilized in the most lucrative manner, locality, size and shape of the land etc.

8. It is submitted that though the Ld. Arbitrator has not specifically mentioned the grant of interest to the respondent, but in para No.18 (B) of the Relief Clause of the award, the Ld. Arbitrator has mentioned that the respondent will be entitled to an interest according to law. It is submitted that the Ld. Arbitrator has wrongly awarded the interest under section 80 of the Act of 2013 in utter violation of the law. It is submitted that the NH Act 1956 is a complete code in itself and there are specific provisions for expeditious acquisition of the land required for public infrastructure and the Act of 2013 is not *ipso facto* applicable to the NH Act, 1956. It is submitted that the perusal of the First Schedule shows that only provisions of Sections 26 & 29 and solatium @ 100% of the Act of 2013 have been made applicable to the acquisition under the NH Act, 1956. It is submitted that in **NHAI v. P.Nagaraju @ Cheluvaiah (2022) 15 SCC 1**, it has been held by Hon'ble Supreme Court that the provisions of the Act of 2013 have very limited applicability on the acquisition made under the NH Act, 1956 and it has been observed by the Hon'ble

Supreme Court that only the provisions enshrined under sections 26 to 28 of the Act of 2013 have to be taken into consideration for determination of compensation for the acquisition made under the NH Act, 1956. It is submitted that the interest awarded by the Ld. Arbitrator under section 80 of the Act of 2013 is wrong and patently illegal, therefore, the impugned award is liable to be set aside on this score only.

9. It is submitted that not acceding to the applicability of interest under section 80 of the Act of 2013, the Ld. Arbitrator granted interest without framing any issue with respect to the grant of interest.

10. It is submitted that the Ld. Arbitrator in order to give undue benefits completely ignored the statutory provisions of NH Act, 1956 i.e. Section 3-H(1) of read with section 3E of the NH Act, 1956 and the award of the Competent authority. Section 3-H(1) provides that the possession of the land can be taken after the compensation is deposited by the Central Government and section 3-E(1) of the Act provides that before taking possession of the acquired land, the Competent Authority has to serve the notice to the owner to surrender or deliver the possession within sixty days of the service of notice. It is submitted that the possession of the acquired land will be taken as per section 3E of the NH Act, 1956.

11. It is submitted that the cause of action arose in favour of the petitioner on 12.04.2024 when the impugned award dated 20.11.2023 passed by the Ld. Arbitrator was received by the applicant. It is submitted that the present petition is within limitation.

12. Reply has been filed on behalf of the

respondent/landowner and the claim of the applicant has been contested with vehemence. The respondent No.1/landowner raised preliminary objections of maintainability, cause of action, locus standi and that this court has no jurisdiction to try, entertain and decide the present petition.

13. On merits, it is contented that the interest part awarded by the Arbitrator, Mandi cannot be challenged by way of present petition by the petitioner as the same was also awarded as per the settled principles of law. Ld. Arbitrator has also failed to enhance the compensation as prayed for by the respondent in his petition filed before it. The Ld. Arbitrator has also failed to award the payment of compensation amount as per section 64(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 qua the acquired land. It is admitted that the impugned award is against the law, facts, evidence and principle of natural justice. The Ld. Arbitrator must have awarded all the reliefs prayed for by the respondents/ landowners in their petition filed qua which no rebuttal evidence is led before it but the Ld. Arbitrator partly allowed the award thereby ignoring the main relief sought by the respondents/landowners. Hence, the award is liable to be modified. It is submitted that the present petition is hopelessly time barred as the petitioner intentionally did not receive the copy of the award within time and let it remained in the office of the Arbitrator and as such, the present petition on this score alone is liable to be dismissed.

14. In reply to the grounds of petition, it is submitted that the interest part has rightly been awarded by the Ld. Arbitrator but the Ld. Arbitrator wrongly ignored the other reliefs claimed by the

respondent No.1. It is submitted that the law cited is related to the land acquired in the state of Punjab and due to geographical situation of the lands in Punjab and in the state of Himachal Pradesh are different. It is submitted that so far as the findings qua the date of possession is concerned, the record of the same is with the petitioner and it is incumbent duty of the petitioner to produce the same. It is submitted that the interest has been awarded by the Ld. Arbitrator as per the settled principle of law. It is submitted that the interest part has been rightly awarded by the Ld. Arbitrator however, the Ld. Arbitrator has wrongly ignored the other reliefs claimed by the respondents/ landowners and wrongly ignored the relevant factors essential for the just determination of the compensation. The Ld. Arbitrator has not taken into account the best pleaded case of the petitioner and also not taken into consideration the market value of the land as per the market value of the land of the last year of acquisition of the land. It is submitted that the Ld. Arbitrator should have assessed the compensation of the land keeping in view the market value of the year by increase of 10% of the market value in each year after 2012. The Ld. Arbitrator has ignored the fact that LAO had ignored the report of the Negotiation Committee constituted for assessing the market value of the land of the area as the said committee has assessed the market value of the land to the tune of ₹4,50,000/- and the same was given to the LAO, but the Ld. Arbitrator has also ignored this very important aspect of the case. It is submitted that interest has been passed in accordance with law, whereas, the other relief claimed by the respondents /Landowners has wrongly been denied, which is illegal and contrary to the settled provisions of law. The Interest part is covered under all the statutory reliefs qua which issues have been already framed. It is submitted that

the Id. Arbitrator has also not awarded the statutory benefits qua the acquisition of the land of the applicant as per the verdict of Hon'ble Apex Court in judgment titled as Union of India v. Tarsem Singh, which is clear from the award passed by the Competent Authority as well as the Ld. Arbitrator. It is submitted that no cause of action accrued in favour of the petitioner. It is submitted that the present petition is hopelessly time barred and is liable to be dismissed.

15. On the other hand, the respondents No.2 and 3 though appeared through Ld. District Attorney but did not file any reply to the application.

16. I have heard Learned counsels for the parties and have gone through the record with minute care.

17. The following points arise for determination :

1. **Whether the impugned award passed by the Ld. Arbitrator is liable to be set aside being not in accordance with the parameters of the Act?**
2. **Final Order.**

18. For the reasons to be recorded hereinafter, while discussing the aforesaid points for determination, my findings on the above points are as under:

Point No.1 : No.

Final Order: The application is dismissed as per operative part of the judgment.

REASONS FOR FINDINGS.

POINT NO.1.

19. Before adverting to the merits of the case, it would be apposite to first examine the ambit and scope of interference this Court is entitled to make, as per the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

20. The Hon'ble Apex Court of India in **Project Director, National Highways No.45 E and 220, National Highways Authority Of India Versus M. Hakeem And Another, 2021 (9) SCC 1**, has held that:

"What is important to note is that, far from Section 34 being in the nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34. Secondly, as the marginal note of Section 34 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3). "Recourse" is defined by P.Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-section (2) and (3), an application can only be made to set aside an award. This becomes even clearer when we see sub-section (4) under which, on receipt of an application under sub-section (1) of Section 34, the court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award. Here again, it is important to note that it is the opinion of the Arbitral Tribunal which counts in order to eliminate the grounds for setting aside the award, which may be indicated by the court hearing the Section 34 application."(Para 16)

Section 34 of Arbitration and Conciliation act 1996 proceedings does not contain any challenge on the merits of the award. (Para 23)

Thus, there can be no doubt that given the law laid down by the Supreme Court, Section 34 of the Arbitration and Conciliation Act, 1996 cannot be held to include within it a power to modify an award. To state that the judicial trend appears to favour an interpretation that would read into Section 34 of the

Arbitration and Conciliation Act, 1996 a power to modify, revise or vary the award would be to ignore the previous law contained in the Arbitration Act, 1940 as also to ignore the fact that the Arbitration and Conciliation Act, 1996 was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 of the Arbitration and Conciliation Act, 1996 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration and Conciliation Act, 1996.” (Paras 31 to 42)

21. Subsequently, the questions raised by three judges bench of Hon'ble Apex Court in **Gayatri Balasamy v. M/s. ISG Novasoft Technologies Ltd** decided on 20.02.2024, the Hon'ble Supreme Court on 30.04.2025, in the aforesaid case, has observed and held that:

“31. The next question that arises is whether the power to set aside an award includes the power to partially set it aside.

II. Severability of Awards

In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a two-fold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz — that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. Indeed, before us, none of the parties have argued that the court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the court’s jurisdiction when setting aside an award.

34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the “valid” and “invalid” portions are legally and practically inseparable. In simpler words, the “valid” and “invalid” portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

37. We would now proceed to examine, the permissibility and scope of the court’s modification powers, within the parameters of Section 34 of the 1996 Act. In doing so, we will distinguish the court’s power of modification from: (i) the court’s power of setting aside an award; (ii) the arbitrator’s power under section 33 to correct, reinterpret, and/or issue an additional award; and (iii) the of the court to remand the award to the arbitrator under Section 34(4).

IV. A Limited power of modification can be located in section 34.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other

words, the power cannot contradict the essence or language of Section 34. The court would not exercise appellate power, as envisaged by Order XLI of the Code of Civil Procedure, 1908.

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

*45. We are thus of the opinion that the Section 34 court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in **Part II** of our **Analysis**.*

22. Therefore, in view of the recent judgment of the Hon'ble Supreme Court, under Section 34, the court in the appellate hierarchy do not have a power to modify the arbitral award, however, the Court can apply the doctrine of severability and set aside a portion of the award while retaining the rest, subject to parts of the award being separable, legally and practically. Further, the power to set aside will not include the power to modify since the power to modify is not a lesser power subsumed in the power to set aside and both are qualitatively different. Further, Hon'ble Apex Court held the law laid down in the judgment in Hakeem (supra) to be correct with only exception to carry out corrections in computational errors, clerical errors or typographical errors and any other errors of similar nature.

23. It is contended by Ld. Counsel for the applicant - NHAI that the impugned award is perverse and against the public policy and the impugned award has been passed on incorrect application of the basic principles of settled law. Therefore, the

impugned award is patently illegal and liable to be set aside.

24. Patent illegality is nowhere defined under the Act. In general, it is a ground to set aside the arbitral award if the award is found to be opposed to substantive provisions of law or requirement of the Arbitration and Conciliation Act, 1996, or against the terms of the contract.

25. It has been held by their Lordships of Hon'ble Supreme Court in **Delhi Airport Metro Express Pvt. Ltd. vs. Delhi Metro Rail Corporation Ltd. 2022(1)SCC 131** as under:-

“25. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award Under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a Clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.

26. Therefore, the ground of patent illegality, with inbuilt exception, is available in the statute for setting aside domestic award, if the decision of the Arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same or construction of the contract is such that no fair or reasonable person would take or the view of the Arbitrator is not even possible.

27. Further, it has been observed by the Hon'ble Apex Court in **Patel Engineering v. North Eastern Electrical Power Corporation Ltd. 2020(7) SCC 167 (Para-20)** that the expansive definition given to the term public policy of India has been done away with, after the amendment of the Arbitration and Conciliation Act in the year 2015.

28. Otherwise also, the National Highway Act, 1956 has been enacted with the object to acquire land, building, maintenance, management, or operation of the National Highways, on the payment of the compensation to the landowners or person interested for such acquisition. Therefore, to my mind, the determination of the just and fair compensation determined by the Arbitrator to the landowners, whose property has been acquired, for such purpose/development cannot be said to be against the public policy.

29. It is also a well-settled principle of law that challenge can be laid to the Award only on the ground that the Arbitrator has drawn his own conclusion or failed to appreciate the relevant facts. Nor can the Court substitute its own view on the conclusion of law or facts as against those drawn by the Arbitrator, as if it is sitting in appeal.

30. The respondent/landowner has taken the preliminary

objection that the present application is not maintainable as this Court has no jurisdiction to decide the application as the acquired land does not fall within the civil jurisdiction of this Court.

31. Their lordships of Hon'ble Delhi High Court in case titled **Hari Ram & Ors. v. National Highways Authority of India & Ors. 2025:DHC:2436, bearing No. O.M.P. (Comm.) 86/2024, decided 04.04.2025** has observed as under:

"8. The A&C Act defines 'Court' in the following manner:-

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

(e) "Court" means- (i) in the case of an arbitration other than international commercial arbitration, 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;...

Thus, it is seen that as per the definition extracted above, the relevant Court would be the one having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. Subject matter of Arbitration should not be equated with subject matter of the suit, as the former is related to proceedings initiated under Part I of the Act. The purpose of the provision is to identify the courts having supervisory control over the arbitration proceedings. The Courts have held that territorial jurisdiction lies with the court within whose jurisdiction the subject matter of the suit is situated, as well as the courts within whose jurisdiction the dispute resolution process, i.e., arbitration, is conducted. Furthermore, it has been consistently held that the moment the seat of arbitration is designated, it is akin to an exclusive jurisdiction

clause. [Ref: BALCO v. Kaiser Aluminium Technical Services Inc. (Supra) and BGS SGS SOMA JV v. NHPC MANU/SC/1715/2019 : 2019:INSC:1349 : (2020) 4 SCC 234].

9. The Supreme Court in the case of Indus Mobile (Supra), while analysing the definition of Court given in the A&C Act, interpreted the same in the following manner:-

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

(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;

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.

32. Therefore, in view of the above said judgment, it can be concluded that both the Courts have jurisdiction where the subject matter of the suit is situated as well as the Courts within whose jurisdiction the dispute resolution process i.e. arbitration is conducted.

33. It is contended on behalf of the applicant – NHA that Ld. Arbitrator has wrongly and illegally enhanced the compensation by adopting the formula alien to law and the Ld. Arbitrator without there being any pleadings on record, added the sale price of the solitary sale deed No.175/2015 dated 27.01.2015 in the average sale price of 23 sale deeds and determined the compensation @ ₹7,490/- per square meter, whereas, the solitary sale deed produced by the respondent could not have been taken into consideration for determining the market value of the acquired land and moreover, no reason has been given by the Ld. Arbitrator as to how by adding the solitary sale deed in the list of average sale price of 23 sale deeds, the market value of the acquired land came to ₹7,490/-. Hence, the impugned award is

liable to be set aside.

34. Hon'ble Supreme Court in NHAI v. P.Nagaraju @ Cheluvaiah (2022) 15 SCC 1 held that the award passed by the competent authority under National Highways Act is an offer of compensation by acquiring authority and the learned arbitrator is not supposed to critically examine the award passed by the authority. It will be open for the learned arbitrator to rely upon the additional material brought on record to determine just and fair compensation. Therefore, in view of the binding precedent of the Hon'ble Supreme Court, the award passed by the competent authority is in the nature of the offer and the arbitrator is entitled to take evidence and reach an independent conclusion. Ld. Arbitrator added the sale deed of muhal Jaterh Ext.P5 for the year 2015 in the earlier sale deeds furnished for same muhal for assessing the market value of the acquired land, which cannot be said to be illegal or alien to the law. The Ld. Arbitrator has taken all relevant evidence placed and proved on record before it, in order to ascertain the just and fair compensation. Further, the contention of Ld. Counsel for the petitioner that how the Arbitrator came to the conclusion of the market value of the acquired land @ Rs.7,490/- per square meter is liable to be rejected because in para No.11 of the Award, the Arbitrator has categorically given the reason to arrive at the conclusion for assessing the market value @ Rs.7,490/- per square meter. Moreover, the legislature has made the arbitrator a final court on facts and it is not permissible to re-appreciate the evidence led before him unless there is patent illegality. No case of patent illegality can be said to be made in the application; therefore, the award of the Ld. Arbitrator on facts has to be treated as final. It appears from this submission that the

applicant is aggrieved from the finding of facts recorded by the learned arbitrator and wants this Court to re-appreciate the evidence to determine whether the learned arbitrator had drawn the correct conclusions or not. In view of the binding precedents of the Hon'ble Supreme Court and the High Courts, it is not permissible for this Court to sit in appeal over the finding recorded by the learned arbitrator by reassessing or re-appreciating the evidence led before the Ld. Arbitrator to determine whether his conclusions are correct or not.

35. By way of present application, the applicant is claiming to set aside the impugned award dated 20.11.2023 passed by the Ld. Arbitrator, being patently illegal and in conflict with public policy of India on the ground that the Ld. Arbitrator wrongly and illegally granted interest @ 9% for the year and 15% thereafter, as the case may be, in accordance with law, on the amount of compensation determined by the Competent Authority in complete ignorance of section 105 of the Act of 2013. It is also contended that section 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not applicable and only the provisions of section 26 and 29 and solatium @100% of the Act of 2013 are applicable to the acquisition under the Act of 1956.

36. In the present case, the preliminary notification under section 3A of the National Highway Act, 1956 for the award passed by the Competent Authority dated 26.12.2017 was published on 18.05.2016 and the compensation was determined as per the first schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as is applicable for acquisition under the

National Highway Act, 1956 w.e.f. 01.01.2015 vide notification/Government of India letter No.11011/30/2015-LA, Ministry of Road Transport and Highways.

37. So far as the contention of the Ld. Counsel for the applicant regarding payment of interest part is concerned, the same is the part of compensation and the more beneficial provision of 2013, Act relating to interest i.e. Section 80 on the amount determined in the first instance (by Competent Authority under NH Act) would undoubtedly apply to the acquisitions made under the NH Act. Further, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and National Highways Act the enactments for the acquisition of the land and all the Acts being beneficial legislation, therefore, cannot be read in contradiction to each other.

38. It is contended on behalf of the NHA that the Ld. Arbitrator in order to give undue benefit completely ignored the statutory provisions of the Act of 1956 i.e. Section 3-H(1) and Section 3-E(1).

39. The Ld. Arbitrator has recorded specific findings that the applicant-landowner has not mentioned the specific period/date on which the possession was handed over by the applicant. As per the award passed by the Competent Authority, the possession of the land affected by the award will be taken from the land owners as per the provisions of section 3(e) of the Act of 1956. Further, no notice as per the provisions of section 3(e) of the Act regarding surrender of land had been placed by either of the parties on record before the Ld. Arbitrator in arbitration proceedings. Therefore, the Ld. Arbitrator was right in holding the landowner to be entitled for the interest, if already not paid, from the date of

taking possession as per section 80 of the Act of 2013.

40. Further, the grievance of applicant/NHAI that substantive law was not considered by the Ld. Arbitrator is not correct perspective.

41. In my considered opinion, the Learned Arbitrator had considered the provisions of the Act of 1956 and Act of 2013, which are the substantive laws applicable to the present case in its right perspective and it cannot be said that there was any violation of the statutory law. Moreover, mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. On this point, reliance can be placed upon judgment titled as *Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49*. Therefore, the submission of Ld. Counsel for the applicant is liable to be rejected.

42. The perusal of the impugned award shows that the Arbitrator has passed a well reasoned award while taking into consideration the evidence led by the parties, arguments advanced by them and the material placed on record in the arbitral proceedings. Nothing appears from the record that the impugned award has been passed in contradiction to the provisions of section 34 of the Arbitration and Conciliation Act, therefore, this Court finds no justification to interfere with the impugned award passed by the Ld. Arbitrator. Accordingly, the point No.1 is answered in negative.

43. No other point was urged.

FINAL ORDER

44. In view of the abovesaid discussion and the latest law cited supra, the present application filed by the applicant is

dismissed. Memo of costs be prepared. The parties are left to bear their respective costs. Pending application(s), if any, are also disposed of, being rendered infructuous. The record of this Court, after due completion, be consigned to the Record Room.

Announced and signed in the open Court today on this 24th day of December, 2025.

(Paras Doger)
District Judge
Mandi District Mandi (HP).

Certified that I have signed the Page
Nos.1 to 23 of the Judgment.

(Paras Doger)
District Judge
Mandi District Mandi (HP).

/Sanjeev/