

UPGK010018722024

**IN THE COURT OF DISTRICT JUDGE, GORAKHPUR**

Presiding Officer:-Raj Kumar Singh, H.J.S.(U.P.1889)

Arbitration Case No. 07/2024

Project Director, National Highways Authority of India, Project Implementation Unit, Gorakhpur, situated at Dev Villa No. 3/40, Bahar Cluster-3, Sahara Estate, Deoria Bypass Road, Gorakhpur.

-----Applicant*Versus*

- 1- Arbitrator/District Magistrate, Gorakhpur.
- 2- Prescribed Authority/Special Land Acquisition Officer, Gorakhpur.
- 3- Smt. Laxmi Devi wife of Sri Dashrath Resident of Village Kaidha Bujurg, Post Jagdishpur, Bhaluwan, Tappa- Gurmahi, Tehsil Bansgaon, District- Gorakhpur.

-----Opposite Parties**JUDGMENT**

1- This arbitration application has been filed by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996 against the arbitral award/order dated 07.07.2020 passed by the Arbitrator/District Magistrate, Gorakhpur in Arbitration Case No. 2019/2017, Computerised Case No. D2017053102019, exercising power under Section 3-G (5), of the National Highway Act, 1956.

2. The facts of the case are as under:

2.1- The respondents preferred an application before arbitrator with the following averments:- “an Arbitration Case was filed on 05.10.2017 by Smt. Laxmi Devi, wife of Shri Dashrath resident of Village Kaidha Buzurg, Post Jagdishpur Bhaluan, Tappa Guramhi, Pargana Bhauvapar, Tehsil Bansgaon, District Gorakhpur stating that her land Plot No. 12, area 0.0136 hectares in revenue village Kaidha Buzurg, situated along the NH-29 highway (which is over 18 meters wide), has been acquired for the widening of National Highway No. 29. A notification under Section 3A of the National

Highways Act, 1956, regarding this acquisition was published on 23.01.2015, and subsequently published in two local newspapers Dainik Jagran and Hindustan on 31.03.2015. The Competent Authority/Special Land Acquisition Officer, Gorakhpur, announced the award in Case No. 28/2016 on 29.08.2016. In the said award, the Competent Authority determined the compensation rate at Rs. 1,16,00,000.00 per hectare based on the circle rate list issued by the District Magistrate for land parcels ranging from 0.040 to 0.100 hectares. Arbitration Case No. D2017053102019 has been filed against this determination, contending that the compensation should be fixed in accordance with Section 26(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and that solatium and interest should also be awarded as per the rules.

2.2 Notices were issued to Opposite Party Nos. 1 through 4; following service of notice, the relevant records were placed on file, and objections were submitted by the respondents. In their objection, the Competent Authority/Special Land Acquisition Officer Gorakhpur stated that land comprising Plot No. 12 (total area 0.062 hectares) was acquired, within which the plaintiff held an area of 0.0136 hectares. The Opposite Parties accepted the facts recorded in the award and maintained that the award declared by the Competent Authority was entirely in accordance with the rules; furthermore, they asserted that the determined rate of Rs. 1,16,00,000.00 per hectare was correct and consistent with the provisions of the Act. The parties requested the disposal of the matter based on written arguments rather than oral submissions. The primary argument raised in the petitioner's written submission is that the Competent Authority determined the compensation rate based on the figure of Rs. 1,16,00,000.00 per hectare a rate prescribed in the District Magistrate's circle rate list for agricultural land ranging from 0.040 hectares to 0.100 hectares. However, the petitioner's land acquired was less than 0.040 hectares in area, falling instead into the category listed for land between 0.000 hectares and 0.040 hectares; for this category, it is appropriate to determine the rate based on the published circle rate of Rs. 550 lakh per hectare.

2.3 The arbitrator by the order dated 07.07.2020 allowed the prayer and directed for re-determination of compensation within 30 days.

03- Feeling aggrieved by the order dated 07.07.2020 the applicant has preferred the present application under Section 34 of the Arbitration and Conciliation Act, 1996 with the following averments that “the arbitrator has passed the award without affording any opportunity of hearing and also without proper service of notice with regard to arbitral proceedings, as such, the order passed by the arbitrator is an ex parte order. The arbitrator has passed the award against the provisions contained under Section 18 of the Act of 1956. The award made by the arbitrator is completely an ignorance of facts/documents as alleged in the provisions as contained under Sections 26, 27 and 29 of the Act of 2013. Application under Section 3-G(5) of the Act of 1956 submitted by the opposite party no. 3 is barred by Article 119 of the Limitation Act, 1903. The arbitrator, without condoning the delay in filing of the application under Section 3-G of the Act has entertained the application of opposite party no. 3 and as such, the act of the arbitrator considering the application under Section 3-G(5) of the Act of 1956 on merits is without jurisdiction and no order could be passed without condoning the delay in filing of the application. The order/ award passed by the arbitrator is illegal, ex parte, has been passed without any notice and opportunity of hearing to the applicant and is also against the provisions contained under the Act of 2013. In any view of the matter, the impugned award dated 07.07.2020 passed by the arbitrator is arbitrary, illegal, bad in law, not sustainable in the eyes of law and is liable to be set aside/quashed by the Hon'ble Court.

04- Learned counsel for the applicant submitted that the arbitrator did not proceed in accordance with law and passed the ex parte impugned order without affording adequate opportunity of hearing to the counsel for National Highway Authority of India. Learned counsel for the applicant submitted that impugned order was passed during the period of Corona pandemic. The learned counsel for the applicant also submitted that order is an ex parte order. There was no opportunity of hearing and learned arbitrator did not consider the written objection filed by the National Highways Authority of India.

05- Per-contra, learned counsel for the opposite party No. 3 submitted that appropriate opportunity was provided to all the parties. The notice of the proceeding was served upon the NHAI and counsel for the NHAI also appeared. The applicant NHAI has also submitted that written objections before the Arbitrator. The learned Arbitrator

considered the entire case and objection of the NHAI and passed the award in accordance with law.

06- Learned D.G.C. (Civil) appeared and submitted that there is no error in the order passed by the Arbitrator. It is in accordance with law. Learned D.G.C. (Civil) further submitted that application under Section 34 is not maintainable.

07- I heard the learned counsel for the applicant, learned counsel for the opposite parties and learned D.G.C. (Civil) and perused the record.

08- Under the provisions of Section 34(2) the arbitral can be set aside from the following grounds only:- 34(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]-

(i) party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any Indication thereon, under the law for the time being in force, or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

2(A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

9. From the perusal of the record, it is clear that the impugned award dated 07.07.2020 was passed during the period of Corona pandemic. From the perusal of the record/order sheet of the arbitrator, it shows that the application under Section 3(G)(5) National Highways Act, 1956 was registered on 30.10.2017. Several dates were fixed but it does not bear signature of the arbitrator, on 01.07.2020 written arguments and evidence were produced by learned counsel for applicant/Smt. Laxmi Devi before the learned Arbitrator and the file was fixed for order on 07.07.2020 and impugned order was passed on 07.07.2020. The learned Arbitrator did not put any signature on the entire order sheet from 09.11.2017 and subsequent several dates till 07.07.2020. The learned Arbitrator put his signatures only on the order passed at the time of admission i.e. on 30.10.2017 and upon the final order dated 07.07.2020.

10. *The Hon'ble Supreme Court in suo moto writ petition No. 3/2020 (IN RE: Cognizance for Extension of Limitation) has issued direction on 10.01.2022 and held that in cases where limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance of period of limitation remaining, with effect from 01.03.2022 it is greater than 90 days, that longer period shall apply. The Hon'ble Supreme Court exercised its jurisdiction taking note of pandemic Covid-19.*

11. In view of the above this court comes to a conclusion that NHAI was unable to present its case, due to corona pandemic. The award passed by the learned arbitrator is an ex parte award which was passed without considering the objections filed by the NHAI. Accordingly, this application is liable to be allowed and impugned award dated 07.07.2020 is liable to be quashed.

ORDER

This Arbitration Case No. 07/2024 is hereby allowed and the impugned award dated 07.07.2020 passed by the learned Arbitrator/District Magistrate, Gorakhpur in Arbitration Case No.-2019/2017, Computerized Case No. D2017053102019 is hereby quashed and the matter is remanded back to the Arbitrator for deciding afresh after giving appropriate opportunity to the parties without being influenced by its earlier order.

Office is directed to send back the record of the Arbitrator, immediately.

Dated: 21.07.2026

(Raj Kumar Singh)
District Judge, Gorakhpur.
J.O. Code-UP1889

Judgment signed, dated and pronounced today in open court.

Dated: 21.07.2026

(Raj Kumar Singh)
District Judge, Gorakhpur.
J.O. Code-UP1889