

**Union of India Vs. Aswani Kumar and others**

Present: Sh. M.R. Gupta, Advocate for the petitioner-objector.  
Sh. R.K. Goyal, Advocate for respondents No's.1 to 3.  
Sh.Amandeep Singh, Junior Assistant on behalf of  
respondents No's.5 and 6.

1. Vide this order. I will dispose of an application filed by the petitioner Union of India for grant of permission to lead evidence in this objection petition under Section 34 of the Arbitration and Conciliation Act 1996.

2. The facts in brief as alleged in the said application are that in this objection petition, the petitioner has taken a ground that the award is against public policy as the Learned Arbitrator has ignored the evidence and the facts of law presented by the petitioner. Further the petitioner has taken a plea that the award is arbitrary, perverse, unjustified and against the morality. The learned Arbitrator failed to appreciate that the acquired land in question was agriculture in nature. The petitioner had also presented the fact that a supplementary award dated 18.09.2017 for left over land area has also been passed by Land Acquisition Collector, Bathinda before the decision of arbitration proceedings. In that supplementary award, the basic market rate of the land was worked out strictly in accordance with the Schedule-I of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RAFCTLARR Act, 2013) in the light of Government of India Instructions issued vide letter No.NHAI/11013/DGM (LA & Coord)/2015/FTS-586/06 dated

03.02.2016 etc. (Instructions which were relied upon by the Ld. Arbitrator in the impugned award), which worked out very less as compared to the rates granted under the parent Award. Further, during the arbitration proceedings, the Ld. Arbitrator, Bathinda had sought the basic market price of land as per RAFCTLARR Act, 2013 during the relevant period of acquisition (of same road of which land under impugned award had been acquired) from the Land Acquisition Collector, Bathinda. Accordingly, the Land Acquisition Collector, Bathinda sent his report of rates to the Ld. Arbitrator, Bathinda which again worked very less as compared to rates granted in the impugned Award. Moreover from the perusal of file of arbitration proceeding, it seems that due to some oversight some evidence lead by petitioner has not been brought on record. Hence the petitioner now wants to lead evidence in this regard. Hence, this application.

3. On the other hand, the contesting and appearing respondents have not filed any reply to this application and their counsel has orally denied all the material averments of the application and prayed for dismissal of application.

4. I have heard learned counsels for the parties and have perused the record.

5. This is an objection petition under Section 34 of Arbitration and Conciliation Act, 1996 filed by the petitioner Union of India for setting aside the award dated 19.11.2019 passed by the concerned arbitrator, pertaining to a reference in proceedings for acquisition of property for construction of a National Highway. The arbitration proceedings before the concerned arbitrator were commenced much prior

to the year 2019 and the concerned award was also passed on 19.11.2019. The said award have been challenged in the present objection petition on several grounds including the ground of said award being against the public policy, arbitrary and unjustified and also on the ground that the arbitrator has granted excessive compensation against all the canons justice, equity and morality.

6. Hon'ble Supreme Court of India in 'Emkay Global Financial Services Limited Vs. Girdhar Sondhi (2018) 9 SCC 49', 'Canara Nidhi Limited Vs. M. Shashikala (2019) 9 SCC 462' and in 'M/s Alpine Housing Development Corporation Pvt. Ltd. Vs. Ashok S. Dhariwal and others in Civil Appeal No. 73 of 2023 decided on January 19<sup>th</sup>, 2023' has clarified that *the scope and ambit of Section 34(2)(a) [pre amended] would be that applications under Sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in Section 34(2)(a) and Section 34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under Section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated. An application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not contained in such records and the relevant to determination of the issues arising under Section 34, they may be brought to the notice of*

*the Court by way of affidavits filed by both the parties and the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under Section 34, then the party who has assailed the award on the grounds set out in Section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall not be allowed unless absolutely necessary.*

7. Now coming to the question as to whether present case is one such an exceptional case where it is necessary to grant opportunity to the petitioner to adduce evidence and further any such case is made out or not, the applicant/petitioner has itself stated in the application in hand during the arbitration proceedings, the arbitrator had sought the basic market price of the land as per RAFTLARR Act, 2013 during the relevant period of acquisition (of same road of which land under impugned award had been acquired) from the Land Acquisition Collector, Bathinda. Accordingly, the Land Acquisition Collector, Bathinda sent his report of rates to the Ld. Arbitrator which again worked very less as compared to rates granted in the impugned Award. Thus any such report of Land Acquisition Collector, Bathinda is also on record of the concerned arbitrator. It has not been clarified by any manner in this application by the petitioner as to what evidence be led by the petitioner has not been brought on record by the arbitrator nor there is any clarity of the evidence

qua which the petitioner is seeking permission to lead evidence at this stage. Although, learned counsel for the petitioner during the course of arguments submitted that he wants to place on record certain basic market price rate of land, whose report was called by Arbitrator after passing of impugned award. However, any such rate which was called for and received after passing of impugned award can in any way not be said to be relevant for the just and effective disposal of the present objection petition. Moreover, this application is also very much belated having been filed after passage of nearly three years from the date of filing of this objection petition.

8. Accordingly, in view of my aforesaid discussion, no such exceptional case is made out to permit the petitioner to lead any evidence in this objections petition. Accordingly, the application for granting permission to lead evidence filed by the petitioner is hereby dismissed.

9. Now to come upon 22.07.2024 for arguments on the objection petition. Record of arbitrator be summoned for the date fixed with the assistance of learned counsels for the parties.

Pronounced in open Court.  
Dated: 06.04.2024

Jaspal Singh SG-I.

(Mahesh Grover)  
Addl. District Judge,  
Bathinda  
(UID No. PB-0243).

