**In the Court of Kewal Krishan,**
**Addl. District Judge, Ferozepur(UID: PB0182)**

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| Case type | Arbitration |
| CIS No. | Arb/49/2024 |
| CNR No | PBFZ010021982024 |
| Instituted on | 06.04.2024 |
| Date of Registration | 06.04.2024 |
| Decided on | 23.10.2024 |

1. Sharanjit Kaur aged 65 years widow of Sh. Atma Singh,
2. Manpreet Kaur aged 42 years widow of Sh. Harpreet Singh,
3. Abhijot Singh aged 14 years minor son of Harpreet Singh son of Atma Singh, through his step mother and natural guardian Manpreet Kaur wife of Harpreet Singh,
4. Seerat Kaur aged 11 years minor daughter of Davinder Singh son of Atma Singh, through her step mother and natural guardian Manpreet Kaur wife of Davinder Singh,
5. Ekamjeet Singh aged 9 years minor son of Davinder Singh son of Atma Singh, through his step mother and natural guardian Manpreet Kaur wife of Davinder Singh,
   all residents of Ward No.8, Near Main Chowk, Talwandi Bhai, Tehsil and District Ferozepur.

……..Applicants

Versus

1. Union of India through Secretary, Ministry of Road, Surface Transports & Highways, 5th Floor, Transport Bhawan, Sansad Marg,New Delhi.

2. Project Incharge, National Highways Authority of India, NH-15 (SE) Central Works Division, (B&R), Ferozepur.

3. Sub Divisional Magistrate, Ferozepur exercising the powers of Competent Authority Land Acquisition (CALA) appointed by the Central Government under National Highways Act, 1956.

...Respondents.

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| Application under section 34 of the Arbitration and Conciliation Act 1996 against the award dated 10.1.2024 in arbitration case No.551/2017 (New No.49/2022) of village Talwandi Bhai, District Ferozepur passed by Sh. Arun Sekhri, IAS, Commissioner-cum-Arbitrator, Ferozepur, whereby while disposing off claim petition filed by |

applicant under section 3G(5) (6) of National Highway Act, to resolve the issue of compensation arising out of acquisition of land of applicant by National Highway Authority of India for the purpose of four laning of NH-15 (Now NH-54) on Section from 163.400 KM. to 215.900 KM (Amritsar-Shri Ganga Nagar) section in District Ferozepur passed by Sub Divisional Magistrate Cum Competent Authority (CALA), Ferozepur, respondent No.3 by as Award dated 30-9-2014 dismissed the petition.
**Claim in application**: For accepting the application and setting aside the impugned award passed by the Arbitrator cum Commissioner, Ferozepur Division, Ferozepur and for remanding the same to the Arbitrator after enhancing the time as per Section 29 of the Act 1996 to decide the matter afresh within the time enhanced by this Court, as per law.

Present:
Sh. A.K. Gupta Advocate learned counsel for the applicants
Sh. Harish Aggarwal Advocate Ld. counsel for respondents No.1 and 2
Sh. Kuldeep Sahni Govt. Pleader for respondent No.3

## Judgment

1. The applicants/landowners have filed this application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the Act 1996) for setting aside the impugned award. Arbitral Record is already received.

## Facts of application

2. Brief facts of the application are that the applicants had filed arbitration case No.551/2017 (New No.49/2022) before the Arbitrator cum-Commission, Ferozepur Division Ferozepur. The Central Govt. expressed its intention to widen the national Highway 15 (now NH-54). For this purpose, a notification dated 5-7-2013 under Section 3-A(1) of

the National Highways Act, 1956 (hereinafter referred as *the Act 1956*) was published on 29-7-2013 vide notification No. S.O. 2044(E). The land of the applicants part of Rect. No.42 Killa No.25 (8-0), 6/1 (4-0), 7/1 (2-0), 8/2 (5-0), 14/1 (5-13), Rect No.47 Killa No.5 (8-0), Rect No.25 Killa No.13/2 (0-9), 14 (8-0), 18 (7-7), 8/2 (0-9), 13/1 (7-11), Rect No.46 Killa No.9/1 (6-0), 9/2 (2-0), 10/1 (0-9), 10/2(7-11), 11/2 (5-4), 12 (8-0), 1/1 (3-12), ½ (3-4), 2/1 (2-0), 2/2 (6-0), 19 (8-0), 20/2 (0-11), 21/2 (5-0), 22 (8-0), 20/1 (7-0), Rect No.43 Killa No.21 (8-0) situated in Talwandi Bhai, Tehsil & District Ferozepur was acquired under compulsory acquisition. No enquiry at the spot was conducted by the Competent Authority Land Acquisition( CALA) and the compensation determined by CALA is not in accordance with the law applicable to the facts of the case. After issuing of necessary notification under section 3-A, notification No.S.O.322(E) dated 4-2-2014 under Section 3-D was passed which was published in the News paper. The land of applicants as mentioned above was compulsory acquired by National Highway Authority of India for construction of NH-15 (Now NH-54) into four laning on stretch of land from 163.400 KM. to 215.900 KM (Amritsar-Shri Ganga Nagar) section Ferozepur and Sub Divisional Magistrate Cum Competent Authority Land Acquisition (CALA), Ferozepur passed the Award dated 30-9-2014. The payment to all the land owners was made after 1-1-2015 as the CALA himself received the payment after February, 2015. Feeling dissatisfied with the amount of compensation granted to applicants by CALA, the applicants approached Arbitrator Cum Commissioner Ferozepur Division, Ferozepur to resolve the issue. The Arbitrator by his order dated 10.1.2024 did not modify the award as claimed by the applicants and dismissed the petition/application. The amount of granted by CALA is on the lower side and the applicants are entitled to claim enhancement of compensation as per his claim petition submitted to the arbitrator. The Arbitrator was to decide the matter within the stipulated under Section 29-A of the Act, 1996. The pleading of parties were compeleted prior to 6.7.2018. Thereafter, neither the parties made an application for extension of period, before the Principal Civil Court of original jurisdiction and as such no extension of period was made. The mandate of Arbitrator terminated after one year of completion of pleadings and therefore, he had no jurisdiction to pass the impugned award. He had assumed the jurisdiction, which did not vest in him by making the Award dated 10-1-2024, which was passed after his mandate has terminated. Hence the award is without any jurisdiction and is vitiated by patent illegality and is liable to be set aside. Since the payment was made after 1.1.2015, the applicants are entitled to 100% solatium. The property was severed into two parts on acquisition of the land and as per Section 3G(7)(b) of the Act 1956, the applicants are entitled to compensation due to bifurcation of the land in two parts. He is also entitled to easmentary compensation. Neither respondent No. 3 nor the Arbitrator had taken into consideration the legal benefits to which the applicants are entitled. The land of the applicants is adjoining the

Municipal Committee Talwandi Bhai is near the New Abadi, New Grain Market, the Rice Sheller and other industries. The land is highly fertile and is of great potential and value. The arbitrator while passing the impugned award did not consider these facts. Different land owners have different type of land and different type of claims. However, all 54 cases of Talwandi Bhai have been decided by one order, which is wrong and is liable to be set aside. Each case has its own facts and as such all the cases mentioned above cannot be decided by single award. A single award cannot decide the true controversies of the cases of the other owners. The principles of parity requires that the same formula, which has been adopted by the concerned CALA while acquiring land situated in District Bathinda, Tehsil Patti, District Taran Taran should have been adopted by the CALA while fixing the compensation amount considering the value of the acquired land. But neither CALA nor the arbitrator considered these facts while passing the award. By adopting different formula for giving compensation, the valuable right of the applicants have been discriminated without any sufficient cause. The formula adopted by the CALA while arriving at the value of the land acquired in district Bathinda and Tehsil Patti District Taran Taran suggest that much higher value was fixed per sq. Yard of the acquired land. The arbitrator did not consider these facts while passing the award. The valuable rights of the applicants are involved due to inadequate compensation tendered to them without upto date interest and benefits of solatium The interest on the compensation amount should have been calculated upto the date of tender of the amount to him. The amount was never tendered to the applicants by the CALA. The CALA has received the compensation after about 5-6 months of passing his award. The landowners have been debarred from using the huge amount for which they are entitled to interest, but the appellants have not been granted interest even for a single day. The solatium and interest has been granted at a lesser rate. The applicants are entitled to 100% solatium as per the different orders passed by Hon'ble Courts. The arbitrator did not take into consideration the principles of contiguity and also the situation of the land on District Ferozepur from KM 163.400 to KM 215.900 (Ferozepur Section) for construction of National Highway No.15 (now 54), widening four lining etc. has been treated differently viz a viz the situation on G. T. Road. The Arbitral did not provide any extra compensation for the severance of the land. A prayer was made that the application may kindly be accepted and the impugned award of the Arbitrator be set aside and the matter be remanded back to the Arbitrator to decide the petition afresh after extending time as per law.

**3.** The respondents No.1 and 2 appeared and filed their reply taking legal objections that the application is not maintainable and the applicants have no locus standi to file the same. The applicants had not filed any objections under Section 3-C of the Act, 1956 at the relevant time challenging the market value of the land. It is well settled law that any objections received after the said period of 21 days are not to be considered and in such an event, the Notification under Section 3-A shall have achieved finality. The market value and nature of the acquired land cannot be brought into question in the proceedings before the Arbitrator, as well as present proceedings. The Competent Authority had announced the aforementioned award after taking into consideration all representations and evidence and also by taking into consideration the conditions as specified under S. 3-G (7) of the NH Act. The application for modification of the impugned award is not maintainable. The applicants have not filed any document or proof in support of their case in respect of village in question for enhancement at the time of notification under section 3-A of NH Act. He has failed to prove on record that the value of the acquired land of this village was more than the awarded amount by the CALA. The award announced by CALA is Just and equitable and same has been announced after considering all the aspects. Strips of the land were acquired for the widening of NH-15 (NOW NH 54). The value of such land cannot be the same as that of the plots in a developed commercial area. The Competent Authority Land Acquisition has announced the Award according to the market value as prescribed by District Level Price Fixation Committee which was held on 13.08.2014 to fix the basic market rates of land under the Chairmanship of Sub Divisional Magistrate, Ferozepur, Distt. Ferozepur. The acquiring department was represented by Sub Divisional Magistrate, Central Works

Sub Division No. 2, PWD (B&R), Ferozepur. The Collector rate at the relevant date was lesser than the compensation awarded by CALA. Interest has been given on the compensation amount as well as on the solatium as per Act and rules. CALA has announced the Award according to the market value as prescribed by District Price Fixation Committee which was held on 13.08.2014. The land acquisition had been made for the welfare of public by the authority and larger interest of public is involved in it and the amount awarded by CALA is fully satisfactory for the Petitioners. It is well-settled law that where a large area of land is acquired, the smaller area of land cannot be taken into consideration for assessing the market value of the land. A prayer for dismissal of the application was made.

**4.** In the present case, issues have not been framed as the same are not required to be framed for the purpose of deciding present applications. Hon'ble Supreme Court has observed in **Fiza Developers & Inter-Trade P. Ltd. v. AMCI(I) Pvt. Ltd.** 2009(4) R.C.R.(Civil) 288 Law Finder Doc Id # 202800 that Court not required to frame issues.

**5.** Arguments are heard. Learned counsel for the applicants has argued in support of the pleas as taken in the application, which are not being repeated. Ld. Counsel further argued that the application be accepted by setting aside the impugned award and case be remanded to the Arbitrator for fresh decision.

**6.** On the other hand, learned counsel for the contesting respondents has argued in support of the pleas as taken in their reply, which are not being repeated. He further argued that this Court cannot modify the impugned nor it has power to remand the case to the arbitrator. This application deserves dismissal.

**7.** After hearing Learned Counsels for parties and on going through the record, following points for determination arise for consideration and decision by this court:-

(A) Whether the applicants are entitled for 100% solatium?

(B) Whether the impugned award/order was passed by the Arbitrator after termination of mandate?

(C) Whether the impugned award is liable to be set-aside?

(D) Whether the case can be remanded under Section 34 of the Act 1996?

**8.** The applicants had filed an application under Section 3 (A-G) of the National Highways Act, 1956 before the Arbitrator. Arbitrator vide impugned order dated 10.01.2024 dismissed 50 applications including the application of present landowners. The impugned order shows that from pleading of parties, the Arbitrator framed the following issues:

**(1) Whether the applicant is entitled for any enhancement of compensation for the acquired land by treating the**

**same as commercial?**

**(2) Whether the applicant is entitled for severance/ easement, if any?**

**(3) Whether the applicant is entitled for solatium @100% and interest on it?**

**9.** The Arbitrator held in the findings on issue No.1 that it is not established that any commercial activity was happening at the time of acquisition. The acquired land was not commercial in nature. The land of applicant was rightly treated as agricultural.

**10.** The Arbitrator held in the findings on issue No.2 that perusal of file reveals that except a mere averment as claimed by the applicants, there is no such revenue record/report made by any revenue authority on the file to prove that the land has been bifurcated into parts which caused financial loss to the applicants.

## **Solatium**

**11.** The findings of the Arbitrator on issue No.3 read as:

'*So far as, the question regarding solatium on the awarded amount is concerned, the competent authority has awarded 30% solatium on the awarded amount to the applicant. In the present case, the compensation of acquired land was given to the landowners as per price, fixed by District Price Fixation Committee and not in accordance with Section 26 read with Schedule of the RFCTLARR Act, 2013. Moreover, keeping in view the spirit of verdict, given by Hon'ble Punjab and Haryana High Court in FAO-756 of 2022 (O&M) date of decision 11.4.2023 titled as* ***National Highways Authority of India versus Modan Singh and other****, relevant para No.17 is as under:*

*(17) It was clarified by guidelines that Section 24 of the 2013 Act is not applicable to the acquisition under the 1956 Act. Clause 4.6 (i) and (ii) elucidated that the relevant date for determination of the market value is the date on which notification under Section 3-A of the 1956 Act was published. Sub-clause (iii) of clause 4.6 deals with applicability of First, Second and Third Schedule appended to the 2013 Act. Sub-clause 4.6(iii) has three clauses. Clause (a) provides two instances in which compensation is to be paid in accordance with First Schedule to the 2013 Act. In all cases where award was not announced under Section 3-G of the 1956 Act till 31.12.2014 or where the award is announced but compensation not paid as on 31.12.2014 in respect of majority of land holding under acquisition. Sub-clause (b) deals with cases where the award under Section 3-G of the 1956 Act was announced before 1.1.2015 but the full amount of award was not deposited by the acquiring agency with CALA. In such cases also, the compensation is to be determined in accordance with First Schedule w.e.f 1.1.2015. As per sub-clause (c) where the process of land acquisition is deemed to be complete and settled, such cases are not to be re-opened. The pre-requisites under sub clause (c) are that on or before 31.12.2014, the award under Section 3-G of the 1956 Act was announced by CALA, the amount deposited by the acquiring agency with CALA and compensation paid to the land owners in respect of majority of land holdings under acquisition.'*

*The relevant Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 states as under:*

*Determination of Market value of land by Collector:*

*(a) the market value, if any, specified in the Indian Stamp At, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or*

*(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or*

*(c) Consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,*

*Whichever is higher:*

*As per detail recorded above with regard to solatium and interest paid as existing provisions of the Act and Govt. instructions, the compensation of acquired land was given to landowners as per price, fixed by the District Price Fixation Committee and not in accordance with Section 26 read with First Schedule of the RFCTLARR Act 2013. In fact, the Collector rate at the relevant date was lesser than the compensation awarded by CALA. I do not find any ground to reopen this issue for redetermination. Hence this issue is dismissed.*'

**12.** The Tribunal found that the compensation and other benefits already awarded by the CALA for acquired land is sufficient. Any further enhancement was ruled out and the application of landowner was dismissed. The impugned order on the question of Solatium is totally non application of mind on the part of Arbitrator. He did not try to find the date of deposit of amount of compensation with CALA and the dates of payments made to the landowners. He just took para No.17 of the case law ***National Highways Authority of India versus Modan Singh and other*** (supra) and by misinterpreting the same declined 100% solatium. He did not go through the entire order of Hon'ble High Court. In this case law of Hon'ble Punjab and Haryana High Court, Learned counsel for NHAI had that the prior to 31.12.2014 full amount of the award was deposited, whereas Learned senior counsel appearing for the landowners argued that the Supreme Court in ***Union of India and another v. Tarsem Singh and others, 2019 (9) SCC 304*** has decided the issue that 2013 Act would be applicable to the land acquired under the 1956 Act. He submitted that as on 31.12.2014, the compensation was not paid to the majority of land holdings under acquisition. Para No.22, 26, 28, 29, 31 of this case law read as:

'*(22) There is no dispute that from 1.1.2015 the beneficial provisions of the 2013 Act were made applicable to the land acquired under the 1956 Act and the other enactments specified in Fourth Schedule.*

*(26) For the cases to be considered as settled and completed under 4.6(iii)(c) of the guidelines, three things were to be done before 31.12.2014 i.e. the award to be announced by CALA under Section 3-G of the 1956 Act; amount to be deposited by the acquiring agency with CALA and lastly compensation to be paid to the majority of land holdings under acquisition. Sub-clause (b) makes First Schedule of the 2013 Act applicable to the cases where the award was announced before 1.1.2015 but full payment of the amount awarded was not deposited with CALA. All the cases where the award was not announced on 31.12.2014 or the compensation to the majority of the land holdings under acquisition was not paid as on 31.12.2014 the benefit of First Schedule of 2013 Act was made applicable by sub-clause (a).*

*(28) It is admitted case that payment to majority of land holdings under acquisition was not made as on 31.12.2014.*

*(29) If the argument of learned counsel for NHAI is accepted, the result would be that if the case of the land owners falls in sub-clause (b), they would be ousted from the benefit of 2013 Act in spite of the fact that they are fully covered under sub-clause (a). In such circumstances, the condition under sub-clause (a) would be rendered redundant. The clauses cannot be read in a manner which render the other clause otiose.*

*(31) Consequently, the provisions of the 2013 Act or determination of compensation shall apply to acquisition in question. The reliance on the decision of Rajasthan High Court in Gopa Ram's case (supra) by NHAI is of no avail. In that case, the admitted position was that the land owners had received compensation prior to 31.12.2014. The issue that deposit of compensation would tantamount to the payment made to land owners was not involved.*'

**13.** The plea of the landowners is that they are entitled for 100% solatium. In the present case, it is an admitted fact that the amount was deposited with CALA after 31.12.2014 and was paid to the land-owners after 1.1.2015. Thus, the case law referred by the Arbitrator in the impugned order supports the version of the landowners of present acquisition.

**14.** Admitted facts are that the land of applicants was acquired and compensation as awarded by CALA was paid to the landowners including the applicant was paid after 1.1.2015. The Competent Authority Land Acquisition-cum-Sub Divisional Magistrate passed award dated 30.09.2014. The rates of land were assessed as follows:

| Sr. No. | Name of village | Basic Market rate of compensation per acre | | |
|---|---|---|---|---|
| | | Agri (per acre) | Resi (sq. yds) | Comm. (sq. yds) |
| 1. | Talwandi Bhai (Both side within 1 acre of Talwandi Bhai main chowk to Zira Road | 50,00,000/- | 3966.942/- | 8595.041/- |
| 2. | Talwandi Bhai (After 1 acre of Talwandi Bhai GT Road | 45,00,000/- | 1983.471/- | 2975.207 |

CALA also awarded Solatium 30%, Additional compensation @12% from the date of Notification i.e. 05.07.2013 to the date of award, compensation to be paid for buildings/structures/Tubewells & wells.

**15.** The act of the Arbitrator ignoring the fact the amount was deposited with CALA after 31.12.2014 is illegal. Para No.4.6 (iii) (a) of the Comprehensive Guidelines dated 28.12.2017 of the Ministry of Road Transport and Highways read as:

'*(iii) By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act , 1956 with effect from 01.01.2015. As such, the following is* *clarified: (a) All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.'*

**16.** Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013) reads as:

*'(24) Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,*

*(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*

*(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

*(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1*

*of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:*

***Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.'***

**17.** As there is no evidence of Union of India and others that payment to any landowner was made before 1.1.2015, the new Act of 2013 is applicable.

**18.** Para Nos.12 and 41 of case law **Union of India v. Tarsem Singh** 2019(4) R.C.R.(Civil) 431 (Law Finder Doc Id # 1587540) of Hon'ble Supreme Court read as:

'(12) The First Schedule to the said Act provides that solatium equivalent to 100% of the market value multiplied by various factors, depending on whether the land is situated in a rural or urban area, constitutes minimum compensation package to be given to those whose land is acquired. The Fourth Schedule to this Act, to be read along with Section 105, expressly includes under Item 7, the National Highways Act, 1956. In Item 9, this

Schedule also includes The Requisitioning and Acquisition of Immovable Property Act, 1952. By a notification dated 28th August, 2015 issued under Section 105 read with Section 113 of the 2013 Act, it is provided that the 2013 Act compensation provisions will apply to acquisitions that take place under the National Highways Act. The result is that both before the 1997 Amendment Act and after the coming into force of the 2013 Act, solatium and interest is payable to landowners whose property is compulsorily acquired for purposes of National Highways. This is one other very important circumstance to be borne in mind when judging the constitutional validity of the 1997 Amendment Act for the interregnum period from 1997 to 2015.

(41) There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed.'

**19.** Section 30(1) of Act 2013 reads as: '*(30)(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a —Solatium amount equivalent to one hundred per cent of the compensation amount.*'

**20.** In case law **National Highways Authority of India vs**

**Piare Lal and others** FAO No.3513 of 2022 decided on 20.04.2023 by Hon'ble Punjab and Haryana High Court is related to grant of 100% solatium as the payments to the landowners was made after 31.12.2014.

**21.** In view of above detailed discussion, this Court find that the landowners are entitled to get statutory benefit i.e. 100% solatium. Therefore, the point of determination (A) is decided in favour of the landowners/claimants.

## Points of determination B and C are interconnected and interlinked. In order to avoid repetition in findings, these are being decided together.

**22.** Section 29-A of the Act 1996 was originally not there and it was inserted by Act 3 of 2016 and was brought into force w.e.f. 23.10.2015. The said section 29-A provides the time limit for Arbitral Award. It was provided in the Said section that the award in matters other than International Commercial Arbitration shall be made by the Arbitral Tribunal within a period of 12 months from the date of Arbitral Tribunal enters upon the reference. The explanation to the said Section also provided that an Arbitral Tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator received notice in writing of his appointment.

**23.** Section 29-A was further amended in the year 2019 w.e.f.

30.08.2019 wherein the said time limit of 12 months for making the award by Arbitral Tribunal is to begin from the date of completion of pleadings.

**24.** Section 21 of the Arbitration and Conciliation Act, 1996 read as: '***21. Commencement of arbitral proceedings***.—*Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.'*

**25.** In **TATA Sons Pvt. Ltd. (Formerly TATA Sons Ltd.) vs Siva Industries and Holdings Ltd. & Ors** 2023(5) SCC 421 Hon'ble Supreme Court held that since Section 29A(1), as amended, is remedial in nature, it should be applicable to all pending arbitral proceedings as on the effective date i.e. 30 August 2019. Para No.36 of this case law reads as:

'*(36) In **Shapoorji Pallonji**, the Delhi High Court had held that amended section 29A(1) of the Arbitration and Conciliation Act, being procedural law, would apply to the pending arbitration as on the date of the amendment. However, a coordinate bench in **MBL Infrastructures Ltd v. Rites Ltd. OMP (Misc) (Comm) 56/2020**, as decided on 10 February 2020 held that the amended Section 29A would be prospective in nature, without referring to the earlier order in Shapoorji Pallonji. Finally, the Delhi High Court in **ONGC Petro Additions** settled the controversy and reiterated the position of law as laid down in Shapoorji*

*Pallonji. The Court, inter alia, stated that Section 29A(1) shall be applicable to all pending arbitration seated in India as on August 30, 2019 and commenced after October 23, 2015, and there is no strict time line prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Act, seated in India.*'

**26.** In **Puran Singh vs Land Acquisition Officer & another'** decided on 21.09.2023, Hon'ble High Court of Himachal Pradesh has observed that the provisions of Section 29-A of the Act of 1996 are equally applicable to the arbitrator appointed under Act of 1956.

**27.** In **Roop Singh Bhatty vs M/s Shriram City Union Finance Limited** 2022 AIR (Telangana) 93 Hon'ble Telangana High Court has observed that Section 29A of the Act, 1996, as it stood when awards were passed mandates that the award should be passed within a period of twelve months from the date Arbitration Tribunal enters appearance. Para No.14 of this case law reads as:

'*(14) The provision as it stood was in mandatory terms and leaves no scope to infer otherwise. The intention of the Parliament is made abundantly clear from the reading of Sub-sections (3) and (4). Sub-section (3) enables parties by consent to extend the time by further period of six months. But it also makes it clear that it should not be extended beyond six months. According to sub-section (4), after the initial period of one year and extended period of six months, if extended by consent,* *the mandate of the arbitrator terminates. Thus, he becomes functus-officio after that period and, therefore, seizes to be an arbitrator. An arbitrator is a creature of the statute and has to work within the four corners of the Act.*'

**28.** Para Nos.5, 6, 7 and 17 of case law **Rohan Builders (India) Private Limited v. Berger Paints India Limited**, Civil Appeal No.10620 of 2024 decided on 12.09.2024 by Hon'ble Supreme Court (Law Finder Doc Id # 2644111) read as:

'*(5) Section 29A envisages two time limits for making of an arbitral award. First, Section 29A(1) states that an award shall be made by the arbitral tribunal within a period of twelve months. Secondly, Section 29A(3) stipulates that the parties by consent can extend the time for making the award beyond twelve months, up to an additional period of six months. Extension beyond six months, even by consent of the parties, is not permitted. In terms of the Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019), the time-limit for making an arbitral award under Section 29A(1) is not applicable to international commercial arbitration. As per the amendment made by Act No. 33 of 2019, the twelve-month period commences from the date of completion of pleadings under Section 23(4) of the A & C Act. Earlier, Section 29A(1) had stipulated that the twelve-month period would begin from the date the arbitral tribunal enters upon reference. Section 29A(2) states that if the award is made within six months, the arbitral tribunal will be* *entitled to receive such amount as additional fees as the parties may agree.*

*(6) Section 29A(4) is the provision which requires interpretation. It states that where the award is not made within the specified period of twelve or eighteen months, the mandate of the arbitral tribunal will terminate. However, this provision does not apply if the court has extended the period, either before or after the expiry of the initial or the extended term. In other words, Section 29A(4) empowers the court to extend the period for making of the arbitral award beyond a period of twelve months or eighteen months, as the case may be. The expression "either prior to or after the expiry of the period so specified" is unambiguous. It can be deduced by the language that the court can extend the time where an application is filed after the expiry of the period under subsection (1) or the extended period in terms of sub-section (3). The court has the power to extend the period for making an award at any time before or after the mandated period.*

*(7) Section 29A(5) states that a party to the arbitration proceedings can file an application in court for an extension of time for making the award. As per the second proviso to Section 29A(4), where an application for an extension of time under Section 29A(5) has been filed and is pending, the mandate of the arbitral tribunal shall continue till the disposal of the application. Thus, the second proviso to Section 29A(4),*

*by specific mandate, allows the arbitration proceedings to continue during the pendency of the extension application under Section 29A(5) before the court. Lastly, the extension of time is to be granted by the court only for `sufficient cause' and on such terms and conditions as may be imposed by the court. We will elaborate on the last aspect, and why this interpretation is preferable. First, we will refer to the ratio and reasoning in Rohan Builders (India) Pvt. Ltd. (supra).*

*(17) As per the second proviso to Section 29A(4), the mandate of the arbitral tribunal continues where an application under sub-section (5) is pending. However, an application for extension of period of the arbitral tribunal is to be decided by the court in terms of sub-section (5), and sub-sections (6) to (8) may be invoked. The power to extend time period for making of the award vests with the court, and not with the arbitral tribunal. Therefore, the arbitral tribunal may not pronounce the award till an application under Section 29A(5) of the A & C Act is sub-judice before the court. In a given case, where an award is pronounced during the pendency of an application for extension of period of the arbitral tribunal, the court must still decide the application under sub-section (5), and may even, where an award has been pronounced, invoke, when required and justified, sub-sections (6) to (8), or the first and third proviso to Section 29A(4) of the A & C Act.*'

**29.** The Landowner filed the application under Section 3 (A to

G) of the National Highways Act on 04.01.2018 before the Arbitrator, which was registered as Arbitration case No.551/2018. The respondents appeared on 08.02.2018 through their Counsel before the Arbitrator. They filed their reply on 11.5.2018. On 31.5.2018, Ld. Counsel for the landowner stated that he does not want to file replication and the proceedings were adjourned to 5.7.2018. The pleadings of parties were completed on 31.5.2018 and the award was required to be passed within one year from the date of completion of pleading i.e. upto 31.5.2019. But the Arbitrator passed the impugned award on 10.1.2024 i.e. after termination of mandate. He had already become functus-officio. Thus, the impugned award passed by the Arbitrator relating to application of present landowners suffers from patent illegalities, which is nullity and in conflict with the public policy of India. Therefore, the points of determination B and C are decided in favour of landowners.

## Remand of case

**30.** The applicants have taken plea to remand the case to the Arbitrator for fresh decision. Hon’ble Supreme Court has observed in **Kinnari Mullick v. Ghanshyam Das Damani,** 2017(3) R.C.R.(Civil) 251 : Law Finder Doc Id # 850218 that no power has been invested by the Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in sub-section 4 of

Section 34. Hon'ble Supreme Court has observed in **Radha Chemicals v. Union of India** ***2019(3) PLR 641*** (Law Finder Doc Id # 1262198) that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the Arbitrator for a fresh decision. In view of these case laws, this Court has no power to remand the case to the Arbitrator for fresh decision. The point (D) of determination is decided against the applicants.

**31.** As the impugned award itself is illegal being passed after termination of mandate, the relief of 100% solatium can not be granted by this Court. The application U/s 34 of the Arbitration and Conciliation Act, 1996 is partly allowed and the impugned award is set-aside being passed after termination of mandate. Parties shall bear their own costs. File be compiled and consigned to the Judicial Record Room.

**Pronounced in open Court,**
**On 23.10.2024**
**Typed by: Anil Kumar**
**Stenographer Gr.I**

**SD/-**
**(Kewal Krishan)**
**Addl. District Judge, Ferozepur**
**UID-PB0182**