

**In the Court of Shri Sham Lal, Additional District Judge, Rupnagar.  
UID No.PB0123.**

Arb. No. : 63 of 01.11.2019  
Reg No. : 63/2019.  
CNR No. : PBRO010051482019.  
Date of Decision : 12.02.2024

1) Union of India, through Secretary (Shipping Road Transport and Highways) to the Government of India, Ministry of Surface Transport, New Delhi.

2) The National Highway Authority of India, through its Project Director, Project Implementation Unit, Chandigarh, Bay Nos. 35-38, Sector 4, Panchkula.

Now both through Project Director, National Highways Authority of India, Project Implementation Unit, Mohali, having its office at Plot No. 275, Industrial Area, Phase-9 Mohali, Punjab-160062.

.....Petitioners

**VERSUS**

1) Sher Singh son of Gurdass Singh resident of House No. 787, Garden Colony, Near Aman Eye Hospital Sector 11, Kharar District SAS Nagar Rupnagar.

3) Commissioner, Rupnagar Division, Rupnagar-cum-Arbitrator.

4) Sub-Divisional Magistrate-cum-Competent Authority, Kharar SAS Nagar Mohali.

.....Respondents.

Objection/Appeal/Petition under Section 34 of Arbitration and Conciliation Act,1996 for setting-aside of Award dated 24.09.2019 passed by Arbitrator-cum-commissioner, Rupnagar Division, Rupnagar in case No.415 of 2018.

Present: Shri Sumit Pasricha Advocate, counsel for petitioner/objectors.

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*Additional Sessions Judge, Rupnagar*  
*UID No.PB0123*  
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Respondent No.2 is Arbitrator.

Respondent No.1 Exparte

Shri NPS Kang Govt. Pleader for respondent No.3.

### **JUDGMENT**

1. This judgment shall dispose of an objection petition filed by Union of India through its Project Director, Project Implementation Unit, NHAI, Mohali and another against respondents Sher Singh and others under section 34 of Arbitration and Conciliation Act against the Award dated 24.09.2019 passed by Arbitrator-cum-Commissioner, Rupnagar Division, Rupnagar in a case No.415 of 2018.

2. In brief assertions of the objection petition are that petitioner Union of India had acquired the land situated at village Daun Majra, District Mohali for building (widening/four laning etc.) maintenance, management and operation of National Highway No.5 vide Notification under Section 3A of the National Highway Act published in Gazette of India on 24.06.2014 and by following the due procedure provided in the National Highways Act 1956 (here-in-after called as Act of 1956), the Competent Authority-cum-SDM, Kharar had passed an Award No.2 dated 28.07.2015 as per the provision of LARR Act, 2013 (here-in-after called as Act of 2013). The petitioner No.1 challenged the said Award by filing an application under Section 3-G(5) of National Highway Act bearing **LAC No. 415/2018** titled as ‘ **Sher Singh Versus Union of India and**

**others’**. The said application has been partly allowed by the Arbitrator-cum-Commissioner Rupnagar Division, Rupnagar vide award dated 24.09.2019 (signed and received on 16.10.2019) wherein learned Arbitrator had remanded the matter back to the respondent No.3 Competent Authority-cum-SDM, Kharar with a direction to recalculate and announce enhanced award with following additions to the award;

- (i) To recalculate the compensation as per Section 26 of the LARR Act 2013;
- (ii) Provide compensation as per Second Schedule of the LARR Act, 2013. Specifically the learned Arbitrator has directed that one time payment of ₹5,00,000/- per family shall be paid as per Sr. No.4 of the second schedule and one time Resettlement Allowance of ₹50,000/- as per Sr. No.10 of the second schedule shall be given to each affected family. Furthermore, the learned Arbitrator has directed to grant other benefits as per entries 1 to 11 of Schedule 2 where applicable;
- (iii) Compensation for structure/ assets along with solatium @ 100% to be paid, if not already done;
- (iv) In case any amendment/suppression of any statute/rules government instruction has taken place, the same may be applied to recalculate enhanced award.

As per Section 3G(5) of the National High Act, 1956 the learned Arbitrator is bound to determine the compensation. In this respect,

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Section 3G(7) of the Act specifies the factors on the basis of which compensation is to be determined. The learned Arbitrator has no power to remand the case to Competent Authority-cum-SDM for recalculation of the compensation as per Section 3G(7) of the Act of 1956. Learned Arbitrator acted beyond the scope of reference in the arbitration in deciding the disputes between the parties as the respondent No.1 has neither even pleaded in their application, nor the petitioners got the opportunity to rebut the directions contained in the award dated 24.09.2019. Hon'ble Karnatka High Court in National Highway Authority of India Vs. Assistant Commissioner and Competent Authority, Kolar and Anr. ILR (2011) KAR 3580 has held that once an award has been passed under Section 3-G of the Act by the Competent Authority, the CALA is rendered functus officio and has no power to pass a second award, and it has been further held that the Arbitrator is enjoined with a duty to determine compensation by following provisions of the Act. Thus, the remand of matter by the Arbitrator to the CALA is ultra vires the provisions of National Highways Act, 1956 and against the law settled by the Hon'ble Courts. The impugned award is in direct conflict with the provisions of the National Highways Act and the LARR Act, apart from the provisions of the Arbitration and Conciliation Act, 1996 as well as the provisions of the Act, 2013. The remand is based on erroneous premise that there are inconsistencies in the award of the CALA which are not only beyond the pleadings of the parties, but also factually and legally

incorrect. The learned Arbitrator grossly erred in directing the payment of compensation as per Serials No.4 and 10 of the Second Schedule of the LARR Act, 2013 to all families i.e. a lump sum amount of ₹5,00,000/- per family and ₹50,000/- per families respectively without giving any evidence in relation to applicability of the same in the present case. The elements of rehabilitation and resettlement as per second schedule are only to be provided to landowners and families whose livelihood is primarily dependent on the acquired land and cannot be granted as a general rule to all land-owner/families. No findings has been returned by the learned Arbitrator regarding the plea of fraud, taken by the petitioners regarding sale deeds relied upon by the respondents. Respondents have filed no objection before the competent authority and they had accepted the award and therefore not entitled to move the present application. The award passed by the learned Arbitrator is against the law and facts available on the record. Hence, this objection petition.

3. On notice, respondent No.2 Arbitrator appeared and contested the objection petition by filing written reply, whereas none has appeared on behalf of the respondent No.1 and respondent No.1 was proceeded against ex-parte vide order dated 24.05.2023 when he did not appear despite service through publication in daily news paper, whereas respondent No.3 is Sub-Divisional Magistrate, Kharar and the reply has not been filed by respondent No.3 despite availing ample opportunities.

4. Respondent No.2 Arbitrator in his written reply has averred that the award passed by the competent authority SDM Kharar was challenged by the petitioner before Arbitrator and upon perusal of the said award it has come to the notice of Arbitrator that Competent-Authority had not passed the award as per the provisions of the Act of 2013 as the award is to be passed according to the Section 26 and 28 of the Act of 2013. Since the Competent-Authority has not followed the process prescribed under Section 26 and 28 of the Act of 2013, therefore the Arbitrator has directed the Competent Authority to follow Sections 26 and 28 of the Act of 2013 and then passed an amended award. The Competent Authority has not decided the value of the acquired land as per the provision of the new Act. Hence the matter has been rightly remanded and then determined the correct compensation as per the new Act of 2013. There is no bar on the part of the Arbitrator to direct the Competent Authority to pass an amended award. Since the Competent Authority has not done, therefore Arbitrator has no other option except to send back the arbitration proceedings to the competent Authority as per the provision of the Act of 2013. Therefore, it is prayed that the objection petition may kindly be disposed off accordingly.

5. I have heard the learned counsels for both the parties and have also gone through the record of Arbitration proceedings.

6. Admittedly the land of respondent Sher Singh situated in the

area of village Daun Majra, District Mohali was acquired by the Government of India for building (widening/four laning etc.) maintenance, management and operation of National Highway No.5 vide Notification under Section 3A of the National Highway Act published in Gazette of India on 24.06.2014 and by following the due procedure provided in the National Highways Act 1956 (here-in-after called as Act of 1956), the Competent Authority-cum-SDM, Kharar had passed an Award No.2 dated 28.07.2015 as per the provision of LARR Act, 2013. Feeling aggrieved by the aforesaid award, respondent/petitioner Sher Singh filed an application under Section 3G (5) of National Highways Act 1956 read with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for determination of proper market value and enhancement of the acquired land and severance charges for non-acquired land along with other statutory benefits and interest bearing LAC No. 415 of 2018 and the learned Arbitrator-cum-Commissioner, Rupnagar Division, Rupnagar vide award dated 24.09.2019 has directed the Competent Authority-Cum-SDM Kharar to recalculate and announce the enhanced compensation due to the petitioner within 30 days of passing of this order by observing that the CALA-cum-SDM Kharar has not awarded the compensation to the petitioner correctly and the directions were given to make the following amendments in the compensation awarded to the petitioner on 24.09.2019

by CALA-cum-SDM Kharar;

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(i) To recalculate the compensation as per Section 26 of the LARR Act 2013;

(ii) Provide compensation as per Second Schedule of the LARR Act, 2013. Specifically the learned Arbitrator has directed that one time payment of ₹5,00,000/- per family shall be paid as per Sr. No.4 of the second schedule and one time Resettlement Allowance of ₹50,000/- as per Sr. No.10 of the second schedule shall be given to each affected family. Furthermore, the learned Arbitrator has directed to grant other benefits as per entries 1 to 11 of Schedule 2 where applicable;

(iii) Compensation for structure/assets along with solatium @ 100% to be paid, if not already done;

(iv) In case any amendment/suppression of any statute/rules government instruction has taken place, the same may be applied to recalculate enhanced award.

7. Learned counsel for the petitioner/respondent/Union of India has contended that the Arbitrator has no power to remand the matter back to the Competent Authority as under Section 3G(5) of National Highways Act, it is for the Arbitrator to determine the compensation in case the parties is not satisfied with the impugned award passed by the Competent Authority after taking into consideration the relevant collector rates/chant rates if the chant rates were not taken into consideration by CALA. In this regard he has placed reliance upon **National Highway Authority of**

**India Vs. Assistant Commissioner and Competent Authority, Kolar and Another ILR (2011) KAR 3580.**

8. Thus the question requires to be determined in the present case is: Whether Arbitrator was competent to remand back the matter to the CALA for recalculation and announce the enhanced compensation by taking into consideration of the provision of Right to Fair compensation Act of 2013 or not?

9. Hon'ble Karnatka High Court in **National Highway Authority of India Vs. Assistant Commissioner and Competent Authority, Kolar and Another ILR (2011) KAR 3580** has dealt with the above said question of Power of Arbitrator to remand back the case to competent authority and held that the remand of matter by Arbitrator to the Competent Authority-Cum-Land Acquisition Collector is ultra vires to the provisions of National Highways Act 1956 by observing as under:

13. The question is whether respondent No.1 has any such power under the provisions of the Act to pass such a second award. The answer has to be an emphatic no. There is no provision in the Act clothing respondent No.1 to pass a second award. Once an award is passed determining the compensation by the competent authority, then as per the provisions contained under sub-section (5) of Section 3G of the Act, the aggrieved party who does not accept the amount has to make an application to the Arbitrator appointed by the Central Government who will determine the

correct amount payable. As per sub-section (6) of Section 3G of the Act, the provisions of the Arbitration and Conciliation Act, 1996, are made applicable to every arbitration that takes place under the National Highways Act 1956. As per sub-section (7) of Section 3G of the Act, certain factors are enumerated which are required to be taken into consideration while determining the amount of compensation by the competent authority and also by the Arbitrator. It is thus clear that if it is the case of the claimants land-owners that proper market value to the acquired land payable as on the date preliminary notification published under Section 3A of the Act was not determined and awarded by the competent authority, the only course open for them is to move the arbitrator whereupon the arbitrator is enjoined with a duty to determine the same by following the provisions contained under sub-section (7) of Section 3G of the Act. The aggrieved party will be further entitled to avail the provisions of the Arbitration and Conciliation Act 1996.

14. In the light of such provision made under the Act in the absence of any provision conferring power or jurisdiction in respondent No.1 competent Authority to pass a second award on the same subject matter, the impugned award passed enhancing the compensation by passing a second award has to be characterized as illegal and untenable.

15. The concept of supplementary award imported by respondent No.1 in the instant case is a total misnomer. A supplementary award by its very nomenclature suggests something that was not done earlier which is attempted by way of supplementary exercise. It is not uncommon in cases where the original award has not dealt with determination of compensation in respect of a part of the land consisting of structure or in respect of certain fruit bearing trees standing therein, due to non availability of valuation report by the concerned engineer or the expert valuer, the competent authority excludes the said portion while passing the award with an intention to pass a supplementary award in respect of the said portion. In such an eventuality, supplementary awards could be passed determining the compensation for the portion which is not included in the earlier award.

16. In the instant case, what was sought to be done is to pass another award in the place of the earlier award by enhancing the compensation adopting a different method by conducting spot inspection and by taking note of other documents made available. If this is permitted, then a question could be asked as to why not a third or fourth or fifth award be passed by the competent authority at the instance of either of the parties. Such a situation, if permitted, will introduce total uncertainty and chaos. In any

event, the competent authority cannot usurp such powers when no such provision is made in the Act. Hence the impugned supplementary award cannot be sustained in law as respondent No.1 has acted without jurisdiction and without any authority under the provisions of the Act while passing the impugned award.

10. The Division Bench of Hon'ble Madhya Pradesh High court (Jabalpur bench) in a case titled as **Anoop Agarwal Versus State of Madhya Pradesh and others Writ Petition NO. 9395 of 2019 decided on 6.11.2020** has held that as per Section 3G(5) of National Highway Act, 1956, Arbitrator has no power to remand the matter back to the competent authority for redetermination, instead he has himself to determine the amount of compensation to be paid on the basis of material available on the record.

11. In another latest judgment passed by the Hon'ble Madhya Pradesh High court in **Noor Mohamad Versus Competent Authority and others Writ Petition No. 23281 of 2021 decided on 03.01.2022** has also held that the Arbitrator as per Section 3G(5) of National Highways Act is required to assess the compensation after examining the material available on the record, he has no power to remand the matter back to the SDO for recalculate and resettlement.

12. Thus as per above said provisions of the National Highways

Act, 1956 as well as law laid down by the Hon'ble High Courts if the

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amount determined by the competent authority under Sub Section 1 and 2 of Section 3(G) is not acceptable to either of the parties, the compensation amount shall be determined by the Arbitrator on an application moved by either of the parties in this regard before the Arbitrator. Respondent who being dissatisfied with the award passed by the Competent Authority-cum-SDM Kharar moved an application under Section 3G(5) of National Highways Act 1956 for enhancement of compensation amount before the learned Arbitrator-cum-Commissioner, Rupnagar Division, Rupnagar bearing LAC Case No. 415 of 2018, but the learned Arbitrator instead of determining the compensation amount of the acquired land at his own level directed the Competent Authority-cum-SDM, Kharar to recalculate and announce the enhanced compensation due to the petitioner/s within 30 days of passing of this order dated 24.09.2019 by observing that the CALA-cum-SDM Kharar has not awarded the compensation to the petitioner correctly as it has not been passed as per the provision of Section 26 of the RFCTLAAR Act of 2013 and as such he is directed to recalculate the compensation amount as per the provision of the Act. Since the learned Arbitrator has no power to remit back the matter to the competent authority for redetermination, therefore the impugned award dated 24.09.2019 passed by the learned Arbitrator-cum-SDM, Kharar whereby the competent authority was directed to recalculate and announce the enhanced compensation is

illegal, against the statutory provisions of the law and liable to be set-

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aside as Arbitrator has acted without jurisdiction and without any authority under the provisions of the Act while passing the impugned award.

13. Hon'ble Supreme Court of India in **Dakshin Haryana Bijli Vitran Nigam Ltd. Versus Navigant Technologies Pvt. Ltd. 2021 SCC Online 157 (SC)** has held that there is no power to modify an arbitral award under Section 34 as according to Section 34 of Arbitration and Conciliation Act, the Court may either dismiss the objections filed and uphold the award, or set-aside the award if the grounds contained in sub-sections 2 and 2A are made out. There is no power to modify an award.

14. Hon'ble **Karnatka High Court in MFA No.23159 of 2011 NHAI Versus Shankarappa and Ors decided on 22.11.2017** has held that a bare reading of the said section goes to show that in an arbitration suit filed under Section 34(2) of the Arbitration Act, what the Arbitration Court can do is only setting aside the award and nothing more, provided the party approaching the Court through arbitration suit (arbitration application) fulfills any one of the above mentioned five grounds as contemplated under Section 34(2) (a)(i) to (v) and if the Court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or the arbitral award is in conflict with the public policy of India as contemplated under Section 34(2) (b) (I) and (ii). Nowhere in the said Section 34 of the

Arbitration Act, it is provided for the Arbitration Court dealing with the  
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application under Section 34 for modifying the arbitral award, particularly, in the manner of enhancement of the award passed by the Arbitrator.

15. In view of my above discussion, Award dated 24.09.2019 passed by the Arbitrator-cum-Commissioner, Rupnagar Division, Rupnagar is not sustainable in the eyes of law as learned Arbitrator has conducted the proceedings in an arbitrary manner and the award was passed in contravention with the fundamental policy of Indian Law. Hence, objection petition filed by Union of India and another is allowed. Award dated 24.09.2019 passed by the Arbitrator-cum-Commissioner, Rupnagar Division, Rupnagar is set-aside. Memo of costs be prepared. File of Ld. Arbitrator along with copy of this judgment be sent back to the concerned quarter and file of this objection petition be consigned to the record room, after due compliance.

Pronounced in open court  
Dated: 12.02.2024 .

Rakesh Stenographer I

(Sham Lal)  
Addl. District Judge,  
Rupnagar.  
UID No.PB0123.

Union of India and others Versus Sher Singh and others

Present: Shri Sumit Pasricha Advocate, counsel for petitioner/objectors.

Respondent No.2 is Arbitrator.

Respondent No.1 Exparte

Shri NPS Kang Pleader for respondent No.3.

Arguments heard. Vide my separate detailed judgment of even date, objection petition filed by Union of India and another against Sher Singh and others is allowed. Award dated 24.09.20219 passed by the Arbitrator-cum-Commissioner, Rupnagar Division, Rupnagar is set-aside. Memo of costs be prepared. File of Ld. Arbitrator along with copy of this judgment be sent back to the concerned quarter and file of this objection petition be consigned to the record room, after due compliance.

Pronounced in open court  
Dated: 12.02.2024

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