

Union of India Vs. Ranjit Singh etc.
IA No. 03 of 2024 in
ARB No. 62 of 2021
PBFZ010008392021

Present: Sh. Varinder Garg Advocate, counsel for petitioner
Sh. Nitin Mehta Advocate, counsel for respondent No.1
Sh. Kuldeep Sahni, Govt. Pleader for respondents No.2
& 3.
Sh. Harish Kumar Aggarwal Advocate, counsel for
applicant/respondent No. 4.

O R D E R:

1. This order of mine shall dispose of an application moved by applicant/respondent i.e. National Highway Authority of India through its counsel for setting aside exparte proceedings, which were initiated vide order dated 19.07.2022.

2. It has been contended by the applicant that National Highways Authority of India is an Authority constituted by an Act of Parliament i.e. the National Highways Authority Act 1956. The NHAI is Governed and controlled by the Ministry of Road Transport and Highways. The present objection petition is against the arbitration award passed by Sole Arbitrator-cum-Commissioner, Ferozepur Division, Ferozepur. Said Award was pertaining to the acquisition of the land acquired for the four laning of National Highway No. 71 in District Moga. The land was acquired for widening of National Highway No. 71 on the stretch of land from Km. 44.600 to Km,

114.250 in District Moga and Union of India has entrusted this work of National Highway to the Executive Engineer, Central Public Works Department, B&R Jalandhar. Further Union of India has entrusted the National Highway No. 71 on the stretch of land from Km. 44.600 to Km. 77.200 for Shahkot-Moga section in District Moga to the National Highways Authority of India vide its Notification No. 380(E) dated 24.01.2019 and accordingly the Executive Engineer, Central Public Works Department, PWD B&R, Jalandhar, has transferred all the cases to National Highways Authority of India (NHAI) on the stretch of land from Km. 44.600 to Km. 77.200 and the stretch of land from Km. 77.201 to Km. 114.250 in District Moga is still in the jurisdiction preview of Executive Engineer, Central Public Works Department, B&R Jalandhar. Previously, the case was fixed for 19.07.2022 for the appearance of applicant/respondent. But due to non-delivery of notice applicant/respondent himself and its counsel could not appear and it came into knowledge of above titled case when the decree holder had moved an application to attach the bank account no. 0945308155, Kotak Mahindra Bank, Branch Ferozepur Road, Moga pertaining to the “National Highways Authority of India project”. Further, when the counsel for applicant/respondent had appeared in the court and inquired the case, it transpired that the applicant/ respondent was

proceeded against exparte by this court. It is further contended that the stretch of land from Km. 77.201 to Km. 114.250 in District Moga is still in the jurisdiction preview of Executive Engineer, Central Public Works Department, B&R, Jalandhar. The non-appearance of the applicant/respondent, on dated 19.07.2022, before this court was neither willful nor intentional but due to the above stated bonafide reason. Hence, prayer has been made for allowing the application.

3. Upon notice of the application, respondent No.1 has filed written reply taking preliminary objections that the present application is time barred and applicant/respondent is estopped from filling the present application. The present application has been filled only to delay the Execution the land of the petitioner was acquired and the award was passed by Competent Authority SDM Moga on 11.09.2015 more than eight year ago and land owner filed reference before the Arbitrator which was decided on 04.02.2021 and it respondent was directed to make the payment within two months from the receipt of the copy of order. The land owner and Union of India has already filed the objection u/s 34 before this court. In objection u/s 34 filed by Union of India, it was ordered by the court of learned District Judge, Ferozepur to deposit the enhanced amount within two months, which has been upheld by the Hon'ble Punjab and Haryana High Court on

01.12.2022, but they have failed to deposit the enhanced amount in the court and not complied with the order passed by the learned District Judge, Ferozepur this shows the conduct of the applicant. The land owner is suffering irreparable loss due to acquisition of his land and opposite party has not deposited the enhance amount till today and want to delay the execution petition and arbitration proceeding pending before this court. Union of India and NHAI and Competent authority and Sub Divisional Engineer was party before the Arbitrator and they were represented by their counsel and they have knowledge about the arbitration proceeding. Moreover, NHAI was party before the Arbitration proceedings they were being represented before the Arbitrator through counsel. The award was announced in their presence. The applicant/respondent has never filled any application before Arbitrator-Cum-Commissioner Ferozepur for striking out or deletion as party before arbitration proceedings. Moreover NHAI has not challenge the award passed by the Arbitrator, so said award has become final qua NHAI. The land owner has already impleaded NHAI as a party in the present petition under section 34 of Arbitration Act. The NHAI has already been ordered to be impleaded as necessary party in the objection petition filed by Union of India by the court of learned District Judge, Ferozepur vide order dated 30.11.2022. It is further

contended that the order passed by the learned District Judge Ferozepur vide order dated 30.11.2022 to implead NHAI as a necessary party was never challenged by NHAI before Hon'ble High Court and it has already attained finality. Counsel for NHAI has also admitted the fact vide gazette notification dated 24.01.2019 Union of India has entrusted the entire project of NH-71 to National Highway Authority of India. This is departmental work between the Union of India, PWD (B&R) Central Works Department and between the NHAI. If there is any agreement between the two departments or authorities then that is their own issue. Why due to any acts of the department, the land owner should suffer. The relevant portion of the notification is as under:

“S.O. 380 (E).-In exercise of the powers conferred by section 11 of the National Highways Authority of India Act, 1988 (68 of 1988), the Central Government hereby entrusts the stretch of national highways, as specified in column (3) of the Table below, of the section as specified in column (2) of the National Highway as specified in the corresponding entry in column (1) of the said Table, to the National Highways Authority of India, namely:

National	Section of National Highway	Stretch in Kilometers
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Highway No.		
(1)	(2)	(3)
H-71	Lambra-Shahkot Section (in the State of Punjab)	Km. 12.00 to Km. 44.600
H-71	Shahkot-Moga Section (in the State of Punjab)	Km. 44.600 to Km. 77.200
H-71	Moga-Tallewala Section (in the State of Punjab)	Km. 77.200 to Km. 114.00
H-71	Tallewala-Barnala Section (in the State of Punjab)	Km. 114.00 to Km. 149.00

With these submissions, he prayed for dismissal of the application.

4. Petitioner, who are being represented by Sh. Varinder Garg Advocate, have given no objection in allowing the present application, whereas learned Government Pleader representing the respondent No. 2 and 3 has stated that application be decided as par law.

5. Arguments have been heard.

6. Perusal of the file shows that notice to the applicant/ respondent was given time and again by the court and at the address given in the petition, registered cover was also sent on 25.05.2022 and as per the track report produced on the file, said notice was received at the address of Panchkula on 28.05.2022, which shows that same was received there. So, since the notice was received by the applicant through its employee, through registered post, as such the applicant was proceeded against exparte. But at the same very time, it is settled

law that no body should be punished unheard and everybody should be given an opportunity to plead and contest the proceedings initiated against him under the law. As such, this court is of the considered view that an opportunity is to be granted to the applicant NHAI through its Project Director to contest the proceedings under section 34 of Arbitration and Conciliation Act in this case. Accordingly, application in hand is allowed. Application stands disposed of accordingly. Now to come up on 24.09.2024 for filing reply to the main petition.

Announced in open court.

Dt: 06.08.2024.

Pritpal Singh

Stenographer Gr. II

Sd/-

(Hardip Singh)

Additional District Judge

Ferozepur.

(UID No. PB0638)