

Union of India and another vs Manjit Kaur and others

Present: Sh. Kamaljit Bansal, Adv. counsel for objector/petitioners.
Sh. Nitin Mehta, Adv. counsel for the respondent no.1
Sh. Bikkar Singh, Clerk on behalf of respondent no. 3.
Respondents no. 2 and 4 exparte vide order dated 18.11.2021.

Application for return/transfer of the petition under Section 34 of Arbitration and Conciliation Act.

ORDER:-

1. This order disposes off an application preferred by the applicant/respondent no.1 for return/transfer of the petition under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act'),

2. It is averred in the application that the respondent was the owner of acquired land which was acquired for widening of Four Lane in village Badbar through notification under Section 3(A) on 25.05.2012 and the notification under Section 3(D) was issued on 03.05.2013 and ultimately Joint Award of six villages was passed by the Sub-Divisional Magistrate-cum-Land Acquisition Collector (LAC), Barnala on 20.01.2014.

It is further averred that aggrieved by the same, the land owners including the petitioner invoked the arbitration clause and consequently the Commissioner, Patiala Division, Patiala was appointed as Arbitrator under Section 3G(5) of the Act, 1996.

The Learned Arbitral Tribunal consolidated cases of village Badbar in main file titled as “Sarwan Singh Versus Union of India & others” (MA-20/18/NH-64). That considering the same the Id. Arbitrator vide consolidated award dated 04.05.2020 decided the 7 cases filed by the land

owners and after due appreciation of evidence came to a conclusion that the property of the petitioner was agriculture in nature and awarded compensation @ of Rs.90,000/- per acre + 100% Solatium alongwith other statutory benefits.

It is further averred that aggrieved by the same, the land owners including the petitioner filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 at District Court, Patiala seeing enhancement of compensation on various parameters as specified in the objections. The said objections were filed on 22.07.2020 and notice issued on same day on 22.07.2020 and the respondents appeared through their counsel on 11.08.2021 and the subsequent respondents filed reply on 19.08.2021 and thereafter the case was adjourned to 06.09.2021 for arguments.

That in the meanwhile Union of India has only filed one main objection petition from 7 objection petition namely “Union of India Vs Sarwan Singh” (ARB/06/2020) at District Court, Barnala.

It is further averred that that land owner Sarwan Singh has filed Transfer application in Hon’ble Punjab and Haryana High Court in case titled as “Sarwan Singh Versus Union of India & others “(TA-856-2021) and the Hon’ble Punjab and Haryana High Court has transferred the objection petition filed by “Union of India Versus Sarwan Singh” (ARB/06/2020) against the same award dated 04.05.2020 to the Court of ADJ, Patiala on 14.10.2021 and the main file of union of India has already been transfer to the Court of Additional District Judge, Patiala from the same bunch of cases.

It is submitted that in fact the objections could not have been

filed at Barnala as the seat of the Arbitration was at Patiala where the Ld. Arbitrator held its proceedings and gave its award as well. Accordingly, for all intents and purposes the jurisdiction should have been only of the Id. Courts at Patiala. It is therefore prayed that the application may kindly be allowed and the present petition may kindly be ordered to be returned to the objector/applicant for presentation before the proper/principle Court i.e. Additional District Judge, Patiala. Hence, this application.

3. Notice of the application was given to the objector/petitioner Union of India who in its reply challenged the same on the grounds of maintainability, locus stand, concealment of material facts and the application in hand, filed by the applicant, is misconceived, untenable and unsustainable as the alleged grounds are not covered within the ambit of any statutory provision. Further, it is averred that in the instant case there is no such arbitration agreement between the petitioners and respondent, whereby the Courts alone at Patiala may have jurisdiction over the matter. The referred order of the Hon'ble Punjab & Haryana High Court, Chandigarh has not been pronounced by the Hon'ble High Court in the case in hand, and the applicant is trying to mislead the Hon'ble Court by misinterpreting the same.

It is further averred that the petitioners have filed the present objection petition before the most appropriate Hon'ble Court, which is having jurisdiction to try, adjudicate and decide the same. Moreover, there is no legal provision through which this Hon'ble Court may transfer the present objection petition to any other District Court.

It is further averred that as per the directions of the Hon'ble Punjab & Haryana High Court, Chandigarh, National Highways Authority of India has already took a police decision, in the case referred by the applicant, that NHAI would file objection petitions under Section 34 of the Arbitration & Conciliation Act in Courts, where the land has been acquired and not at the location of Arbitration proceeding to facilitate/convenience of the land owners/NHAI and avoid multiplicity of proceedings, but the referred order has not been placed on record by the applicant for the reasons best known to him. Rest of the averments were denied and a prayer for dismissal of the application has thus been made.

4. I have heard the learned counsel for the parties and have gone through the records.

5. During arguments, learned counsel for the parties reiterated their pleas as raised in the application and the reply. In support of his contentions, learned Counsel for applicant/respondent no.1 has placed reliance upon the judgment in case of **BGS SGS Soma JV Vs. NHPC Ltd. 2020 (4) SCC 234.**

6. After giving thoughtful consideration to the rival contentions, and having gone through the record carefully, this court is of the considered view that the present application deserves dismissal.

The petitioner Union of India has filed the instant petition under Section 34 of the Act whereby the award dated 14.05.2020 passed by the Arbitrator i.e. the Commissioner, Patiala Division, has been challenged. A five judges Constitution Bench of Hon'ble Supreme Court in '**BALCO Vs.**

Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 & also the Hon'ble Supreme Court in **'BGS SGS Soma JV Vs. NHPC Ltd. 2020 (4) SCC 234'** (relied upon by the applicant also) has clarified the law regarding the jurisdiction of the Court where the objection petition under section 34 of the Act can be filed. It has been clarified that in absence of any exclusive jurisdiction clause in the agreement between the parties, both the Courts i.e within whose jurisdiction arbitral award is passed as well as the Court within whose jurisdiction any part of the cause of action has arisen, will have the jurisdiction to entertain and decide the petition under section 34 of Act, subject of course of applicability of section 42 of the Act. In the present case, there was no arbitration agreement between the parties, nor there was any exclusive jurisdiction clause pertaining to the seat of arbitration in any agreement between the parties. The Commissioner, Patiala Division (by his official designation) was appointed as Arbitrator by the Government of India under the National Highways Act, 1956 for the Patiala-Bathinda section in District Barnala, Punjab, so as to deal with claims filed under the National Highways Act on account of compulsory acquisition of land of the landholders in District Barnala. The said appointment by itself does not mean that the seat of arbitration was fixed to be at Patiala District only or that the courts at District Patiala were conferred any exclusive jurisdiction to deal with all the disputes under the Act (including petitions under Section 34 of the Act) qua the award of the aforesaid arbitrator. The land in question which was acquired was within the territorial jurisdiction of this Principal Civil Court at Barnala. Further the original award in question in this case

was passed by LAC, Barnala. Since there was no Arbitration agreement having any exclusive arbitration clause regarding territorial jurisdiction of court between the parties in the present case, so in view of the law laid in **BGS Soma's case (supra) & in Balco's case (supra)**, this court at Barnala being Principal Civil Court under the Act is also having the territorial jurisdiction to entertain and to decide the instant petition. Hence, no ground to return the present petition for presenting the same to the court of Additional District Judge, Patiala is made out.

So far as transfer of the present petition to the court of Additional District Judge, Patiala where as per applicant some other petitions qua the same Award are pending is concerned, it is appropriate to mention here that this court has no jurisdiction to pass any order for transferring the present petition to the court of Additional District Judge, Patiala. Accordingly, in view of the above discussion, the present application being sans merit is hereby, dismissed.

Pronounced.
Dated:19.02.2024

Rajiv Kumar JW/I

(Devinder Kumar Gupta)
Additional District Judge,
Barnala. (UID No.PB0520)