

MHST010033142022



ORDER BELOW EXH. 5 IN CIVIL MA NO.223/2022.

National Highways Authority of India Applicant

Vs.

Mr. Baban Dnyandev Bankar & Ors. Respondents

The application *vide* Exh. 5 is filed by the applicant for stay of the Arbitral Award (No. 155/2020) dated 04.02.2022.

02. The respondent Nos. 1, 3, 5 and 6 filed reply at Exh. 15, the respondent No. 7-Competent Authority, Land Acquisition Office (CALA) filed reply only to the main application at Exh. 16. The respondent Nos. 2 and 4 are yet to be served with the notices of the main application.

03. Heard Shri. Hinge, learned Advocate for the applicant, Shri. V. S. Kulkarni, learned Advocate for the respondent Nos. 1, 3, 5 and 6 and learned Government Pleader Shri. M. N. Kulkarni for the respondent No. 7.

04. The Award passed by the Arbitral Tribunal directed the applicant-National Highways Authority of India (NHAI) to pay compensation at increased rate of Rs. 1083/- per Sq.meter instead of originally awarded Rs. 416/- per Sq.meter. The

award includes different lands, therefore, compensation amount varies as per the area of the lands.

05. The applicant has challenged the said Award under Section 34 of the Arbitration and Conciliation Act, 1996, alleging that enhancement of the land acquisition compensation by the Arbitrator is arbitrary, based on wrong calculations. The Arbitrator has failed to appreciate the evidence and committed grave error of law in passing the Award.

06. According to the respondent No. 7-Competent Authority, Land Acquisition Office, the compensation awarded under initial Award was just and proper. The respondent mentioned above opposed granting of stay and submitted that the compensation amount must be fully deposited in the Court as condition precedent in view of Section 36 of the Arbitration and Conciliation Act, 1996.

07. Shri. Hinge, learned Advocate for the applicant-National Highways Authority of India submitted that the Arbitrator has awarded exorbitant compensation. The Award is induced and effected by corruption. Later in point of time, the same Arbitrator is alleged to have accepted bribe for awarding higher compensation in similar cases who was arrested. It is his submission that stay should be granted with direction for payment of money. According to him, initial amount as per Award is already paid to the applicant. In case of excess payment to the respondents, it would be difficult to recover. He invited this Court's attention to Section 36(3) of the Arbitration and

Conciliation Act, 1996. He emphasized that the provision is discretionary as word “may” is used.

08. On the other hand, Shri. V.S. Kulkarni submitted that similar to money decree, depositing the arbitral amount, before granting stay to its implementation is absolutely mandatory. This Court's attention is invited to the proviso to Section 36 of the Arbitration and Conciliation Act, 1996 and Order 41 Rule 5 of the Code of Civil Procedure. It is further submitted that the National Highways Authority of India is asking for stay in each and every matter and depriving the land owners of their legitimate money as the well thought out strategy.

09. Shri. Kulkarni invited this Court's attention to the judgment of the Hon'ble Supreme Court of India in case of ***National Highways Authority of India Vs. Sarwatibai Shinde and Others, SLP No. 12409/2022, Order dated 01.08.2022*** wherein in similar situation the Hon'ble Supreme Court directed NHAI to deposit 50% of the compensation amount as awarded by the Arbitral Court, with the executing Court within a period of 4 weeks. The said amount was further directed to be released to the land owners unconditionally. Balance of amount was directed to be deposited after determination u/s.34 of the Arbitration Act.

10. On perusal of the main application it is seen that no such ground is pleaded in the main application or the stay application.

11. The applicant has raised the grounds on merits of the case as if this Court would be exercising Appellate jurisdiction.

12. This Court is required as per Section 36 of the Arbitration and Conciliation Act, 1996 to impose condition as may be deemed fit while granting stay of Award. The Court is also required to keep in mind the provision under Order 41 Rule 5 of the Code of Civil Procedure while granting stay to the implementation of the Award.

13. Assuming that refusal to stay the Award during pendency of this proceeding may result in loss to the applicant, this Court accepts the request for stay of Award, subject to the conditions stated hereinafter. Hence, the following order :

ORDER

1. Application (Exh.5) is allowed.

2. The applicant-National Highways Authority of India is directed to deposit within two months, in this Court 50% of the compensation awarded by the impugned Arbitral Award (No. 155/2020) dated 04.02.2022 including the interest accrued thereon till this date.

3. On depositing of an amount as above it shall be released in favour of the respondents as per the usual procedure.

(Dictated and pronounced in open Court.)

Sd/-

(V. R. Joshi)

Date : 01.04.2024.

Principal District Judge, Satara.