

Arb no.825 of 2019

CNR no. PB PT 01 017833-2019

Union of India vs. Kaushalya Devi

Application under Section 36 (2) of Arbitration and Conciliation Act for staying the operation of award dated 22.8.2019 till the final decision of the objection petition.

Present: None for petitioner- UOI
 Sh.S.S.Virk, Advocate, counsel for respondent no.1
 Sh.K.S.Kang, Advocate, counsel for respondent no.3-
transposed as petitioner no.2
 Respondent no.4 ex parte

ORDER

1. Heard. The application has been filed under Section 36 (2) of Arbitration and Conciliation Act 1996 for staying the operation of award dated 22.8.2019 till the final decision of the objection petition under Section 34 of the Act by Union of India and NHAI who has been transpose as petitioner/objector no.2 vide separate order of even date.

2. Learned counsel for applicant-objector argued that award for the acquisition was passed in the instant case by Sub Divisional Magistrate-cum-Collector Rajpura on 20.12.2013 but the respondents/land owners were not satisfied with the award passed. The Govt. of India, Ministry of Shipping, Road Transport and Highways vide its notification dated 24.9.2014 appointed Divisional Commissioner Patiala as Arbitrator to resolve the issues arising out of the acquisition of land for road construction/widening. Since the respondents were not satisfied with the award, they filed an application under Section 3-G (5) of

National Highway Act 1956 for enhancement of the compensation in respect of the acquired land. It has further been argued that impugned award dated 22.8.2019 passed by the learned Arbitrator is wrong and unsustainable in the eyes of law. The learned Arbitrator has wrongly held that The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is applicable. It has also wrongly been held by learned Arbitrator that Collector rate cannot be fixed for the land acquired as the same is only for the purpose of leveling stamp duty. The learned Arbitrator has wrongly assessed the amount of compensation by considering the land in question as commercial, whereas there is no evidence on the file that there were commercial or non-agricultural activities taking place on the acquired land immediately before its acquisition. No evidence led by the respondents which suggests that market value of the land was much more than which was determined by the Collector. It has been argued that learned Arbitrator has wrongly awarded solatium @100% as compensation amount. It has been argued that hence the award of the Arbitrator is illegal and beyond the evidence on record and the same is liable to be set aside. It has further been argued that applicant/objector has already filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 in which request has been made that till the decision of the said objections, the operation of the award may be stayed. Learned counsel for objector has relied upon case law titled as **Ram Awadh vs. Competent Authority/Spl.Land Acquisition Officer, Bbk. And Another, 2019 (4) ADJ 794, Allahabad High Court** and

Shiv Shyam Vs. Competent Authority/Spl.Land Acquisition Officer, Barabanki, Land Acquisition no.9292 of 2019, D/o 15.4.2019 by Hon'ble Allahabad High Court.

3. Per contra, learned counsel for respondent-landowner conceded that objection petition against the award has been filed. However, the same is liable to be dismissed. It has also been admitted that execution for the recovery of the enhanced amount has already been filed and the respondents are entitled for enhanced compensation. The learned counsel for the respondents has drawn attention of the Court to provisions under Section 36 (2) of the Arbitration and Conciliation Act 1996, under which the present petition for staying the operation of the arbitral award is filed. They submitted that as per Section 36 (2) of the Act mere filing the petition under Section 34 of the Act shall not by itself amounts to stay of the award. In this regard separate application is required to be filed and an speaking order while allowing the application may be passed by imposing the conditions and as also keeping in mind the provisions of grant of stay of a money decree under the provisions of Code of Civil Procedure, 1908. In this regard he further relied upon a case titled as **PAM Developments Pvt Ltd. Vs. The State of West Bengal and another, Civil Appeal no.5432 of 2019 (Arising out of Special Leave Petition © No.7383 of 2019. d/o 12.7.2019 by Hon'ble Supreme Court of India.** It is argued that if the operation of the award is stayed without getting the due amount deposited, the respondents/decreed holders would be deprived of the fruits of the award and would suffer an irreparable loss and injury.

4. I have heard the rival contentions of learned counsel for the parties and have gone through the record carefully.

5. The applicant/objector-petitioner has filed a petition under Section 34 of the Arbitration and Conciliation Act 1996 for setting aside the award dated 22.8.2019 passed by the Arbitrator. The said application is accompanied with the present application filed under Section 36 (2) of the Act for staying the operation of the award. In order to appreciate the contentions, firstly it is relevant to refer Section 36 of the Act, 1996, which reads as under:-

“36. Enforcement-(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of an money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a prima facie case is made out that-

- (a) the arbitration agreement or contract which is the basis of the award; or
- (b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation- For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.”

6. Further in this regard, it is relevant to refer the observations of the Hon’ble Supreme Court in case titled as **PAM Developments Pvt Ltd. Vs. The State of West Bengal and another (Supra)**, which are as under:-

(15) The amended section 36 of the Arbitration Act provides for (a) after expiry of making an application to set aside the arbitral award (i.e. 90 days from the award) the award shall be enforced as if it was a decree of the Court; (b) filing of an application under Section 34 shall not by itself render the award unenforceable; (c) upon an application for grant of stay of the award, the Court has the discretion to grant stay, which may be subject to such conditions as it may deem fit; (d) while passing any stay order the Court is to “have due regard” to the provisions of CPC for grant of stay of money decree.

(16) The backbone of the submissions on behalf of the respondent-State of West Bengal is that under the provisions of Order 27, Rule 8A of the CPA, no security shall be required from the Government in case of there

being a money decree passed against the Government, and the execution of which is prayed for. If such submission of the respondent is accepted then the same would mean that mere filing of an objection under section 34 of the Arbitration Act by a Government shall render the award unenforceable as the stay order would be passed in a mechanical manner and as a matter of course, without imposing any condition against the Government judgment debtor. If the contention is accepted, the effect would be that insofar as the Government is concerned, the unamended provision of section 36 of the Arbitration Act would automatically come into force.

(18) In our view, in the present context, the phrase used is 'having regard to' the provisions of CPC and not 'in accordance with' the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36 (3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute (i.e. Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as a guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self contained Act, the provisions of the CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.

(24) Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money decree award as passed by the Arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree holder would be fully deprived of the fruits of the award on mere filing of objection under section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be

treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in section 36 of the Arbitration Act is only to guide the Court, as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act.

(25) It may be true that the CPC provides for a differential treatment to the Government in certain cases, but the same may not be so applicable while considering a case against the Government under the Arbitration Act. For instance, section 80 of CPC provides for a notice of two months to be given before any suit is instituted against the Government. Further it is also provides that no *ex parte* injunction order can be passed against the Government. Whereas on the other hand, under the Arbitration Act no such special provision has been made with regard to arbitration by or against the Government. There is no requirement under the Arbitration Act for a notice of two months to be given to the Government before invoking arbitration proceedings against the Government. Further, sections 9 and 17 of the Arbitration Act also provide for grant of *ex parte* interim orders against the Government.

(26) section 36 of the Arbitration Act also does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of section 34 of the Arbitration Act. Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under section 34 of the Arbitration Act.

(27) Although we are of the firm view that the archaic Rule 8A Order 27 CPC has no application or reference in the present times, we may only

add that even if it is assumed that the provisions of Order 27, Rule 8a of CPC are to be applied, the same would only exempt the Government from furnishing security, whereas under Order 41, Rule 5 of CPC, the Court has the power to direct for full or part deposit and/or to furnish security of the decretal amount. Rule 8A only provides exemption from furnishing security, which would not restrict the Court from directing deposit of the awarded amount and part thereof.

7. Further in case titled as **Dewas Transport Pvt Ltd. Vs. The State of Madhya Pradesh, Civil Appeal no.5888 of 2019 Hon'ble Supreme Court** relying upon the above mentioned judgment of the Hon'ble Supreme Court held that, "*The appeal is disposed of in terms of the judgment dated 12.7.2019 passed by this Court in Civil Appeal no.5432 of 2019 titled as "PAM Developments Pvt Ltd. Vs. The State of West Bengal". However, the respondent is directed to deposit a sum of Rs.2,50,06,500/- with the District Judge, Ujjain within a period of 12 weeks from today*".

In view of law laid down by Hon'ble Supreme Court of India in **PAM Developments Pvt Ltd. Vs. The State of West Bengal (supra)**, the authorities cited by learned counsel for objector are not applicable to the facts of present case.

8. Adverting to the facts of the present case that there is no dispute to the fact that respondents-landowners have already received the amount of compensation as per the award dated 22.8.2019. The dispute is only with regard to the enhanced amount made by the Arbitrator appointed under Section 3-G (5) of the Act, 1956. The said impugned award has already been challenged by filing application under Section 34

of the Act.

9. However, applying the yardsticks of the above referred authorities and in the interest of justice, the present application filed under Section 36 (2) of the Arbitration and Conciliation Act is allowed and operation of the award dated 22.8.2019 is stayed till the disposal of the objection petition under Section 34 of the Act. However, same is subject to the deposit of entire enhanced awarded amount alongwith requisite interest within four months, in terms of the award dated 22.8.2019 of learned Arbitrator. However, same be kept in the shape of FDR and not to be released till final disposal of the petition under Section 34 of the Act. The application is accordingly allowed in the aforestated terms.

Date of order 26.7.2022
Ravinder Kaur
Stenographer-I

(Surinder Pal Kaur)
Addl. District Judge,
Patiala UID No.PB0089

Arb no.825 of 2019

CNR no. PB PT 01 017833-2019

Union of India vs. Kaushalya Devi

**Application on behalf of NHAI under order 1 rule 10
read with order 23 rule 1A alongwith section 151 CPC**

Present: None for petitioner- UOI
 Sh.S.S.Virk, Advocate, counsel for respondent no.1
 Sh.K.S.Kang, Advocate, counsel for respondent no.3-
 (applicant)
 Respondent no.4 ex parte

ORDER

1. Heard on the application moved on behalf of NHAI for transposing it as petitioner.

2. It is argued by learned counsel for applicant that the land in question was earlier acquired by PWD (B&R) and the said department had been contesting the land acquisition proceedings before the Competent Authority, learned Arbitrator as well as before this Court, as a petitioner through Executive Engineer, Central Works Division, PWD, B&R, Patiala. However, in the meantime the entire project was transferred to National Highways Authority of India and stretches of highways were redistributed amongst the Project Implementation Units of NHAI under its Regional office at Chandigarh. Vide office order dated 2.7.2021 the Competent Authority had constituted a new Project Implementation Unit at Patiala under Regional Office, Chandigarh according to which the land acquisition matters pertaining to present petition of NH 64 came under the jurisdiction of PIU, Patiala vide letter dated 6.7.2021. In essence PWD,

B&R has no further claim in the said proceedings and the present applicant has stepped into the shoes of acquiring authority and consequently owing to financial liability upon itself has substantial question to be decided against the applicant. With these submissions it has been prayed that applicant- NHAI be transposed in the array of parties from respondent to petitioner no.2 and to strike out Executive Engineer, Central Works Division, PWD (B&R), Patiala from the array of petitioner.

3. Reply to the application was filed by landowners praying for dismissal of application.

4. It is an admitted fact that vide Notification of the Ministry of Road Transport and Highways, New Delhi dated 6.8.2020, National Highway 64 (New NH-7), Zirakpur-Patiala Section in the State of Punjab having stretch in km 0.000 to km 50.000, has been entrusted to National Highways Authority of India. It is also an admitted fact that at the time of filing of petitions, project was with Union of India, Ministry of Shipping Road Transport and Highways, New Delhi through Executive Engineer Central Works Division PWD (B&R), Patiala. The award in question is dated 22.8.2019 and at that time also the project was with Union of India, Ministry of Shipping Road Transport and Highways, New Delhi through Executive Engineer Central Works Division PWD (B&R), Patiala. However, later on project has been transferred to National Highways Authority of India. Vide office order dated 6.7.2021 of National Highways Authority of India project of Zirakpur Rajpura Section from km 0.00 to 28.11 NH-7 and project of 4 lane Rajpura Patiala section from km 28.11

to 50.00, NH-7, mentioned at serial no.4 and 5 in the said office order, have been transferred from PIU, Chandigarh to PIU, Patiala. It also reveals from the objection petition filed by objector that it has already made National Highways Authority of India as party as proforma respondent, but since now National Highways Authority of India vide abovesaid Notification dated 6.8.2020 has been entrusted with the project of NH-64 I.e.Zirakpur-Patiala Section in the State of Punjab having stretch in km 0.000 to km 50.000 as aforesaid, it has stepped into the shoes of objector i.e. Union of India, Ministry of Shipping Road Transport and Highways, New Delhi through Executive Engineer Central Works Division PWD (B&R), Patiala, from whom the project has been transferred and said objector has left with no interest in the project. Therefore, National Highways Authority of India is required to be transposed as petitioner as per Notification dated 6.8.2020, being a necessary party, alongwith present objector to whom earlier the project was entrusted.

5. So, keeping in view the above discussion, the application is allowed and National Highways Authority of India is transposed as petitioner no.2 instead of proforma respondent.

Date of order 26.7.2022
Ravinder Kaur

(Surinder Pal Kaur)
Addl. District Judge,
Patiala UID No.PB0089

An application for setting aside ex parte order passed against respondent no.3 filed. Heard. In view of the fact that case is at the initial stage, respondent no.3 is allowed to join the proceedings.

An application is also filed by NHAJ for transposing it as petitioner. Reply to application also filed. Heard. Vide separate order of even date the application for transposition of NHAJ has been allowed as detailed therein.

Arguments on application under Section 36(2) of the Arbitration and Conciliation Act also heard. Vide separate order of even date, the said application has been allowed as detailed therein. Now, to come up on 9.9.2022 for filing amended title and for arguments.

Date of order 26.7.2022
Ravinder Kaur

(Surinder Pal Kaur)
Addl. District Judge,
Patiala UID No.PB0089