

**IN THE COURT OF PARMINDER SINGH GREWAL,
ADDITIONAL DISTRICT JUDGE (UIDNo.PB0438),
JALANDHAR**

CIS No.	Arb 842/2017
CNR	PBJL01-016823-2017
DATE OF INSTITUTION	29.11.2017
DATE OF DECISION	09.03.2020

1. Union of India, through its Secretary, Ministry of Road Transport & Highways, New Delhi.
2. The Project Director, National Highways Authority of India, at present 778, Kalia Colony, Jalandhar.

....Petitioners.

V e r s u s.

1. Charan Singh son of Alam Singh, resident of village Gurdaspur, PO Jandwal, Teshsil Mukerian, District Hoshiarpur.

....Respondent.

2. Competent Authority-cum-Land Acquisition Collector-cum-SDM, Mukerian, District Hoshiarpur.
3. State of Punjab through District Collector, Hoshiarpur.
4. Commissioner cum Arbitrator, Jalandhar Division, Jalandhar.

.... Proforma Respondents.

(Petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended upto date for setting aside the Award dated 22.03.2011 (In the case MA-493 of 2008) passed by Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.

Present: Sh. Puneet Sareen, Advocate counsel for petitioner.
Sh. Rohiteshwar Singh, Advocate for the respondent No.1.
Sh. Sukhwant Singh, Government Pleader for the respondents No.2 to 4

ORDER

1. The petitioner has filed the present petition under Section 34 of Arbitration and Conciliation Act, 1996 for setting aside the award dated 22.03.2011 (In the case MA-493 of 2008) passed by the Ld. Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.

2. The brief factual conspectus of the present case is that the petitioners have acquired the land comprising in Khasra No.41//14/2/1 (1-16), which is situated in village Jandwal belonging to the respondent No.1 for widening of the road and had issued Gazetted notification in the Gazette of India under SO No.1422 (E) dated 24.12.2004 and consequently another notification under Section 3 D (I) of the National Highways Act 1956 in the Gazette of India vide SO No. 991 (E) dated 11.07.2005, which were published in the various newspapers as public notice inviting claims from all the interested persons in the land to be acquired. It has been further pleaded that the respective claims received within the scheduled dates were considered on merits and thereafter, after verification of the land record and inspection of the site of the land, the compensation of the acquired land has been passed by the respondent No.2.

 It has been further pleaded that the respondent No.1 has filed petition for enhancement of compensation of his acquired land before the respondent No.4 i.e. learned Arbitrator, who has passed the impugned award dated 22.03.2011, which is Arbitrary, bad and against public policy.

It has further been pleaded that the aforesaid impugned award has been passed without issuing proper notice or without hearing the petitioners and no notice to the petitioners were sent by way of registered post. It has further been pleaded that the learned Arbitrator has enhanced the compensation without any proof or evidence as no sale deed, on the basis of which the compensation can be assessed, has been produced on record . It has further been pleaded that learned Arbitrator has wrongly awarded interest at the rate of 9% per annum, if the enhanced compensation is paid within 90 days, at the rate 15% per annum, if the payment is made after 90 days, and at the rate of 18% per annum if the payment is delay beyond six months, which is not permissible as per law. It has further been pleaded that the learned Arbitrator has also wrongly awarded solatium to the respondent No.1 in violation of the settled legal position as per case laws titled as, **“Sunita Mehra & others Vs Union of India and others Civil Appeal No. 10553 of 2011, decided on 11.08.2016 and M/s Golden Iron and Forging Vs Union of India and others, 2011 (4) Recent Civil Reports, 375 ”** . It has further been pleaded that the learned Arbitrator has not complied with the provisions of Section 31 (5) of the Arbitration and Conciliation Act as no communication about making of the award or no copy of the award has been either made or delivered to the petitioners and thus, as per the provisions of Section 34 (3) of the Arbitration and Conciliation Act, the limitation starts after the parties receive the copies the arbitral award and thus, present petition has been filed under Section 34 of the aforesaid Act without delay after

obtaining the certified copy of the same. A prayer for has been made that the impugned award may be set-aside.

3. Upon notice, respondent No.1 appeared and filed written reply, whereby the respondent No.1 has denied each and every averment of the petition. It has further been pleaded that the petitioners/ objectors have not filed the present petition within the period of limitation despite knowledge about the passing of the award. It has further been pleaded that the respondent No.1 has filed CWP No.11021 of 2014 in the Hon'ble High Court, wherein the reference of the case pending before the respondent No.4 was mentioned and the aforesaid CWP was disposed of by the Hon'ble High Court vide order dated 29.05.2014 in the presence of the learned counsel for the petitioners herein and thus, the petitioners were having knowledge about the passing of the impugned award. It has further been pleaded that the co-villagers of the respondent No.1 have filed various petitions i.e. FAO No.3537 of 2014, FAO No.3672 of 2015, FAO No.5920 of 2013, FAO No.8019 of 2015 and FAO No.8491 of 2015 which were decided in their favour and the co-villagers namely Dilawar Singh, Sadhu Ram and Satpal has been given awarded compensation alongwith interest and other benefits. The respondent has also placed reliance upon the case law, “ M/s Hans Construction VS DDA 1994 (2) RRR 295 Delhi, Iqbal Singh VS Dosho Brothers 2000 (3) RCR (Civil), 464 (P&H), Vishan Engineers Vs DDA 1998 (4) RCR (Civil) 496 (Delhi)”. A prayer for dismissal of the present petition has been made.

4. All the learned counsel for the parties have reiterated their

respective pleas taken in their pleadings as their respective arguments and therefore, the same are not repeated here once again for the sake of brevity.

5. This court has heard the learned counsel for both the parties and have perused the record with their assistance carefully.

6. Furthermore, all the learned counsel for the parties have arrived at ad-idem consensus with respect to the plea of limitation and they have respectively stated at bar during the course of arguments that all the parties have no objection if the present petition may be decided on merits without going into the question of limitation. Furthermore, this court is of the considered view that the present petition under Section 34 of the Arbitration and Conciliation Act has been filed within the prescribed period of limitation after receiving of the copy of the impugned award dated 22.03.2011 passed by the learned Arbitrator as the learned Arbitrator has not supplied the copy of the same to the petitioners at the time of passing of the aforesaid impugned award dated 22.03.2011 and the copy of the same was lateron obtained by the petitioners through proper channel.

7. At the very outset, it is pertinent to mention here that under Section 34 of the Arbitration Act, the scope of interference in the award is limited. Section 5 of the Act provides that “notwithstanding anything contained in any other law for the time being in force, in matter governed by this part, no judicial authority shall intervene except where so provided.” Therefore, the scope of Judicial scrutiny of an award under

Section 34 of the Arbitration and Conciliation Act, 1956 is narrow. In **“2010(8) RCR (C) 1777 (Delhi), National Thermal Power Corporation Ltd. Vs Wig Brothers Builders and Engineers Ltd.”**, it has been held by the Hon’ble High Court that “In proceedings to adjudicate the challenge to the award under Section 34, the Court has to bear in mind that it does not sit as an appeal court that has the jurisdiction to revisit the evidence and the arguments before the arbitrators and then substitute its own views with those of the arbitrators. The Court will not set aside a decision of an Arbitral Tribunal merely for the reason that had it heard the matter in the first instance, it would have come to a different conclusion or that the view it would have taken could have been a better view. So long as the view of the Arbitral Tribunal is a plausible view, the Court will not interfere with the award merely because it feels that the view of the court may have been different than the one taken by the arbitral tribunal. The jurisdiction of this Court is confined to the four corners of the Arbitration Act, in particular to the provisions of Section 34, for determining whether an arbitration award is liable to be set aside or not”. In **“Delhi Development Authority vs M/s Sachdev Brothers (Delhi) reported in 2002(97) DLT-902”**, it has been held by the Hon’ble High Court that the Arbitrator is the sole judge of quality as well as quantity of evidence. The Court cannot take upon itself the task of being a judge on evidence considered by the arbitrator. In **“Mrs Gurdeep Kaur vs Mrs CK Bedi (Delhi), reported in 2008(104) DRJ-213”**, it has been held by the Hon’ble High Court that the law is well settled that the scope of

the Court's interference in an arbitral award is very limited. The Court is not expected to sit in appeal or judgment over the judgment of the Arbitrator. In “Hindustan Construction Co. Ltd. vs Governor of Orissa and others, reported in AIR 1995 SC 2189”, it has been held by the Hon'ble Apex Court that the Court cannot re-appreciate the material on the record. In “Hindustan Iron Co. vs K.Shashikant and Co. reported in AIR 1987 SC 81”, it has been held by the Hon'ble Apex Court that award of the arbitrator ought not to be set aside for the reason that, in the opinion of the Court, the Arbitrator reached wrong conclusion or failed to appreciate the facts. In view of law laid down in these citations, it is clear that jurisdiction of this Court is confined within the four corners of the Arbitration Act, in particular to the provisions of Section 34, for determining whether an arbitration award is liable to be set aside or not.

As per Section 34(2) of the Arbitration and Conciliation Act, 1996, “An arbitral award may be set aside by the Court only if;

- (a) *the party making the application furnishes proof that-*
 - (i) *a party was under some incapacity, or*
 - (ii) *the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication thereon, under the law for the time being in force; or*
 - (iii) *the party making the application was not given proper notice or the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
 - (iv) *the arbitral award deals with a dispute not contemplated by or not falling within the terms of submission to arbitration, or it*

contains decisions on matters beyond the scope of the submission to arbitration: provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate or failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India”.

This Court cannot examine the award as an Appellate Court and cannot re-appreciate the material on record. Arbitral award can be evaluated on the touch stone of the conditions as mentioned in Section 34(2) of the Act.

Thus, this court is of the considered view that the petitioners have failed to bring forth their case within the fore-corners of the law contained under Section 34 of the Arbitration and Conciliation Act and therefore, the present petition is liable to be dismissed on this ground alone. Furthermore, the plea taken by the petitioners to the effect that no notice was issued to the petitioners by the Arbitrator and no opportunity of being heard has been given to them by the learned Arbitrator, is also not sustainable, in as much as, the perusal of the impugned arbitration

award reveals that the petitioners have been duly represented by their counsel before the learned Arbitrator. Furthermore, another plea taken by the petitioners to the effect that learned Arbitrator has enhanced compensation without any proof or evidence as no sale deed was produced on record by the respondent No.1 with respect to the value of the acquired land, **is also not sustainable**, in as much as, it is an admitted position that the petitioners have made payment of the enhanced amount at the same rate to many co-villagers of the respondent No.1 with respect to their adjoining land acquired by the petitioners under the same notification for the same purpose.

7. So far as the objections qua the interest as well as the benefits of Solatium and interest are concerned, the Hon'ble Supreme Court in **“Union of India vs. Tarsem Singh (Civil Appeal No.7064 of 2019- decision dated 19.09.2019)”** has struck down Section 3J of NHAI Act being violative of Article 14 of The Constitution of India and has held that:

“There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but

given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed”.

In light of the Law as enunciated by the Hon'ble Supreme Court of India as extracted above, there remains no manner of doubt that NHAI is bound to pay the benefits under Section 23(1A) of Land acquisition Act as well along with the solatium and interest in terms of Sections 23(2) and 28 of the Act, as such, this part of the award is liable to be upheld. However, the interest awarded by the Arbitrator beyond the scope of referred law is liable to be modified and is accordingly, ordered to be modified in terms of **Tarsem Singh's case (supra)**. Furthermore, the reliance placed upon the case law titled as, “**Sunita Mehra & others Vs Union of India and others Civil Appeal No. 10553 of 2011, decided on 11.08.2016 and M/s Golden Iron and Forging Vs Union of India and others, 2011 (4) Recent Civil Reports, 375** ” by the

petitioners is not of any help to them in view of the settled legal position as held in “**Tarsem Singh’s case (Supra)**”.

8. In the light of above discussion and without elaborating further, this Court is of the considered opinion that the petitioners have failed to prove their case except for making out a case for modification in the interest part, which is beyond the statutory provision. Accordingly, petition under Section 34 of the Arbitration and Conciliation Act for setting aside the award dated 22.03.2011 is hereby dismissed being without merits with modification in interest part only. The remaining award is upheld. Memo of costs be prepared. Arbitration record be returned to the concerned quarter and file of this Court be consigned to the Record Room.

Announced in the open court
Dated: 09.03.2020
Som Nath *

(Parminder Singh Grewal),
Additional District Judge,
Jalandhar (UIDNo.PB0438)