

*IN THE COURT OF MRS.LUKHVINDER KAUR DUGGAL,
ADDITIONAL DISTRICT JUDGE, FEROZEPUR
(UID No.PB0156)*

ARB/85/2024

CNR No.PBFZ01-003159-2024

Date of Inst.: -23.5.2024

Date of decision: 1.9.2025.

1. Union of India, through Ministry of Road Transport and Highways, New Delhi, through Project Director/Manager (Tech.), National Highways Authority of India, Project Implementation Unit, Bathinda, having its office at Toll Plaza Premises, on Bathinda-Malout Highway (NH-07), Village-Balluana, Tehsil and District Bathinda-151001, Punjab.
2. National Highways Authority of India, Project Implementation Unit, Bathinda, having its office at Toll Plaza Premises, on Bathinda-Malout Highway (NH-07), Village-Balluana, Tehsil and District Bathinda-151001, Punjab.

.....Petitioners/Objectors

Versus

1. Balwinder Singh son of Harnek Singh, resident of Village Rajiana, Tehsil Baghapurana, District Moga, Punjab.

....Contesting Respondent.

2. Competent Authority Land Acquisition-cum-Sub Divisional Magistrate, Baghapurana, Tehsil Baghapurana, District Moga.
3. Arbitrator-cum-Commissioner, Ferozepur Division, Ferozepur.

.....Respondents

Objection petition under section 34 of the Arbitration and Conciliation Act 1996 (as amended upto date) seeking setting aside the impugned award dated 28.2.2024 passed by Learned Arbitrator-cum-Commissioner, Ferozepur Division, Ferozepur (respondent no.3) in case No.311 of 25.8.2023, whereby the Learned Arbitrator-cum-Commissioner has wrongly and arbitrarily partly allowed the application under section 3-G (5) of the National Highways Act, 1956 filed by the respondent no.1 and has wrongly and arbitrarily awarded additional compensation @30% of the market value of the acquired land as Severance by erroneously, without there being any documentary evidence on record.

Present: Sh.Harish Kumar Aggarwal, Advocate for the petitioners.

Service of proforma respondents dispensed with.

Respondent no.1 exparte.

1. This order of mine shall dispose of an objection petition detailed above, filed by Union of India for setting aside the impugned award dated 28.02.2024.

2. The 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 Shipping, Road Transport and Highways. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 is being filed through Project Director/ Manager (Tech.), Project Implementation Unit, Bathinda with the office at Bathinda, who is

fully conversant with the facts and circumstances of the case. The impugned Award dated 28.02.2024 passed by the Learned Arbitrator-cum-Commissioner, Ferozepur (Respondent No. 3) appointed by the Central Government of India under Section 3-G (5) the National Highways Act, 1956 (hereinafter referred to as 'NH Act, 1956'), is against law and facts available on the record. It is humbly submitted that the Ld. Arbitrator has grossly erred in acting beyond its powers under the NH Act, 1956, and against the substantive law in force in India, thus rendering the award against the public policy in India. The brief facts of the case are that the petitioners had acquired land for the public purpose of NH-105B on the stretch of land from Km. 0.000 to Km. 38.100 in Village Rajiana in the District Moga in the State of Punjab vide Notification No. S.O. 212 (E) dated 10.01.2020 U/s 3-A of the National Highway Act, 1956 declaring its intention to acquire the land in Village Rajiana, District Moga, in the State of Punjab and the same was published in the Gazette of India, and after following the due procedure prescribed under the NH Act, 1956, declaration U/s 3-D was issued vide Notifications No. S.O. 1282 (E) dated 22.04.2020 and Notifications No. S.O. 1594 (E) dated 22.05.2020 under Section 3D of

the Act was also published in the Gazette of Government of India, declaring that the land specified in the said schedule should be acquired for the aforesaid purposes and the land shall vest absolutely in the Central Government free from all encumbrances. The substance of the said notifications was also published in the two daily newspapers widely circulated in the locality namely "Hindustan Times" (English) and "Jagbani" (Punjabi) on 02.05.2020 and "The Times of India" (English) and "Punjabi Jagran" (Punjabi) on 13.06.2020. The public notice under Sub-Section 3 of Section 3G of National Highways Act, 1956 was also published in daily newspapers circulating in the locality and inviting claims from the landowners/persons interested in the land to be acquired. As a result of this communication, claim/objections were received from interested landowners/persons were duly heard by the Competent Authority and were subsequently disposed off/settled. Ultimately, the Competent Authority had pronounced the Award No. 01 of 2021 on 20.11.2021. A perusal of the award shows that the Competent Authority had determined the compensation in Village Rajiana in accordance with the NH Act, 1956 read with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013. The Competent Authority had determined the market value on the basis of rate Average sale deeds i.e. Rs. 18,59,414/- per Acre, for the land categorized as Agriculture' for the Village Rajiana as the same were higher than the value derived from considering Collector rates i.e. Rs. 6,88,500/- per Acre of Agriculture Land alongwith 100% solatium and interest @12%. The total market value for the acquired land situated in village Rajiana has been determined by CALA as under:

1	2	3	4	5	6
Name of Village Rajiana	Market Price In Rs. (Per Acre)	Additional Compensation @12% 10.1.2020 to 20.11.2021 (680 days) (per acre)	Multiplication factor 1.5 of Col.2 (Per Acre)	Solatium @100% of Col.4	Total compensation (Col. 3 + Col.4 + Col.5) (Per Acre)
Agriculture	18,59,414	4,15,694/-	27,89,121	27,89,121	59,93,936

The acquired land is Agriculture' in nature and the CALA has rightly assessed the compensation of acquired land as per revenue record of the land. Aggrieved by CALA Baghapurana, Award dated 20.11.2021, Balwinder Singh son of Harnek Singh has filed application bearing No. 311 of 25.08.2023 under Section 3-G(5) of the NH Act, 1956 before the Learned Arbitrator-Cum-Commissioner, Ferozepur. The petitioners herein had appeared in the matter and filed the detailed reply. Thereafter no rejoinder was filed by respondent No. 1. On the completion of pleadings by the parties, and the matter was fixed for evidence and thereafter for final arguments. Application under Section 3-G (5) filed by Respondent No. 1 had been partly allowed by the Ld. Arbitrator-Cum-Commissioner, Ferozepur vide its award dated 28.02.2024 in the following terms:

- a) XXXXXXXXXXXXXXXX
- b) XXXXXXXXXXXXXXXX
- c) Additional compensation @30% of the market value of the acquired land as severance compensation is given to the applicant subject to the condition that the land of applicant has been bifurcated into two taks. This fact would be re-verified by the Collector, and only

upon verification the severance compensation would be given to the applicant.

d) Payment already made to be deducted from award money.

An Award dated 28.02.2024 is wrong, perverse, against the substantive law and public policy of India, and thus, liable to be set aside in toto, on the following, amongst other.

Because the Petitioners had made detailed submissions before the Ld. Arbitrator with respect to the non-grant of compensation on account of the Additional compensation @30% of the market value of the acquired land as severance compensation, without there being any documentary evidence on record. It was the case of the petitioners before the Ld. Arbitrator that the compensation of the acquired land is to be determined as per the factors enumerated in Schedule First of the RFCTLARR Act, 2013. Nowhere in the detailed provisions of Section 26, RFCTLARR Act, 2013 and the first Schedule appended to the said Act, the 'additional compensation' of the acquired land has been mentioned as a separate factor for the determination of compensation. The relevant clauses of Section 26 of the RFCTLARR Act, 2013 are reproduced below for ready reference:

"26. ***Determination of market value of land by Collector.-***

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1. The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village

or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2. For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3. While determining the market value under this section and the average sale price referred to in Explanation 1 or explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4. While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value"

3. However, the Ld. Arbitrator, Ferozepur has wrongly and arbitrarily awarded additional compensation @ 30% of the market value of the acquired land as Severance by erroneously, without there

being any documentary evidence on record. As such the award is in complete contravention of Section 28 (1) the Arbitration and Conciliation Act, 1996 wherein it has been specifically mentioned that the-'arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India and is thus in contravention with the fundamental policy of Indian law.

Because the Ld. Arbitrator-Cum-Commissioner, Ferozepur is to pass the Award by keeping into consideration First Schedule of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Competent Authority had announced the aforementioned award after taking into consideration all representations and evidence and also by taking consideration the conditions as specified under Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Further the Ld. Arbitrator-Cum-Commissioner has not adopted the correct approach while passing the Award. So, the Award passed by Ld. Arbitrator-Cum-Commissioner is liable to be set aside on this ground alone.

4. Because the Arbitrator-Cum-Commissioner, Ferozepur has awarded the compensation @ 30% on account of Severance, subject to the condition that the bifurcation of land would be verified by the CALA himself. It has been further stated that the learned Arbitrator cannot delegate its power to the Collector. The learned Arbitrator has not mentioned as to under which provision of law, he has awarded 30% value of severance. It is noteworthy that there is no defect in CALA Award nor had ever been put forth by the opposite Counsel during arguments. Moreover, the impugned award is just like remanding back the matter to CALA which is not permissible under law nor the learned Arbitrator has any authority to delegate his powers, which has been done in the present case. It has been further stated that as per Section 3-G (5), only the Arbitrator has been authorized by Central Government to determine the amount not CALA. Therefore, the impugned award is just an abuse to the process of law and the learned Arbitrator has acted beyond its powers. As such, the present award is liable to be set aside on this ground alone.

5. Because the amount of compensation was determined by the Competent Authority of Land Acquisition i.e. CALA,

Baghapurana, in accordance with the provisions laid down under section 26 of the RFCTLARR Act, 2013. Furthermore, the respondent No. 1 have not made any representation before the Competent Authority. The Competent Authority had announced the aforementioned award after taking into consideration all representations and evidence. As such, the award is liable to be set aside on the sole ground of it being arbitrary.

6. Because while adjudicating the disputes between the parties, the Ld. Arbitrator overlooked the provisions of Section 18 of the Arbitration and Conciliation Act, 1996 which provides that parties shall be treated with equality and each party should be given a full opportunity to present his case. The award of the Ld. Arbitrator is in violation of the principles of natural justice and is against the basic principles of jurisprudence i.e. *audi alteram partem*.

7. Because the Ld. Arbitrator has burdened the public exchequer without any reason or basis. Therefore, the impugned award passed by the learned Arbitrator is null, arbitrary, unjustified and perverse as well as against the law and facts, as such, the same is liable to be set aside.

8. Because the Award passed by Ld. Arbitrator-Cum-Commissioner is exorbitant, illogical and is giving undue benefit to the beneficiaries. The purpose of the Highway Act as well as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is to award the appropriate and reasonable compensation to the land owners. The highways are constructed for the use of public and a lot of public money is invested in the National Highways. The grant of excessive and exorbitant compensation is loss to the Government Exchequer and the loss of public money, so the impugned award is liable to be challenged.

9. Because the Ld. Arbitrator did not take into consideration that the mandatory provisions of Section 28 (1) (a) of the Arbitration and Conciliation Act which mandates that while deciding the disputes between the parties, the Arbitral Tribunal is bound to take into consideration the substantive law for the time being in force in India.

10. A perusal of impugned award shows that despite the fact a categorical stand was taken by the Petitioners that the Ld. Arbitrator as per Section 28 (1) is bound to take into substantive law for the time

being in force yet, the Ld. Arbitrator violated the provisions of Section 28 (1) of the Arbitration and Conciliation Act, 1996.

11. That the Arbitrator passed the erroneous, arbitrary and wrongful impugned award on 28.2.2024, the cause of action arose in favour of the petitioners on 26.3.2024 when the copy of order was received by objectors/petitioners. Hence, the present objections.

12. Upon notice, respondent no.1 did not appear despite service and he was proceeded against exparte vide order dated 10.9.2024. Service of proforma respondents was dispensed with vide order dated 10.9.2024.

13. Learned counsel for petitioners/objectors has argued that the arbitrator has committed errors in granting the relief of severance compensation to the respondent no.1 without verifying the evidence placed on record. The award itself goes to show that there was not an iota of evidence on the record that the land of respondent no.1 has been bifurcated into two taks. In the absence of any evidence on record, the grant of additional compensation at the rate of 30% to land owner is a gross violation of the principle of natural justice and public policy. The Arbitrator passed a conditional order which suggests that there was no

evidence regarding the severance of the land of the respondent no.1. After passing the award, he instructed the authorities to verify and only upon verification the severance compensation would be given to respondent no.1.

14. He further argued that the award to the extent of relief given in clause (c) of para no.9 is against the public policy and statutory provision of Act and thereafter, it is liable to be set aside to that extent. He further argued that the setting aside the Award in part is permissible and it does not come under the preview of modification. With these submissions, he has prayed for setting aside the award dated 28.2.2024 to the extent of relief granted in sub para (c) of para no.9.

15. Arguments of learned counsel for the petitioners/objectors have been heard.

16. This Court is of the considered opinion that the Arbitrator decided two issues in his arbitral award. First was the enhancement of the compensation for the acquired land but the Arbitrator upheld the award of CALA by giving finding that the Collector rate of agricultural land of the village was Rs.6,88,500/- per acre, which is lower than the compensation awarded by the CALA. The CALA has already awarded

adequate compensation to the landowners of village. Accordingly, the compensation paid by the CALA is sufficient. Any further enhancement is ruled out. The second issue which was decided by the learned Arbitrator was with regard to the component of severance compensation. As earlier stated, separate claims within an Award may be treated as distinct award if they are not inter-dependent. The method for calculating severance compensation are independent and distinct from the method of calculation of market value. If the severance compensation is set aside, then it would not impact the assessment/finding of Arbitrator on market value and other reliefs granted to claimant. Severance compensation is granted to the claimant/landowner when his portion of land is acquired leaving the remaining part separated, severed, isolated or significant diminished in value due to its separation from the rest of the land and the land owner is entitled to compensation for this reduced utility of remaining land. The severance compensation part of award was independent of the remaining Award passed by arbitrator. While determining the amount of severance, the arbitrator was required to consider the size and shape of remaining land parcel of the land owners which has been left

unutilized after acquisition, the access to the remaining land after severance, potential impact on the market value due to the severance. The Learned Arbitrator without going through the aforesaid parameters, quantify the additional compensation to the extent of 30% on the market value of the acquired land of every landowner. This quantification of the additional compensation was not permissible without considering the aforesaid parameters. The findings of the learned Arbitrator itself reveal that he was not convinced of availability of any evidence on the record with regard to quantum of severance and the damage causes to the land owners due to severance, if any.

17. The grounds upon which an arbitral award may be set aside, as stipulated by Section 34 (2) of the Arbitration and Conciliation Act, 1996, encompass:-

- a) Incapacity of a party [S.34 (2) (a) (i)]
- b) Invalid arbitration agreement by law [S.34 (2) (a) (ii)]
- c) Lack of notice of the appointment of an arbitrator or the arbitral proceedings [S.34 (2) (a) (iii)]
- d) Adjudicated matter not falling within terms or beyond the scope of arbitration agreement [S.34 (2) (a) (iv)]

- e) Lack of agreement regarding the composition of the arbitral tribunal or the arbitral procedure [S.34 (2) (a) (v)]
- f) Subject matter not capable of settlement by arbitration [S.34 (2) (b) (I)]
- g) Arbitral award in conflict with the public policy of India [S.34(2)(b)(ii)], and
- h) Award vitiated by patent illegality appearing on the face of the award [S.34(2A)].

18. In the present case, Arbitrator quantified the severance compensation without any evidence on the record. The learned Arbitrator pass the order of additional compensation @30% of the market value of the acquired land as severance compensation to applicant subject to the condition that the land of applicant has been bifurcated into two taks and Learned Arbitrator directed the Collector to reverify the same and only after verification the severance compensation would be given to applicant. The plea of learned counsel for applicant/objector is that the Award dated 28.2.2024 is wrong, perverse, against the substantive law and public policy of India and thus, award is liable to be set aside in toto. An Award passed without

any evidence on record is in conflict with public policy of India and patent illegality appears on the face of Award. Recently ***Hon'ble Apex Court in M/s Unibros Vs. All India Radio Civil Appeal No.6895 of 2023 D/d., 19.10.2023*** set aside part of an arbitral award concerning idling of manpower and machinery, attributed to delays in completing the work beyond the stipulated period, which was passed without any evidence and solely relied upon Hudson's formula, deeming it in conflict with the public policy of India as contemplated under Section 34(2)(b) of the Arbitration and Conciliation Act, 1996. The ***Hon'ble Apex Court relied upon the decision in ONGC Ltd. vs. Saw Pipes Ltd. (2003) 5 SCC 705***, which dealt with the interpretation of the term "public policy of India" used in Section 34 of the Arbitration Act. It was held that the term is required to be given a wide meaning and can be seen that the concept of public policy promotes a matter which concerns the public good and the public interest. What is for public or in public interest, or what would be injurious or harmful to the public good or public interest, has varied from time to time. However, an award which is, on the face of it, in patent violation of statutory provisions cannot be said to be in the public interest. Such an award is likely to adversely affect the administration of justice.

The Hon'ble Supreme Court held that subsequent decisions have interpreted "public policy of India" to include arbitrariness, non-compliance with the fundamental policy of Indian law, statutes, and judicial precedents, the need for a judicial approach, compliance with natural justice, manifest unreasonableness, and patent illegality. This was elucidated in the decision of Associated Builders (2015) 3 SCC 49.

19. In view of the aforesaid discussion, the application under Section 34 of the Act filed by applicants/objectors seeking setting aside the Award to the extent of relief granted in Clause-C of para no.9 of the Award is hereby allowed. The award is set aside to that extent of relief granted in clause (c) of para no.9 and rest of the award is intact. Both the parties shall bear their own costs. Memo of costs be prepared. File be consigned to the Record Room.

Pronounced in open Court.

Dated 1.09.2025

(Rohit Stenographer I)

(Direct Dictation)

Lukhvinder Kaur Duggal,
Additional District Judge,

Ferozepur.

(UID No.PB0156)

