

**IN THE COURT OF HARDIP SINGH
ADDITIONAL DISTRICT JUDGE
FEROZEPUR.**

PBFZ010060312019



Arbitration Case No. RBT-28 of 2019/2020
Date of Institution: 27.11.2019/22.07.2020
CIS No. ARB No. 82 of 2019
Date of Order: 10.10.2023

Union of India, Ministry of Road and Transport through Executive Engineer, Central Works Division, PWD (B&R) Branch, Jalandhar.

....Objector/Applicant.

Versus

1. Parveen daughter of Tajinder Singh, resident of village Dosanj, Tehsil and District Ferozepur.

2. Sh. Sumer Singh Gurjer, I.A.S. Arbitrator cum Commissioner, Ferozepur Division, Ferozepur.

.....Respondents.

3. Competent Authority Land Acquisition (CALA) cum SDM, Moga, District Administration Complex, Moga.

.....Proforma Respondents.

Application under section 34 of The Arbitration and Conciliation Act 1996 for setting side the award dated 30.08.2019 passed by Learned Commissioner-cum-Arbitrator, Ferozepur Division, Ferozepur in case No. 622/2019/NH-71.

PBFZ010061062019



Arbitration Case No. RBT-21 of 2019/2020
Date of Institution: 29.11.2019/22.07.2020
CIS No. ARB No. 91 of 2019
Date of Order: 10.10.2023

Parveen aged 55 years daughter of Tejinder Singh Khewatdar of village Dosanjh, Tehsil and District Moga.

....Applicant/Claimant.

Versus

1. Union of India through Secretary, Ministry of Road Transport and Highway, 5th Floor, Transport Bhawan, Sansad Marg, New Delhi.

2. Sub Divisional Magistrate-cum-Competent Authority Land Acquisition (CALA), Moga.

3. Sub Divisional Engineer, Central Works Division, PWD (B&R) Kothi No. 3-R, Old Baradari, Backside Circuit House, Jalandhar.

.....Respondents.

Application under section 34 of The Arbitration and Conciliation Act against the award dated 30.08.2019 in arbitration case No. 622/2019 of village Dosanjh, District Moga passed by Shri Sumer Singh Gurjar, IAS, Commissioner-cum-Arbitrator, Ferozepur.

Present: Sh. Varinder Garg, Advocate, counsel for Union of India.
Sh. N.K. Kakkar Advocate, counsel for Parveen.
Sh. Amandeep Prinja, Government Pleader for CALA
Sh. Sumer Singh Gurjar, I.A.S. Arbitrator exparte.

ORDER

1. This combine order of mine shall dispose of two arbitration petition detailed above, out of which first arbitration petition has been filed by Union of India for setting aside the impugned award dated 30.08.2019 and second petition has been filed by Parveen for enhancement of compensation amount qua acquired land of village Dosanj, District Moga.

2. Union of India has filed its petition on the grounds that main object and purpose of the authority is to implement the National Highway Development and consequently to develop Expressways, New National Highways, construction of bypass, bridges and their approaches, National Highways Building or Improvement of existing facilities. The land were acquired for the construction of the National highway No. 71 within area of District Moga, wherein CALA is the competent authority for the purpose of the appropriate assessment of the amount of compensation to the acquired land holder and the same always be subject to the approval/sanction by appropriate Govt. The CALA passed the award dated 11.09.2015 for the land in question. The respondents having remained dissatisfied with the award filed an application under Section 3 (A to G) of the National Highways Act, 1956 for enhancement of the compensation in respect of the acquired

land. The applicant is challenging the impugned award dated 30.08.2019 with in period of limitation after getting the copy of order which was passed by Ld. Arbitrator Cum Commissioner, Ferozepur Division Ferozepur and record of the award passed is lying in the office of Arbitrator cum Commissioner, Ferozepur Division, Ferozepur. The impugned award dated 30.08.2019 made and published by Ld. Arbitrator Cum Commissioner Ferozepur Division, Ferozepur is Patently illegal, Arbitrary, Unwarranted in the eyes of law and the award is contrary to the Provisions of National Highway Act, 1956 and RFCTLARR Act, 2013, therefore, liable to be set aside. The impugned award dated 30.08.2019 made and published by learned Arbitrator cum Commissioner, Ferozepur Division, Ferozepur is based upon surmises and conjecture and has been passed against the settled principles of law and fact and been resulted in to gross injustice to the objector/applicant. As such same is liable to be set aside. The brief facts leading to filing the present objections are that acquisition of the land was done for the public purpose at large and for that Notification under section 3-A(i) of the National Highway Act 1956 was published declaring its intention to acquire such land of Village Dosanj District Moga, for National Highway No.703 old NH 71.No objections were filed by the respondents before LAC in prescribed period and

Notification under section 3-D(i) was published in official gazette and further in pursuance of that the central government hereby declares that on publication of this notification, the land specified in the said schedule shall vest absolutely in the Central Government free from all encumbrances. The land of Parveen was acquired as Agriculture and as such compensation was given for Agriculture land. It is very important to mention here that owner never challenged before the CALA as per provisions of the Act, that his land was wrongly categorized at the time of notification under section 3-A and 3-D. Every information regarding the notification was properly informed by the CALA and got published in the newspaper. This fact has been totally ignored by the Ld. Arbitrator. The amount of over and above already awarded amount of 100% solatium on as the enhanced compensation alongwith additional amount @ 12% from the date of issue of notification 3A to the date of award, which is not made out when in totality of the circumstances, letter and spirit of concern law are considered. The Ld. Arbitrator has erred while passing the award dated 30.08.2019 whereby the land price has been enhanced many fold high then the price of land mentioned on the basis of assumptions and presumptions and without any cogent evidence in support of the claim of the land owner. Therefore, the award under the present application is legally not maintainable and

tenable under law and the same is liable to be set aside being not sustainable. The said award of the Arbitrator is liable to be set aside as the award is erroneous and is a product of non-application of Judicial mind on the part of Ld. Arbitrator as claims were decided by the Ld. Arbitrator arbitrarily and ignoring peculiar facts of the case and regarding the claims which were not discussed in the whole award. The arbitral award is bad in the eyes of law, as the same is against the public policy and also against the substantial law prevailing at the time of pronouncement of the Award. In furtherance to the same, the subject matter of the dispute is not acceptable on settlement by the Arbitrator and it contains the decision on the matter beyond the scope of the submission of Arbitration. The Ld. Arbitrator has acted beyond his power in a haste manner and granted such relief, which were never prayed by the respondents and enhanced the amount of compensation under the wrong provisions of Law, which makes the Award is liable to be set aside on this ground alone. Before proceeding further, it is apt to state here that though the power of the objecting court is limited to the extent that the objecting court does not set as an appellate court while scrutinizing the arbitral Award, However, the attention of this Hon'ble Court is being drawn towards the pronouncement so made in 2008(4) RCR, 165 Supreme Court, wherein the law was summed up by the

Hon'ble Supreme Court and the proviso of Section 34 (2) was explained in detail by the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has held that the Court/Objecting court can interfere and set aside the award in the following circumstances:

(a) An award which is:

(i) Contrary to substantive provisions of law; or

(ii) The provisions of the Arbitration and Conciliation Act, 1996; or

(iti) Against the terms of the respective contract; or

(iv) Prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act. (b) Award could be set aside if it is contrary to:

(i) Fundamental policy of Indian Law; or

(ii) The interest of India; or

(ili) Justice or morality;

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

Now coming to the point that as to how the circumstance law has not been taken into consideration by the Ld. Arbitrator, who has announced

the Award with the bias mind in a unprecedented manner ignoring the basic fundamental policy of Indian Law and also substantial law, which was prevailing at that time being in force. The provision of difference acts have not been taken into consideration by the Ld. Arbitrator, which was otherwise imperative upon the Arbitrator to taken into consideration before announcing any Award under the provision of Arbitration and Conciliation Act. Moreover, as per the Section 28 of the Arbitration and Conciliation Act, the Arbitrator is bound to pass the award carrying the substantial law of India. Now coming to the aspect the substantial law, which has not been taken into by the Ld. Arbitrator Firstly, The Provision of Section 26 to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Secondly, The Provision of Section 33 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Thirdly, the Section 31(3) of Arbitration and Conciliation Act . As per the provision of Section 26 of the Act, it was imperative upon the Collector to take into consideration the provision as satisfied under Arbitration and Conciliation Act of Sub Section (i) of Section 26, which duly taken into consideration by the Collector and then pass the award thereto. However, The Ld. Arbitrator while announcing the Award, have failed to consider the above said

facts and enhanced the compensation on twin basis, firstly the Ld. Arbitrator has wrongly not considered the facts of the landowners of two adjacent villages i.e. Talwandi Bhungerian and Lande Ke, have been granted the compensation on the higher rates and land falling in the present villages i.e. Dosanjh is also required to be deserves the same rate, as they are the same distance of each other and both the villages are similar land. The said contention of Ld. Arbitrator is not correct to the basic proviso of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and also against the pronouncement made by the Hon'ble Court in 1998(4) RCR (Civil) 704, wherein the Hon'ble Supreme Court has held that the market value of the land is to be determined on the basis the evidence and rejected the contention of the appellant that deserves the same rate of compensation as awarded to the claimants of adjoining villages and the should be given the same rate. Thus it is submitted here that the said enhancement and contention in the award passed by the Arbitrator is against the fundamental policy of India and also against the substantial law prevailing at that time. If we go by the instances given by the Arbitrator, then the land which has been acquired to the four-laining No. 703, starting from Village Lambra in District Jalandhar to Barnala would be having the same

rates irrespective to the nature and tie and the value of the land. Thus the said award of the Ld. Arbitrator is against the public policy of India and has been passed with biased mind and is liable to be set aside on this ground alone. Now coming to the aspects, wherein the Ld. Arbitrator has relied upon the corrigendum dated 6/10/2016 issued by SDM, Moga, ignoring the provisions of section 33 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, one thing is clear that after reading the pronouncement held by the Hon'ble Court, if any substantial law has been violating, then this court can set aside the award. It cannot be said that the Ld. Arbitrator is not aware of the proviso of Section 33 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and cannot take the benefit of his own wrong. The learned Arbitrator has wrongly relied upon Section 28 of the RFCTLARR Act 2013 and awarded the compensation solely on the basis that there was a corrigendum issued by the SDM cum CALA Moga dated 06/10/2016. Though the same has not been accepted by the Ministry of Road Transport and Highways and wrongly held that the Ministry of Road Transport and Highways has never rejected the corrigendum. The perusal of section 33 of the above-said act would reveal that the Collector is imperative to correct

any clerical or arithmetical mistake in their all the awards or arising therein, by his own or any application of the person or the local authority, but the same has to be done within the period of six months from the pronouncement of date of award. Ld. Arbitrator has ignored the above-said section of the Act while granted the compensation misconceived the facts that the delay can be condoned/ignored by the Arbitrator, if any clerical error has taken place in the award. It is further submitted that revising the rate of any particular villages does not fall into the category of arithmetical mistake or clerical mistake. Secondly, it is only clerical or aithmetical mistake, which can be corrected by the Collector itself within the period of six months from the date of pronouncement of award by the CALA. Thereafter, same can only be removed by making reference to the authorities under Section 64 of the Act. The Arbitrator is not the appropriate authority under the Section 64 of the Act either to condone the delay of the Collector or to rectify the clerical mistake or to adjudicate the clerical error/mistake by its own. There is no such enabling under the provision of RFCTLARR Act, which imperative the Arbitrator to take into consideration the corrigendum so issued by the SDM cum CALA Moga rightly or wrongly. The Ld. Arbitrator has acted in haste and with a bias manner, just in order to give undue compensation to the

claimant/ respondent and decided the case in their favour without taking into consideration the substantial law of India, which was prevailing at that of the arbitral award. Thus anything, which is against the substantial law, the same is liable to be set aside on this ground alone. Learned Arbitrator with the bias mind in order to give undue benefit to the concerned landowners have wrongly arrived into the conclusion that the CALA taking into consideration the corrigendum dated 06/10/2016 have released the amount of compensation as per the corrigendum to some of the landowners, whose land has also been acquired for the widening of National Highway 71. It is further submitted that the payment which has been issued as per the corrigendum to some of the landowners have wrongly been issued by the Competent Authority and the Arbitrator failed to appreciate the fact that the concerned CALA on different time and occasion i.e vide letter dated 01.09.2017 and thereafter on 25.05.2019 has specifically directed the concerned landowners to deposit the excess amount of payment, which have been paid inadvertently to them. The same is not in consonance to the provision of Section 33(3) of RFCTLRR-2013. But in the present case in hand, the Ld arbitrator with the biased mind and in order to give undue benefit has acted against the public policy of India and also against the substance provision of law and wrongly

relied upon the corrigendum and thereafter all the payment made on the basis of corrigendum and passed the impugned award, which is liable to be set aside on this score alone. The said act of the Arbitrator is void-abnatio as any act which is done not in consonance of the provision of the Acts and if the same is not having any evidentiary value in the eye of law, the same is against the substantial provision of law and also against the provision of RFCTLARR Act 2013. Thus the present award is liable to be set aside. The award dated 11.09.2015 was passed by the CALA after assessing all the factors.

3. Notice of the petition was issued to the respondents, upon which the respondent Parveen appeared through his counsel and contested the petition, whereas the other respondents did not appear despite service and they were proceeded against exparte.

4. Respondent Parveen filed written reply, wherein it was specifically mentioned that the land of respondent which has been acquired in this case is not an agricultural land, rather it is a commercial land and learned arbitrator has wrongly assessed the compensation at the rate of Rs. 50,00,000/- instead of Rs. 2,50,00,000/-, which is the true market value of the land and as since the respondent has spent huge amount on development of said land and accordingly, the amount of compensation was liable to be

enhanced as per market value. The acquired land is situated on the main road and is of great potential. There are several types of commercial activities near and adjoining to the acquired land including shops, hotels, Infact it is a complete commercial hub and the acquired land is of great potentiality and was most fit for construction of mega show room/ mall besides petrol pump, which could have given long term income to him and his family. Abadi area is also near to it, besides residential colonies have been carved out prior to publication of notification for acquisition. On account of severance of his land in different parts and the left over land has also suffered great set back. The respondent has also come to know that there is provision of no construction zone after the limit of NH-71, which shall be kept open to the extent of 30 meters and very less area will remain with respondent for actual use. The compensation which had been awarded and calculated by learned Arbitrator is not correct and all benefits of second and third schedule according to new Land Acquisition Act, which are applicable to the acquired land have not been given. Hence, prayer has been made for dismissal of the petition.

5. On the other hand, Parveen has filed her petition on the grounds that her land measuring 12 Marla (362.639 Sq. yard) out of Khasra No. 347/2 (6-8), situated in village Dosanj, Tehsil and District

Moga, was compulsory acquired by National Highway Authority of India for construction of NH-71 into four laning on stretch of land from 0.00 KM to 144.630 KM (Jallandhar-Barnala) Section in District Moga and the competent authority under Land Acquisition Cum Sub Divisional Magistrate, Moga announced the award dated 11.9.2015 and feeling dissatisfied with the amount of compensation granted to her by competent authority Land Acquisition Cum Sub Divisional Magistrate, Moga by his award dated 11.9.2015, she approached Shri Sumer Singh Gurjar, IAS Commissioner Cum Arbitrator, Ferozepur, Division, Ferozepur to resolve the issue arising out of acquisition of land by National Highway Authority of India for the purpose of four laning of National Highway NH-71 referred to above and the learned Commissioner Cum Arbitrator by his order dated 30.8.2019 modified the award and has granted the value of acquired land of Parveen by enhancement to Rs.72,874/- alongwith interest at the rate of 9% per annum, besides 100% solatium on enhanced compensation alongwith additional amount at the rate of 12% from the date of issuance of notification under section 3-A from the date of award, which infact is on the lower side and she is entitled to claim enhancement of compensation as per her claim petition submitted to the competent authority and also by submitting written arguments to the learned

Arbitrator and that the learned Commissioner Cum Arbitrator has rightly held the nature of acquired land as commercial, but has committed grave illegality in determining the compensation payable and that she had spent huge expenses on her said land and accordingly the amount of compensation is liable to be enhanced as per prevalent commercial market rate. The documents placed on record have not been referred to in the entire impugned order. Her acquired land is in the vicinity of main market of Bughipura Chowk and there are all types of commercial activities near the acquired land. The land of nearby villagers i.e. Lande Ke, Moga Mehla Singh, Talwandi Bhangarian, Moga Mehla Singh-1, Moga Mehla Singh-2 were also acquired for the same purpose of four laning of NH-71 and the land of said Moga Mehla Singh-1 and Moga Mehal Singh-2 was categorized as commercial and the land owners whose land was acquired were awarded compensation considering it to be commercial land at the rate of Rs.12,00,00,000/- (Twelve Crore) per hector (Rs.10,033/- per sq. yard). The acquired land of applicant is more superior than the Talwandi Bhangarian and Moga Mehla Singh-1 and Moga Mehal Singh-2. There are more commercial activities near the acquired land of applicant as compared to Moga Mehla Singh-1 and Moga Mehal Singh-2. There are different commercial buildings such as Ashok

Leyland Showroom, Thapar Nursing College, Metro Super Specialty Hospital, Government Senior Secondary School, Blue Hill Hotel, Hospitals, Five Star Hotels and marriage palaces, factories, school, colleges, shops and more than 300 commercial buildings were already existing near the acquired land of the applicant. The area surrounding the acquired land of applicant is a complete commercial hub and the land of applicant had a great potentiality. Since the acquired land of applicant and that of Moga Mehla Singh-1 and Moga Mehal Singh-2 were acquired for the same purpose and for same notification and as such the acquired land should also have been assessed at the same compensation as of other said villages. The competent authority as well as the learned Arbitrator have committed grave illegality in discriminating the value of the land by making different categorization at different rates & zone. The applicant is entitled to compensation at the market value of Rs.1,50,000/- per sq. yard besides 10% of easementary benefit of the loss of the easementary right of the acquisition. Learned counsel for the applicant has further contended that the applicant is also entitled to 10% of extra compensation on account of displacement. The compensation which has been awarded and calculated by the learned Arbitrator is not correct and that all the benefits which are applicable to the acquired land have

not been given to the applicant. The applicant is further entitled to interest on delayed payment as the award was announced on 11.9.2015 while the payment was made to her in the year 2018. The new amended Land Acquisition Act has come into force on 26.01.2013 and the award was announced on 11.9.2015 and as such the applicant is entitled to benefit of new Land acquisition Act of second and third schedule as well (The Right to Fair Compensation & Transparency in acquisition, Rehabilitation and Resettlement Act 2013) and since the acquired land is commercial, the applicant is entitled to double the market rate in view of the amended Act, besides 100% solatium on the market value and permissible interest in view of the new amended Act.

6. Upon notice of the petition filed by Parveen, respondent No. 1 and 3 appeared through counsel Sh. Varinder Garg Advocate, whereas respondent No. 2 appeared through learned Government Pleader.

7. Respondents No. 1 and 3 filed their written reply on similar grounds as mentioned in their petition, which are mentioned above as grounds of petition filed by Union of India. Contents of the said reply are not being mentioned here to avoid the unnecessary repetition of facts. However, no reply was filed by respondent No.2.

8. Arguments of learned counsels for the parties have been heard.

9. Both the respective parties while addressing arguments have argued on the lines of their respective claims.

10. After hearing the arguments, this court finds that since both these petitions have been filed under section 34 of the Arbitration and Conciliation Act challenging the award passed by the arbitrator, first of all it is to be seen what are the grounds, which are provided under section 34 of the Act, in which this court can assail the award passed the arbitrator and what are the grounds, on which the award of arbitrator can be assailed by a court in proceedings under Arbitration petition. Section 34 of the Arbitration Act reads as under:-

34. Application for setting aside arbitral award: (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section(3).

(2) An arbitral award may be set aside by the Court only if:

(a) the party making the application (establishes on the basis of the record of the arbitral tribunal 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 of 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 the submission to arbitration, or it contains decision on matters beyond the scope of the submission to arbitration: Provided that, if the decision on matters submitted to arbitrator 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 provisions of this part for 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.

[Explanation 1. For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if –

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with most basic notions of morality or justice.

Explanation 2. For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute].

11. Even the *Hon'ble Supreme Court of India in case titled as Fiza Developers and Inter-trade P. Ltd. Versus A.M.C.I. (I) Pvt. Ltd. and another* reported in *Law Finder Doc. Id 202800* has held that *"at the time of passing the order under section 34 of the Arbitration Act, court is not required to frame issues. Grounds for setting aside the award under section 34(2) are specific. Partly challenging such award, need to plead facts necessary to make out ingredients of any of the grounds mentioned therein. Court when question arises for adjudication by the court i.e. whether award is to be set aside on the given grounds and also the person, on whom burden is*

placed to prove the existence of grounds is statutorily specified, need for framing issues does not arise.” Similarly in **State of Rajasthan and another Vs. Ferro Concreete Construction Pvt. Ltd.** reported in **Law Finder Doc. Id. 254783**, it has been held that “wrong conclusion of arbitrator whether a ground for setting aside the award, re-appreciation of evidence by the court, permissibility, arbitrator reaching wrong conclusion or failing to appreciate the facts while making award is not ground for setting aside the award. Court does not sit in appeal over the findings of the arbitrator nor can re-appreciate the evidence, when there is no allegation of moral misconduct against the arbitrator with reference to the arbitration proceedings. His award can be challenged only on the grounds of legal misconduct of arbitrator and on error apparent on the face of the award.” So, by applying the ratio of above stated statute and the law settled by Hon’ble Supreme Court in above two cases to the facts of the present case, this court has taken the contentions raised by the petitioner/objector one by one.

12. The entire contentions which have been raised in this case by the Union of India are almost interconnected and the facts mentioned therein are corroborative to each other, so all the contentions are taken hereby together and the contentions which have been raised in this case is that the award is erroneous and is a product

of non application of judicious mind of Arbitrator as claims were decided by the arbitrator arbitrarily and ignoring the peculiar facts of the case and regarding claims, which were not discussed in the award. The second contention of the learned counsel for Union of India is that the arbitral award is bad in the eyes of law and same is against the public policy and also against the substantial law prevailing at the time of pronouncement of the award. It is further challenged that the arbitral award has been passed without taking into consideration the provisions of section 26 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Secondly, The Provision of Section 33 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Thirdly, the Section 31(3) of Arbitration and Conciliation Act and provisions of section 26 of the said Act are imperative upon the Collector to take into consideration the provision as satisfied under Arbitration and Conciliation Act of Sub Section (i) of Section 26. The learned Arbitrator while announcing the Award, has failed to consider the above said facts and wrongly not considered the amount of compensation granted to the two adjacent villages i.e. Talwandi Bhungerian and Lande Ke. It has also been mentioned that the basic provisions of law were not complied with during the entire proceedings

by the CALA and it has not acted as per the provisions of section 33 of RFCTLRR Act of 2013 and the learned Arbitrator has passed the award with biased mind. The award dated 11.09.2015 was passed by CALA after assessing all the factors. The entire claim of Parveen is vague, bogus and evasive. No documents have been submitted regarding assessment of the market rate of the land before the learned Arbitrator and nor any effort to arrange or peruse any record in the shape of sale deed etc was made by the Arbitrator. The market value of the land was rightly taken up at the time of notification under section 3(a) of National Highway Act. The provisions of section 3 of National Highway Act were not considered by the Arbitrator and the Arbitrator has wrongly adopted the criteria completely unknown to law, as it has ignored the pleas of the applicant/objector and over looked the provisions of Arbitration and Conciliation Act.

13. This court while dealing with the entire objection taken by the Union of India, has found that in this case, the property in question of village Dosanj, Tehsil and District Moga was acquired vide award dated 11.09.2015 passed by the learned Sub Divisional Magistrate, Moga, who was competent authority under Land Acquisition pertaining to acquisition of land for the purpose of construction of national highway from village Landran, Jalandhar to Barnala and village

Dosanj falls on the said stretch. So, the said property was acquired by Union of India and later on compensation award was passed on 11.09.2015 by Sub Divisional Magistrate, Moga after the process of notification bearing No. 1384(e) dated 20.05.2015 issued under section 3(A)(1) of National Highway Act, 1956. After the award was passed, certain applications were moved before CALA i.e. Sub Divisional Magistrate, Moga, which were moved by residents of village Talwandi Bhangarian and Dosanj after considering those applications. The corrigendum dated 06.10.2016 was announced by CALA and the copy of the same was sent to the competent authority for the purpose of approval and as per the findings given by the Arbitrator, those authorities i.e. Ministry of Road Transport and Highway of India through Executive Engineer, PWD (B&R) branch Jalandhar had returned the said corrigendum by saying that the CALA i.e. Sub Divisional Magistrate, Moga is competent to decide the same. As such CALA decided and issued corrigendum accordingly. The said corrigendum was challenged and an application under section 3(a)(g) of National Highway Act 1956 framed upto date was filed before the Commissioner-cum-Arbitrator, Ferozepur with prayer to award the compensation of the land acquired by the Union of India and interest accordingly. Both the parties were called and ultimately Arbitrator

passed the impugned award, whereby objections-cum-application of the private parties were allowed and following directions were issued:-

- “1.The market value of the acquired land of the petitioners is enhanced to Rs. 72,874/- per marla.
2. The petitioner/applicant is entitled to get the interest @ 9% per annum from the date of taking possession and till the date of payment of such excess amount awarded.
3. The petitioner is entitled for 100% solatium on the enhanced compensation alongwith additional amount @ 12% from the date of issue of notification 3-A to the date of award.”

14. The market potential rate of village Dosanj was inquired and increased to 2,13,00,000/- per Hectare for agriculture class of land and Rs. 2,88,00,000/- per Hectare for residential as well as commercial class of land. Being aggrieved of the same, the said award was challenged. Since, section 34 of the Arbitration and Conciliation Act confers power upon this court to assail the said order, so, as discussed above since section 34 of the Arbitration and Conciliation Act confers limited powers upon this court, so this court finds that the contentions,

which have been raised by the learned counsel for Union of India that the said award has not been passed correctly and by appraising the true facts. This court finds that the said contention is not acceptable, as the proceedings, which were conducted before the Arbitrator clearly shows that ample opportunity was granted to both the parties to lead their evidence. Moreover, as far as corrigendum is concerned, the perusal of the corrigendum clearly shows that the same was passed after the applications were moved by the residents of village Talwandi Bhengerian and Dosanj. It is also a fact on record that even the said corrigendum was sent for approval to the applicant, who has challenged the award and the concerned officials of the applicant, in their reply as reflected from the award had stated that CALA-cum-Sub Divisional Magistrate, Moga was competent to decide the said fact and once these officials have been stated that CALA was competent, now they cannot blow hot and cold at the same time and challenge the award on the said ground. Moreover, the perusal of the award clearly shows that the Arbitrator had personally visited the site in question and had seen the actual and factual position at the spot and then decided the objections of the parties and enhanced the market value and the said fact is evidently clear from the facts mentioned by the Arbitrator in his arbitration award. Said fact has never been challenged by Union of

India at any stage of time. Moreover, it is a fact that village Dosanj is situated between village Talwandi Bhengarian and village Lande Ke and it is also fact, which has been admitted by both the parties that village Dosanj is situated in between these two villages and this fact has been clearly taken into consideration while deciding the fact that these three villages falls on the same stretch of the national highway and are at equal distance from Moga city.

15. So, with these observations, this court finds that the learned Arbitrator has passed the arbitration award rightly and after going through the entire facts and learned Arbitrator has rightly passed amount of compensation to the land owner considering the nature of the acquired land.

16. As far as the claim of Parveen is concerned, the arbitrator has already discussed the above stated matter and enhanced the amount of compensation in consonance with the rates prevailing in the village Talwandi Bhangerian, which is just adjoining to the said village i.e. Dosanjh. The arbitrator has already taken up all the objections of Parveen in detail and decided them, keeping in mind the actual and factual position at the time and by applying the settled law enacted for granting the compensation for acquiring the land. As such, this court is of the considered view that the claim put forward by Parveen has

already been granted to her by the arbitrator, so no further enhancement is required. The law cited by the learned counsel for Union of India are not applicable to the facts of the present case.

17. So, keeping in view the above said discussion, this court finds that award passed by the Arbitrator is not effected by any infirmities and same has been passed by keeping in view the public interest as well as the law of the land. Therefore, no interference of this court is required in the impugned award passed by the learned Arbitrator. Accordingly, the both the petition under reference are hereby dismissed with no cost, being devoid of any merits. This original order be placed in the file titled as Union of India Vs. Parveen bearing CIS No. ARB-82 of 2019 and copy of the same is placed in file titled as Parveen Vs. Union of India, bearing CIS No. ARB-91 of 2019. Files be consigned to the record room.

Announced in open court.

Dt: 10.10.2023.

Pritpal Singh

Stenographer Gr. II

Sd/-
(Hardip Singh)
Additional District Judge
Ferozepur.
(UID No. PB0638)