

CNR NO.MHJG050034982022

RAVINDRA NILKHANT PATIL

V/S

THE COMPETENT AUTHORITY (LAND  
ACQUISITION) NH NO. 6 & OTHERS

COMMON ORDER BELOW EXH. 12, 18 & 20 IN ARBITRATION  
REGULAR DARKHAST NO. 1455 OF 2022.

- 1) The Decree-Holder moved the application (at Exh. 18) for praying to issuance of recovery warrants of Rs. 74,033/- against the Judgment-Debtors.
- 2) Judgment-Debtor No. 2 objected this application by filing reply-cum-objection (at Exh. 20) & moved the application (at Exh. 12) under Section 47 of the Code of Civil Procedure. He contended that Judgment-Debtor No. 1 filed Diary Application No. 24435 of 2021 before the Hon'ble Supreme Court for praying to disallow retrospective effect/ operation of the decision of *Union of India V/s. Tarsem Singh & Others, 2019 SCC Online 1230*. In Writ Petition No. 8673 of 2022 (titled as *Shyam Mohanlal Agrawal V/s Union of India & Others*) before the Hon'ble Bombay High Court, his learned Advocate made submission of pendency of Diary Application No. 24435 of 2021 in respect of *Union of India V/s. Tarsem Singh & Others (Supra)* for seeking clarification of prospective effect/ operation of thereof. Upon his submission, the Hon'ble Bombay High Court adjourned hearing of Writ Petition No. 8673 of 2022 (titled as *Shyam Mohanlal Agrawal V/s Union of India & Others*) till decision of Diary Application No. 24435 of 2021 by the Hon'ble Supreme Court. The issue involved in the case in hand & the issue referred in Writ Petition No. 8673 of 2022 (titled as *Shyam Mohanlal Agrawal V/s Union of India & Others*) is identical i.e., claim of solatium & interest on the basis of decision delivered by the Hon'ble Supreme Court in case of *Union of India V/s. Tarsem Singh & Others (Supra)*.

Therefore, Judgment-Debtor No. 2 requested to keep in abeyance this petition till the decision of Diary Application No. 24435 of 2021 (which pending on the file the Hon'ble Supreme Court).

3) Judgment-Debtor No. 2 also contended that the present execution petition is based on Settlement Memo (at Exh. 22) arrived in Mediation Proceeding in the year of 2017 & entire agreed amount already paid to the Decree-Holders. Therefore, the Decree-holder is not entitled to claim of solatium & interest in closed case. On these grounds, he urged for rejection of the application (at Exh. 20).

4) Judgment-Debtor No. 2 also raised objection under Section 47 of the Code of Civil Procedure by contending that the Decree-holder was already received entire benefits of Mediation Settlement Agreement. The claim raised by them in this petition is exceeds amount under the arbitration award. Therefore, the executing court or this Court cannot go beyond the said award. If the executing court pass any order in this matter, it amounts to modification of the arbitral award by this court, which is not permissible by law. In fact, this Court has no jurisdiction to amend or modification of arbitral award in this petition. On these grounds, he urged for dismissal of this petition as fully compiled or satisfied.

5) The Decree-holder filed reply (at Exh. 16) to the application (at Exh. 12) moved by Judgment-Debtor No. 2. The Decree-holder contended that the arbitral award in execution (at Exh. 21) attained finality. While deciding the application under Section 34 of the Arbitration & Conciliation Act, the Hon'ble District Court, Jalgaon observed that *"Therefore, it is not necessary to remand the matter back before the learned arbitrator for passing appropriate order regarding solatium & component. Even in absence of directions from this Court, the land-owner has right to claim*

*compensation for said statutory benefits.....”* Therefore, the right flowing from the judgment of the Hon'ble Supreme Court in *Union of India V/s. Tarsem Singh & Others (Supra)* are crystallized. According, the Decree-holder has claimed such statutory benefits. They further submitted that granting such statutory benefits does not result in modification of award because the arbitral award has specifically granted statutory benefits to the Decree-holder and which is based upon the decision or the judgment of the Hon'ble Supreme Court.

6) The Decree-holder contended that Judgment Debtor No. 2 cited cases of *a) Sureshchandra Agrawal v Secretary to Government of India*, *b) Rishabhkumar Jejani v Secretary to Govt. of India*, *c) Project Director v Varghese Mathai*, and *d) Shyam Agrawal v Union of India*. In these cases, the Court declined to grant benefit of *Tarsem Singh's* judgment because it was not granted in the arbitral award and granting it now would result in modification of award. But facts of the present case are distinguishable. In the present case, the Decree-holder had claimed the benefits of Section 23(1-A), 23(2) and 28 in the original Arbitral Award (at Exh. 21). Even the Arbitral Tribunal passed an order on the issue. Therefore, granting of such benefits would not result in modification of award and would not fall under the ratio of judgments cited by Judgment Debtor No. 2.

7) The Decree-holder contended that Judgment Debtor No. 2 cited the case of *Union of India v Tehal Singh* (along with order dated 30/07/2021 passed therein) which filed separately for clarification of the issue relating to section 23(1-A) only for that specific case. It must be noted that no other connected case in *Union of India v Tarsem Singh (supra)* was listed. On these grounds, the Decree-holder urged for rejection of this objection raised/application

moved (at Exh. 12) by Judgment-Debtor No. 2.

8) Heard the learned Advocates for both side. Perused the record & documents available therein.

9) Admittedly, this execution petition is filed for execution of Arbitral Award (at Exh. 21) passed by the Arbitral Tribunal & District Collector, Jalgaon in case bearing NH-6/LAQ/Appeal No. 943 of 2015 (dated 06/07/2017). Its operative part reproduced as under,

**“ORDER**

- 1. The Application is partly allowed.*
- 2. Respondents shall pay the enhanced compensation for acquired area of the Applicant in this case as under,*
  - 1) Market Value fixed as per  
Arbitral Award - Rs. 991/- per sq.m.*
  - 2) Market Value already paid as per  
CALA's Award - Rs. 260/- per sq.m.*
  - 3) Enhanced Compensation to be  
paid - Rs. 731/- per sq.m.*
- 3. Respondents shall pay to the Applicants of **Rs. 73/- per sq.m.** for loss of easement rights as per section 3-G(2) of the Highways Act.*
- 4. Respondents shall pay to the Applicants damages for severing of property and loss to the remaining property at the rate of **Rs. 99/- per sq.m.** as per section 3-G (7) (b) and 3-G (7) (c) of the Highways Act.*
- 5. Interest at the rate of 9% p.a. shall be paid to the Applicant on total enhanced compensation for a period commencing from 19.10.2012 till the date of actual deposit thereof as per section 3-H (5) of the Highways Act.*
- 6. Both the parties shall abide by and execute the ratio of the decision of the Hon'ble Supreme Court in SLA (Civil) 15104/2014 and Civil Appeal No. 10695/2011, as and when it is finally decided in respect of claim of statutory benefits under the Land Acquisition Act, 1894.*
- 7. As per Section 3-H (1) of the Highways Act read with The National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority*

*for acquisition of Land) Rules, 1998, the Respondent No. 2 shall deposit through demand draft the total enhanced compensation along with interest as per this Arbitral Award with the Respondent No. 1, within seven (7) days of the date of passing this Arbitral Award.*

*8. As per Section 3-H (2) of the Highways Act, as soon as amount is deposited as per section 3-H(1), the Respondent No. 1 shall immediately pay amount to Applicant.*

*9. This order is to be communicated to all the parties at the earliest.*

*Sd/xx*

*(RUBAL AGARWAL)*

*ARBITRATOR AND*

*DATE:6.7.2016*

*PLACE: JALGAON*

*DISTRICT COLLECTOR JALGAON*

10) On baring of the Clause No. 6 of the aforesaid operative part, it is clear that the ratio laid down by the Hon'ble Supreme Court in SLA (Civil) No. 15104/2014 & Civil Appeal No. 10695/2011 in respect of claim of statutory benefits under the Land Acquisition Act, 1894 is binding upon the parties & executable upon them as & when it is finally decided. This Clause No. 6 makes clear that the statutory benefits available to the Decree-holder under the Land Acquisition Act are forming part of the said award. However, it is depending upon the decision of the Hon'ble Supreme Court in SLA (Civil) No. 15104/2014 & Civil Appeal No. 10695/2011.

11) It is matter of the record that Judgment-Debtor No. 2 challenged the said Arbitral Award before the Hon'ble District Court, Jalgaon by filing Civil Misc. Application No. 149 of 2016, wherein this dispute referred to the Mediation. The parties amicably settled their dispute before the Mediator in terms of Mediation Agreement or Settlement Memo (at Exh. 22). Its Para No. 2(g) provides that, "All other benefits of the Awards in favor of the Respondents remain the same".

12) On baring of the clause 2(g) of the aforesaid Mediation Agreement or Settlement Memo (at Exh. 22), it is clear that the Decree-Holder had not waived their rights to claim statutory benefits under the Land Acquisition Act. They are intact. This clause 2(g) of the aforesaid Mediation Agreement or Settlement Memo (at Exh. 22) makes clear that the statutory benefits available to the Decree-holder under the Land Acquisition Act are forming part of the said award. However, it is based on outcome of SLA (Civil) No. 15104/2014 & Civil Appeal No. 10695/2011.

13) For deciding the objection raised/application (at Exh. 12) moved by Judgment-Debtor No. 2, I have gone through the documents available on the record. It is matter of the record that, the present Decree-holder had been claimed the benefits under Section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894 in the original Arbitral Award (at Exh. 21). While deciding the same, the Arbitral Tribunal observed under heading **“22. Benefits of Land Acquisition Act, 1894”** in the Judgment that, *“As it would not be proper to take a view on this issue at this juncture. As and when the Hon’ble Supreme Court takes a view, the Applicant shall be at liberty to claim the statutory benefits under the Land Acquisition Act, 1894. This issue is left open”*. To that effect, the Arbitral Tribunal passed order in the form of Clause No. 6 in the operative part that, both parties shall abide by and execute the ratio laid down by the Hon'ble Supreme Court in SLA (Civil) No. 15104/2014 & Civil Appeal No. 10695/2011, as an when it is finally decided in respect of claim of statutory benefits under the Land Acquisition Act, 1894.

14) Accordingly, I have gone through the copy of order dated 21/07/2016 (at Exh. 23) produced by the Decree-Holder passed by the Hon'ble Supreme Court in SLA (Civil) No. 15104/2014, wherein

the National Highways Authority of India had granted solatium & interest to the land-losers as per order of the Hon'ble Punjab & Harayana High Court. Subsequently, ***Project Director, National High Way No. 1-A Vs. Rajeshwar Sing and Ors. [bearing SLA (Civil) No. 15104/2014]*** on the file of the Hon'ble Supreme Court came to be disposed of on the statement of the then Solicitor General of India that solatium in terms of the impugned order of the High Court would be granted for the instant acquisitions made under the provisions of the National Highways Act, 1956, no subsisting issue remains in the present appeals as also in the Special Leave Petition. The appeal and Special Leave Petition No. 15104/2014 are accordingly disposed of on 21/07/2016. It means that, the order and judgment passed by the Hon'ble Punjab and Harayana High Court for granting statutory benefits to the land-losers be kept intact. Therefore, this Court is under obligation to follow the same. In this view, I hold that the Decree-holder is also entitled to get statutory benefits under the Land Acquisition Act, 1894.

15) Needless to say that, the instant execution petition is based on statutory benefits granted to the Decree-Holder in the Arbitral Award (at Exh. 21) in execution. In other words, the statutory benefits under the Land Acquisition Act, 1894 are forming part of the said award. On this ground too, the Decree-holder is entitled to claim the statutory benefits in this execution petition as these rights flowing from the Arbitral Award (at Exh.21) in execution.

16) In order to buttresses my aforesaid observations, I would like to rely upon the decision of **Gurpreet Singh vs Union Of India, reported in 2006 SCC Online SC 1102 : (2006) 8 SCC 457**, wherein the Hon'ble Supreme Court observed that,

*“54. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in Courts all over the country, we permitted counsel to address us on that question. That question is whether in the light of the decision in Sunder (supra), the awardee/decreed holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the reference court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder (supra) on the ground that the execution court cannot go behind the decree. But if the award of the reference court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the reference court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of Sunder (supra) and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not....”*

17) By applying aforesaid dictum of the Hon'ble Supreme Court to facts of the present petition, it seems the Decree-holder had been claimed the statutory benefits under Section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894 in the original arbitration petition (at Exh. 21). While deciding the same, the Arbitral Tribunal had neither rejected nor negatived the same. On the contrary, the Arbitral Tribunal intended to grant such statutory benefits to the Decree-Holders. Therefore, the Arbitral Tribunal kept this issue open

and which is subject to decision of SLA (Civil) No. 15104/2014 & Civil Appeal No. 10695/2011 pending before the Hon'ble Supreme Court. Under these backdrops, I have no hesitation to hold that the statutory benefits under the Land Acquisition Act, 1894 are forming part of the said award (at Exh. 21). Consequently, granting such statutory benefits to the Decree-holder is not amounting to alteration or modification of the original Award. In the result, the objection (at Exh. 20) raised/application moved (at Exh. 12) by Judgment-Debtor No. 2 is not maintainable and which are liable to be rejected.

18) This conduct of Judgment-Debtor No. 2 for taking written objection (at Exh. 20) to issuance of attachment warrant amounts to denying fruits of the award. For effective execution of the said award, this is fit case to issue recovery warrants of Rs. 74,033/- against the Judgment-Debtors. Accordingly, following order is passed.

**:- ORDER :-**

- 1.) The objection raised by Judgment-Debtor No. 2 (at Exh. 20) is hereby rejected.
- 2.) The application (at Exh. 12) moved by Judgment-Debtor No. 2 is hereby rejected.
- 3.) The application (at Exh.18) is allowed and thereby issue recovery warrant of Rs. 74,033/- (Rupees Seventy Thousand Thirty Three Only) against the Judgment-Debtors.

Date : 12/08/2024.

Place : Jalgaon

(Sharad S. Pardeshi)  
3<sup>rd</sup> Joint Civil Judge Senior Division,  
Jalgaon.