

**In the Court of Shri Sham Lal, Additional District Judge, Sangrur.
UID No.PB0123.**

Arb. No. : 23 of 26.04.2019.
Reg No. : 23/2019.
CNR No. : PBSG010040752019.
Date of Decision : 14.09.2021.

Tejinder Singh aged 51 years son of Sadhu Singh resident of Golden Earth
Global School, Village Khurana, Patiala Road, Sangrur.

..Petitioner/Appellant.

VERSUS

- 1) Union of India, through Secretary Ministry of Shipping Road Transport and Highways, New Delhi.
- 2) National High Ways Authority of India, through its General Manager (Tech & Project Director) H. No. 17-L, Model Town, Ambala City.
- 3) Competent Authority cum Land Acquisition Collector cum Sub Divisional Magistrate, Sangrur.
- 4) Executive Engineer Central Works Sub Division Punjab PWD (B&R) Branch, Sangrur.
- 5) Arbitrator-cum-Commissioner Patiala, Block-A, Mini Secretariat Patiala.

..Respondents.

Objection/Appeal/Petition under Section 34 of Arbitration and reconciliation Act for modifying the award and for enhancement of award amount passed by Arbitrator-cum-Commissioner Patiala on 31.01.2019.

Present: Shri P. K. Utreja, Advocate, counsel for petitioner/objector.
Shri Vishavdeep Gupta, Advocate, counsel for respondents No.1 and 4.
Shri J.S. Rathore, Advocate, Counsel for respondent No.2.
Respondent No.3 exparte.
Respondent No.5-Arbitrator.

AND

Arb. No. : 74 of 25.11.2019.
Reg No. : 74/2019.
CNR No. : PBSG010119062019.
Date of Decision : 13.09.2021.

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

2) National Highway Authority of India, through its General Manager H. No. 17-L Model Town, Ambala City, Haryana. (Struck out vide order dated 31.08.2021)

..Objector/Petitioner.

VERSUS

1) Tejiinder Singh son of Sadhu Singh resident of Golden Earth Global School, Village Khurana, Patiala Road, Sangrur.

2) Competent Authority Land Acquisition cum Sub Divisional Magistrate, Sangrur, District Administrative Complex, Sangrur.

3) Ld. Arbitrator-cum-Commissioner Patiala Division, Patiala, Mini Sec, Patiala.

..Respondents.

Petition under Section 34 of Arbitration and Conciliation Act, 1996 for setting aside the award dated 31.01.2019 passed by the Arbitrator cum Commissioner, Patiala Division, Patiala.

Present: Shri Vishavdeep Gupta, Advocate, counsel for petitioner/objector.

Shri P. K. Utreja, Advocate, Advocate, counsel for respondent No.1.

Respondent No. 2- Exparte.

Respondent No.3-Arbitrator.

JUDGMENT:

1. This Judgment shall dispose of two objection petitions one filed by Tejinder Singh son of Sadhu Singh and the other filed by Union of India, Ministry of Road and Transport through Executive Engineer under section 34 of Arbitration and Conciliation Act, 1996 (here-in-after referred as the Act) against the award dated 31.01.2019 passed by Arbitrator-cum-Commissioner, Patiala Division, Patiala.

2. As per the averments made by petitioner Tejinder Singh in his objection petition, petitioner Tejinder Singh is owner of land bearing Khasra No.407 and 408 purchased by way of two sale deeds dated 27.04.2004 and out of the said land he has leased out 06 Bigha 14 Biswas 13 Biswasi land to Good Look Education and Welfare Society for the period w.e.f. 01.06.2004 to 31.05.2034 vide registered lease deed. An entry regarding mortgage has also been incorporated in the jamabandi for the year 2010-2011. The said society has been running a school under the name and style of Golden Earth Global School over the said land since 2006. Out of Khasra No.408 in which Golden Earth Global School is running 233 feet front and 57.75 depth i.e. about 1495 sq. yard land is acquired by NH-64 Department after issuance of Notification under Section 3-A on 23.06.2015 and Notification under Section 3-D(2) on 11.12.2015. The Land Acquisition Collector (LAC), Sangrur has given ₹70,27,297/- for the above said acquisition of land as compensation by passing a joint award dated 03.06.2016 for 24 villages. The LAC after issuance of Notification under Section 3-D made variation certificate by

visiting the spot as part of award in which the nature of the land has been shown as institutional, but the said order was challenged and it was held that if notification under Section 3-D is issued then no change can be made in the nature of the land so variation certificate/report was dismissed. The petitioner filed petition/reference before Arbitrator with a request that the property at the spot is commercial and LAC has wrongly treated the property of the petitioner as agricultural property. Ld. Arbitrator has held that the property of the petitioner is institutional property in which Golden Earth Global School is running. The Competent Authority, Sangrur has given compensation at the rate of ₹1,10,00,000/- per acre to agricultural land, compensation at the rate of ₹7200/- per sq. yard to residential property, compensation at the rate of ₹9000/- per sq. yard to institutional property and compensation at the rate of ₹10000/- per sq. yard to commercial property. The petitioner was given compensation @ ₹1,10,00,000/- per acre by treating his land as agricultural property. The objector/petitioner approached Arbitrator-cum-Commissioner, Patiala Division, Patiala and the learned Arbitrator enhanced the award amount to ₹9000/- per sq. yards by treating the property as institutional property alongwith 100% solatium plus interest on solatium plus 9% interest or under section 28 of Land Acquisition Act, though the market value of the property is ₹30,000/- per sq. yard. Shri Balaji Petrol Pump Khurana is just adjacent to the school of the petitioner which is just 3 km away from Sangrur. The property of the petitioner is surrounded by commercial property like Dhaba, City Honda Cars Agency, Nishan Cars Agency and

Toyata Cars Agency. The industrial area/focal point is just half kilometer from the suit property and more than 50 industries are there in the focal point area. The residential area is towards back side of the property of the petitioner. The front wall of the school was totally destroyed due to acquisition of the property but no extra compensation was given. The petitioner is entitled to get compensation @ ₹30,000/- per sq. yard along with all other benefits provided under NHAI Act and new guidelines issued by the Govt. by modifying the award passed by Arbitrator-cum-Commissioner, Patiala Division, Patiala. The petitioner is also entitled to get solatium @ 100% on market rate as according to the new guidelines issued by the Govt. after 01.01.2015, every land owner whose land is acquired and has not been given compensation till 01.01.2015 is entitled to get 100% solatium on market value and all other benefits. He is also entitled to get 10% easementary benefit on the loss of easementary right due to acquisition as per section 3G(2) of NHAI Act. No compensation for No Construction Zone has been given to the petitioner and as such, petitioner is entitled to get the same. No separate award for structure was passed and no compensation and interest and solatium on structure was given to the petitioner. Petitioner is also entitled to get compensation for loss of acquired land @ 50% of market rate. The award was passed on 03.06.2016 and the petitioner has been given the compensation amount along with interest for 346 days only i.e. upto 03.06.2016 but no interest has been given on delayed payment. It is also averred that SDM, Khanna has given the rate @ ₹50,000/- per sq. yard qua the land situated on

NH-1 and SDM Sangrur has awarded the compensation @ ₹60,000/- per sq. yard qua land of Bhawanigarh and @ ₹20,000/- per sq. yard qua the land of Channo and Balad Kalan vide award dated 15.01.2014. SDM, Sunam Udham Singh Wala has given ₹45,000/- per sq. yard qua the land of village Dirba vide award dated 20.10.2014, whereas petitioner has given very less rate. Hence, this objection petition.

3. On notice, respondents No.1, 2 and 4 appeared and contested the objection petition whereas respondent No.3 was proceeded against exparte vide order dated 27.05.2019 and respondent No.5 is Arbitrator. Respondents No.1, 2 and 4 in their common written reply have taken the preliminary objections of maintainability, cause of action, concealment of true facts and barred by period of limitation. On merits, it is averred that some land was acquired for the purpose of widening of road for NH-71 and award was passed by CALA. The amount of compensation was deposited in time by UOI. As per provisions of National Highway Act, while deciding the rates, the date of notification under Section 3(A) of National Highway Act will prevail and average price will be decided prior to three years prevailing rates. The amount was rightly given by CALA after considering the land of the petitioner as agricultural land. Petitioner has not produced either before CALA or before Arbitrator the sale deed of the land acquired. Learned Arbitrator has totally ignored the main aspect of the acquisition. He has not perused any record of sale deeds of the said area, any kind of agreements, any kind of lease deeds or mortgage deeds and even the record of CALA. The entire claim of the land owner is

vague, bogus and evasive. Moreover, the falling of land on National Highway itself does not mean that it is commercial land. The claim of the petitioner that acquired land is commercial, is absolutely vague and unsustainable. The alleged documents related to CLU was never produced before CALA and Arbitrator. Mere production of any alleged document without any proof and authenticity at the time of arbitration proceedings is not sufficient. The assessment related to the structure was rightly done by CALA. There is no provision of enhancing the amount of structure. Learned Arbitrator has wrongly passed the order relating to enhancement of compensation amount for structure. The petitioner has not produced any evidence for loss of alleged structure. Each village has its own potentiality and different chanaat rates. The land of the petitioner is far away from the Municipal limit. CLU was not obtained at the time of purchasing the land in question. The other commercial establishments have no concern with the land of petitioner. The new Act is not applicable to the present case as per provisions of the Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the enactments referred in forth scheduled are specifically exempted until and unless a specific reference is made qua any acquisition to be considered as having been made qua the Act of 2013 and as such, for the purposes of the present acquisition, only the provisions of the National Highways Act, 1956 are applicable. Rest all the allegations of the objection petition were denied to be incorrect and it was prayed that the petition may kindly be dismissed with costs.

4. Respondent No.2 in separate written reply has taken the preliminary objections of maintainability, barred by period of limitation, locus standi and cause of action. No land has been acquired by respondent No.2, nor the same stretch comes under the office of respondent No.2. On merits, it is averred that competent authority cum SDM, Sangrur has awarded compensation at the rate of ₹1,10,00,000/- per acre to agricultural land, compensation at the rate of ₹7200/- per sq. yard to residential property, compensation at the rate of ₹9000/- per sq. yard to institutional property and compensation at the rate of ₹10000/- per sq. yard to commercial property along with solatium @100% and additional compensation @ 11.40% from the date of notification u/s 3-A to the date of award dated 03-06-2016. The award passed by competent authority is just, equitable, adequate and the same is on higher side along with benefits. The Arbitrator has wrongly held that the nature of the land is commercial. Rest all the allegations of the objection petition were denied to be incorrect and it was prayed that objection petition may kindly be dismissed with heavy and exemplary costs.

5. Respondent Union of India through Executive Engineer, Central Works Division, Sangrur has also filed objection petition under Section 34 of Arbitration and Conciliation Act,1996 for setting aside the award dated 03.06.2016 passed by the Arbitrator-cum- Commissioner, Patiala Division, Patiala on the ground that award is patently arbitrary, unwarranted and contrary to the terms and conditions of the National Highway Act,1956 and as such, the same is liable to be set-aside or

modified. The acquisition of the land situated in village Khurana was done for the public purpose at large vide notification under Section 3-A(i) of the National Highways Act, 1956 for NH No.64, Patiala-Sangrur-Bathinda Section. No objection was filed by the respondents before LAC in prescribed period and notification under section 3-D(i) was published in official gazette. The land of the respondent was acquired in agricultural category as per revenue record. Respondent No.1 never challenged before the CALA that his land was wrongly categorized as agricultural 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. The award dated 03.06.2016 was passed by by CALA after assessing all the factors. The entire claim of the respondent is vague, bogus and evasive. The land is not commercial in nature and compensation has been awarded accordingly. The amount of full compensation has been deposited by the Acquiring department/objector within time frame and it was the duty of LAC to disburse the amount in time. The amount of 100% solatium was already given as per award. No document regarding assessment of market value of the land has been placed on record by the respondent No.1, nor the learned Arbitrator has made any effort to arrange or peruse any record which shows the actual and factual market rate as assessed by him in the impugned order. Learned Arbitrator has ignored the provisions of section 26 of RTFCRR Act. The rates claimed by the respondent/petitioner is never prevailed as market rates. The market value of the land on the date

of publication of the notification under Section 3A would prevail. The alleged valuation report placed on record is a report made by private persons which has no value in the eyes of law. The alleged building/structure was duly assessed by the Executive Engineer and his team. The award passed by the Arbitrator is against the law and public policy. Hence, this objection petition.

6. On notice, respondents No.1 appeared and contested the objection petition by filing reply, whereas respondent no. 2 was proceeded against exparte vide order dated 13.08.2019 and respondent No. 3 is Arbitrator. Respondent No. 1 in his written reply has taken the preliminary objection of maintainability. On merits, it is averred that petitioner has not placed on record any document to prove as to how he has been authorized to file the present objection petition on behalf of Union of India. It is wrong that the award dated 31.01.2019 passed by the Arbitrator cum Commissioner is arbitrary, unwarranted or contrary to the terms of National Highway Authority of India Act. However the answering respondent being dissatisfied with the said award has also filed separate petition under Section 34 of Arbitration and Conciliation Act. The notification under Section 3-A of National Highways Act for Khurana was passed. Respondent No.1 has no knowledge about passing of notification under Section 3-A and 3-D of NHAI Act or passing of award. Later on respondent No.1 came to know about the passing of award. When the respondent No.1 has no knowledge regarding the passing of notification then how could he files the objections. Award is passed by

CALA on 03.06.2016. It is correct that at the time of notification the land of the respondent No.1 was shown as agricultural property, but only collector rate has been given, whereas the petitioner at that time was entitled to get market rate of the property @ ₹30,000/- per sq. yard. It is settled principle of law that if the compensation amount is not paid up to 01.01.2015, then land owner is entitled to get 100% solatium. Thus the answering respondent is entitled to get all the benefits as per the provisions of new Act. The CALA/SDM has wrongly mentioned the institutional property of the answering respondent as agricultural property and the Arbitrator after considering all the aspects enhanced the compensation amount by considering the acquired property of the petitioner as institutional property, but the market rate prevalent at the time of notification was not given even though the rate of the surrounding properties situated at Banasar Enclave Sangrur, which is 02 KM away from the property, reserved by the Govt. is ₹49200/- to ₹1,20,000/- per sq. yard. Therefore, the rate of the acquired property of answering respondent may kindly be enhanced to the extent of ₹30000/- per sq. yard. Rest all the allegations of the objection petition were denied to be incorrect and it was prayed that the objection petition of the petitioner UOI may kindly be dismissed with heavy costs.

7. In support of their claims, both the parties have produced certain documents on the record.

8. Petitioner Tejinder Singh in Arbitration case No.23 has produced affidavit Ex.PW1/A, Annexures 1 to 32, copies of Award

Ex.PX/1 to Ex.PX/5, certified copy of judgment dated 06.11.2019 Ex.PX/6, copy of certificate of registration of societies Annex.PZ, copy of memorandum of association Annex.PZ/1 and copy of letter No.31/Arbitration dated 22.01.2019 Annex.PZ/2. Respondent Union of India in this case has produced Notification u/s 3-D Annex.R-1, copy of order dated 29.08.2019 passed by Arbitrator Annex.R-2 and copy of order dated 12.07.2019 passed by Arbitrator Annex.R-3.

9. Petitioner Union of India in Arbitration case No.74 has produced notification u/s 3-D Annex. OP-1, copy of order dated 29.08.2019 passed by Arbitrator Annex. OP-2 and copy of order dated 12.07.2019 passed by Arbitrator Annex.OP-3. Respondent No.1 Tejinder Singh in this case has produced his affidavit Ex.RW1/A, documents Annex. R-1 Copy of order dated 12.07.2019 passed in case No. MA278/2015/NH-64, Annex. R-2 Copy of order dated 12.07.2019 passed in case No. MA277/2015/NH-64, Annex. R-3 Copy of order dated 12.07.2019 passed in case No. MA287/2015/NH-64, Annex. R-4 Copy of order dated 17.01.2019 passed in case No. MA425/2015/NH-64, Annex. R-5 Memo No.6208 dated 14.06.2018, Annex. R-6 notice regarding auction, Annex. R-7 list of commercial property sold by way of auction situated at Banasar Enclave Sangrur, Annex. R-8 Copy of jamabandi 2010-11, Annex. R-9 affiliation letter dated 29.05.2013 issued by CBSE, Annex. R-10 Copy of khasra girdawri 2006-07 to 2018-19, Annex. R-11 copy of affiliation dated 26.12.2006 issued by CBSE, Annex. R-12 Copy of judgment dated 06.11.2019 passed by Ld. Addl. District Judge,

Fatehgarh Sahib, Annex. RX/1 copy of Letter No. 4/LAC/NH-64 dated 01.01.2019, Annex.RX/2 copy of judgment dated 05.02.2021, Annex.RZ copy of certificate of registration of societies, Annex.RZ/1 copy of memorandum of association and Annex.RZ/2 Copy of letter no. 31/Arbitration dated 22.01.2019.

10. I have heard the learned counsels for both the parties and have also gone through the written arguments submitted by counsel for both the parties, record of Arbitration proceedings as well as documents produced on file by both the parties in support of their respective claims.

11. Learned counsel for Petitioner Tejinder Singh in Arbitration case No.23-cum-Respondent No.1 in Arbitration case No.74 has argued that the award dated 31.01.2019 passed by the learned Arbitrator is not sustainable in the eyes of law and it is liable to be modified as when it suffers from manifest illegality and learned Arbitrator did not consider any document filed by the petitioners without assigning any reason for non-consideration of the said documents and erroneously determine the compensation payable without any basis in a discriminating manner, then such award being against public policy is liable to be interfered by this court. He has also argued that a petition under Section 34 of the Arbitration Act is a continuation of the arbitration proceedings, like continuation of a suit before an Appellate Court and the same analogy could be applied to Section 3G(7) of the NH Act. He has also submitted that Hon'ble Supreme Court of India in ONGC vs. Saw Pipes Ltd. (2003) 5 SCC 705 has given the wider meaning of the phrase 'public

policy of India' used in Section 34 of the Arbitration Act, which includes unfair and unreasonable. He has also placed reliance upon **The Project Director, National Highway vs. M. Vijayalakshmi and Another C.M.A. (MD) Nos.560 of 2018 & 225 of 2019 etc. decided on 13.02.2020** by Hon'ble Madurai Bench of Madras High Court in which it was held that the expression 'recourse to a Court against an arbitral award' appearing in Section 34(1) cannot be construed to mean only a right to seek set-aside of an award; it could be either for setting aside or for modifying or for enhancing or for varying or for revising an award. Thus this Court has the power under Section 34 to modify or vary an award passed by the Arbitral Tribunal.

12. Learned Counsel for Petitioner Tejinder Singh has further argued that the petitioner is entitled to get fair compensation in terms of Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (here-in-after referred to as "Act 30 of 2013") and as such the compensation is to be calculated and paid as per Act 30 of 2013, but neither Land Acquisition Collector nor learned Arbitrator in the impugned award has explained as to how and in what manner they assessed the market value of the land of the petitioner acquired for widening the NH-64. None of the documents produced by the petitioner for determining the market value of the land was taken into consideration by the Arbitrator. No reason has been assigned by the Arbitrator for non considering the said documents. Since an order devoid of reasons is a nullity and violative of Article 14 of the

Constitution of India, thus affecting the Fundamental Policy of Indian Law, therefore this court has the power to interfere with such an order. It is also contended by him that land of the petitioners was wrongly categorized as agricultural land by CALA without verifying the revenue record and inspecting the spot as upon the land of petitioner an educational institution school under the name and style of Golden Earth Global School has been running much prior to the acquisition of the land by the petitioner, regarding which an entry has also been reflected in the revenue record Copy of Jamabandi for the year 2010-2011 Ex.P8 and learned Arbitrator has rightly categorized the land of petitioners as institutional property after taking into consideration this fact as well as the potentiality of the acquired land as abutting to the said land number of commercial activities like Petrol Pump, four wheelers agencies, Dhabas etc. have been running. He has also argued that petitioner has given his land comprising Khasra No. 407 and 408 on lease to Good Luck Educational and Welfare Society for the period of 01.06.2004 to 31.05.2034 and the certificate of the registration of said society Annex. RZ and copy of memorandum of association of Good Luck Welfare Society, Annex. RZ/1 shows petitioner Tejinder Singh as Life member of the Executive Director of the Governing Body of the said society. The Arbitrator can change the nature of the land by passing the award after taking into consideration the document placed on record by the land owner and the description of the land as agricultural in Section 3A, 3D and 3G notification would not come in the way of the petitioner

contending in the arbitration proceedings under Section 3G(5) of the National Highways Act that the land is commercial and that the petitioner is entitled to compensation at commercial rate and not agricultural rate as held by Hon'ble Delhi High court in **Manju Arora Vs. Union of India and others Law Finder doc Id # 1745821** and Hon'ble Punjab and Haryana High Court in **Hardeep Singh and others Vs. Union of India and others Law Finder doc ID # 1545835**. It is further contended by him that the Arbitrator was required to ascertain the market value of the acquired land while awarding the fair compensation and in order to determine the market value of the land, the potentiality of the acquired land should also be taken into consideration. In this regard he has placed reliance upon **Sabhia Mohammed Yusuf Hamid Mulla (Dead) by LR's & Ors. Vs. Special Land Acquisition Officer & Ors. (2012) 7 SCC 595**. He has also placed reliance upon judgment of Hon'ble Punjab and Haryana High Court passed in CWP No. 29431 of 2017 decided on 12.03.2018 titled as Phool Singh Vs. National Highway Authority of India and others, judgment of Ld. Addl. District Judge Fatehgarh Sahib Annex. PX/1, judgment dated 05.02.2021 passed by this court Annex. PX/2, spot inspection done by Arbitrator-cum-Commissioner on 28.01.2019 Annex. RZ/2. Therefore, it is prayed that the objection petition filed by petitioner Tejinder Singh may kindly be allowed and the compensation amount of the acquired institutional land of the petitioner be enhanced from ₹9,000/- per sq. yard to ₹30,000/- per sq. yard along with all other benefits provided under the NH Act, whereas the petition under Section 34 filed by

Union of India and another may kindly be dismissed with costs.

13. On the other hand learned counsel for respondents No.1, 3 & 4 has vehemently argued and submitted in the written arguments that petition filed by petitioner Tejinder Singh under Section 34 of the Arbitration Act for enhancement of the value of acquired land by modifying the Award dated 31.01.2019 is not maintainable as under the provisions of the Arbitration Act, Courts are not conferred with power to modify the award. The Court can either set aside the award or refuse to set aside the award only under the circumstances enumerated under sub-Section (2) of Section 34 of the Arbitration Act and it cannot sit in appeal over the arbitral award. Hon'ble Supreme Court of India in Delhi Development Authority Vs. M/s R. S. Sharma & Co. New Delhi, 2008(4) RCR(Civil) 165 has summed up the law relating to Section 34(2) of Arbitration and Conciliation Act. He has also placed reliance upon M/s Unissi (India) Private Limited Vs. Post Graduate Institute of Medical Education and Research & another Law Finder ID No.1532276.

14. It is further argued by him that learned Arbitrator has wrongly enhanced the amount of compensation to the tune of ₹9,000/- per sq. yard without applying mind while deciding the market value. No sale document was produced by the petitioner before the Arbitrator. CALA has rightly categorized the land of the petitioner as agricultural land as according to the revenue record the land of the petitioners is agricultural land and no objection was raised by the petitioner before CALA against

Notification u/s 3-A and 3-D of the Act published in the Gazette notification for acquiring the land of the petitioners by mentioning it as agricultural land. Ld. Arbitrator has wrongly categorized the land of the petitioner as institutional property on the basis of an entry of the school in the copy of jamabandi, though the sale deed whereby the petitioner purchased the said land shows that the said land is agricultural land. He has also submitted that petitioner had given the said agricultural land on lease to a society Good Look Educational and Welfare Society, who has been running a school over it under the name and style of Global Earth School, but no authority letter or any resolution was placed on file before the Arbitrator in favour of any alleged person of Global Earth School being the lease holder in question. The land was acquired from Tejinder Singh and not from any School or Society. No CLU for using the said land for running a school over it has been produced on the file by the petitioner either before Arbitrator or before this Court. No cogent reason has been given by the Arbitrator for categorizing the land of the petitioner as institutional property and assessing its market value as ₹9,000/- per sq. yard. Ld. Arbitrator himself has declined the variation certificate/report given by the land acquisition collector regarding change of nature of the land. Arbitrator has no authority to change the nature of the land and as such, findings of Arbitrator qua change of nature of the land of the petitioner i.e. from agricultural land to institutional land is not sustainable in the eyes of law. It is further submitted by him that no document regarding assessment of market value has been placed on record by the

petitioner/respondent No.1 Tejinder Singh, nor the learned Arbitrator has done any effort to arrange or peruse any record which shows the actual and factual prevailing market rate which he assessed in the impugned award. The land-owner was required to produce the documents regarding sale of land situated in the same locality made on or before the date of acquisition of land to determine the market value of the acquired land. The case of the petitioner/respondent Tejinder Singh is based upon some alleged photocopies of the sites auctioned by the Local Govt. at Sangrur, but the same has no relevancy as present acquisition was done for establishment of NH-64 and not for establishment of any commercial or residential colony and as such the comparison with said sites is absolutely wrong and illegal. The rate assessed in the award is absolutely wrong and arbitrary and the award passed by Arbitral Tribunal against the provisions of the Act is contrary to the public policy of India, which is liable to be set aside. Learned Arbitrator has not performed his duty properly and committed an error while categorizing the land as institutional property and enhancing its market value.

15. He has further submitted that delay of more than 750 days from the date of passing the award in filing the petition before Arbitrator has not been taken into consideration by the Arbitrator and as such Union of India cannot be held responsible in any manner to pay such a huge amount of compensation as huge amount of public is involved. Thus the award dated 31.01.2019 passed by the Arbitrator is beyond the scope of submissions to Arbitrator and is in conflict with the public policy.

Therefore, it is prayed that the impugned award may kindly be set aside in the interest of justice and the objection petition filed by Tejinder Singh may kindly be dismissed whereas the objection petition filed by Union of India be allowed with costs.

16. Learned counsel for respondent No.2 National Highway Authority of India has argued that the exercise of the power under Section 34 of the Arbitration Act is not an exercise of power by an Appellate Court and therefore there can be neither appraisal nor re-appraisal of evidence placed before the Arbitrator. The grounds of challenge to an award have been enumerated under Section 34(2) and there can be no other ground on which an award can be tested for its correctness. It is further contended by him that the land has been acquired for the purpose of widening of National Highway road which is meant for the interest of the public at large and not for any monetary gain. The petitioner has not produced any sale deed before the learned Arbitrator to prove his case. The value of the land of different villages is always different as per the location and even in the same village, the value of the land is also different as per their location etc. So it cannot be said that the value of the land of the petitioner was not properly assessed or lesser rate of the land of the petitioner has been assessed by the Arbitrator or competent authority. He has also submitted that the entire compensation amount has been deposited with Land Acquisition Collector (LAC) by the department within the time frame and it was for the LAC to disburse the same to the land owners including petitioner in time. Thus no ground is made out to

interfere with the Award passed by the Arbitrator and as such the petition filed by petitioner Tejinder Singh may kindly be dismissed with costs.

17. From the above discussion, following points are required to be determined:-

- I) Whether acquired land of petitioner Tejinder Singh is institutional or agricultural land?
- 2) Whether Award passed by the Arbitrator can be modified/varied under Section 34 of Arbitration Act or not?
- 3) Whether objection petition under section 34 filed by Executive Engineer, PWD on behalf of Union of India is maintainable?

18. Admittedly about 1495 sq. yard (233 x 57.75 sq. feet) land of the petitioner Tejinder Singh out of land comprised in Khasra No.408 situated in the revenue estate of village Khurana, Tehsil and District Sangrur was acquired for widening NH-64 under National Highway Act, 1956 (here-in-after referred to as NH Act) vide Notification issued under Section 3-A dated 23.06.2015 and Notification issued under Section 3-D(2) dated 11.12.2015 of NH Act and a common Award in this regard along-with other land of 24 villages situated in District Sangrur acquired for this purpose of widening NH-64 was passed by Competent Authority-cum-Land Acquisition Collector (hereinafter referred as CALA), Sangrur on 03.06.2016. It is also an admitted fact that CALA while passing the award categorized the said acquired land of the petitioner as agricultural land and the compensation was awarded by assessing the value of

agricultural land as ₹1,10,00,000/- per acre along with solatium @ 100%, additional compensation @ 11.40% from the date of Notification under Section 3-A(i) i.e. 23.06.2015 to the date of Award i.e. 03.06.2016 (for 346 days). Against this, a reference under Section 3-G (5) of National Highway Act, 1956 read with The Right to Fair Compensation and Transparency in the Acquisition, Rehabilitation and Resettlement Act, 2003 was preferred by land-owner/petitioner Tejinder Singh. Learned Arbitrator (Commissioner, Patiala Division, Patiala) vide award dated 31.01.2019 by considering acquired land of petitioner Tejinder Singh as institutional land awarded compensation @ ₹9,000/- per sq. yard along with solatium @ 100% on the market value determined and interest on the solatium with the direction to make the payment within one month from receipt of copy of this award @9% interest or as prescribed in section 28 of the Land Acquisition Act, 1894. Both land owner/petitioner Tejinder Singh and respondent Union of India challenged the said award by filing separate objection petitions under Section 34 of the Act.

19. Union of India assailed the said award first of all on the ground that learned Arbitrator has wrongly and illegally treated the land of the land owner as institutional land though no documentary proof in this regard has been produced on the file and the Ld. Arbitrator was having no authority to change the nature of the land from agricultural land to institutional land.

20. Hon'ble Punjab and Haryana High Court in **Kehar Singh Vs. Punjab State, 1992(1) R.R.R. 81 (P&H) (DB)** while dealing with

the categorization of land has observed as under:

12. On an analytical examination of the aforementioned judicial pronouncements of this Court, it can safely be reiterated or held that the Courts of law would generally be disinclined to categorize the land and would be inclined to evaluate the entire land at a flat rate whenever it has got the potentialities for being used for residential, commercial and industrial purposes. The factum of the land being situated in a compact block is another consideration which must weigh with the Court to do away with the belting system. The location of the land in urban area is another factor leaning towards the grant of flat rate when the entire land is acquired by one notification. Even suburban properties near or around the Municipal Town can have the same potentialities until and unless evidence to the contrary is produced.

21. Thus as per the ratio of the above said judgment the location of the land and its potentiality must be taken into consideration while categorizing the nature of the land. It is correct that the acquired land has been mentioned as agricultural land in the notification u/s 3-A and 3-D of the Act Annex. OP1 on the file of Arb. Case No.74 and Annex.4 on the file of Arb. Case No.23, but the copy of Jamabandi 2010-2011 Annex.R8 on the file of Arb. Case No.74 and copy of Khasra Girdawri 2006-07 to 2018-19 Annex.R10 on the file of Arb. Case No.74 and Annex.6 on the file of Arb. Case No.23 shows that the land comprised in Khasra No.408

(4-10) situated in the area of village Khurana owned by Petitioner Tejinder Singh has Gair Mumkin School (3-10-13) and Gair Mumkin Dhaba (0-13-7) over it. Since 0.1819 hectare area of land out of Khasra No.408 was acquired vide notification 3-A dated 23.06.2015 as is apparent from notification dated 11.12.2015 Annex. OP1, therefore at that time, the Land Acquisition Collector was required to take into consideration the potential of the land as well as the activity, if any, going on over the said land and the land surrounding it. Copy of Jamabandi 2010-2011 and copy of Khasra Girdawri 2006-07 to 2018-19 as referred to above shows the running of a School and Dhaba over the land comprised in Khasra No.408 situated in the area of village Khurana owned by Petitioner Tejinder Singh since 2006. The land of Petitioner Tejinder Singh was admittedly acquired out of the land comprised in Khasra No.408 situated in the area of village Khurana. Though the land was agricultural at the time of purchasing the same by Petitioner Tejinder Singh in the year 2004 vide registered sale deed dated 27.04.2004 (copy of sale deed Ex.P6 lying on the file of Arbitrator proceedings), but a school under the name and style of Golden Earth Global School has been running over the said land since 2006 by the Society to whom the said land was given on lease by the Petitioner vide lease deed dated 17.06.2004 (copy of lease deed Ex.P7 lying on the file of Arbitrator proceedings) as is apparent from letter dated 26.12.2006 Annex.R11 on the file of Arb. Case No.74 and Annex.7 on the file of Arb. Case No.23, whereby Central Board of Secondary Education gave provisional

affiliation to the said school. The nature of the land is to be determined from the activities running over the said land as if the land is being used for doing agriculture work, then it will be categorized as agricultural land, if it is being used for residential purpose, then it will be categorized as residential property, if it is being used for commercial activity then it will be categorized as commercial property and if it is being used for any educational or other institution then it will be categorized as institutional property. Thus, it can not be said that the land is still agricultural property even if it is being used for the purpose of commercial or residential or institutional purpose merely on the basis that the land was originally agricultural land. Moreover Ld. Arbitrator himself had visited the spot for inspection of the acquired land on 28.01.2019 as is apparent from letter No. 31/Arbitration dated 22.01.2019 Annex. RZ/2 prior to pronouncing the award. Therefore, learned Arbitrator has rightly observed in the award dated 31.01.2019 while categorizing the land of petitioner as institutional land that from the copy of affiliation provided by CBSE to the school, it becomes abundantly clear that the school was functioning since 2006 and not only this, against the Khasra No.408, an entry of Gairmumkin School has been made in the jamabandi of village Khurana pertaining to the period 2010-11, which lead to simple conclusion that school indeed was functioning on the site out of which land of the appellant was acquired. It was also observed by the Arbitrator in the said award that it is a matter of record that the collector himself had come to the conclusion that mention of the acquired land as agricultural in notification under section 3-A and

3-D was wrong and while passing the award he had made a variation report to this effect, though it is a separate matter that he was not empowered to change the land use after issuing the notification under section 3-D, but surely he had tried to make amends in considering the actual use of the land as institution.

22. The contention of Ld. Counsel for respondent Union of India that Arbitrator was having no authority to change the nature of the land is devoid of any force as Hon'ble Delhi High Court in Manju Arora's case (supra) has held that the description of the land as agricultural in Section 3A, 3D and 3G notifications would not come in the way of the petitioner contending in the arbitration proceedings under Section 3G (5) of the National Highways Act that the land is commercial and the petitioner is entitled to compensation at commercial and not agricultural rates by placing reliance upon Anubhav Chand Kathuria Vs. Union of India 2019 SCC On-Line Delhi 7307 (DB).

23. Hon'ble Punjab and Haryana High Court in Hardeep Singh's case (supra) has held that as per the revenue record 2012-13 Khasra Girdawari and spot inspection the nature of the acquired land is not agriculture/Nehri. The nature of the acquired land is Gair Mumkin abadi. The case of the petitioner has substance in as much as the area had been wrongly shown as Nehri/agriculture land whereas the same had been shown being used for Abadi purpose. In such circumstances, amount of compensation which have been awarded on the basis of type of land is less in comparison than the claim of the petitioner and sub-Divisional

Magistrate-cum-Land Acquisition Collector, Taran Taran was directed to pass a supplementary award qua the claim of the petitioners as discussed above and grant compensation as per the correct type of the land which the petitioners own in view of the aforesaid affidavit of the SDM and the revenue record.

24. Thus, in view of the ratio of the above-said judgments, Ld. Arbitrator has the power to correct the description of the acquired land while passing the award under Section 3G (5) of the Act if it is proved on the record that the nature of the land is different than that of the land mentioned in the notification issued under Section 3A and 3D of the Act. The order dated 11.02.2021 Annex. OP2, order dated 02.12.2020 Annex. OP3, order dated 08.02.2021 Annex. OP4, order dated 24.02.2021 Annex. OP5, order dated 05.02.2021 Annex. OP6, order dated 18.12.2020 Annex. OP7, order dated 24.02.2021 Annex. OP8 passed by Arbitrator-cum-Commissioner, Patitola Division, Patiala in other applications under Section 3(5) (G) of National Highway Act relied upon by the petitioner Union of India in Arbitration case No. 74 do not cause any help to the petitioner Union of India as on the basis of said award it cannot be said that Arbitrator was not having the authority to change the nature of the land. Hence, the acquired land of the petitioner, which was part of the land upon which an educational institution i.e. Golden Earth Global School has been running, has been rightly categorized as commercial land by the Arbitrator.

25. It is correct that petitioner has not challenged the Notification

under section 3-A and 3-D of NH Act, 1956 in which the land of the petitioner has been recorded as agricultural land, but it itself is not sufficient to ignore the status and potential of the acquired land of the petitioner at the time of publishing the above said notifications to acquire the land for widening NH-64. Land Acquisition Collector is required to keep in mind existing geographical situation of the land, existing use of the land, already available advantages, like proximity to National or State Highway or road and/or developed area and market value of other land situated in the same locality/village/area or adjacent or very near the acquired land to categorize the land and assess its market value as held by Hon'ble Supreme Court of India in **Sabhia Mohammed Yusuf Hamid Mulla's case (Supra)**. Thus when the entire acquired land of the petitioner in the form of a strip is abutting to the main road NH-64 and upon the land an educational institution school has been running since 2006 as referred to above, then the entire acquired land of the petitioner was institutional land. The mere non-producing of CLU regarding the acquired land by the petitioner itself is not sufficient to decline the claim of the petitioner qua the nature of his land and as such I do not find any force in this contention of Ld. Counsel for respondents Union of India.

26. So far as the assessment of market value of the land of the petitioner is concerned, learned Arbitrator by considering the acquired land of the petitioner as institutional land has granted compensation @ ₹9,000/- per sq. yard. Petitioner has sought the relief of enhancement of compensation amount by way of modifying the Award passed by the

Arbitrator by contending that this court has the power under Section 34 to modify or vary an award passed by the Arbitral Tribunal as held by Hon'ble Madurai Bench of Madras High Court in **The Project Director, National Highway Vs. M. Vijayalakshmi and Another C.M.A. (MD) Nos.560 of 2018 & 225 of 2019 etc. decided on 13.02.2020,** on the ground that the petitioners are entitled to get fair compensation in terms of Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (here-in-after referred to as "Act 30 of 2013") and as such the compensation is to be calculated and paid as per Act 30 of 2013, but neither Land Acquisition Collector nor learned Arbitrator in the impugned award has explained as to how and in what manner the value of the land of the petitioner acquired for widening the National Highway-64 was assessed. Respondents on the other hand have submitted that this court has no power to modify or vary an award passed by the Arbitral Tribunal under Section 34 of Arbitration and Conciliation Act, 1996 as under the provisions of the Arbitration Act, Courts are not conferred with power to modify the award, the Court can either set aside the award or refuse to set aside the award only under the circumstances enumerated under sub-Section (2) of Section 34 of the Arbitration Act.

27. As per Section 34 of the Arbitration and Conciliation Act, 1996, the Arbitration Award can be set aside by the court only on the grounds provided under this Section. It runs 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 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 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 decisions on matter 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 Past; 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.-Without prejudice to the generality of sub- clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

28. Hon'ble Supreme Court of India in a latest judgment dated 20.07.2021 pronounced in **Civil Appeal No.2756 of 2021 {arising out of SLP (Civil) No.13020 of 2020} titled as Project Director, National Highways No.45-E and 220 National Highway Authority of India Vs. M. Hakeem and Anr.** after considering number of judgments in favour of and against the power of court to modify the award under Section 34 of the Act including most of the aforesaid judgments relied upon by the petitioner has observed in para No. 29 and 46 of the judgment as under:

29.“ Thus, there can be no doubt that given the law laid down by this Court, Section 34 of the Arbitration Act, 1996 cannot

be held to include within it a power to modify an award. The sheet anchor of the argument of the respondents is the judgment of the learned Single Judge in **Gayatri Balaswamy (supra)**. This matter arose out of a claim for damages by an employee on account of sexual harassment at the workplace. The learned Single Judge referred to the power to modify or correct an award under Section 15 of the Arbitration Act, 1940 in para No.29 of the Judgment. Thereafter, a number of judgments of this Court were referred to in which awards were modified by this Court, presumably under the powers of this Court under Article 142 of the Constitution of India. In para 34, the learned Single Judge referred to para 52 in **McDermott's case (supra)** and then concluded that since the observations made in the said para were not given in answer to a pointed question as to whether the Court had the power under Section 34 to modify or vary an award, this judgment cannot be said to have settled the answer to the question raised finally.

46. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very

clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over.

29. In the present case Competent Authority-cum-Land Acquisition Collector (CALA) by categorizing the entire acquired land of the petitioner as institutional land after taking into consideration its location, institutional activity running over it as well as its potentiality has granted compensation at the rate of ₹9,000/- per sq. yard as assessed by CALA in the award dated 03.06.2016 on the basis of report qua market value of the acquired land given by District Price Fixation Committee. No sale deed or any other document to prove the market value of the acquired land of the petitioner from more than ₹9,000/- per sq. yard at the time of notification issued under Section 3-A of the Act has been produced on the file by the petitioner before the Arbitrator. The enhancement of the market rate of adjoining land of Anita Rani by this Court vide judgment dated 05.02.2021 Annex.PX/2 by placing reliance upon the judgment of Madurai Bench of Hon'ble Madras High Court in a case titled as **The Project Director National Highway Vs. M. Vijayalakshmi and another (Supra)** itself is no ground to hold that petitioner is also entitled to get enhanced rate of compensation on the ground of parity, especially when the Hon'ble Supreme Court of India in

the latest judgment as referred to above has held that Section 34 of the Arbitration Act, 1996 cannot be held to include within its power to modify an award. Hence, it cannot be said that the market rate of the land of the petitioner situated at village Khurana was ₹30,000/- per sq. yard at the time of its acquisition as claimed by the petitioner.

30. It is correct that order passed by the Arbitrator without assigning any reason for non considering the documents produced before him by the petitioners for determining the fair and just compensation of their compulsory acquired land and ignoring the said documents without any basis amounts to violation of natural justice and Article 14 of the Constitution of India, thus effecting the fundamental policy of Indian Law as held in cases titled as Jagmohan Singh Gujral Vs. Satish Ashok Sabnis (Bombay), 2004(2) R.A.J. 67, Smt. Saroj Bala Vs. Rajive Stock Brokers Ltd. (Delhi), 2005 (1) R.A.J. 637 Abhijeet Saraswat Vs. Nalamaty Doraiah (Bombay) 2004(2) R.A.J. 534, M/s Anand Brothers P. Ltd. TR. M.D. Vs. Union of India & Ors 2014(5) RAJ 755, but in the present case petitioner has not produced any sale deed showing the market value of the institutional property situated in the said area more than that of the market rate of the land in dispute awarded by the CALA as compensation to him either before CALA or before the Arbitrator. The record Annex.-II regarding number of auctions of the commercial sites situated at Banasar Enclave Sangrur done during the period from 2008 to 2014 wherein the reserve price for commercial land

was fixed as ₹49,200/- to ₹1,20,000/- per sq. yard was not produced in

evidence before the Arbitrator by the petitioner and as such it cannot be said that the Arbitrator has not taken into consideration the record of auction proceedings qua the sale of commercial land situated at Banasar Enclave Sangrur in an open auction made by the PUDA, while assessing the market rate of the land of petitioner. Moreover the area of Banasar Enclave falls within the Municipal Limit of Sangrur, whereas the land of the petitioner does not fall within the Municipal Limit of Sangrur.

31. Thus it cannot be said that the market rate of the acquired land of the petitioner has not been properly assessed by the Arbitrator especially when no other document to assess the market rate of the said land has been produced before him by the petitioner.

32. Petitioner Tejinder Singh though claimed compensation for structure, solatium on structure and interest, but no iota of evidence regarding existing of structure over his acquired land or the loss caused to the structure raised by him due to acquisition of his land has been produced on the file by the petitioner either before Arbitrator or in this objection petition.

33. In view of my above discussion, both the objection petitions, one filed by Tejinder Singh and the other filed by Executive Engineer Central Works Division on behalf of UOI, Ministry of Road and Transport fail and the same are, hereby, dismissed without any order as to costs and

both the parties will bear their own cost. Memo of costs be prepared. File be consigned to the record room, after due compliance.

Pronounced in open court
Dated: 14.09.2021.

Jyoti, steno

(Sham Lal)
Addl. District Judge,
Sangrur.
UID No.PB0123

Reg No. : 23/2019.
CNR No. : PBSG010040752019.

UOI Versus Tejinder Singh

Present: Shri P. K. Utreja, Advocate, counsel for petitioner/objector.
Shri Vishavdeep Gupta, Advocate, counsel for respondents
No.1 and 4.

Shri J.S. Rathore, Advocate, Counsel for respondent No.2.
Respondent No.3 exparte.

Respondent No.5-Arbitrator.

Vide my separate detailed order of even date, the objection petition filed by Tejinder Singh and the objection petition filed by Executive Engineer Central Works Division on behalf of UOI, Ministry of Road and Transport fail and the same are, hereby, dismissed without any order as to costs and both the parties will bear their own cost. Copy of the Judgment be placed in connected file titled as Union of India Vs. Tejinder Singh and others. Memo of costs be prepared. File be consigned to the record room, after due compliance.

Pronounced in open Court
Dated: 14.09.2021.

Jyoti, steno

(Sham Lal)
Addl. District Judge,
Sangrur.
UID No.PB0123