IN THE COURT OF HARDIP SINGH
ADDITIONAL DISTRICT JUDGE
FEROZEPUR.

PBFZ010038062019

Arbitration Case No. RBT-18 of 2019/2020
Date of Institution: 14.08.2019/22.07.2020
CIS No. ARB No. 22 of 2019
Date of Order: 04.11.2024

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

....Objector/Applicant.

Versus

1. Ashok Kumar son of Shri Chaman Lal, resident of House No. 17, Bank Colony, Talwandi Bhai, 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, Ferozepur/Zira.

4. District Administration Complex, Ferozepur/Zira.

5. State of Punjab through Secretary, Department of Revenue Civil Secretariat, Punjab, Chandigarh.

.....Proforma Respondents.

Application under section 34 of The Arbitration and Conciliation Act 1996 for setting side the award dated 31.05.2019 passed by Learned Commissioner- cum- Arbitrator, Ferozepur Division, Ferozepur in case No.7/2015/NH-15.

Present: Sh. H.K. Aggarwal, Advocate, counsel for the Objector/ applicant.
Sh. Ajay Batta and Sh. Neeraj Makol Advocates, counsel for respondent No.1.
Respondent No.2 exparte.
Sh. Sahib Singh, Government Pleader for respondent No. 3 and 5.
Objections/application against respondent No. 4 dismissed as withdrawn vide order dated 13.12.2019.

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PBFZ010041682019

Arbitration Case No. RBT-07 of 2019/2020
Date of Institution: 29.08.2019/28.02.2020
CIS No. ARB No. 54 of 2019
Date of Order: 04.11.2024

Ashok Kumar aged 74 years son of Sri Chaman Lal son of Sh. Kalu Ram, resident of Talwandi Bhai now at 17- Bank Colony, Ferozepur City. **…..Applicant.**

Versus

1. Union of India, through Secretary, Ministry of Road Transport & Highways, 5th Floor, Transport Bawan, Sansad Marg, New Delhi – 110001.

2. Project Incharge, Superintendent Engineer, Central Works, Division (PWD), Ferozepur.

3. Sub Divisional Magistrate, Firozepur exercising the powers of Competent Authority Land Acquisition (CALA) appointed by Cenral Government under the National Highways Act, 1956.

4. State of Punjab through Secretary, Department of Revene, Civil Secretariat, Punjab, Chandigarh.

5. Arbitrator appointed by the Central Government under section 3G(5) of the National Highways Act 1956 cum-Commissioner, Ferozepur Division, Ferozepur.

…..Respondents.

Application under section 34 of The Arbitration and Conciliation Act 1996 (26 of 1996) for modification of arbitral award dated 31.05.2019.

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Present: Sh. Ajay Batta and Sh. Neeraj Makol Advocates, counsels for applicant.
Sh. Harish Aggarwal, Advocate, counsel for respondent No.1
Sh. I.D. Bawa Advocate, counsel for respondent No. 3.
Respondents No. 3 to 5 exparte.

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O R D E R

1. This order of mine shall dispose of above detailed two arbitration petitions whereby both the parties have challenged the award dated 31.05.2019 passed by Arbitrator-cum-Commissioner, Ferozepur Division, Ferozepur regarding acquisition of land situated within municipal limits of Talwandi Bai, Tehsil and District Ferozepur.

Grounds of Petition of Union of India

2. The 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 respondents having remained dissatisfied with the award and 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 31.05.2019 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 made and published by the Arbitrator Cum Commissioner Ferozepur Division, Ferozepur is patently arbitrary, unwarranted in the eyes of law regarding few claims as the same were contrary to the provisions of National Highway Act, 1956, therefore, same is liable to be set aside and or modified by way of slashing the amount to the assessment level of the CALA. The objector is challenging the award, which should be decided in favour of the objector/applicant department and against respondent no.1. Infact as it is apparent that an order of multiple bundle of cases have been decided with similar routine or one order which is neither legal nor justified as per the established principles and the provisions of the Act. No such consolidation process was either contemplated or adopted or necessitated by the Arbitrator or prayed by the claimant party in any manner whatsoever. Thus the award can not be passed in such omnibus/universal and stereo type manner which will not only defy the process of justice, but will also cause lot of burden on the tax payer's money. The impugned award made and published by the Arbitrator is based upon surmises and conjecture, without inspecting the spot and has been passed against the settled principles of law and this fact has resulted into gross injustice to the Applicant/ JD and as such the same is liable to be set aside. The acquisition of the land was done for the public purpose at large and for that Notification under section National Highway Act 3-A(1) of the 1956 was published declaring its intention to acquire such land of the claimant in the Village/town question. No objections were filed by respondent/claimant before Collector, in the Land Acquisition prescribed period and Notification under section 3-D(1) was published in official gazette and further in pursuance of that the Central Government even declared 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 the respondent /claimant was acquired for above mentioned object and as such the compensation was also given for the same object. It is very important to mention here that claimant never disputed the amount/calculations arrived at by the CALA, nor he disputed the same there as per provisions of the Act as if the 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 newspapers. This fact has been totally ignored by the Arbitrator, while deciding the arbitration proceedings in hand. The impugned award was passed by the CALA after assessing all the factors. The award so passed by respondent also deserves to be dismissed with exemplary costs. The compensation so assessed is already on the higher side. Only basis to enhance the compensation amount by Ld. Arbitrator is the rates assessed at the spot/site in question and as per its location per se. The claims based on wrong facts and apparently by way of making wrong reliance on facts and the law and as such, the statement of claim as filed by the claimant is liable to be dismissed. No document regarding assessment of Market value of the land has been placed on record by the claimant/respondent no.1 nor has the Arbitrator done any effort to arrange or peruse any record like in shape of any justified sale deed, any lawful lease agreement, reliable mortgage deed or any or any other authenticated and reliable document which may justify the actual and factual prevailing market rates as should have been assessed by the Arbitrator by way of the impugned award. The corollary of documents mentioned by the objector in his written statement and the evidence during the arbitral process are the best evidences to be perused before deciding the matter in hand but none of the document so produced by the objector was relied upon by the Arbitrator. The claimant neither produced any such reliable document and nor he duly appeared as a competent witness before the Arbitrator. So by totally ignoring the provision of section 3 (G) 7 of National Highway Act 1956, in which clearly mentioned about the how to determine the market value for giving compensation and by ignoring the main provision. Learned Arbitrator has violated the provision so mentioned under section 34 of Arbitration Act. The Claimant/ respondent no.1 has not produced any document, which may be able to establish that the valuation of the land/kind of land is as such on higher side as wrongly prayed for by him in the claim. There are important points to be looked into before adjudication or passing of the award which are grossly ignored i.e. A) The market value of the land on the date of publication of the notification under section 3-A. B) The alleged report of valuation placed on record is made by private persons which has no value in the eyes of law but still same has been relied upon wrongly and illegally. C) That no income tax returns have been produced by the claimant/respondent. The alleged construction/ works were already assessed and calculated for compensation with proper formulas. D) The claims so given also deserves based to be dismissed with exemplary costs throughout for the reason that the claim is being based upon the between/adjoining locations whichever are adjacent to each other and both are in the vicinity of District Ferozepur which itself is though a municipal corporation but the property in question is located in rural area. E) If there becomes any delay in receiving the compensation, Objector/Union of India shall not be held responsible in any manner for such disbursal of the amount so finally arrived at subsequent to the final disposal of the matter in hand. Rather the Objection Applicant Union of India have been falsely implicated in the matter in hand. The award in question is erroneous and is a product of non-application of judicial mind on the part of the Arbitrator as the claims were wrongly decided by the Arbitrator arbitrarily and ignoring peculiar facts of the case and regarding the claims which were not discussed in the whole award. The award is against the law of the land and on careful perusal of the impugned award would reveal as the same is silent qua many lawful points, which were raised by the objector in the objection petition and the Arbitrator grossly and negligently ignored and consideration the facts didn't take produced by into the objector before the Arbitrator during the proceedings of the objection application. Learned Arbitrator had wrongly adopted criteria completely unknown to law as the Arbitrator ignored the pleas of the objector and the Arbitrator overlooked the necessary provisions of Arbitration Act and documents produced by the objector and respondents, while passing the award. Under Section 28 of the Arbitration & Conciliation Act, 1996, the Arbitrators are bound to pass the award according to the substantive law of India and Section 31 (3) of the said act mandates to give reasons. In the present case, the award of the Arbitrator has been passed in utter disregard of these provisions. The present impugned award in some aspects does not satisfy the requirement of a reasoned award. Therefore, the same is contrary to the provisions of the Act and is contrary to the public policy of India. Hence, if the arbitral tribunal does not dispense justice, a court acting on Wednesbury's Principle would be well within its right in upholding the challenge to the award on the ground that it is in conflict with the public policy of India. Learned Arbitrator passed the award in harsh manner and without complying the principles of natural justice. A perusal of order reveals that the order passed on the basis of presumption and no calculative method have been used and passed award in harsh manners. Hence, the impugned order is liable to be modified on this ground alone. The calculation submitted is also vague and wrong. Learned Arbitrator wrongly passed the award and the finding of the learned Arbitrator is totally wrong, illegal, and null and void, against the law, facts and principal of natural justice and the same is not sustainable in the eyes of law and as such the finding of the learned Arbitrator is liable to be set aside. As per Section 18 of Arbitration & Conciliation Act, 1996 (amended upto date), the Arbitrator has to treat parties to arbitration equally and each party shall be given a full opportunity to present his case. In the present case, the Arbitrator has ignored the said section. Thus, the Arbitrator had violated the provisions of Arbitration & Conciliation Act, 1996 while conducting the Arbitration proceedings. Learned Arbitrator has travelled beyond the provisions of NHAI and Land Acquisition Acts and had decided claims going beyond the four corners of provisions, which amounts to judicial indiscipline and is liable to be modified by the interference of this court as per the settled legal proposition of law. While deciding the present proposition everything should be decided as per time/date Notification U/s 3 (A). The amount so arrived at by the Ld Arbitrator is not only beyond the scope of the Act but the same is highly excessive. The solatium amount has been incorrectly calculated which was not required to be assessed in the manner so made.

Grounds of petition of Ashok Kumar.

3. Ashok Kumar (hereinafter referred to as land owner) has challenged the impugned award on the grounds that the Government of India, Ministry of Road Transport and Highways/NHAI expressed its intention to widen the National Highways No.15 (New NH-54) into four laining (Amritsar-Bathinda section). For this purpose a notification No.S.O.244(E) under section 3-A of the National Highways Act, 1956 was published on 05.07.2013. The said notification was published in two daily Newspapers i.e. Daily Post and Jagbani on dated 29.07.2013. Land of the land owner falls in the revenue estate of Talwandi Bhai (within the Municipal Limits) of District Ferozepur. The objections were called for u/s 3C(1)&(2) of the National Highways Act, 1956 and which were filed by him and the same were disposed off, by rejecting the said objections in routine manner, even the requisite correction regarding the extent of acquired land of the land owner pointed out to the Competent Authority Land Acquisition was not corrected. However, finally a Notification u/s 3D(1)(2) under the National Highways Act 1956 was issued vide notification no. 322(E) dated 04.02.2014 under which the acquired land vested with the Central Government as per the earlier notification without any change declaring that all the objections has been rejected

in a stereo type language, without applying judicial mind. A public notice as per the requirement of section 3G(3) without SO Number inviting the claims of compensation at Delhi for the acquired land was also published in two local news papers. However after telephonic enquiry from Ministry of Road Transport and Highways, in short referred as MORT&H, the claim statement was also submitted to the SDM cum CALA at Ferozepur. After admitting the claims of compensation in due process of time the award of compensation was passed on 30.09.2014. The Competent Authority Land Acquisition, Ferozepur has wrongly assessed the rate of compensation of land under acquisition, of village Talwandi Bhai in two classifications for each category of land i.e. land under acquisition within 1 Acre area in depth (73 Yards) and beyond 1 Acre area (after 73 yards) from Talwandi Bhai G.T. Road west to east of existing NH-15 passing through the town, which classification has been wrongly and illegally accepted by the learned Arbitrator, who has gravely erred in assessing the compensation amount of the acquired land at the same rate within two acre, as assessed by the CALA. Patti and other Sub-Divisions for the land acquired under the same scheme/project and thereby the case of the land owner has been discriminated against without any reasonable cause. The land under acquisition belonging to the land owner measuring 19311 Sq. Yard comprised of khasra No.25//2/2, 25//3, 25//9, 25//12, 25//18/1 and 25//19 situated in the revenue estate of Talwandi Bhai within the Municipal Limits was acquired, which falls under the category of beyond one acre (73 yards), further categorized as agricultural and was assessed at the rate of Rs.930/- per sq yard alongwith Solatium at 30% on the basic market value (without considering the effect of provision of section under section 3G(7)) as determined by CALA, Ferozepur and additional amount/interest @ 12% from the date of Notification u/s 3A to the date of award. In this way, learned CALA Ferozepur has under valued the compensation amount, by applying the same rate, which is applicable to land situated beyond one acre and the Arbitrator has also gravely erred in not granting compensation by applying the formula meant for acquisition of land within one acres. In the claim petition u/s 3G by citing various reasons discussed below a demand of Rs. 15000/- per sq. yards was made by the land owner and it was further contended that entire land is urban and commercial in nature which is under acquisition, is situated with the Municipal Limits of Talwandi Bhai and there are number of commercial Establishments/industries/Rice shellers/residential area/ God owns/Cold Storage so also just near to the New Grain Market surrounding the acquired land, a passage (Pacca Rasta) has been provided by the government to approach the land. The land owner was never interested to get his land acquired, due to love and affection, held from decades, and the same is also situated in the close vicinity of the town just near to New Grain Market at a distance of less than 200 yards. The learned Arbitrator has committed grave illegality in not taking note of the aforesaid facts and not considering the land being of commercial nature, while assessing its value in the arbitral award and has wrongly under valued the compensation by wrongly treating the same as land of residential nature and wrongly under valued the same, contrary to the value assessed by the Revenue Officials, on the orders of Deputy Commissioner, Ferozepur, while disposing an application filed by the land owner. Prior to the cited notification u/s 3A, the present land owner requested the then Deputy Commissioner, Ferozepur not to acquire the said land for the aforesaid purpose as the Bye-Pass should not be in close vicinity of the town and costly land will be adversely effected and is not required to be acquired and at this the then Worthy Deputy Commissioner, Ferozepur namely Sh. Manjit Singh Narang, visited the site area alongwith ADC/XEN (PWD) and recommended the Government for alternative site for acquisition vide his letter No DRA/LA/2013/1353 dated 18.06.2013 after considering the facts and other ground realities. In the meantime notification u/s 3A for acquisition was issued. In the process of claim application u/s 3G before the SDM again the New Deputy Commissioner, Ferozepur was requested to consider the nature of land for the purpose of Compensation, on the application of the land owner. The Deputy Commissioner, Ferozepur enquired the matter and sought, detailed report from the field staff of Revenue Department through SDM, Ferozepur who was also Competent Authority himself. Ultimately, Deputy Commissioner, Ferozepur advised the SDM/CALA, Ferozepur to consider the land as commercial in nature and directed the SDM for payment of commercial value vide letter No. 1745 dated 14/10/2015. Learned CALA, Ferozepur as well as the Arbitral has committed grave illegality while ignoring the said report, for arriving at the amount of compensation to be paid to the land owner, who submitted requisite application, for enhancement of the compensation assessed by the CALA, Ferozepur, before the learned Arbitrator cum Divisional Commissioner Ferozepur appointed by the Central Government. The case of the land owner is that the land under acquisition has much more value against the awarded amount of Rs.930/- per sq yard so also ignoring the self recommended rates by the competent authority at Rs.2975/- per sq. yard as per award against the demand of Rs. 15000/- per sq. yard. The arbitrator has although come to the conclusion that the acquired land can be put to use for residential/commercial purposes and land being Urban and near Grain Market but instead of granting the enhanced compensation amount at the rate of Rs. 15,000/- per Sq.yard, it under valued the acquired land and allowed very less amount treating the same as residential, at the rate of Rs.1983/- per sq.yard of second acre against the commercial rates as per the award in general without considering the enhancement of rates fixed in Award dated 30.09.2014. Actually, it happened, normally 60 meter vide land has been acquired for four laning, but in the present case of the land owner, the width of 150 meter has been acquired i.e. 45 meter extra on both side for the purpose of construction of commercial activities, amenities for Truck Lay-Bye viz. Cafitoria, Dormatary, Bath Rooms for Ladies and Gents, Petrol Pump site, Work Shop, Car/Truck Parking, Clinic, Parks, water Pump for watering of trees for Road net work perhaps the place was rightly chosen for commercial activities by the NHAI itself. Similar view was drawn by both the Deputy Commissioners as commercial land mentioned supra. Hon'ble Apex Court has ruled in the case of Meharwal Khewaji Trust (Regd) Faridkot (Civil Appeal No.4005 of 2012 arising out of SLP No.26866 of 2009 dated 27.04.2012 in which it has been held (i) Highest sale deed in the area has to be relied upon instead of formula of averaging as reported by the Naib Tehsildar. Copies of four instances, registered sale deeds were provided which shows the highest rates out of which at Rs. 4722 per sq yard. needs to be picked up and further to consider in many Govt. cases the highest auction rate in the vicinity/the nearby area is Rs. 60,030/- Per sq. yard for which five examples had been supplied with letters of allotments, these facts are also in conformity of the Punjab Govt. standing order No.28 on compensation matter for guidance addressed to the Divisional Commissioner, that while ascertaining the correct market value the cabinet (Counsel of Ministers) was not in agreement of taking the basis of averaging and was further of the view that poor farmer should be given their proper dues at the first instance without giving the chances of litigation time and again. Some of the other cases the competent authority has granted more than rate given in the present case at Rs.2975/- per sq. yard in killa No.6//18 further the project implementing authority purchased land for extra requirement by PWD for Road Net work planning, by means of registered document under the scheme of missing plots without notification at the rate of Rs. 3966/- per sq yards in Killa No.6//9, 12 which land is also part of the same project and notification of NH-15 just before the Truck Lay-Bye as pleaded. The Arbitrator has not discussed the various pronouncements of the Hon'ble Supreme

Court of India and High Court of Punjab and Haryana and has there by committed grave illegality which has resulted into miscarriage of justice. The Arbitrator has failed to appreciate the documentary as well as oral evidence produced by the land owner and has adopted procedure, which is unknown in Indian Law. In light of facts and circumstances mentioned above, The Right To Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (RTFCTLARR-2013) (No.30 of 2013) is fully applicable as clarified by the MORT&H New Delhi in the instructions dated 28th December 2017 vide para 4.2, 4.3, 4.4, of the guidelines, but for the reasons best known to the Arbitrator, it has not computed the compensation in question under the said Act which has resulted into grave miscarriage of justice and caused much financial loss to the land owner. By doing so, the Arbitrator has passed the impugned Award in an illegal manner, which is in conflict with public policy of India and as such the impugned award is liable to be modified by this Court, by exercising jurisdiction vested in it under Section 34 of "The Arbitration and Conciliation Act, 1996". The Arbitrator has also gravely erred in not awarding Solatium @ 100% against 30% wrongly granted by it on the actual market value, which has caused material prejudice to the rights of the land owner. The Arbitrator has wrongly ignored the guidelines issued by the Acquiring Agency, Ministry of Road Transport & Highways New Delhi vide No. NH-11011/30/2015-LA dated 28th December, 2017, a copy whereof was also delivered to the Ld. Arbitrator during the course of arguments and as per para 4.6(iii)(a)(b) of the instructions that the compensation would be payable in accordance with the First Schedule of the RTFCTLARR Act, 2013 in the circumstances, where an award of compensation u/s 3G had been announced/passed before 01.01.2015 but full amount of award had not been released/deposited by the acquiring agency with the CALA, the compensation would be liable to be determined, in accordance with First Schedule but the Arbitrator has gravely erred in not adhering to the aforesaid guidelines. In this case, the compensation was released by the Ministry even after 01-01-2015 and question of payment does not arise prior to that date, actually it was released much after 01.01.2015 which was started disbursing in August, 2015, hence the guidelines are fully applicable in the present case. The Arbitrator while rejecting the claim of 100% Solatium, observed that land is acquired under NH Act,1956 which provides 30% Solatium, has not applied its judicial mind and as such the impugned award is liable to be modified by way of enhancement of the awarded amount and granting 100% Solatium on the market value to be arrived at including the cost of assets attached to the land and payment made by the concerned authorities in the light of facts and circumstances narrated above. In fact, this parameter was settled for compensation purposes in view of the judgment of Hon'ble High Court of Punjab & Haryana High Court judgment, Chandigarh as mentioned in the award dated 30.9.2014 and arbitral award, the compensation was paid in the light of Land Acquisition Act, 1894 which was in force at that time. In the meantime new act RTFCTLARR- Act 2013 came in force and enactments as mentioned in fourth schedule including NH Act, 1956 we.f. 01.01.2015 came in operation for which the position has been clarified by the Central Government, as discussed above vide guidelines dated 28.12.2017 for its applicability on NH Act, 1956 mentioned Supra. In view of the clarification by the Acquiring Agency of the Central Government, It appears some wrong interpretation has been drawn by the Arbitrator while rejecting the admissibility. Thus, the land owner is entitled to the payment of Solatium @ 100% as per the comprehensive guidelines on the market value, and is also entitled to all the benefits as per schedule Second and Third of New Act, which has been wrongly and illegally declined by the Ld. Arbitrator. Learned Arbitrator has not granted interest on Solatium awarded by the CALA being part of the compensation and thereby committed grave illegality. The land owner is entitled to interest at the rate of 12% per annum on the amount of Solatium, as held by the Apex Court in various cases viz. Sunder vs UOI (2001) SCC 211 and many other cases including Punjab & Haryana High Court. The Arbitrator was bound to pass an Arbitral Award, taking note of comprehensive guidelines dated 28.12.2017 for the implementation of new RTFCTLARR Act 2013, but the Arbitrator wrongly ignored the said guidelines and thereby committed grave error, which needs intervention by this Court. The said guidelines have been issued by the Government and as such is public policy to provide justice and proper compensation to the aggrieved farmers, whose land has been compulsory acquired by the Government. Additional amount as contemplated in view of section 69(2) of the new act in terms of section 30(3) given @ 12% for 453 days under the nomenclature of interest in Arbitral award is not correct, actually it is an appreciation of land and is narrated in the award of CALA dated 30.09.2014 itself, at the end, as an "additional compensation" Since this amount is not taxable as additional amount being part of compensation for Income Tax purposes and no TDS is required to be deducted. The correct word may kindly be substituted as additional amount. The arbitral award is silent on account of interest to be granted to the applicant, on account of interest on the enhanced compensation from the date of taking possession to the date of payment and the land owner is entitled to the said interest for the cited period at the rate of 18% per annum and the provisions of Section (5) of the N.H.Act, 1956 and section 72 of the RTFCTLARR Act 2013 support the aforesaid contention. The Arbitrator has also wrong in not granting interest as claimed on account accrued Interest amount in public deposit account kept by the CALA upto the date of payment, as has no right to retain the same and he was obliged upon to disburse the same to the applicant, as held by judicial pronouncements.

4. Notice of both the petitions were issued to the respective respondents. Land owner filed reply to the petition filed by Union of India on similar grounds as that of his petition. Similarly Union of India and filed reply to the petition of land owner on similar grounds as mentioned in petition filed by Union of India. Whereas no reply has been filed on behalf of other respondents.

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

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

7. After hearing the arguments, this court finds that since this petition has 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 awared 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].

8. 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 sectin 34 of the Arbitration Act, court is not requried 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 Conreete 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.

9. First contention, which has been raised during the arguments in this case is that the Arbitrator was not authorized to pass the mandate under the Arbitration Act, since the limitation to decide the arbitration proceedings have been crossed in this case. The reference has been made to section 29A of the Arbitration Act, which reads as under:-

> "(29A). Time limit for arbitral award.-
> (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.- For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree

(3) The parties may, by consent, extend the period specified in sub-section

(1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the

application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s)appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

10. Further the reference has been made to judgment of ***Hon'ble Supreme Court of India in TATA Sons Pvt. Ltd. (Formerly TATA sons Ltd.) Vs. Siva Industries and Holding Ltd. & Ors.***

Reported in Law Finder Doc Id # 2107994 wherein it has held that "Arbitration and Conciliation Act. Section 29A. Object and scope. Section 29A applicable to all pending proceedings. Amended is remedial. It carves out international commercial arbitration from the rigour of the time line for six months. This lies within the domain of the arbitrator and is outside the purview of judicial intervention. Removal of the mandatory time limit for making an award in the case of an international commercial arbitration does not confer any rights or liabilities on any party. Since section 29A(1), as amended, is remedial in nature, it should be applicable to all pending arbitral proceedings as on the effective date i.e. 30 August, 2019." Even the Hon'ble Supreme Court of India has compared the position of section 29A Pre and Post 2019 amendment, which is as under:-

SECTION 29-A PRE AND POST 2019 AMENDMENT

Post 2015 Amendment w.e.f. 23.10.2015	**Post 2019 Amendment w.e.f. 30.08.2019**
29.A(1) The award shall be made within a period of twelve months from the date of arbitral tribunal enters upon the reference.	29.A(1)The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under Sub Section (4) of Section 23.
Explanation:-For the purpose of this sub section, an arbitral	Provided that the award in the matter of international commercial

tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be have received notice, in writing, of their appointment.	arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub section (4) of Section 23.
2)If the award is made within a period of six months from the date, the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees the parties may agree.	2)If the award is made within a period of six months from the date, the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees the parties may agree.
3)The parties may, by consent, extend the period specified in Sub Section(1) for making award for further period not exceeding six months.	The parties may, by consent, extend the period specified in Sub Section(1) for making award for further period not exceeding six months.
4)If the award is not made within the period specified in sub section (1) or the extended period specified under sub section(3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified extended the period.	4)If the award is not made within the period specified in sub section (1) or the extended period specified under sub section(3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified extended the period
Provided that while extending the period under this sub section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then it may order reduction of fees of arbitrator(s) by not exceeding five percent for each month of such delay.	Provided that while extending the period under this sub section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then it may order reduction of fees of arbitrator(s) by not exceeding five percent for each month of such delay. Provided further that where an

	application under Sub Section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application. Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.
5)The extension of period referred to in Sub Section(4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.	The extension of period referred to in Sub Section(4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.
6)While extending the period referred to in sub section(4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of evidence and material already on record and arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.	While extending the period referred to in sub section(4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of evidence and material already on record and arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.
7)In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be continuation of the previously appointed arbitral tribunal.	n the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be continuation of the previously appointed arbitral tribunal.
8)It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.	It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.

9)An application filed under sub section(5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite parties. (emphasis supplied)	An application filed under sub section(5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite parties. (emphasis supplied)

11. So, applying the ratio of above said provisions to the facts of this case, this court finds that in this case, the application for entering into the arbitration was filed by the applicants on 11.09.2015, when the applicant has challenged order dated 30.09.2014 passed by CALA and thereafter the file was put up on 30.10.2015, when the notice was issued. The contention has been raised that since the arbitrator has applied its mind to the award on 30.10.2015, whereas the amendment of 2015 was made applicable from 23.10.2015. So, since the petition has been filed prior to 23.10.2015, as such the amendment is not applicable to the facts of this case. As such, this contention of Union of India that section 29A is applicable, is not acceptable at all and is hereby decided against Union of India and the arbitration proceedings cannot be considered to be barred by the mandate of the law.

12. The next contention, which has been raised herein is that whether the land has been rightly considered as commercial by the Arbitrator or not. This fact has been challenged in both the petitions, whereby by it has been pleaded that the arbitrator has wrongly ordered the market rate to the land owner at the rate of Rs. 1983/- per sq. yard. I have gone through the entire evidence and the findings given on the said evidence by learned arbitrator and finds that the findings of learned arbitrator are correct. Since he has reached at conclusion, which is as under:-

> "The counsel for the applicant has prayed that determination of amount of compensation of acquired land of the applicant at the rate of 15,000/- per square yard being commercial land as per report dated 15.10.2014 of the Deputy Commissioner. Ferozepur along with solatium equivalent to 100% and interest at the rate of Rs.18% per annum as per law of acquisition by way of enhancement of compensation pertaining to compulsory acquisition of land of the applicant measuring 8 Kanals comprised in Rect. No.25 Killa No.8/2, 13/1 situated in the revenue estate of village Talwandi Bhai acquired for the purpose of By-Pass/Truck Lay-By in the process of construction and widening of National Highway No.15 into four lanning Amritsar to Bathinda. In evidence, the applicant has produced documents which are exhibited. The land of the

applicant is situated within Municipal Limits of Talwandi Bhai Town and is urban in nature. The necessary certificate of M.C., Talwandi Bhai in this regard was produced by the applicant. There are number of commercial establishments surrounding the acquired land. The land can be put under use for residential/commercial purposes. The land being Urban and near grain market can be used for both commercial/residential purposes. The Deputy Commissioner, Ferozepur vide letter No.DRA/LAC/2014/1745 dated 15.10.2014 intimated to SDM. Ferozepur that land of the applicant is adjoining commercial land and applicant be given compensation at commercial rate. Therefore, at least compensation at residential rate of Rs. 1983/- per square yard of second acre is required to be given to applicant. The applicant is entitled to get compensation at the rate of 1983/- per square yard for his entire land acquired by the National Highways Authority. Therefore, issues No.1 is decided in favour of the applicant and against respondents. The issue No.2 is partly decided in favour of applicant and the land in question is given residential rate. The land of applicant was acquired under the National Highway Act, 1956 which provided solatium at the rate of 30%. Therefore, 100% solatium cannot be allowed. Hence, issue No.3 is decided against the applicant and in favour of respondents."

13. The next contention raised in this case by the land owner is that the arbitrator has not granted compensation at the rate of 10% towards easementary rights entire perusal of the contentions of both the parties, clearly shows that the main point of consideration herein is that the learned Arbitrator has concluded and granted the following two reliefs in the award:-

1. The market rate announced to the applicant is hereby ordered as Rs. 1983/- per Sq. Yard.

2. The applicant is allowed solatium @ 30% on enhanced compensation alongwith interest at the rae of 12% from the date of 3-A notification to the date of award.

14. Section 3-G(2) of The National Highway Act provides that where the right of user or any right in the nature of an easement on any land acquired and the right of enjoyment of the land has been effected, he is to be given an easementary amount equivalent to 10% of the amount determined under sub section 1 of section 3G. The parameters provided under Section 3-G of National Highway Act for the determination of amount payable as compensation are as under:-

[3G. Determination of amount payable as compensation:-

(1) Where any land is acquired under this Act, there shall be paid an an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person, whose right of enjoyment in that land has been effected in any manner, whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section(1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by any agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to stage the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section(1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration :-

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason or the serving of such land from other land;

(c) the damage, if any, sustained byte person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.]

15. Even section 26 and 28 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides as under:-

26. Determination of market value of land by Collector:-

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

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

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

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisitions of lands for private companies or for public private partnership projects, which ever is higher, provided that the date of determination of market value shall be the date on which the notification has been issued under section 11.

2. The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that:-

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately proceedings three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners f the land as a part compensation, for acquisition of land, such shares in no case shall exceed twenty five percent of the value so calculated under sub-section (1) or sub-section (2) of sub-section (3) as the case may be;

Provided further that the Requiring Body shall in no case compel any owner of the land to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

28. Parameters to be considered by Collector in determination of award:-

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration:-

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition inuriously affecting his other property, movable or immovable in any other manner, of his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

sevently, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

16. Perusal of site plan available on record received from the Arbitrator clearly reveals that the land belonging to land owner Ashok Kumar has been severed into two chunks and due to said severance of the land, the easementary rights of land owner for going from one property to other are effected and the value of the land of the land owner has also been reduced. Moreover, the land owner has also moved an application before CALA for providing access/passage to his left over land, which clearly shows that due to the acquisition of land of the land owner, his right of access to his left over land has been infringed. Therefore, as per section 3-G of National Highway Act, land owner is entitled for 10% compensation as easement allowance.

17. Third point of determination, which has been raised herein is with regard to the grant of solatium. Section 30(1) of Act 2013 reads as '(30)(1) The Collector having determined the total compensation to

be paid, shall, to arrive at the final award, impose a —Solatium amount equivalent to one hundred per cent of the compensation amount.'

18. In case law N***ational Highways Authority of India vs Piare Lal and others FAO No.3513 of 2022 decided on 20.04.2023 by Hon'ble Punjab and Haryana High Court*** is related to grant of 100% solatium as the payments to the landowners was made after 31.12.2014. Even the Hon'ble Punjab & Haryana High Court in said case has held as under:-

> "15. It would be apposite to note that none of the parties is challenging the amount of compensation determined by CALA and grant of 100% solatium by the arbitrator. The only issue is as to whether the award should be set aside only for re-calculating the compensation for purpose of awarding solatium as per the recalculated amount.
>
> 16. Section 30 of the 2013 Act is reproduced:-
>
> "30. Award of solatium.-(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, imposes a 'Solatium' amount equivalent to one hundred per cent of the compensation amount.
>
> Explanation.- For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation and connected matters [16] payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for te period commencing on and from the date of the publication of the notificatio0n of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

17. As per sub-section (1) of Section 30 of the 2013 Act, the land owners shall be entitled to 100% solatium equivalent to the compensation determined by the Collector. As per sub-section (2), Collector is obliged to issue individual awards giving details of compensation payable and the details of payment of the compensation as specified in the First Schedule. Under sub-section (3), the land owners in addition to market value provided under Section 26 shall be awarded the amount calculated at the rate of 12% per annum on such market value for the period commencing from the date of publication under sub-section (2) of Section 4 till the date of award of the Collector or taking over the possession whichever is earlier.

18. Under Section 3-G (5) of the NH Act either party aggrieved of the compensation determined by CALA has a remedy for initiating the arbitration. The NHAI accepted the compensation determined and chose not to avail remedy of arbitration. The land owners opted for arbitration but are not pressing their appeals for enhancement. In other words, now the compensation determined by CALA remains unchallenged and has been accepted by both the parties.

19. From the plain reading of Section 30 of the 2013 Act, it is clear that as per sub-section (1), 100% solatium is to be paid on the total compensation determined by the Collector. The explanation to sub-section (1) further clarifies that solatium is in addition to the compensation payable to the person whose land has been acquired. In the case in hand, the compensation awarded by CALA has attained finality. The contention that only for quantifying solatium compensation should be re-calculated as per First Schedule to 2013 Act lacks merit. If the argument is accepted it would result in determining two distinct figures of compensation, first the compensation awarded and second for calculating solatium, such eventuality shall not be in consonance with the provisions of Section 30 of the 2013 Act."

19. So, since as per the above stated discussion the land owner Ashok Kumar was entitled to solatium at the rate of 100%, but the arbitrator has provided him the solatium at the rate of 30%. As such,

since in the award, the statutory benefit has not been granted. The question arose, whether this court can grant the said statutory benefit and if it is granted, will this amount to any enhancement or modification of the award. Reliance can be placed on the judgment of ***Sarjuprasad v. National Highways Authority of India (Arbitration Appeal No. 28 of 2019 etc. decided on 26.08.2021 by Hon'ble Bombay High Court (Nagpur Bench) : Law Finder Doc Id # 1891656***, the Landowners filed applications under Section 3G-(5) of the Act of 1956, seeking enhancement of compensation and determination of the same by the Arbitrator. The Arbitrator granted enhancement of compensation alongwith additional amount of 10% for loss of easementary rights. The acquiring body preferred applications under section 34 of the Arbitration Act before the District Court, who confirmed the quantum of compensation granted by the Arbitrator. Instead the said Court modified the Award by directing payment of amount of solatium of 30%, while deducting the grant of 10% amount for loss of easementary rights under Section 3- G(2) of the Act of 1956. The Court further directed payment of interest @ 12% p.a. as per Section 23(1-A) of the Land Acquisition Act, 1894, and further granted interest @ 9% p.a. in terms of section 28 of the Land Acquisition Act, 1894. Para No.14 of this case law reads as:

"(14) In this context the law laid down by the Hon'ble Supreme Court in the recent judgment in the case of The Project Director, NHAI Vs. M.Hakeem (supra), becomes relevant. The Hon'ble Supreme Court has held in paragraph 46 as follows :-

"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."

Hon'ble High Court further observed that there is substance in the contention raised on behalf of the acquiring body that the District Court could not have modified the Award under section 34 of the Arbitration Act. But, it needs to be examined as to whether the operative portion of the impugned Judgments and Orders passed by the District Court actually modifies the Award or not. Para No.21, 22 and 28 of this case law read as:

'(21) The position of law laid down by the Hon'ble Supreme Court in the above quoted paragraph in the case of Narain Das Jain v. Agra Nagar Mahapalika (supra), would show that payment of solatium and interest under the aforesaid provisions i.e. section 23(2) and 28 of the Land Acquisition Act, would spontaneously spring up and become payable to the land owners, once the compensation as per market value stands determined. Therefore, to that extent when the District Court in the impugned judgments and orders directed payment of solatium and interest under clauses (i) and (iii) of the operative portions of the orders, it cannot be said that there was modification of the Award, even though the District Court while recognizing grant of such amounts stated that the Award was being modified.

(22) Insofar as payment of 10% of amount of compensation under Section 3-G(2) of the Act of 1956 is concerned, the Arbitrator in the Award had clearly granted such amount, while the District Court in the impugned judgments and orders directed deduction of such amount. This clearly amounted to modification of the Award, which would be impermissible as per the law laid down by the Hon'ble Supreme Court in the said recent Judgment in the case of The Project Director, NHAI Vs. M.Hakeem (supra).

(28) In view of the above, all the four appeals are partly allowed and it is held as follows: -

(A) The Arbitration Award passed by the Arbitrator and confirmed by the District Court in the impugned order is upheld and the impugned judgments and orders are interfered with only to the extent that the direction of deducting 10% of compensation for loss of easementary rights under Section 3-G(2) of the Act of 1956, is set aside and further the direction to pay amount under Section 23(1-A) of the Land Acquisition Act in Clause (ii) of the impugned orders is set aside, as these directions amount to modification of the Arbitration Award.

(B) The direction in Clause (i) to pay solatium and direction in clause (iii) for payment of interest are upheld, since they are held not to be modifications of the Arbitration Award, but instead recognition of statutory amounts payable to the land owners upon determination of compensation as per market value, which automatically flow to the land owners upon determination of such compensation.'

27. Hon'ble Supreme Court has observed in para No.12 and 41 of case law Union of India v. Tarsem Singh 2019(4) R.C.R.(Civil) 431 (Law Finder Doc Id # 1587540) as:

'(12) The First Schedule to the said Act provides that solatium equivalent to 100% of the market value multiplied by various factors, depending on whether the land is situated in a rural or urban area, constitutes minimum compensation package to be given to those whose land is acquired. The Fourth Schedule to this Act, to be read along with Section 105, expressly includes under Item 7, the National Highways Act, 1956. In Item 9, this Schedule also includes The Requisitioning and Acquisition of Immovable Property Act, 1952. By a notification dated 28th August, 2015 issued under Section 105 read with Section 113 of the 2013 Act, it is provided that the 2013 Act compensation provisions will apply to acquisitions that take place under the National Highways Act. The result is that both before the 1997 Amendment Act and after the coming into force of the 2013 Act, solatium and interest is payable to landowners whose property is compulsorily acquired for purposes of National Highways. This is one other very important circumstance to be borne in mind when judging the constitutional validity of the 1997 Amendment Act for the interregnum period from 1997 to 2015. (41) There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed."

20. Section 30(1) of Act 2013 reads as: ' (30)(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a Solatium amount equivalent to one hundred per cent of the compensation amount.'

21. In case law ***National Highways Authority of India vs Piare Lal and others FAO No.3513 of 2022 decided on 20.04.2023 by Hon'ble Punjab and Haryana High Court*** is related to grant of 100% solatium as the payments to the landowners was made after 31.12.2014.

22. In view of above detailed discussion, this Court find that the land owners are entitled to get statutory benefits including 100%

solatium. Therefore, the point of determination (B) is decided in favour of the landowners/claimants.

23. As discussed above, award can be set aside, if it is contrary to substantive provisions of law, patently illegal, against fundamental policy of Indian Law, or the interest of India, or justice or morality, if it is so unfair and unreasonable. Jurisdiction of the Court to interfere with an award of an arbitrator is limited one. Adjudication of the arbitrator is generally binding between parties and it is not open to the Court to attempt to prove mental process by which the arbitrator has reached his conclusion. Civil Court examining the validity of an arbitral award under section 34 of the Act, exercises supervisory and not appellate jurisdiction over the awards of an arbitral tribunal.

24. As a result of above detailed discussion, Union of India has failed to prove that the impugned award is against fundamental policy of Indian law, or the interest of India, or justice or morality or patent illegal. Case laws relied upon by learned counsel for Union of India do not give any benefit to it. Therefore, application of Union of India being devoid of merits is hereby dismissed. However, the land owner has been awarded solatium @ 30% by the Arbitrator. Solatium is statutory benefit. The land-owner is entitled 100% solatium instead of 30% on the enhanced compensation alongwith interest @12%

alongwith 10% easementary compensation from the date of issuance of notification under Section 3A of the Act 1956 till realization. So, the application of the landowner under Section 34 of the Act 1996 is hereby partly allowed and the petition of Union of India is dismissed. Both the petitions/applications stand disposed of accordingly. Parties shall bear their own costs. This original judgment be kept in the file bearing CIS No. ARB-22 of 2019 titled as Union of India Vs. Ashok Kumar etc and copy thereof be kept in the cross petition bearing CIS No. ARB-53 of 2019 titled as Ashok Kumar Vs. Union of India. Files be consigned to the record room.

Announced in open court.

Dt: 04.11.2024.

Pritpal Singh

Stenographer Gr. II

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