

**In the Court of Charanjeet Arora,
Additional District Judge, Jalandhar.
(UID No.PB0178)**

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**CNR No.PBJL01-012191-2021.**

**CIS No.ARB/250/2021.**

**Date of institution: 29.10.2021.**

**Decided on: 09.01.2024.**

1) Union of India, through its Secretary, Ministry of Road Transport and Highways, New Delhi;

2) The Project Director, National Highway Authority of India, 44-A, Kalia Colony, Jalandhar.....(**Petitioners**)

Versus

1) Ajit Singh son of Lashu (Lacchu);

2) Jit Kaur (now deceased) daughter of Lashu, through Ajit Singh on the basis of Will. Both resident of Village Khanpur, Tehsil Mukerian, District Hoshiarpur.....(**Respondents**)

3) The Commissioner, Jalandhar Division-cum-Arbitrator, Jalandhar;

4) **Competent Authority-cum-Land Acquisition Collector, SDM, Tehsil Mukerian, District Hoshiarpur.....(Performa respondents)**

**Petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended vide the Arbitration and Conciliation (Amendment) Act, 2015 for setting aside the Arbitration Award dated 23.11.2020 (in the case MA No.45 of 2012) (Old MA No.42 of 2009) passed by the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar, performa respondent No.3.**

**Present:** Shri Abhilaksh Gaind, Advocate for the petitioners.  
Shri Harish Mahajan, Advocate for respondents No.1 & 2.  
Respondents Nos.3 and 4 are performa respondents.

**ORDER**

Under disposal by means of this order is an objection petition filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 as amended in 2015 whereby the petitioners have assailed the

Arbitral Award dated 23.11.2020 passed by performa respondent No.3 while acting as an Arbitrator in case MA No.45 of 2012 (old MA No.42 of 2009).

2. The factual matrix as can be gathered from the records of the case is that for the purpose of widening/four laning maintenance, management and operation of the National Highway No.1-A, the Government of India with intent to acquire the landed property of different persons including that of the present respondent No.1 in the area of Village Khanpur, issued a notification under Section 3-A of the National Highways Act, 1956 on **24.12.2004** and after disposal of the objections against such notification, if any preferred by the land-owners, notification under Section 3-D of the Act *ibid* was issued on **11.5.2005** thereby declaring that the land specified in the schedule of the said notification should be acquired for the purpose aforesaid. This was followed by invitation for claims from the land owners which were duly considered by the competent authority Land Acquisition Collector and considering all the relevant aspects, the compensation for the acquired land was assessed at the rate of Rs.6875/- per marla and the amount assessed was duly paid to and received by respondents No.1 & 2.

3. However, feeling dis-satisfied by the amount of compensation so awarded and paid to the land owners, the respondents No.1 & 2 invoked Section 3-G(5) of the National Highways Act, 1956 by filing an application before the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar with a prayer for enhancement of the compensation keeping in view the prevailing and fair market value of the acquired land. The case was originally heard by the Arbitrator and was decided on **10.02.2021** but the said Award was set aside vide orders dated **16.02.2012** passed by the learned Additional District Judge, Jalandhar whereby while disposing of the objections under Section 34 of the Arbitration and Conciliation Act, 1996, the matter was remanded back to the arbitrator for fresh decision.

4. After the case was remanded back for fresh decision, the learned arbitrator after taking into consideration all the relevant aspects as also the rates of compensation allowed for the adjoining and nearby villages, assessed the market value of the acquired land of respondents No.1 & 2 to the tune of Rs.1,45,000/- per Marla. Apart from this, other benefits like solatium at the

rate of 30%, interest as provided for by Section 28 of the Land Acquisition Act, 1894, easement amount to the tune of 10% as per provisions of Section 3-G(2) of the National Highways Act, 1956 and also additional compensation at the rate of 12% p.a. on the assessed market value in consonance with provisions of Section 23(1)(A) of the Land Acquisition Act, 1894 were also allowed in favour of the land owners/respondents Nos.1 and 2. It is the said Award of the arbitrator by which the petitioners felt aggrieved and have brought the present objection thereagainst praying for setting aside the arbitration Award dated 23.11.2020 passed by the Arbitrator with the submissions that the arbitrator has erred while assessing the value of the acquired land at Rs.1,45,000/- per Marla without any cogent evidence in support of such assessment. The Award is also claimed to be bad in the eyes of law as according to respondents, the subject matter of dispute is not capable of settlement by the arbitrator and it contains the decision on merits beyond the scope of submissions to the arbitration. The objectors have then reproduced the grounds provided for setting aside the Award as enunciated in Section 34(2) of the Arbitration and Conciliation Act, 1996. It is averred that the arbitrator failed to act in a judicious manner and has simply granted the benefit qua enhancement of land price without there being any basis, material or evidence for the same and thus the arbitrator failed to act independently. The arbitrator is also claimed to have exceeded his jurisdiction and the Award made by him is without jurisdiction, against law, untenable, passed without adopting legal procedure, not maintainable and nonest in the eyes of law. Non compliance with provisions of Section 31(5) of the Act as regards supply of signed copy of the Award is concerned, has also been set up as one of the grounds to set aside the arbitration Award under challenge.

5. On being put to notice of the petition, the respondent caused appearance and filed their joint Written reply wherein they raised various Preliminary objections as to maintainability of the petition. The Award passed by the arbitrator is stated to be in conformity with the public policy and the objection petition is claimed to have been filed only to harass the land owners-respondent. It is thus contended that the rate of compensation as allowed by the arbitrator after taking into consideration the compensation awarded in respect of acquired land in the adjoining and nearby villages, can

by no stretch of imagination be said to be on higher side when particularly the same rate has been allowed in respect of the land of Village Latifpur located just opposite to the location of Village Khanpur and both the villages being on the side of the national highway, have the same potential value of the land and hence the land value has rightly been assessed at the rate of Rs.1,45,000/- per marla. Thus, defending the Award as passed by the arbitrator, the respondents at last made a prayer for dismissal of the objection petition.

6. The records of the arbitral proceedings were also requisitioned from the office of respondent No.3 and on receipt of such records, I have heard the learned counsels for the parties and have perused the records of the case carefully.

7. Taking up first the contention of the petitioners with regard to the dispute being beyond the scope of arbitration, suffice it to note that Section 3-G(5) of the National Highways Act, 1956 as amended in 1997 specifically provides for adjudication of dispute through arbitration in the event of either the landowners or the acquiring authority feeling aggrieved by the price of the land assessed by CALA and since the dispute involved in the case hand squarely falls within the ambit of the said provision of law, the objection of the objectors in this regard is totally mis-conceived and has to be repelled and stands repelled accordingly.

8. As regards the objection of the petitioners with regard to non-compliance with provisions of Sec.31(5) of the Arbitration and Conciliation Act, 1996 is concerned, the said objection on the face of it is found to be mis-conceived and factually incorrect. A perusal of the certified copy of the Award appended to the objection petition shows that after the Award was passed on 23.11.2020, and a copy of the Award was applied for by the objectors on 27.11.2020 which clearly shows that passing of Award was duly made known to the objectors. The certified copy of the Award under challenge was delivered to the objectors on 02.08.2021 whereafter the present objection petition has been filed well within the period as prescribed by Section 34 of the Arbitration and Conciliation Act, 1996. Hence, the petitioners have miserably failed to show any non-compliance with provisions

of Section 31(5) of the Act ibid by the arbitrator and the contention so raised is apparently mis-conceived without there being any basis for the same.

9. As has already been taken note of while discussing factual matrix of the case, the land belonging to the respondents which stood acquired by the petitioners is situated in Village Khanpur, Tehsil Mukerian, District Hoshiarpur and upon a petition under Section 3(G) of the National Highways Act, 1956 filed by the landowners, the arbitrator has enhanced the amount of compensation as assessed by the Competent Authority-cum-Land Acquisition Collector and the enhanced compensation has been assessed at the rate of Rs.1,45,000/- per Marla and it is the said enhancement of land price coupled with grant of statutory benefits in the shape of easement, solatium and interest which has now been assailed by the petitioners in their objection petition. However, for the reasons to be followed, I find no merit or substance in the objection petition filed by the petitioners.

10. Taking up first of all the issue as to price of land as determined by the arbitrator, suffice it to note that the said price of land is not at all based upon just guess work or imagination of the arbitrator nor does such price of land appear to be hypothetical or arbitrary in any manner when viewed in the light of documentary evidence produced by the land owner before the arbitrator. A perusal of the record shows that in order to assess the fair market value of the land, the arbitrator has taken into consideration all the relevant aspects as they find mentioned in para No.9(vi) of the Award under challenge. Not only this, he has also taken into consideration the rates of land awarded in respect of the adjoining Village Aima Mangat at Rs.2 lac per marla, Village Chak Alla Baksh at Rs.2,50,000/- per Marla and above all the land of Village Latifpur assessed at Rs.1,45,000/- and since the land of Village Latifpur was found to be located on the other side of the same main road i.e. two villages facing each other on the same national highway and in respect of the land of Village Latifpur, the assessed rate of Rs.1,45,000/- already upheld by the Hon'ble High Court in **FAO No.2778 of 2016** titled as **Union of India Versus Daljit Kaur and others** decided on **10.8.2016**. Thus, the award of the arbitrator as regards rate determined for the acquired land is concerned, is found to be based upon consideration of all the material and relevant aspects and when the land of the Village just opposite to Village Khanpur has already

been awarded and upheld by the Hon'ble High Court to the tune of Rs.1,45,000/- per Marla, the assessment of land of Village Khanpur at the same rate as has been assessed in respect of the village on the other side of the road (opposite to Village Khanpur), cannot in any manner be termed to be arbitrary, excessive or in violation of any public policy. As a result, the objection of the objector as regards fixation of land price at Rs.1,45,000/- per marla is concerned, has to be repelled and stands repelled accordingly.

11. The petitioners have also assailed the benefit of solatium and interest as has been allowed by the arbitrator while passing the Award under challenge and have contended that the said benefits are not permissible and not payable to the land owners. On the other hand, the learned counsel for the contesting respondents has argued that the said benefits have been granted by the arbitrator keeping in view the provisions of Land Acquisition Act, 1894 the provisions whereof with regard to payment of interest and solatium were made applicable to the acquisitions under the National Highways Act, 1956 also by virtue of Judgment passed by our own Hon'ble High Court in the case of **'Golden Iron and Steel Forging Versus Union of India'** reported as **2011(4) Recent Civil Reports Page 375**. He thus contended that there is no illegality or violation of any law or the public policy of India warranting any interference in the Arbitral Award passed by the arbitrator and the objection petition may be dismissed.

12. As far as award of solatium at the rate of 30% and award of interest at the rate of 9% p.a. for the first year from the date of taking possession and 15% p.a. for rest of the period is concerned, it is worth while to take note of the fact that these benefits are the outcome of the provisions as contained in Section 23(2) and 28 of the Land Acquisition, 1894, which were initially inapplicable to the acquisitions under the National Highways Act, 1956 by virtue of Section 3(J) thereof. However, while rendering a Judgment in a CWP titled as **'Golden Iron and Steel Forging Versus Union of India'** (*supra*), the Division Bench of our own Hon'ble High Court struck down Section 3-J of the National Highways Act, 1956 as arbitrary, irrational and violative of Article 14 of the Constitution as far as they deny payment of solatium and interest and that in respect of all the acquisitions made under the National Highways Act, 1956 solatium and interest will have to be granted in

terms of Section 23(2) and Sec.28 of the Land Acquisition Act, 1894. While Section 23(2) of the LAA, 1894 pertains to grant of solatium to the land owners, Section 28 of the said Act pertains to grant of interest at the rate of 9% p.a. for the first year from the date of taking possession of the acquired land and at the rate of 15% for the subsequent period. The interest in the case having been awarded by the arbitrator in consonance with the provisions of Section 28 and the solatium at the rate of 30% under Sec.23(2) of the Land Acquisition Act, 1894 having been granted strictly in accordance with the provisions abovesaid made applicable to the acquisitions under the National Highways Act, 1956 by virtue of Judgment in the case of ‘Golden Iron (supra), the same does not call for any interference as such an Award cannot in any manner be termed to be against the public policy.

13. However, the Award of easement money at the rate of 10% as has been awarded by the arbitrator by means of impugned Award is found to be untenable in view of the Judgment rendered by our own Hon’ble High Court passed in **FAO No.2131 of 2014** titled as ‘**Union of India and another Versus Sarabjit Singh**’ whereby the Hon’ble High Court has already held the said benefit of easement money to be not payable to the land owners and accordingly following the law so laid down by our own Hon’ble High Court, the Arbitration Award qua easement money cannot be sustained and needs to be modified in that regard.

14. Similarly, as far as the award of additional compensation at the rate of 12% is concerned, it is worth while to note that such a benefit is provided for by Section 23(1-A) of the Land Acquisition Act, 1894 but as per the Judgment rendered by Hon’ble High Court in the case of ‘**Golden Iron (supra)**, the benefit of Section 23(1-A) of the Land Acquisition Act, 1894 dealing with grant of additional compensation at the rate of 12% p.a. was never made applicable to the acquisitions under the National Highways Act, 1956. The arbitrator has however awarded the said additional compensation at the rate of 12% p.a. also while relying upon a Judgment rendered by Hon’ble Supreme Court of India in the case of ‘Union of India Versus Tarsem Singh and others’ decided on 19.9.2019 whereby benefits payable under Sec.23(1-A) of the Land Acquisition Act, 1894 were also made payable to the acquisitions under the National Highways Act, 1956. Here it is worth while

to take note of the fact that in a subsequent decision rendered by the Hon’ble Supreme Court while deciding a Miscellaneous Application Diary No.2572 of 2020 in the case of ‘**National Highway Authority of India Versus Tehal Singh and others**’ it stood clarified that Section 23(1-A) as was included in the Judgment of ‘Tarsem Singh (supra)’ was infact not present before any authority or the court on the facts of these cases and accordingly the expression/word “(1-A) and” occurring in Paragraph No.41 of the Judgment in the main case was ordered to be deleted. This being the situation, the position as it existed after passing of Judgment in the case of ‘Golden iron (supra)’ got reverted and only the benefits of solatium under Sec.23(2) and interest payable under Sec.28 of the Land Acquisition Act, 1894 can be said to be payable to the landowners. Thus being of the considered view that the said benefit of additional compensation at the rate of 12% p.a. under Sec.23(1-A) of the LAAct, 1894 and easement money at the rate of 10% is not permissible in the case in hand, I am of the considered view that except for modification of the arbitral Award only with regard to the said benefit of additional compensation under Section 23(1-A) of the Land Acquisition Act, 1894 which was never made applicable to the acquisitions under the National Highways Act, 1956, and the Award of easement money, the rest of the Award warrants no interference and deserves to be upheld.

15. Accordingly, while modifying the Award to the extent it relates to Award of additional compensation at the rate of 12%p.a. and easement money at the rate of 10% as allowed by the arbitrator and holding the said benefits to be not payable to the land owners/respondents Nos.1 and 2, the rest of the Award is upheld and the objection petition filed by the petitioners is hereby partly allowed. Memo of costs be prepared and the file be consigned to the Record Room.

Pronounced:  
09.01.2024.

(Charanjeet Arora)  
Additional District Judge, Jalandhar.  
UID No.PB0178

**Memo of costs**

| <b><u>Nature of cost.</u></b>  | <b><u>Petitioner</u></b> | <b><u>Respondent</u></b> |
|--------------------------------|--------------------------|--------------------------|
| Court fee stamp on petition    | Rs.300-00                | Rs.00-00                 |
| Court fee on Power of Attorney | Rs. 10-00                | Rs.10-00                 |
| Process fee                    | Rs. 50-00                | Rs.00-00                 |
| Subsistence for witnesses      | Rs. 00-00                | Rs.00-00                 |
| Misc.expenses                  | Rs. 00-00                | Rs.00-00                 |
| <b>Total:</b>                  | <b>Rs.360-00</b>         | <b>Rs.10-00</b>          |

Given under my hand and seal of the Court, this 09<sup>th</sup> day of January, 2024.

(Charanjeet Arora)  
Additional District Judge, Jalandhar.  
(UID No.PB0178)

