In the Court of Kewal Krishan,
Addl. District Judge, Ferozepur(UID: PB0182)

Case type	Arbitration
CIS No.	ARB/27/2019
CNR No.	PBFZ010038222019
Date of Institution	16.08.2019
Date of Registration	16.08.2019
Date of Order	27.03.2024

Union of India, Ministry of Road and Transport through National Highways Authority of India through its Project Director, Project Implementation Unit, #16308, Street No.13/9, Dhillon Colony, Barnala Road, Bathinda.

………..…....Applicant

Versus

1. M/s Shah Rice Mills, Talwandi Bhai, Tehsil and District Ferozepur, a sole proprietorship firm through its proprietor Gurmeet Singh son of Wakil Singh, resident of Ward No.4, Gali No.2, Talwandi Bhai, Tehsil and District Ferozepur.

2. Sh. Sumer Singh Gurjar, 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.

……....Performa Respondents.

Objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the order dated 31.05.2019 in case No.10/2015/NH-15 made by Arbitrator cum Commissioner, Ferozepur Division, Ferozepur.

Present:

Sh. Harish Aggarwal Advocate counsel for the applicant.

Sh. Ranjit Saini Advocate counsel for the respondent No.1 through VC, whereas Sh. Ajay Batta Advocate has appeared in the Court.

Respondents No.2, 3 & 5 exparte.
Name of respondent No.4 deleted from the array of respondents vide order dated 27.01.2020.

And

Case type	Arbitration
CIS No.	ARB/55/2019
CNR No.	PBFZ010041942019
Date of Institution	30.08.2019
Date of Registration	30.08.2019
Date of Order	27.03.2024

M/s Shah Rice Mills, Talwandi Bhai, Tehsil and District Ferozepur, a sole proprietorship concern through its proprietor Gurmeet Singh son of Wakil Singh, resident of Ward No.4, Gali No.2, Talwandi Bhai, Tehsil and District Ferozepur.

…......Applicant.

Versus

1. Union of India through Secretary, Ministry of Road, Transports & Highways, 5th Floor, Transport Bhawan, Sansad Marg, New Delhi-110001.
2. Project Director, National Highways Authority of India/ Superintending Engineer, Central Works Circle, Punjab, PWD B&R), Ferozepur (NH-15).
3. Sub Divisional Magistrate, Ferozepur, exercising the powers of Competent Authority Land Acquisition (CALA) appointed by the Central Government under the National Highways Act, 1956.
4. State of Punjab through Secretary Department of Revenue, 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, for modification of arbitral award dated 31.05.2019 passed by respondent No.5 in Arbitration Case No.10/2015/NH-15 whereby less amount of compensation was enhanced by respondent No.5 with CLAIM for enhancement of compensation by modification of the impugned award.

Present:
Sh. Ranjit Saini Advocate, Ld. counsel for the applicant through VC
Sh. Harish Aggarwal Advocate Ld. counsel for respondents No.1 and 2.
Respondents No.3 to 5 exparte.

Judgment (Consolidated):

1. An award dated 31.05.2019 was passed by the Arbitrator-cum-Commissioner Ferozepur Division, Ferozepur. Union of India has challenged the said award vide above application under Section 34 of the Arbitration and Conciliation Act, 1996. M/s Shah Rice Mills has filed separate application under Section 34 of the said Act. Both these applications are being decided vide this consolidated judgment. Arbitral Record is already received.

Facts of application of Union of India

2. Brief facts of the application of Union of India are that the main object and purpose of Union of India through Acquiring Authority is to implement the National Highway Development and consequently to develop Expressways, New Highways, construction of bypasses, bridges and their approaches, National Highways Building or Improvement of existing facilities or any other needful act as per letter and spirit of the NH Act, all for the welfare of public at large. To achieve the object and goal of the Act, Ministry of Road and Transport is empowered to acquire the land under National Highways Act, 1956, for the purpose of construction of new Highways, Bypass, Bridges and their approaches etc. The

respondent No.1 having remained dissatisfied with the award as passed by CALA, 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 before the respondent No.2. 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. It is liable to be set aside and/or modified by way of slashing the amount to the assessment level of the CALA. In fact, 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. 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. Even the relevant factors as argued by the applicant/respondent were grossly ignored and thus, the same has caused grave prejudice to them. The applicant/JD has produced comprehensive evidence, which was ignored. The impugned award is based upon surmises and conjecture. Before deciding the award, no spot inspection was conducted by the Arbitrator nor any procedure was signed by the claimant party. The claimant never disputed the amount/calculations arrived at by the CALA. Every information regarding the notification was properly informed by the CALA and got published in the newspapers. The impugned award was passed by the CALA after assessing all the factors. The entire claim of the claimant is vague, bogus and evasive. He has unnecessary filed the Objection application. No document regarding assessment of market value of the land has been placed on record by the claimant. There are important points to be looked into before adjudication or passing of the award. The Arbitrator has ignored the market value of the land on the date of publication of the notification under section 3-A. The alleged report of valuation is made by private persons, which has no value in the eyes of law, but still same has been relied upon wrongly and illegally. No income tax returns have been produced by the claimant. The alleged construction/works were already assessed and calculated for compensation with proper formulas. The award is erroneous and is a product of non-application of Judicial mind on the part of the Arbitrator. It is against the law of the land. Under Section 28 of the Arbitration & Conciliation Act, 1996, the Arbitrator is 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 Ld. Arbitrator has been passed in utter disregard of these provisions. It is in conflict with the public policy of India. 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. A prayer has been made to set-aside and modified the Impugned award.

3. The landowner/respondent No.1 appeared through its counsel and filed written statement taking preliminary objections that the objection petition has not been filed by an authorized and competent person. The objector has concealed the material and relevant acts from the court. On merits, it was replied that they had raised objections, which were not decided in accordance with law and no speaking order was passed by the Competent Authority. This award has been challenged by way of modification for further enhancement. The acquired land of the landowners falls within municipal limits. The arbitrator has relied upon the documents placed on record and passed the award. Remaining averments made in the application were denied and a prayer for dismissal of the same was made.

Facts of application of Landowner

4. Brief facts of the application of landowner are that the arbitral award dated 31.05.2019, given by respondent No.5 in respect of dispute having been arisen between the parties regarding the extent of compensation order to be given by the respondent No.5 to the applicant regarding compulsory acquisition of its landed property, situated within the Municipal limits of Talwandi Bhai, Tehsil and Distt. Ferozepur for widening of National Highway-15 (New-NH-54) from Amritsar to Bathinda, under National Highways Act 1956, whereby the Arbitrator while disposing of the claim petition filed by the applicant under Section 3-G (5) and (6) of the National Highways Act 1956 (48 of 1956) against the award No.1224 of 2014 dated 30.09.2014 announced by the Competent Authority Land Acquisition/Sub Divisional Magistrate, Ferozepur, granting the amount of compensation @ Rs.2,975/- per sq. yard has passed arbitral award enhancing the compensation amount from the amount of Rs.2,975/- per sq. yard to the rate of Rs.8,595/- per square yard, Solatium @30% on the enhanced amount of compensation along with interest @12% from the date of notification under Section 3-A to the date of award, besides severance allowance @30% of the compensation amount on the acquired land at the rate of Rs.1,983/- per sq.yard, due to bifurcation of the remaining land, while enhancing the amount of compensation assessed vide award No.1224 of 2014 passed by Respondent No.3, whereby the latter has awarded compensation at the rate of Rs.2,975/- per square yard along with solatium @30% as stated above and additional compensation @12% from the date of notification under Section 3-A till the date of (which has been wrongly interpreted as interest) and the said Arb Award is liable to be modified. The applicant/claimant is entitled to the enhanced compensation by way of acceptance of the application. After Notification, the objections were called for U/s 3C(1)&(2) of the National Highways Act, 1956, which were filed by the applicant/claimant, which were rejected without applying judicial mind. After admitting the claims of compensation in due process of time, the award of compensation was passed on 30.9.2014. CALA, Ferozepur wrongly assessed 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. The land under acquisition belonging to the claimant measuring 0.3004 Hectare equivalent to 5 kanals 18 marlas i.e. 4 kanals 12 marlas out of land comprised in Khasra No.21M//3 (8-0) and land measuring 1 kanals 6 marlas out of land comprised of Rect No.21M, Killa No.8/1 and land measuring 0.0034 Hectares equivalent to 1 kanals 7 marlas being 30/147 share of land measuring 7 kanals 7 marlas comprised of Rect No.6M//22/2 (6-0), 23/1 (1-7) situated in the revenue estate of Talwandi Bhai within the Municipal Limits was acquired, which was categorized as commercial and was assessed at the commercial rate of Rs.2,975/- per sq. yard of second acre for his entire land under acquisition, alongwith Solatium at 30% on the basic market value 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, CALA Ferozepur has under valued the compensation amount. There are number of commercial Establishments/industries/Rice shellors/residential area/Godowns/ Cold Storage so also just near to the New Grain Market surrounding the acquired land. The applicant/claimant was never interested to get his land acquired, due to love and affection, held from decades, where he was running his business which was the only source of livelihood of the applicant and the same is also situated in the close vicinity of the town. The Arbitrator has committed grave illegality in not taking note off the aforesaid facts and not taking note off the value at the rate of Rs.25,000/ per sq yard as determined by the Deputy Commissioner vide its report dated 15.10.2014. Prior to the notification U/s 3A, the claimant requested the then Deputy Commissioner, Ferozepur not to acquire the said land as the Bye-Pass should not be in close vicinity of the town and costly land will be adversely effected. 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. CALA, Ferozepur as well as the Arbitrator has committed grave illegality for arriving at the amount of compensation. The Arbitrator has although come to the conclusion that the acquired land is of commercial nature, but instead of granting the enhanced compensation amount @ Rs.25,000/- per Sq. yard, it under valued the acquired land and allowed very less amount at the rate of Rs.8,595/- per sq. yard by wrongly ignoring the report dated 15.10.2014 of the Deputy Commissioner, Ferozepur. The case of the applicant/claimant has been discriminated from other acquisition cases of similar nature under the same project, wherein awards have been passed by other CALAs viz. Tarn Tarn, Patti and Bathinda and of other cases acquired for widening purposes N-15 road for the same project. The Arbitrator has failed to appreciate the documentary as well as oral evidence produced by the applicant/claimant 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 (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 rersulted into grave miscarriage of justice and caused much financial loss to the applicant/claimant. 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 applicant/claimant. In this case, the compensation was released by the Ministry even after 1-1-15 and question of payment does not arise prior to that date, actually it was released much after 1-1-15 which was started disbursing in August, 2015. 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 value to be arrived at including the cost of assets attached to the land and payment made by the concerned facts and circumstances narrated above. The Arbitrator has not granted interest on Solatium awarded by the CALA being part of the compensation and thereby committed grave illegality. The applicant/ claimant is entitled to interest @12% per annum on the amount of Solatium, as held by the Apex Court in various cases viz. **Sunder vs UOI** (2001)SCC 211. 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 30/9/2014 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 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 applicant 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 RTFCRR Act 2013 support the aforesaid contention. 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. Besides the compensation awarded in the arbitral award, in view of the provisions of section 3G(2), compensation @ 10% towards easmentary rights as applicable have not been granted, to which the applicant is entitled in the light of Punjab & Haryana High Court decision in the case of **Phool Singh vs NHAI** in CWP No.29431 of 2017 as the applicant has been materially prejudiced by the infringement of his right of way, and govt. road provided from the other side has been closed by placing fencing and no cut out in the road net work in between the land divided in two parts, damaged by means of 6/7 feet height by un-leveled and various other reasons and the same has also badly affected the left over land. The National Highways Authorities have failed to construct a metalled drainage system for draining water because of which the rainy water enters the left over land of the applicant which damage his property.

The rate of compensation for the entire acquired land which has been held to be of commercial nature, be given @Rs.25,000/- per sq.yard along with solatium amount equivalent to 100% of the compensation and interest at the rate of 18% per annum as per law of acquisition by way of enhancement of compensation and in addition thereto Rs. 19,15,00,000/- in all i.e. Rs.1,50,00,000/- as the costs of construction of shed, which are the part of the acquired portion of the Rice Mill and the costs of damages of the Rice Mill building is Rs.2,50,00,000/- and damages to the machinery is of Rs. 15,00,00,000/- and business.

5. The respondents No.1 and 2 i.e. Union of India, and Executive Engineer (Central Works Division) PWD B&R filed their reply taking pleas that the application is not maintainable. It is counter blast to the application of Union of India. The landowner has not come to the Court with clean hands. The pleas taken in the application U/s 34 of the said Act filed by Union of India have also been taken in the written statement. A prayer for dismissal of the application of landowner was was made.

6. In the present case, issues have not been framed as the same are not required to be framed for the purpose of deciding present applications. Hon'ble Supreme Court has observed in **Fiza Developers & Inter-Trade P. Ltd. v. AMCI(I) Pvt. Ltd.** 2009(4) R.C.R.(Civil) 288 Law Finder Doc Id # 202800 that Court not required to frame issues.

7. Arguments are heard. Learned counsel for the applicant Union of India has argued in support of the pleas as taken in the application and in the written statement filed in the separate application of landowner, which are not being repeated. Ld. Counsel further argued that the impugned award was passed by the Arbitrator after termination of his mandate. No extension U/s 29-A of the Arbitration and Conciliation Act, 1996 was sought. This Award is nullity. Thus, the application of Union of India deserves to be accepted by setting aside the impugned award and the application of land-owners deserves dismissal. Ld. Counsel has relied upon case laws **Balak Ram and others vs NHAI** 2023(2) Latest HLJ (H.P.) 1325 Law Finder Doc ID No.2347203, **TATA Sons Pvt. Ltd. (Formerly TATA Sons Ltd.)** 2023(5) SCC 421 of Hon'ble Supreme Court, '**M/s Suryadev Alloys and Power Pvt. Ltd. and Others Vs. M/s Shri Govindaraja Textiles Pvt. Ltd. and Ors** 2020(2) LW 961 of Hon'ble Madras High Court, **ONGC Petro Additions Limited vs Ferns Construction Co. Inc.** 2020(3) RCR (Civil) 522, **Puran Singh vs Land Acquisition Officer & another'** decided on 21.09.2023 by Hon'ble High Court of Himachal Pradesh, **Roop Singh Bhatty vs M/s Shriram City Union Finance Limited** 2022 AIR (Telangana) 93.

8. On the other hand, learned counsel for the respondent/ landowner has submitted the written arguments to the effect that CALA passed the award on 30.09.2014, but payment was not deposited by NHAI till 31.12.2014, and it was only after 05.01.2015, when Government of India, Ministry of Road Transport and Highway sent the funds for land acquisition as per award in various Districts. Thus, the claimant is entitled for 100% solatium alongwith interest on the award amount. With regard to the judgment passed in **M. Hakim Case**, it was interpreted by Hon'ble Bombay High Court, Nagpur Bench in Arbitration Appeal No.28 of 2019 decided on 26.08.2021, wherein it was held that granting of statutory benefits i.e. Solatium and interest does not amount to modification of the judgment as laid down in M. Hakim case and District Judge is well within jurisdiction to grant these benefits. While following the verdict given by Hon'ble Bombay High Court, Learned Additional District Judge, Patiala granted 100% solatium to the landowners. Case law **'Shri Sarjuprasad and ors. Vs National Highways Authority of India & ors.'** decided by Hon'ble Bombay High Court (Nagpur Bench) on 26.08.2021 (Law Finder Doc ID No.1891656.

9. Regarding applicability of Section 29-A of the Act, it was submitted that as per the Arbitration and Conciliation Act (Amendment Act 2015) was made applicable w.e.f. 23.10.2015. Sections 29A, 26, 21 of the said Act were referred. The explanation to sub-section (1) of Section 29-A specifically stipulates that an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the Arbitration or all the arbitrator as the case may be, have received notice in writing of their appointment. Thus, it is the date of the appointment of the Arbitrator which is relevant and required to be seen in the present case. In this case, Arbitrator was appointed on 16.07.2015 and thereafter, the claimant filed claim petition before Arbitrator. Thus, as the settled law, the Arbitrator and Conciliation Act (Amendment Act 2015) has no applicability in the present case. Even the judgment titled as **Tata Sons Lvt. Ltd. Vs Siva Industries & Holdings Ltd.** heavily relied upon by Learned Counsel for NHAI, in para No.36 specifically says that Section 29-A (I) shall be applicable to all pending proceedings seated in India as on 30.08.2019 and commenced after after 23.10.2015. In view of the explanation to Section 29-A (I) read with Section 21 of the Principal Act, Section 29-A of the Arbitration and Conciliation Act (Amendment Act 2015) is not applicable to the present case. Ld. Counsel has relied upon case laws **Snehdeep Auto Centre vs Hindustan Petroleum Corporation Ltd.** Law Finder Doc ID No.400102 decided by the Division Bench of Hon'ble Bombay High Court on 16.04.2012, **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.

POINTS FOR DETERMINATION

After hearing Learned Counsels for parties and on gone through the record, following points for determination arise for consideration and decision by this court:-

(A) Whether the landowner is entitled to get statutory benefits including 100% solatium?

(B) Whether the impugned award of the Arbitrator suffers from patent illegalities and the same is in conflict with the public policy of India? If so, its effect?

(C) Whether the impugned award is a nullity having been passed after the mandate of the Arbitrator had already expired as per the provisions of Section 29-A of the Act of 1996? If so, its effect?'

10. Acquisition of land of the landowner is an admitted fact. The Competent Authority Land Acquisition-cum-Sub Divisional Magistrate, Moga passed award dated 30.09.2014. The rates of land were assessed as follows:

Sr. No.	Name of village	Basic Market rate of compensation per acre		
		Agri (per acre)	Resi (sq. yds)	Comm. (sq. yds)
1.	Talwandi Bhai (Both side within 1 acre of Talwandi Bhai main chowk to Zira Road	50,00,000/-	3966.942/-	8595.041/-
2.	Talwandi Bhai (After 1 acre of Talwandi Bhai GT Road	45,00,000/-	1983.471/-	2975.207

CALA also awarded Solatium 30%, Additional compensation @12% from the date of Notification i.e. 05.07.2013 to the date of award, compensation to be paid for buildings/structures/Tubewells & wells.

11. Present landowner was not satisfied with the Award of CALA and filed an application under Section 3 (A to G) of the National

Highways Act 1956. The impugned order was passed on 31.05.2019 by the Arbitrator. The relevant para relating to the observations made by the Arbitrator reads as:

'*I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the record placed on the file. It is a matter of record that land/property of the applicant has been declared as commercial by the Land acquisition Collector. In evidence, the counsel for the applicant has placed on record documents exhibited as Ex.P1 to Ex.P9. The main ground taken by the applicant is that there was a Rice Sheller running on the land in question and entire land is commercial and comprised is in one unit. The Deputy Commissioner. Ferozepur vide letter No.DRA/LAC/2014/1744 dated 15.10.2014 also directed SDM. Ferozepur to give commercial rate to the applicant. The applicant has been given commercial rate of Rs.2975/- per square yard for entire land. According to entries in jamabandi for the year 2009-10 Ex.P9, the land comprised in Rect. No.21. Killa No.2,3 and 8/1 is Gair Mumkin Sheller. Therefore, the land is commercial. The Rice sheller is comprised in one unit and entire land under Rice sheller is to be considered as commercial by giving the same rate of Rs.8595/- per square yard for the entire land. But the land acquisition Collector has given less rate for the commercial land located beyond one acre from the G.T. Road, which is not justified. I also visited the spot. There is Rice Sheller, installed on the* *land. There is no partition or any other thing, which can differentiate between first acre and 2nd acre in this case. The total land/Rice Sheller is a single unit owned by single owner. Therefore, two rates cannot be given to this land because if there is a single owner of any piece of land on the road side generally, the owner will claim same rate of the whole land. Therefore, it should be considered as single unit. The applicants are entitled to get compensation at commercial rate of Rs.8595/- per square yard for entire land covered under Rice Sheller being single commercial unit irrespective of the distance from G.T. Road. Therefore, issue No.1 and 2 are decided in favour of the applicant and against the respondents. The applicant is held entitled to get commercial rate of Rs.8595/- per square yard for his entire acquired land respective of the fact that land is situated within one acre or beyond one acre. In the present case land was acquired under the National Highways Act, 1956 under which the provisions of only 30% solatium is there. The solatium of 100% is admissible under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which is not applicable in this case. Therefore, issue No.3 is decided against the applicant and in favour of the respondents.'*

12. The Arbitrator enhanced the rate from Rs.2975/- per sq. yard to Rs.8595/- per sq. yard. Solatium @30% on the enhanced compensation and interest @12% from the date of 3-A notification to the date of award were also allowed on enhanced Compensation. This Court has gone through the record and agrees with the observations made by the Arbitrator for considering the entire acquired land as one unit.

13. Further, it is an admitted fact that the amount was deposited with CALA after 05.01.2015 i.e. after 31.12.2014. Thus, question of any evidence regarding payment to the landowner before 31.12.2014 does not arise at all. The act of the Arbitrator ignoring the fact the amount was deposited with CALA after 31.12.2014 is illegal. Para No.4.6 (iii) (a) of the Comprehensive Guidelines dated 28.12.2017 of the Ministry of Road Transport and Highways read as:

'*(iii) By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act , 1956 with effect from 01.01.2015. As such, the following is clarified: (a) All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.'*

14. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013) reads as:

'(24) Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.'

15. As no payment to any landowner was made before 1.1.2015, the new Act of 2013 is applicable.

16. In **'Shri Sarjuprasad and ors. (supra)** Hon'ble Bombay High Court (Nagpur Bench) has observed that to the extent when the District Court directed payment of solatium and interest, 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. The case law '**The Project Director, National Highways Authority of India vs M. Hakeem**' of Hon'ble Supreme Court was also referred in this case law by Hon'ble High Court.

17. 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.'

18. 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.*'

19. In case law **National Highways Authority of India vs Piare Lal and others** (supra) is related to grant of 100% solatium as the payments to the landowners was made after 31.12.2014.

20. In view of above detailed discussion, this Court find that the landowner is entitled to get statutory benefits including 100% solatium. Therefore, the point of determination (A) is decided in favour of the landowner/claimant.

21. **Points of determination B and C are interconnected and interlinked. In order to avoid repetition in findings, these are being decided together.**

22. Section 29-A of the Act of 1996 was originally not there and it was inserted by Act 3 of 2016 and was brought into force w.e.f. 23.10.2015. The said section 29-A provides the time limit for Arbitral Award. It was provided in the Said section that the award in matters other than International Commercial Arbitration shall be made by the Arbitral Tribunal within a period of 12 months from the date of Arbitral Tribunal enters upon the reference. The explanation to the said Section also provided that an Arbitral Tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator received notice in writing of his appointment.

23. Section 29-A was further amended in the year 2019 w.e.f. 30.08.2019 wherein the said time limit of 12 months for making the award by Arbitral Tribunal is to begin from the date of completion of pleadings.

24. Section 21 of the Arbitration and Conciliation Act, 1996 read as: '***21. Commencement of arbitral proceedings***.*—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.'*

25. In **TATA Sons Pvt. Ltd. (Formerly TATA Sons Ltd.) vs Siva Industries and Holdings Ltd. & Ors** (supra), Hon'ble Supreme Court held that 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. Para No.36 of this case law reads as:

'*(36) In* ***Shapoorji Pallonji****, the Delhi High Court had held that amended* *section 29A(1) of the Arbitration and Conciliation Act, being procedural law, would apply to the pending arbitration as on the date of the amendment. However, a coordinate bench in* ***MBL Infrastructures Ltd v. Rites Ltd. OMP (Misc) (Comm) 56/2020****, as decided on 10 February 2020 held that the amended Section 29A would be prospective in nature, without referring to the earlier order in Shapoorji Pallonji. Finally, the Delhi High Court in* ***ONGC Petro Additions*** *settled the controversy and reiterated the position of law as laid down in Shapoorji Pallonji. The Court, inter alia, stated that Section 29A(1) shall be applicable to all pending arbitration seated in India as on August 30, 2019 and commenced after October 23, 2015, and there is no strict time line prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Act, seated in India.*'

26. In '**M/s Suryadev Alloys and Power Pvt. Ltd. and Others (supra)** Hon'ble Madras High Court has held that it is only the Court that can extend the period for making of the award after the expiry of the One year period under Section 29A(1) or the extended period under Section 29A(3). However, even the Court cannot ratify an award ex post facto by extending the period in a petition filed under Section 34 by an aggrieved party.

27. In **Puran Singh vs Land Acquisition Officer & another** (supra) Hon'ble High Court of Himachal Pradesh has observed that the provisions of Section 29-A of the Act of 1996 are equally applicable to the arbitrator appointed under Act of 1956.

28. In **Roop Singh Bhatty** (supra) Hon'ble Telangana High Court has observed that Section 29A of the Act, 1996, as it stood when awards were passed mandates that the award should be passed within a period of twelve months from the date Arbitration Tribunal enters appearance. Para No.14 of this case law reads as:

'(*14) The provision as it stood was in mandatory terms and leaves no scope to infer otherwise. The intention of the Parliament is made abundantly clear from the reading of Sub-sections (3) and (4). Sub-section (3) enables parties by consent to extend the time by further period of six months. But it also makes it clear that it should not be extended beyond six months. According to sub-section (4), after the initial period of one year and extended period of six months, if extended by consent, the mandate of the arbitrator terminates. Thus, he becomes functus-officio after that period and, therefore, seizes to be an arbitrator. An arbitrator is a creature of the statute and has to work within the four corners of the Act.*'

29. Para No.8 of case law **Snehdeep Auto Centre vs Hindustan Petroleum Corporation Ltd.** (supra) of Division Bench of Hon'ble Bombay High Court reads as: '(8) In the case at hand after the period stipulated of six months was over on November 3, 2006, the respondent made further submission in the arbitration proceedings on December 14, 2006. The respondent made further submissions on December 21, 2006. On March 3, 2007 the period of four months thereafter expired. Thereafter on March 12, 2007 both the parties therein submitted their Written Statement. In the written submission, the respondent did not contend that the mandate of arbitrator had come to an end. Thus, the respondent did not take a clear and unambiguous stand that, the arbitrator cannot proceed to declare the award as his mandate has come to an end. This conduct of the respondent amounts to clear waiver to the objection of time limit being mandatory requirement for pronouncement of the award. Making submissions and filing written submissions cannot be termed as formal steps but were integral part of the proceedings before the arbitrator. The respondents had opportunity, both at the time of making oral submissions on December 14, 2006 and December 21, 2006 to raise the contention that the mandate of the arbitrator has come to an end by efflux of time. Respondent also had an opportunity to put on record this contention in the written submissions filed on March 12, 2007. This conduct of the respondent amounts to clear waiver on their part to the condition of time limit stipulated in the agreement.'

30. The Landowner M/s Shah Rice Mill filed the application under Section 3 (A to G) on 24.09.2015 registered as Arbitration case

No.10/2015 on 18.11.2015 and the Arbitrator passed the impugned award on 31.05.2019 i.e. before August 30, 2019. Section 29-A of the Act of 1996 was inserted by Act 3 of 2016 and was brought into force w.e.f. 23.10.2015. The said section 29-A provides the time limit for Arbitral Award. This Court finds that as the application of landowner was already decided before 30.08.2019 i.e. on 31.05.2019, the original inserted provision 29-A came into force w.e.f. 23.10.2015 is applicable, which reads as:

‘(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."

31. In **Balak Ram and others** (supra) Hon'ble Himachal Pradesh High Court has observed that as per section 29A(1) of the Arbitration and Conciliation Act, the award has to be made within a period of 12 months from the date the Arbitral Tribunal enters upon the reference. Section 29A(3) provides for extension of the period specified in sub section (1) for a further period not exceeding six months by the consent of the parties. An arbitral award, therefore, can be made within a period of 12 months from the date the Arbitrator enters upon the reference. The parties can extend this period by consent for a further period not exceeding six months. An award made beyond 12 months under Section 29A(1) or 18 months under Section 29A(3) shall not be valid. It was further observed by Hon'ble High Court that the court can extend the mandate of the Arbitral Tribunal as per Section 29A(4). Para No.4(iv) of this case law reads as:

'(*In view of above discussion on facts & law, it has to be held that consent of the parties envisaged under Section 29A(3) of the 2015 Arbitration & Conciliation Act for extending the arbitral period need not necessarily be either express or in writing. There can be a deemed consent, an implied consent of the parties, which can be gathered from their acts and conduct. Their acquiescence in proceeding with the arbitration case beyond twelve months without raising any objection to the continuation of proceeding does amount to consent. On the basis of such consent, the arbitral award if passed within a further period of six months would be a valid award. In the given facts, consent of the parties to continue the arbitral proceedings beyond the period of one year (12 months) from the date the Arbitrator entered upon the reference, is writ large. The award was passed by the Arbitrator within further period of two months. The award was thus saved by Section 29A(3) of the Act as it was passed within the period permitted under Section 29A (3) of the Act. The conclusion drawn by learned District Judge about the award being illegal having been passed beyond the mandated period, therefore, being* *illegal, cannot be justified.*'

32. In the present case, the Divisional Commissioner, Ferozepur Division, Ferozepur under the provisions of Section 3G of the Act of 1956 was appointed as Arbitrator by the Central Government by his official designation i.e Commissioner Ferozepur Division (ex-officio) was appointed as Arbitrator to deal with arbitration matters of District Ferozepur under the National Highways Act under section 3G. The Landowner M/s Shah Rice Mill filed the application under Section 3 (A to G) on 24.09.2015 registered as Arbitration case No.10/2015 on 18.11.2015. The Arbitrator entered upon the reference on 18.11.2015, when first zimni order was passed as: '*Heard. Issue notice to the respondents. Case to come up for the presence of the respondents & reply on 18.12.2015.*' The award was required to be passed within one year i.e. upto 17.12.2016. Further, it is pertinent to mention here that replication was filed on 17.02.2017 and proceedings were adjourned to 07.04.2017 for evidence of the claimant. Even if the period of one year is computed from 17.02.2017 i.e. the date of completion of pleadings, the award was required to be passed upto 17.02.2018. There is no consent of parties regarding extension of the period specified in sub-section (1) for making award for a further period not exceeding six months. Even if it is presumed that there was implied consent, then the award was required to be passed upto 17.08.2018. Further, no extension from the Court was sought by either of the parties or even by the Arbitrator. The impugned Award was passed by the Arbitrator on 31.05.2019 i.e. after his mandate had terminated and he had become functus-officio. Thus, the impugned award of the Arbitrator suffers from patent illegalities. It is nullity and in conflict with the public policy of India. The points of determination (B) and (C) are decided against the landowner.

33. The case laws relied upon by Learned Counsel for landowner on the question of Section 29-A of the Act of 1996 do not give any benefit to the land-owner. Keeping in view of the above detailed discussion, the application of landowner U/s 34 of the Arbitration and Conciliation Act, 1996 is dismissed. The application of Union of India/National Highways Authority of India is allowed and the impugned award dated 31.05.2019 is set-aside as it was passed after termination of mandate. Parties shall bear their own costs.

34. Copy of this judgment be placed on record of application U/s 34 of the said act titled as 'M/s Shah Rice Mills vs Union of India and others'. File be compiled and consigned to the Judicial Record Room.

Pronounced in open Court,
On 27.03.2024.

Typed by: Anil Kumar
Stenographer Gr.I

Sd/-
(Kewal Krishan)
Addl. District Judge, Ferozepur
UID-PB0182

ANIL KUMAR
"I attest to the accuracy and authenticity of this document."
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