

**IN THE COURT OF SH. KEWAL KRISHAN, ADDITIONAL
DISTRICT JUDGE, PATIALA.**

Case type	Arbitration
CNR No	PBPT010007742020
CIS No.	Arb/18/2020
Instituted on	16.01.2020
Date of Registration	17.01.2020
Decided on	19.03.2021

IN THE MATTER OF :

Balwinder Singh aged about 52 years son of Sh.Dhanna Singh, resident of village Nihalgarh Shadihari, Sangrur District Patiala.
.....Applicant/Petitioner

Versus

1. Union of India, through Secretary Ministry of Shipping, Road Transport and Highways New Delhi.
 2. National Highways Authority of India through its General Manager, (Tech and Project Director) H.No.17-L, Model Town Ambala City.
 3. Competent Authority-Cum-Land Acquisition Collector-cum-Sub Divisional Magistrate Patran, District Patiala.
 4. Sub Divisional Engineer, Central Works Sub Division, Sangrur at Patiala.
 5. Executive Engineer, Central Works PWD (B&R), Patiala.
 - 6.Sole Arbitrator Sh. Deepinder Singh, Commissioner, Patiala Division, Patiala.
- ...Respondents

Objections petition under Section 34 of the Arbitration and Conciliation Act (as amended upto date) to the Award dated 12.9.2019 on behalf of the objector.

Present:

Sh. N.K. Singla Advocate Learned Counsel objector.

Sh. Vishavdeep Gupta Advocate Learned Counsel for the respondents No.1, 3, 4 and 5.

Sh. Charanvir Singh Advocate counsel for respondent No.2.

Respondent No.6 exparte.

Order :

1. The objector has filed this objection petition under Section 34 of the Arbitration and Conciliation Act challenging the order dated 12.9.2019 of the Arbitral Tribunal. The objector has considered the impugned order as Award. The question of maintainability of the present objection petition under Section 34 of the said Act is involved. The impugned order is reproduced as under:

*“Present: Clerk/Sh. Parminder Singh Adv., for the petitioner.
Sh. Vishavdeep Gupta Adv. For the respondents.*

This is an application filed under Sub Section 5 of the Section 3(G) of the National Highways Act 1956 for determining the market value of the land situated in village Patran, Tehsil Patran, District Patiala, acquired by National Highways Authority of India for widening the National Highways-71 (Sangrur to Punjab/Haryana Border Section) in District Patiala. The award for acquisition was passed by the Sub Divisional Magistrate -Cum-Land Acquisition collector, Patran on 7.11.2014.

2. The application was filed by the counsel for the applicant on 24.12.2015 and case was fixed for arguments on

25.10.2018. From 25.10.2018 till today eight adjournments were given on the request of clerk of counsel for the petitioner. The counsel never appeared. Today, neither the petitioner nor his counsel have come present. It clearly shows that he is not interested to pursue the present case. As such the application in this case is hereby dismissed.

ANNOUNCED

Arbitrator-Cum Commissioner,

12.9.2019

Patiala Division Patiala.”

2. Brief facts as putforth in the petition are that objectors being the owner in possession of landed property situated alongside the National Highway-71 were constrained to part with part possession of the same under notification issued by the Union of India whereby wide in/four laning of NH071 was proposed. The final award was passed by the Competent Authority. The objector filed a petition before Learned Arbitrator for enhancement of compensation. Learned Tribunal dismissed the petition vide impugned order, which has been challenged vide present objection petition.

3. The respondents No.1, 3, 4 and 5 have appeared and filed their joint reply admitting filing of the petition before the Learned Arbitrator and passing of impugned order. Other pleas of the objector were denied and a prayer for dismissal of objection petition was made. Reply on behalf of respondent no.2 is not filed, which is dispensed with for the purpose of deciding the question of maintainability of the petition U/s 34 of the said Act.

4. The question of maintainability of present petition under Section 34 of the said Act against the impugned order are heard. Learned counsel for the objectors has argued that the impugned order is an Award and this petition under Section 34 of the said Act is maintainable, whereas learned counsel for appearing respondents has argued that this petition is not maintainable.

5. It is admitted fact that the objector filed a petition under Section 3 G (5) of National Highways Act 1956 before the Arbitrator-cum-Commissioner Patiala on 24.12.2015. The evidence was submitted by the petitioner on 2.5.2016 and then proceedings were adjourned for arguments, which remained pending for long period for arguments. On 12.9.2019, the petition was dismissed by Learned Arbitrator vide impugned order.

6. Hon'ble Supreme Court has observed '**Srei Infrastructure Finance Limited v. Tuff, Drilling Private Limited**' [2017\(12\) Scale 105](#) (Law Finder Doc Id # 908008) that the arbitral tribunal enjoys the power to recall its own order. The Division Bench of Hon'ble Madras High Court has observed in **Bharat Heavy Electricals Limited v. Jyothi Turbopower Services Private Limited**, [2016\(5\) MLJ 1](#) : Law Finder Doc Id # 777336 that the appropriate remedy in case of termination of proceedings under Section 25 (a) would require the Arbitral Tribunal itself to be moved, which would then examine the aspects on merits as to why the order

does or does not require to be recalled. In view of these case laws to get the order of termination of proceedings set-aside, the remedy lies with the objector is to file an application with the Arbitral Tribunal, who would examine the aspects on merits as to why the order does or does not require to be recalled.

7. Hon'ble Bombay High Court has observed in '**Neeta Lalitkumar Sanghavi v. Bakulaben Dharmadas Sanghavi** [2020\(1\) ArbiLR 344](#) (Law Finder Doc Id # 1368608) that an Award is passed by the Arbitral Tribunal, interim or final, when it decides the lis between the parties. There has to be some adjudication on the merits of the claim or part thereof (which may include limitation) for the order passed by the Tribunal to be termed as an Award. In the present case, Learned Tribunal while passing the impugned order has not made adjudication on the merits of the claim or part thereof. Section 34 of the said Act is related to setting aside arbitral award. It is not related to an order of the arbitral tribunal. The impugned order is neither an Award not an interim Award.

8. Keeping in view above detailed discussion, this Court finds that present objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 against the impugned order is not maintainable and the same stands dismissed without going into the merits of the claim. The parties shall bear their own costs.

9. This order of mine shall have no effect on the proceedings, if initiated before the Arbitral Tribunal. Record

of the Arbitral Tribunal be returned. File of this Court be compiled and consigned to the Judicial Record Room.

**Pronounced in open Court,
On 19.03.2021
Typed by: Narinder Sharma-I**

**(Kewal Krishan)
Addl. District Judge, Patiala
UID-PB0182**

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Balwinder Singh Vs. UOI and others

Present:

Sh. N.K. Singla Advocate Learned Counsel objector.

Sh. Vishavdeep Gupta Advocate Learned Counsel for the respondents No.1, 3, 4 and 5.

Sh. Charanvir Singh Advocate counsel for respondent No.2.

Respondent No.6 exparte.

Reply to the main petition under Section 34 of the Arbitration and Conciliation Act on behalf of respondent No.2 is not filed. For the purpose of deciding question of maintainability of this petition, reply on this respondent is dispensed with.

Arguments are heard on the question of maintainability of present objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. Vide separate detailed judgment of even date, the objection petition has been dismissed. Record of the Arbitral Tribunal be returned. File be compiled and consigned to the Judicial Record Room.

**Pronounced in open Court,
On 19.03.2021
Typed by: Narinder Sharma-I**

**(Kewal Krishan)
Addl. District Judge, Patiala
UID-PB0182**