

MHRT010006852022



Received on : 17.10.2022
Registered on : 19.10.2022
Decided on : 15.03.2024
Duration : 01 Y. 04 M. 29 D

IN THE COURT OF DISTRICT JUDGE-1 RATNAGIRI.
(Presided over by A. M. Ambalkar)

CIVIL MISC. APPLICATION NO. 52/2022

Exh.No.21.

Netaji Ragho Sakpal,
Age : 70 yrs, Occu.: Farmer,
R/o. 574, Kondaye Tarafe Saundal,
Tal. Rajapur, Dist. Ratnagiri.

Applicant

VERSUS

1. The Competent Authority (Land Acquisition)
National Highway and Sub Divisional Officer,
Rajapur Division, Rajapur.
Address- S.D.O. Office, Rajapur,
Dist. Ratnagiri.
2. Project Director, National Highway
Authority of India,
Project Implementation Unit NH-66,
4th Floor, MTNL Telephone Exchange Building,
Opposite CBD Belapur Railway Station,
CBD- Belapur, Navi Mumbai- 400614.

Respondents.

Shri. Satish T. Pawar - Ld. Advocate for Applicant. Shri. A. A. Phansekar - Ld. Advocate for Respondent No.1 Shri. M.H. Pawar & Miss. Sampada J. Ambre - Ld. Advocates for Respondent No.2.
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J U D G M E N T

(Delivered on this 15th March 2024)

1. The present petition has been filed by applicant under Section 34 of the Arbitration and Conciliation Act, 1996. (For the sake of brevity it will be referred hereinafter as the said Act.) for setting aside the Arbitral Award.

2. Brief facts of the petition are as under:-

The applicant is having Land bearing Gat No. 115 out of which 1300 Sq.Mtrs. Land situated at village Kondye Tarfe Saundhal, Tal. Rajapur, Dist. Ratnagiri came to be acquired by Government of India under the provisions of National Highway Act, 1956. The Respondent No.1 was entrusted with the task to fix compensation for such land. Accordingly, Respondent No.1 declared an Award and compensation at the rate of Rs.530/- per Sq.Mtr.. The said Award was passed by applying the provisions of the Act of 2013 to some extent and paid additional compensation as per this Award.

3. Being aggrieved by the said Award, the applicant filed an application under section 3-G(5) of the National Highways Act, 1956 for determination of compensation before National Highway Arbitrator appointed by the Government. Applicant prayed for enhancement of compensation and he raised following issue before

Arbitrator.

- a) Interest at the rate of 9% p.a. u/s. 3-H(5) shall be paid on the amount enhanced by the Respondent through revised Award.
- b) Date of valuation of acquired land should be considered as 01/01/2016 instead of date of notification u/s. 3(a) based on Central Government Circular No.D.O.No.13013/01/2014-LRD(Pt), dated 26/10/2015.
- c) Multiplication factor of 2.0 should be used for rural areas based on Maharashtra Government Notification dated 24/04/2017, 29/08/2017 and 24/11/2017.
- d) Belting Method of valuation should be discarded in view of Maharashtra Government Circular dated 13/08/2018 and judgment of Hon'ble Bombay High Court bench at Aurangabad in case of ***Janabai Rathod Vs. State of Maharashtra, (WP No.12232/2016)***.
- e) 10% Statutory Easementary Rights shall be awarded as per section 3-G(2) of the National Highway Act, 1956.
- f) Damages due to severing of the property and loss to the remaining property shall be awarded to the applicant.
- g) Solatium and Component not awarded by learned Arbitrator.

4. It is further contended that the matter was filed in the year 2018. It was taken up for hearing in the year 2019. Later on due to change of Officers in the office of learned Arbitrator and their

willingness to hear Arbitration matter, the matter was postponed. The effective hearing started in the year 2020. However, due to onset of COVID-19 pandemic the advocate for the applicant could not take instructions and file affidavit. In the meantime, the Hon'ble High Court issued SOPs. for all the Courts and directions were given that no adverse orders should be passed.

5. Since June 2022, rainy season started and since month of July entire Konkan region came under red alert due to heavy rain. The advocate for applicant sent mail to learned Arbitrator and requested to adjourn the matter. However without taking evidence of applicant Arbitrator rejected the petition. The proper opportunity to present his case was not given to the applicant and therefore the Award dated 29/07/2022 is illegal.

6. It is further contended that the Ld. Arbitrator committed error in not making statutory disclosure under section 12 of Arbitration & Conciliation Act. The learned Arbitrator has not passed the order in judicious manner and impartial manner. The Award is not reasoned and speaking. The Ld. Arbitrator has not considered the rainy season which prevented the applicant to present his case before Arbitrator and wrongly rejected the application.

7. The Ld. Arbitrator has not discussed as to why statutory benefits of easementary rights, damages and interest under the provisions of said Act are not payable to the applicant. The Ld.

Arbitrator failed to issue notice to applicant prior to passing dismissal order. The Ld. Arbitrator failed to appreciate that there is policy of government to award compensation at the rate of four times of the circle rates of the lands in rural area and thereby committed error and it is the breach of fundamental policy of India. The Award passed by Ld. Arbitrator is contrary to substantive provisions of law and is patently illegal and it is in contravention of fundamental policy of Indian Law. Finally, it is prayed to set aside the order of Ld. Arbitrator.

8. Respondent No.1 filed its say at Exh.19 and strongly resisted the application and submitted that the matter was fixed for hearing before learned Arbitrator and applicant remained absent 8 times out of 9 dates fixed. The compensation awarded is correct and legal by taking into consideration correct multiplier as provided by law and the ready reckoner has also been considered while awarding compensation. The applicant has accepted the said amount and has not raised any protest while accepting the amount. There are no grounds as contemplated under section 34 of the said Act. Finally, it is prayed to reject the application.

9. Respondent No.2 filed its say at Exh.13 and strongly resisted the application and raised almost similar grounds as raised by Respondent No.1. It is further submitted by Respondent No.2 that the application does not fall under the purview of section 34 of the said Act. There is no patent illegality in the order passed by learned Arbitrator and this Award is not in conflict with public policy of India.

It is further submitted that the learned Arbitrator had given sufficient opportunity. However, the applicant failed to avail the same and hence the application came to be rejected and therefore the application is worthy to be rejected. Finally, it is prayed to reject the application.

10. Considering the pleadings and documents on record, following points arise for my determination and I have recorded my findings thereon for the reasons stated herein below :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether applicant showed that the Award passed by Arbitrator is arbitrary, against public policy and illegal?	In the negative.
2]	Whether petition is maintainable?	In the negative.
3]	What order ?	As per final order.

REASONS

11. The present matter appears to have been allotted to this Court on 19/10/2022 and after appearance of all the parties, matter was fixed for hearing on 12/09/2023. Thereafter around 9 dates were fixed for hearing. The record shows that the petitioner and his advocate remained absent on every date. The sufficient opportunity has been given to the applicant. However, he failed to avail the same. Therefore, I proceeded to decide the matter on merits

after the hearing the advocates for Respondents.

As to point Nos. 1 and 2:-

12. As far as, petition under Section 34 of Arbitration and Conciliation Act 1996 is concerned it provides for setting aside the Award passed by Arbitrator on certain grounds which are laid down in Section 34 of the said Act. For that purpose it is necessary to reproduce the said provision.

Section 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 the dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this 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 award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
- (ii) it is in conflict with the 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.....

13. As such it is necessary for the party making the application

to establish that the party was under some incapacity, arbitration agreement is invalid under the law to which the party is have subjected it, the party making application was not given proper notice of the appointment of an arbitrator, the arbitral award deals with the dispute not contemplated by or not falling within the terms of the submission to arbitration or its contents, decisions on matters beyond the scope of this submission to arbitration, the composition of the Tribunal or the procedure was not in accordance with the agreement of the parties.

14. Further sub-section 2(b) provides that the Court is empowered to set aside the arbitral award if it finds that subject matter of dispute is not capable of settlement by arbitration, the arbitral award is in conflict with the public policy of India. The further provisions of Section 34 are not concerned with the present matter.

15. As per the contention raised by petitioner, it appears that the present petition is mainly on the ground that the arbitral award is in conflict with the public policy of India and the Ld. Arbitrator has not given opportunity to petitioner to lead evidence.

16. On perusal of Section 34 it is very clear that it has laid down particular grounds for setting aside arbitral award under this provision. As far as Section 2(a) is concerned the applicant has not raised any grounds provided under this clause (a).

17. Sub-clause (ii) of Explanation 1 lays down that if the

award is in contravention with the fundamental policy of Indian Law then the award can be set aside. The applicant has not put forth any such ground to show that the award passed by Ld. Arbitrator is in contravention with the fundamental policy of any Indian Law. So it is also not applicable.

18. Sub-Clause (iii) of Explanation 1 lays down that if the award is in conflict with the most basic notions of morality and justice then it is to be set aside. In the present matter applicant has not also put forth any such grounds as regards to morality and justice. As far as morality and justice is concerned, it is for the applicant to show as to what kind of moral principles and the principles of justice are contravened and have not been considered while passing arbitration award.

19. Explanation 2 clearly lays down that it is not permissible to review the matter on merits to test to find out as to whether there is contravention with the fundamental policy of Indian Law.

20. On perusal of Award, it appears that the Ld. Arbitrator has considered the grounds raised by petitioner and the say filed by Respondents before it. Ld. Arbitrator held that although matter was fixed for hearing. Petitioner remained absent and failed to lead the evidence in support of grounds raised and finally dismissed the petition.

21. As far as COVID-19 pandemic is concerned, it is the matter

of record that the Courts and other offices were started to function full-time since the month of September 2021. As such, thereafter, the petitioner and his advocate appears to have sufficient time and opportunity to approach to the Arbitrator and to lead evidence. The grounds of rainy season cannot be accepted as it was not the situation that all the functions of common people and other offices were absolutely closed. Therefore, the grounds raised by the petitioner before this Court cannot be said to be justifiable. It is the matter of record that before this Court also the petitioner and his advocate remained absent since long.

22. Further, the Award appears to have been passed by considering ready reckoner given by the government and it can not be said to be in conflict with the morality or justice. Therefore, I am of opinion that the present petition is not maintainable. Hence, I came to the conclusion that the applicant failed to establish any ground for setting aside the arbitral award. Therefore, I answered point Nos. 1 and 2 in negative and proceed to pass the following order.

ORDER

- 1 Petition is hereby dismissed.
- 2 Record and proceeding be sent to Ld. Arbitrator.

Date :- 15.03.2024

**(A. M. Ambalkar)
District Judge-1, Ratnagiri.**

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		Civil Misc.Appln. 52/2022
Name of Stenographer	:-	Mr. Rajesh G. Rahate
Name of Court	:-	District Court-1 Ratnagiri.
Date of Dictation	:-	15.03.2024
Order signed by the P.O. on	:-	15.03.2024
Order uploaded on	:-	15.03.2024