

**In the Court of Sh.Arunvir Vashista,
Additional District Judge, Jalandhar.**

Case Type	ARB
Filing No.	6486/2013 Filing Date : 11-11-2011
Case No.	29861/2013 Registration Date: 24-09-2013
Case Code	201300064862013
Old Case No.	ARB/3716652/2011
Date of decision	01.07.2014

1. Govt. of India, through its Secretary, Ministry of Road Transport & Highways, New Delhi.
2. Project Director, National Highway Authority of India, 135, Guru Amar Dass Nagar, Jalandhar.

.....Petitioners

Versus

1. Amarjit Singh son of Piara Singh son of Chuhan Singh, resident of Village Laroya, Tehsil and District Jalandhar.
2. Competent Authority cum Land Acquisition Collector, Punjab, Punjab Works Department (B&R), Jalandhar.
3. Commissioner, Jalandhar Division- cum- Arbitrator, Jalandhar.

.....Respondents.

Petition under Section 34 of Arbitration and Conciliation Act for setting aside the award dated 25.7.2011 (In the remand case MA No.51 of 2011) made by Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.

Present:- Shri Umesh Dhingra, Counsel for the petitioners.
 Shri H.L.Sharma, Counsel for respondent No.1.
 None for respondent No.2.
 Respondent No.3 is Arbitrator.

JUDGMENT

1. This judgment shall dispose of objection petition under Section

34 of Arbitration and Conciliation Act filed on behalf of Govt. of India and Project Director objectors-petitioners for setting aside the award dated 25.7.2011 made by Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.

It was submitted that the impugned award had been passed by the Arbitrator after its previously passed award, which had been set aside by the court of Sh.B.S.Sandhu, Addl. District Judge, Jalandhar vide his order dated 2.2.2011, whereby the petition under section 34 of the Act filed by the petitioners had been accepted and the case was remanded for passing lawful order. The land of respondent No.1 measuring 2 kanal 4 marla 'Chahi' agricultural comprised in khasra No.8//3/2/1 (1-12) and 8/1/1/2 (0-12) situated at village Laroya Tehsil and District Jalandhar had been acquired for public purpose of widening and four-laning of Jalandhar-Pathankot section of National Highway No.1A. After publication of notification, the competent authority-cum-Land Acquisition Collector, PWD (B&R) determined the compensation to be paid to the land owner for the acquired land at market rate as on 24.12.2004 after getting approval of them Commissioner, Jalandhar Division. The land has been classified as 'Chahi' land and the same has been assessed at the rate of Rs.10,00,000/-per acre. The respondent No.1 had been paid a sum of Rs.1,77,726/- as compensation for the cost of land acquired and there was no structure existing on this land. The Arbitrator had again erred while passing the award dated 25.7.2011 whereby the price has been enhanced many fold high than the price of the land mentioned in the previous award on the basis of assumptions and

presumptions without any cogent evidence in support thereof of the land owner. The Arbitrator failed to consider the provisions of section 3 of the National Highway Act while passing the impugned award. It contained decision on matters beyond the scope of submissions to arbitrator. The Arbitrator has granted such reliefs in the award which were never prayed for by the respondents. The Arbitrator has wrongly and illegally awarded and enhanced the compensation of the land at the rate of Rs.1,50,000/-per marla. The enhancement of amount of compensation by awarding interest @ 9% on the enhanced amount from the date of taking possession of the acquired land if the amount was paid within 60 days and if not paid so, then interest @ 15% and 18% respectively would be applicable, was illegal. The provisions of section 143 of PUDA Act, 1995 were also ignored by the arbitrator that prohibited the construction of any kind upto 30 meters adjoining the national highway/scheduled road, thereby reducing the value of the land in that portion. The enhancement of compensation was done manifold, which was unreasonable, excessive, irrational and against law. Thus the award under challenge was without jurisdiction, against law and was in conflict with the public policy of India beyond the scope of submissions to the arbitrator.

2. The present petitioners/objectors had earlier also instituted a petition under section 34 of the Act with respect to the acquisition of 'Chahi' agricultural land measuring 2 kanal 4 marlas of respondent No.1 situated at Village Laroya, Tehsil and District Jalandhar seeking setting aside of the award dated 26.3.2010. In the said objection petition, learned court of Sh.B.S.Sandhu, Addl. District Judge, Jalandhar, vide its order

dated 2.2.2011 directed the Arbitrator to make a fresh award after taking into consideration all the aspects stipulated under section 3(G)(7) (a) to (d) of National High Way Act while setting aside the said award.

3. The objection petition has been opposed and resisted by respondent No.1 raising preliminary objections on the grounds of maintainability, estoppel and limitation. On merits, it was submitted that Arbitrator had rightly passed the award dated 25.7.2011 on the basis of evidence brought on record and as per the legal claim of answering respondents. The award was capable of settlement by Arbitrator. The Arbitrator had rightly enhanced the compensation in the impugned award for the land acquired. Hence all the objections that have been raised by the Govt. of India in its objection petition were not tenable ones and the award could not be set aside on those grounds.

4. Both the parties have been heard through their respective counsel and record of the case has been examined/perused carefully.

5. The present objection petition has been preferred by petitioner Govt. of India under section 34 of Arbitration and Conciliation Act, 1996. It would therefore be essential as well as helpful if we refresh ourselves with the provisions of section 34 of the Act, which run as under:-

34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An award may be set aside by the Court only if-

(a) the party making the application furnishes proof 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 given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

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

- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains 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.-Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may where it is appropriate and it is so requested by a party adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

6. One of the grounds mentioned on the basis of which an effective challenge could be made to award or the award could be set aside by the court is if the arbitral award is in conflict with public policy of India. Thus one of the touch-stones to test an award made by the Arbitrator is to find out if the award is in conflict with the public policy of

India. The reading of provisions of section 34 of the Act also further reveals that discretion to set aside an arbitral award under section 34 of the Act is very limited as has been almost settled by now. The grounds given by objectors-petitioners are in the way of an appeal and it has been held in catena of judicial pronouncements that a civil court will not sit in appeal over the decision of the Arbitrator as it is not to re-appraise the evidence or facts. Merely because the court would come to a different conclusion on the available material is not enough ground to interfere with the award. It is therefore well settled that the jurisdiction of the court when called upon to decide the objections raised by a party against arbitral award is limited as expressly indicated in the Act itself. It cannot sit in appeal over views of the Arbitrator by re-examining and re-assessing the materials as has been observed by Hon'ble Supreme Court of India in Puri Construction (P) Ltd. Vs. Union of India (1989) 1 SCC-411.

7. Under the Arbitration and Conciliation Act, 1996, the arbitral award was given a high measure of sanctity and could be challenged under section 34 of the Act on very limited grounds. As is also revealed by the bare reading of the section that those grounds are basically procedural, such as incapacity of parties, invalidity of the arbitration agreement, lack of proper notice of appointment of arbitrators or arbitral proceedings, lack of jurisdiction, non-contractual composition of arbitral tribunal or arbitral procedure and non-arbitrability of the subject matters of dispute. An award could also be set aside as has been discussed above, if it was in conflict with public policy of India which is the only ground under which an award could be challenged on merits. Accordingly the

scope of judicial scrutiny of an award under section 34 of the Act is very limited. By and large Indian Courts have dis-favoured interference with arbitral awards and have shown a definite inclination to preserve the award as far as possible. The Hon'ble Supreme Court itself in the words of Justice S.B.Sinha in McDermott International Inc. Vs.Burn Standard Co.Ltd. (2006) 2 ArbLR 498 makes the following observations:-

“The 1996 Act makes a provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice etc. The court cannot correct error of the arbitrator again if it is desired. So, scheme of the provisions aims at keeping the supervisory role of the court at minimal level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it”.

Recently again in Sumitomo Heavy Industries Ltd. Vs.ONGC which was decided on 28th July, 2010, the Supreme Court has laid down that:

“It is true that if there is an error apparent on the face of the award or where the umpire had exceeded his jurisdiction or travelled beyond the reference, the Court can interfere. If the conclusion of the arbitrator is based on a possible view of the matter, the Court is not expected to interfere with the award, the High Court has erred in so interfering. Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator...”

8. Now, when the objections raised by the petitioners/objectors are examined in the light of above discussed law and criteria, not much

substance is found to be there. The argument that the Arbitrator again has erred while passing the impugned award enhancing the land price manifold than the price of land mentioned in the previous award on the basis of assumptions and presumptions and without any cogent evidence supporting the landowners claim, is found to be carrying not much weight or substance. The impugned award is not at all found to be in conflict with the public policy of India nor the enhancement was done with a biased mind. All the submissions in this regard as have been put forth by objectors are rather found to be containing not much weight or substance upon perusal of the fresh award that was passed following a direction of the court vide its order dated 02.02.2011 remanding the matter to the arbitrator after setting aside the impugned award. This court fails to see if the award under challenge was passed in conflict with the public policy of India. There is nothing in the award that makes it a patently illegal award. In order to attract the bar of public policy, the enforcement of award must invoke something more than the violation of law of India as has been observed by Hon'ble Supreme Court in Renusagar Power Co.V.General Electrical Corporation. The other objection raised by Union of India was that the impugned award was self contradictory is also not tenable one.

9. Nothing is also further found to be there that makes the award an unreasoned one or it being without application of mind. The perusal of award dated 25.7.2011 adequately shows and mentions the documents and evidence considered and relied upon by the Arbitrator for giving its award. All the documentary evidence which was taken into consideration has been duly mentioned and discussed in the award. This court is not

supposed to act as an appellate court so as to re-appraise the evidence brought before the Arbitrator and then to indulge in finding if the compensation was excessive or more than adequate. The award has been given by the Arbitrator, who was appointed as such under section 3 (G)(5) of National Highway Act, 1956 by the Government of India and he happened to be the Commissioner, Jalandhar Division. It could hardly be agitated on the part of Govt. of India that the said Government official acting as an Arbitrator was sitting with a biased mind or had acted beyond his jurisdiction, power and competency. The questions whether the amount of compensation or its enhancement was right or wrong could not perhaps be agitated as a ground under section 34 of the Act.

10. So far as awarding of interest by the Arbitrator is concerned, recently it has been categorically observed by Hon'ble Supreme Court in Indian Hume Pipe Co.Ltd. Vs State of Rajasthan reported in 2010(1) Apex Court Judgments-208 (S.C.) that if the amount is withheld wrongly and without any justification and there is no embargo or legal hurdle in awarding interest then there cannot be any justifiable reason to deny the same. Arbitrator has the competence, jurisdiction and power to award interest for the period from the date of award to date of payment as also for pre-reference, pendente lite and post award.

11. With regard to reasonableness of the interest awarded, again it has been observed by Division Bench of our own Hon'ble Punjab & Haryana High Court in a case reported as M/s RLF Industries Limited and others versus National Highway Authority of India and others-2011 (3) Law Herlad (P&H)(DB)-2233 that provisions of Sec.3(J) & (G) of

National Highway Act, 1956 are ultra vires the Constitution of India to the extent that the same deny payment of solatium and interest of acquisitions made under the National Highway Act. It has also been laid down that land owners are entitled to solatium and interest in terms similar to those contained in Sec. 23 and 28 of Land Acquisition Act. All acquisitions made under National Highway Act would grant solatium and interest in terms similar to those contains in Sec. 23 and 28 of the Land Acquisition Act.

Accordingly on this score, the award is not found to be suffering from any illegality as was contended.

13. Another objection is also found to be without any much substance that the Arbitrator decided the issues and matters that were not submitted to him by the parties. To argue this, is totally against the facts as both the parties put in their appearance before the Arbitrator and made their respective submissions. Besides the questions decided by him were very much within his competence, jurisdiction and were submitted before him for passing the award over those. Thus finding that the award suffered from no infirmity and illegality, the objection petition is ordered to be dismissed. File be consigned to the Record Room.

Announced in open Court on
Dt.01.07.2014

(Arunvir Vashista),
Additional District Judge,
Jalandhar.

Govt.of India vs Amarjit Singh

Present:- Shri Umesh Dhingra, Counsel for the petitioners.
 Shri H.L.Sharma, Counsel for respondent No.1.
 None for respondent No.2.
 Respondent No.3 is Arbitrator.

Arguments heard. Vide my separate detailed judgment of even date, the objection petition has been dismissed. File be consigned to the record room.

Announced in open Court on
Dt.01.07.2014

(Arunvir Vashista),
Additional District Judge,
Jalandhar.