

**In the Court of Dr. Harpreet Kaur, Additional District Judge,
Jalandhar**

Arbitration Petition No. 64/2015

Filing No. 201300002612015

Date of Filing: 16.01.2014

Date of Judgment: 08.05.2015

1. Union 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. Trishna Devi daughter of Mulkh Raj son of Bullo, resident of Jhakho Lahri, Tehsil Pathankot, Gurdaspur.
2. Commissioner-cum-Arbitrator, Jalandhar Division, Jalandhar.

-----respondents

[Petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated 20.06.2013 (in case MA No.96 of 2011) made by the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar]

Present: Sh. Puneet Sareen, Adv. Counsel for petitioners.
Sh. K.K.Rajput, Adv. Counsel for respondent no. 1
Respondent No. 2 Arbitrator.

JUDGMENT:-

1. The petitioners have filed this petition under section 34 of the Arbitration and conciliation Act, 1996, (hereinafter to be referred as “Act”) for setting aside the arbitral award dated 20.6.2013 passed by Commissioner, Jalandhar Division, Jalandhar, respondent No.2 as an Arbitrator. The brief facts of the case of the petitioners are that the land measuring 3 kanal 02 marlas comprised in Khasra No.12/13 situated at village Jhakho Lahri, Tehsil Pathankot, District Gurdaspur has been

acquired. The land has been classified as barren land but the same was assessed as Chahi as per the revenue record and the same has been assessed @ Rs.25,00,000/- per acre, duly considering it to be falling within the strip of 80 karam along the National Highway. It is further pertinent to mention here that the collector rates of the said village are very much low (i.e. Rs.18,00,000/- per acre) and the CALA has adopted very much higher rates (i.e. Rs.25,00,000/- per acre) as compared to the Collector rates. The respondent No.1 have been paid a total sum of Rs.10,65,625/- (Rs.9,68,750/- + Rs.96,875/-) as compensation for the cost of the acquired land. The land was acquired for public purpose of widening and four laning of Amritsar-Pathankot section of National Highway No.15. However, it is submitted that for acquisition of land for widening/four laning, maintenance, management and operation etc. of National Highway No.15 the Govt. of India had issued notification under Section 3A(1) of National Highway Act, 1956 declaring its intention to acquire such land fall in 33 Nos. of villages of Tehsil Pathankot, District Gurdaspur and the same was published in the Gazette of India vide S.O.807(E), dated 3rd April, 2008. As per section 3 A (3) of the Act, the substance of this notification was published in two local newspaper i.e. The Punjab Kesri (Hindi) and Jagbani (Punjabi) dated 5th June 2008, for the information of the public. Thereafter, the objections were received under section 3 C(1) of the Act and the same were considered as per section 3C(2) of the Act and disposed off accordingly by the competent authority. Thereafter, the Govt. of India had published notification under Section 3D(1) of National Highway Act, 1956 in the Gazette of India vide

S.O.No.886 (E) dated 31st March, 2009 declaring that the land specified in the schedule of said notification should be acquired for aforesaid purpose. It is pertinent to mention here that before proceeding to determine the amount of compensation, a public notice alongwith substance of 3D Notification was published in two local newspapers i.e. Jagbani (Punjabi) and Dainik Jagran (Hindi) dated 3rd June 2009 inviting claims from all persons interested in the land to be acquired and was to be received in the Office of Competent Authority. So, in view of this notification, the claims were received by the scheduled date were considered on merits and after verification of land record and inspection of site of land, the compensation of the acquired land in the Village Jhakho Lahri, Tehsil Pathankot, District Gurdaspur has been passed by the Competent Authority cum Sub-Divisional Magistrate Pathankot. It is averred that the competent authority of Land Acquisition has fairly assessed the market value of the land acquired and awarded the adequate compensation within the scope of the Act and detailed view of the Competent Authority of Land Acquisition may also be considered before deciding the present application. However, respondent No.1 has not approached the arbitral authority with clean hands and has suppressed and misrepresented the true facts and also the area and description of the acquired land has also not correctly been mentioned in the petition by respondent No.1. The learned Arbitrator-cum-Commissioner of Jalandhar Division, Jalandhar who while exercising the powers under Arbitration and Conciliation Act conferred under the provisions of National Highway Act as arbitrator has passed the impugned award. The said award of the Arbitrator is liable to be set aside

on the following grounds:-

- a) That the Ld. Arbitrator failed to consider the provisions of Section 3 of the National Highway Act, while passing the impugned award. The impugned award contains decision on the matter beyond the scope of the submissions and has been passed in a biased manner by the learned Arbitrator and the same is in conflict with Public Policy and beyond the scope of the law and the jurisdiction and authority of the Arbitrator. Since the award is patently illegal as such the same is liable to be set aside under the provisions of section 34 of Arbitration and Conciliation Act as held by the Apex Court in the landmark judgments of the **Delhi Development Authority Vs. R.S.Sharma 2008(4) RCR (Civil) 165 (S.C) and ONGC Vs. Saw Pipes 2003(2) RCR (Civil) 554.**
- b) That the arbitral award is bad in the eyes of law because the subject matter of dispute is not capable of settlement by arbitrator and it contains decision on matters beyond the scope of submissions to arbitration. The Ld. Arbitrator has granted such reliefs in the award which were never prayed for by the respondents.
- c) That the Arbitrator-cum-Commissioner, Jalandhar

Division, Jalandhar has wrongly, arbitrarily and illegally awarded the enhancement of compensation for commercial land to the tune of Rs.1,50,000/- per marla, for residential land Rs.1.30 lacs per marla and agricultural land Rs.1.15 lacs per marla, solatium to the tune of 30% and interest as per the provisions of section 34 of Land Acquisition Act 1834 @ 9% p.a. for 1st year and 15% p.a. for subsequent years. Thus, the entire award passed by Ld. Arbitrator has become a void, illegal, unlawful and infructuous which is liable to be set aside. Ld. Arbitrator has assessed wrongly the above said amounts without any basis and record which makes the whole award invalid. Thus, the entire award passed by the Ld. Arbitrator has become void, illegal, unlawful, infructuous and is patently illegal which is liable to be set aside.

- d) That there is no ground for awarding solatium and interest to the respondent No.1/land owner.
- e) That the Ld. Arbitrator has further wrongly ordered to pay Rs.12,000/- as Arbitration fees, which cannot be charged by the Arbitrator cum Divisional Commissioner who being the Government official has performed the proceedings under his official capacity and duty.

- f) That the Ld. Arbitrator has also ignored the provisions of Section 143 of PUDA Act 1995 and Section 3 of Punjab Scheduled Roads and Controlled Area Restriction of Un-Regulated Development Act, 1963 which prohibits the construction of building/structures within 10 meters adjoining land in Municipal Area, and upto 30 meters adjoining land in the rural areas and 100 meters abutting the National Highways/Scheduled Roads, thereby reducing the value of the land in that portion.
- g) That the arbitrator illegally, wrongly and malafide, enhanced the compensation to many fold high then the amount assessed by the competent authority. The amount enhanced by the arbitrator is exorbitant, excessive, unreasonable, irrational, against law and beyond the scope of provisions of law under the act and is liable to be set aside.
- h) That Ld. Arbitrator has wrongly mentioned in the award that the respondents are liable to pay the interest and cost of arbitration of huge amount to which the arbitrator is not entitled to receive the same.
- i) That the award made by the Ld. Arbitrator is without jurisdiction, against law, untenable, passed

without adopting legal procedure, not maintainable and non-est in the eyes of law.

2. It has been averred that the Ld. Arbitrator has not complied with the provisions of Section 31(5) of the Arbitration and Conciliation Act, 1996. Neither Ld. Arbitrator communicated to the petitioner about making of the award, nor has delivered the signed copy of the award to the petitioner till date, which is mandatory under law. However, the petitioner gained knowledge about the passing of award in the month of December, 2014 when some of the land owners came to the office of the petitioners and started demanding the enhanced payment of compensation. Thereafter, the petitioner applied the certified copy of the award and after receiving the certified copy of the award, the petitioners have filed the present petition.

3. Upon notice, Respondent No. 1 through his counsel contested the objection petition and filed written reply taking preliminary objections regarding maintainability, cause of action; jurisdiction; petition is time barred. On merits, the fact regarding the acquirement of the land by the Land Acquisition Collector, Pathankot was admitted. It is submitted that as per the site plan village Jhakho Lahri is situated abutting the national highway and the acquired khasra numbers are not far away from the National Highway, therefore, due to close proximity with national highway, the acquired land is commercial in nature which can be used for residential purposes as well as for setting commercial units. It is immaterial that the acquired land is used for agricultural purposes as for assessing the value of the acquired land, the potential of the land is to be

taken into consideration. Rest all the averments made in the petitioner are denied and a prayer for dismissal of the same has been made.

4. Record of the Arbitrator, respondent No.2 was requisitioned in order to decide the present objection petition which was received and perused.

5. Learned counsel for the petitioners Sh.Puneet Sareen Advocate has argued that the National Highway Act, 1956 which provides a special procedure for acquisition of land and award of compensation to the land owner and provisions of land acquisition act does not apply in this matter. He further contended that the compensation awarded by the competent authority under the Act has to be determined by taking into consideration the nature of the property and its market value at the time of notification, but the Arbitrator i.e. respondent No.2 has illegally awarded and enhanced the amount without any basis and wrongly awarded the solatium and interest against the statute. The procedure provided under the Act under section 31(5) of the Arbitration and Conciliation Act has not been complied with. He further stated that the Ld. Arbitrator had not assigned any reason or basis for the enhancement of the acquired land. The award is against public policy and beyond jurisdiction. It is prayed that the award may be kindly set aside.

6. Learned counsel for the respondents No.1 Sh. K.K.Rajput, Advocate has argued that the reference for enhancement of compensation before the Arbitrator i.e. respondent No.2 was made as per provision of Section 3(5) of the said Act. The said Arbitrator followed the procedure as per the consent of parties and has given due opportunity to the parties to

present their case and Arbitrator on pursuing the evidence by the parties enhanced the compensation determining the market value of the land. He further argued that the Arbitrator has rightly awarded interest to respondents. In order to support his contention, he placed reliance on **M/s Golden Iron & Steel Forging Vs. Union of India & Ors 2011(4) R.C.R. (Civil) 375**, wherein it has been held that “*all acquisitions made under this act necessarily would entail solatium and interest, in turn similar to those contained in section 23(2) and section 28 of Land Acquisition Act. Section 3(J) and 3(g) of the Act are held ultravires of article of 14 of the Constitution of India in so far as they denied solatium and interest to landowners.*” He further averred that the impugned award passed by the respondent No.2 is perfectly valid, legal, reasoned and is not against the public policy, so, the same is liable to be dismissed.

7. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the petitioners as well as learned counsel for respondent No.1.

8. It has been argued by the learned counsel for the petitioners that the subject matter of the dispute is not capable of settlement by the Arbitrator. The learned Arbitrator has granted relief beyond its power and jurisdiction and were not as per documents on file. It has also been argued that the learned Arbitrator has not complied with the provisions of Section 31(5) of the Arbitration and Conciliation Act. Learned Arbitrator neither communicated to the petitioner about making of the award, nor the Arbitrator has delivered the signed copy of the award to the petitioner till date which is mandatory under law. The award is

against the public policy of law. Therefore, he prayed that the award may kindly be set aside.

9. As far as the argument of the counsel for the respondent regarding the award having been passed beyond the authority and the submissions made before the Arbitrator is concerned, the same cannot be sustained. As Section 3(G)(5) of National Highway Act, 1956 lays down that if the amount determined by competent authority under sub-section (1) or sub-section (2) of Section 3(G) is not acceptable to either of the parties, it can be determined by the Arbitrator (to be appointed by the Central Government). Therefore, as per Section 3(G)(5) the Divisional Commissioner, who is an I.A.S Officer, has been appointed to determine compensation through arbitration.

10. This court is mindful of the fact while deciding the objections under section 34 of the Arbitration Act, the scope of interference in the award is limited. Section 5 of the Act provides that *“notwithstanding anything contained in any other law for the time being in force, in matter governed by this part, no judicial authority shall intervene except where so provided.”* Therefore, the scope of judicial scrutiny of an award under Section 34 of the Arbitration and Conciliation Act, 1956 is narrow. It has been held by Hon'ble Supreme Court in **Santa Stone & Lime Co. Ltd., M.P. Etc. Vs. Union of India & Another etc. 2008(3) R.C.R. (Civil) 226** and also in case **J.G.Engineers Pvt. Ltd. Vs. Union of India and another-2011(3)-Recent Criminal Reports (Civil) Page 683.** that *“the scope of appellate court is limited and court would not be justified in re-appreciating the material on record and substituting*

its own view in place of arbitrator's view.” Further, it has also been held that “the arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself a task of being a judge of the evidence before the arbitrator. The court should approve the award with the desire to support it, if that is reasonably possible rather than to destroy it, by calling it illegal.”

11. The Civil Court can interfere with the award only on the grounds set out in section 34 of the Arbitration and Conciliation Act. Under section 34 of Arbitration and Conciliation Act, 1956 the award can be set aside only on the grounds mentioned below:-

- (i) a party was under some incapacity, or
- (ii) the arbitration agreement is not valid under the law 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 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;

In case of **Delhi Development Authority Vs. M/s R.S.Sharma & Co., New Delhi, 2008(4) RCR (Civil) 165**, it has been held by the Hon'ble Supreme Court of India that “Under the Arbitration and Conciliation Act

the award passed by the Arbitrator can be set aside only on the grounds mentioned in Section 34(2) of the said Act, which are as under:-

- (a) An award, which is
 - (i) Contrary to substantive provisions of law; or
 - (ii) the provisions of the Arbitration and Conciliation Act, 1996; or
 - (iii) against the terms of the respective contract; or
 - (iv) patently illegal, orprejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act.
- (b) Award could be set aside if it is contrary to;
 - (i) fundamental policy of the law; or
 - (ii) the interest of India; or
 - (iii) justice or morality;
- (c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.
- (d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.”

12. Section 3(G)(7) of the National Highway Act, 1956 has given ample power to the Arbitrator to consider relevant factor for the fair determination of the compensation. It has been held in number of cases that as per section 34 of Arbitration and Conciliation Act, 1996 grant of compensation at higher rate is no ground to set aside the award. As Civil Court while examining validity of an award under section 34 of the Act exercises supervisory and not appellate jurisdiction over the award of an arbitral tribunal. The learned counsel for the petitioners has not been able to point out as to how the learned Arbitrator has exceeded his jurisdiction or gone beyond the submissions or facts of the file. Thus, the objections

that the arbitrator has enhanced the compensation exorbitantly is not tenable because arbitrator is the best judge of facts and evidence before him while passing the award.

13. The next point agitated before this court challenging the award is that the arbitrator has ignored the provisions of section 143 of PUDA Act 1995 and Section 3 of Punjab Scheduled Roads and Controlled Area Restriction of Un-regulated Development Act, 1963. The above acts regulate the constructions around the scheduled roads within the defined area and within the requisite parameters and the compensation ought to have been reduced keeping in view the scale/parameter provided in the said act. This court is unable to accede to this submission of petitioner as these provisions would not stand in a way of arbitrator in assessing the market value of the acquired land.

14. As to the objection regarding award of solatium by the arbitrator under the Act, the counsel for the petitioner referred to Section 3(J) and 3(G) of the National Highway Act, 1956 and had argued that nothing in the land acquisition Act shall apply to the acquisition under this Act, therefore, the respondent No.1 was not entitled to solatium as awarded by the arbitrator. This argument is not tenable as Section 3(J) of the Act has been struck down by division bench of our own High Court in **M/s Golden Iron and Steel Forging Vs. Union of India & others reported in 2011(4) RCR (Civil) page 375** by holding that all the acquisitions made under this Act would necessary would grant solatium and interest, in turn similar to those contained in section 23(2) and section 28 of Land Acquisition Act. Section 3(J) and 3(G) of the Act are ultravires

of article 14 of Constitution of India in so far as they denied solatium and interest to land owners. This view has again been affirmed by Division Bench of our own High Court in **RLF Industries Limited and others Vs. National Highway Authority of India & Others, reported in 2011 (3) Law Herald page 2233**. Thus, the solatium, is permissible for compulsory acquisition of land under National Highway Act, 1956. Therefore, the arbitrator is competent to grant the solatium as per the provisions of Land Acquisition Act.

15. So far as the finding of arbitrator regarding payment of cost of arbitration by the parties concerned. As per the contention of the learned counsel for the petitioner, the Hon'ble High Court has already directed the Arbitrator to refund the same in separate proceedings. So the arbitrator shall refund the same to the concerned parties as per the directions of the Hon'ble High Court. Therefore, this court is of the view that petitioner has failed to prove, point out any departure from the parameters laid down under section 34 of Arbitration and conciliation Act.

16. One of the main point vehemently argued by the learned counsel for the petitioners is that the enhancement of the compensation by learned Arbitrator exorbitant, excessive, unreasonable, irrational, beyond the scope of provisions of law under the act and the award was passed without adopting any legal procedure, therefore, the same is liable to be set aside.

17. Indeed, the Arbitrator cannot be allowed to evaluate the compensation without there being any rationale or reason. However, perusal of the award reveals that due procedure was followed by the

learned Arbitrator as notice was sent to the petitioners/respondents and they appeared through counsel Sh.Rajesh Kumar, Advocate who filed his power of attorney and the reply was also filed by the petitioners/respondents. Thereafter, the procedure to be adopted for arbitration proceedings was finalised. List of all the documents/evidence was submitted by the parties, which has been made part of the award. The law cited by both the counsels in the shape of judgments has been discussed and after framing of issues, their respective findings have been made after citing the relevant law on the issue in hand. Thereafter, the said enhancement has been made by the learned Arbitrator after taking into consideration sale deed No.553 dated 2.5.2007 of the village Jhakho Lehri and the sale deed No.870 dated 11.5.2011 of village Jhakho Lehri and the sale deed No.1499 dated 12.6.2008 of the village Rajpura (which is abutting to the village Jhakho Lehri). The Learned Arbitrator has placed reliance of various judgments of higher courts and award pertaining to same area and similar kind of land. After discussing the entire record, the learned Arbitrator has passed the present award.

18. Therefore, it is apparent from the record that due procedure was followed by the Arbitrator, fair number of opportunities were given to the petitioners/respondents and the contention of the parties were duly recorded and appreciated. After giving reasons for enhancement of compensation, the learned Arbitrator has passed the present award. Therefore, I find that the award passed by the learned Arbitrator is a well reasoned order and does not require any interference.

19. Keeping in view of my above said discussion, present

petition is hereby dismissed leaving the parties to bear their own cost.

Memo of cost be prepared. File be consigned to Record Room.

**Pronounced in open Court:
08.05.2015**

**(Harpreet Kaur),
Addl. District Judge,
Jalandhar.**

Memo of Costs

S.No		Petitioners	Respondents
1	Stamp of petition	Rs. 300.00	0.00
2	Stamp for power	Rs. 10.00	10.00
3	Stamp for process	Rs. 50.00	0.00
4	Counsel fee	0.00	0.00
5	Sub of witnesses	0.00	0.00
6	Misc	0.00	0.00
7	Total	Rs. 360.00	10.00

Given under my hand and seal of this Court on this day 8th May, 2015.

(Harpreet Kaur)
Additional District Judge,
Jalandhar.

Present: Sh. Puneet Sareen, Adv. Counsel for petitioners.
Sh. K.K.Rajput, Adv. Counsel for respondent no. 1
Respondent No. 2 Arbitrator.

Arguments heard. Vide my separate detailed judgment of even date, present petition is hereby dismissed leaving the parties to bear their own cost. Memo of cost be prepared. File be consigned to Record Room.

**Pronounced in open Court:
08.05.2015**

**(Harpreet Kaur),
Addl. District Judge,
Jalandhar.**

