

MHND080007382022



ORDER BELOW EXH. 12 IN Civil M.A.No. 99/2022

The Project Director Vs. Madhav & others

This application is filed by the applicant with prayer to issue direction to respondent No. 1 and respondent No. 2 to handover possession of acquired land to National Highway for construction of National Highway 361. It is also prayed that, applicant is ready to deposit undisputed compensation amount along-with other statutory charges and interest.

In brief facts of the application are as under -

2- The applicant has filed main application under section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award and Judgment of Arbitrator and Additional District Collector, Nanded. The applicant is Project Director of National Highway Authority of India, project implementation Unit Nanded. The development work of road widening of National Highway No.361 Malegaon to Derala has been transferred to the applicant by the Central Government (MORTH).

3- According to the applicant, process of acquisition of land followed as per Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and

NHAI Act, 1956.

4- The Competent Authority for Land Acquisition (CALA) and the Arbitrator considered Government circular dated 16.3.2020 for determination of compensation amount of acquired land, but the appropriate Government has no right to issue a circular for applying multiplying factor it regard with Urban Land, hence the arbitrator and CALA have wrongly determined the compensation of acquired land as per the multiply factor two.

5- Respondent No. 1 has not handed over possession of acquired land to the applicant, so the applicant could not complete Project of construction which is at last stage, therefore suffering financial losses. The applicant being Government of India undertaking the work in the interest of public at large, hence this application.

6- Respondent No. 1 has filed say below Exh. 14, stating that, most of owners migrated to other towns, hence difficult to trace out. The Hon'ble Supreme Court in the case of NHAI Vs. M. Hakeem and others (2021) has held, the Court in the matter under section 34 of the Arbitration Act does not sit as a Court of Appeal. Respondent No. 1 raised objection that, the applicant failed to comply mandatory provision of issuance of notice as contemplated under section 3 (E) of National Highway Act. Respondent No. 1 is not accepting terms of compromise as prayed in the application. It is further contended that, the Hon'ble Supreme Court has given guidelines in Special Leave Appeal No. 12409/2022 in the case of

the Project Director, National Highway Authority of India Vs. Sarswatibai Chandrakant Shinde and others, that the Court in its power distribute the amount and the Court has directed the National Highway Authority of India to deposit 50% of the compensation amount as Awarded by the Arbitral Tribunal with executing Court and permitted the original land owners to withdraw the same unconditionally. It is contended that, respondent No. 1 without surrendering his legal rights, ready to accept 50% amount as interim amount and to handover possession of the land.

7- On the rival contentions of parties, following points arise in my mind. The points along-with findings there are as under-

Sr. No.	POINTS	FINDINGS
1.	Whether the application deserves to be allowed ?	In the affirmative
2.	What order ?	As per final order

REASONS

8- Learned advocate Shri. V. T. Sakolkar for the applicant has submitted, as per contents in the application. The Competent Authority and the Arbitrator considered Government circular dated 16.3.2020 (multiplying factor) for determination of compensation of acquired land and applied wrong market value while determining the compensation. The appropriate Government has no right to issue circular for applying multiplying factor in regard

with urban land, because as per first schedule of serial No. 3 of RFCTLARR Act, 2013, the multiplying factor one is applicable for urban area. It is further submitted, the applicant is ready deposit undisputed compensation amount along-with other statutory charges. Learned advocate has placed reliance on the following judgments -

a) Shital Jaidev Wade and others
Vs. The Union of India and others, Writ
Petition No. 144/2021, decided on 1st April
2022, wherein the Hon'ble High Court has
directed to respondent No. 1 and 2 to
deposit the amount along-with interest with
respondent No. 3 and also permit the
petitioners to approach before the
competent Authority and filed an
application with affidavit undertaking that,
in the litigation, if an adverse order is
passed the excess amount would be re-
deposited with the authority within
stipulated period.

b) Balaji Gyanoba Umate Vs. The
Union of India through it's secretary &
others, Writ Petition No. 8231 of 2022,
decided on 11th August 2022, wherein the
Hon'ble High Court gave permission to
petitioners to file an application before

executing Court and seek directions from depositing the compensation amount.

c) National Highway Authority of India Vs. Shital Jaidev Wade and others, Civil Appeal No. 5256/2022, decided on 24th August 2022, wherein the Hon'ble Apex Court held that, once the original Writ Petitioner was having an efficacious alternative remedy to execute the award passed by the learned Arbitral Tribunal/Court by initiating and appropriate execution proceeding before the competent executing Court, the High Court ought to have relegated the original Writ petitioners to avail said remedy.

9- On the other side learned advocate for respondent No.1 has submitted applicant be directed to deposit 50% compensation @ 9% interest from the date of possession till today. It is further submitted, the applicant has not complied mandatory provision of the National Highway Act regarding issuance of notice. Learned advocate has alternatively submitted that, respondent No. 1 is ready to handover possession after getting 50% compensation amount by reserving his right in the compensation.

10- I have gone through the record. Admittedly, present Civil miscellaneous Application is filed under section 34 of the

Arbitration Act challenging judgment and order passed by Arbitrator/Collector Nanded in Arbitration application No. Cr 1249/2021 dated 11.05.2022 as well as challenged Judgment and Award of CALA, Kandhar. It appears from the contents of the application and reply of respondent No. 1 that, applicant is ready to deposit disputed amount along-with all statutory charges and interest, while respondent No. 1 is ready to handover possession without surrendering his legal rights by accepting 50% interim amount of compensation.

11- I have gone through the cited judgments, the Hon'ble Apex Court and the Hon'ble High Court has given directions to NHAI to deposit 50% amount of compensation with liberty to the land looser to withdraw said amount. It is not in dispute acquisition was carried out nearly five years back and respondent No. 1 has not handed over possession of his acquired land to the applicant. It takes time to decide main application on merit. In these circumstances, the applicant is not able to carryout preparatory works required for the development and maintenance of National Highway, therefore in order to avoid loss which will cause to both sides the application filed under section 9 of the Arbitration and Conciliation Act needs to be allowed.

12- In view of all above reasons and by taking help of the cited judgments, I pass following order -

ORDER

1. Application is allowed as under -

- a) The applicant/NHAI is directed to deposit 50% of the compensation amount along-with interest @ 9% p.a. from the date of CALA's order.
- b) Respondent No. 1 is directed to handover possession of acquired land to applicant/NHAI for construction of National Highway 361 within two weeks after the deposit of the amount by the applicant/NHAI in the Court.
- c) Respondent No. 1 would be at liberty to withdraw amount deposited by the applicant, by filing an application.

Sd/-

Date: 14/03/2024

(U. V. Indapure)
Ad-hoc District Judge-1,
Kandhar.

CERTIFICATE

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

Name of the Stenographer : Smt. S.S.Korewar,
Stenographer (L.G.)

Court Name : Court of Ad-hoc District Judge-1,
Kandhar.

Date of order : 14-03-2024

Order signed by
the Presiding Officer on : 14-03-2024

Order uploaded on : 15-03-2024