

**In the Court of Charanjeet Arora,
Additional District Judge, Jalandhar.
(UID No.PB0178)**

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**CNR No.PBJL010088252021.  
CIS No.ARB/71/2021.  
Date of institution: 13.08.2021.  
Decided on: 13.09.2024.**

- 1) Union of India through its Secretary Ministry of Road Transport and Highways, New Delhi;
- 2) The Project Director, National Highway Authority of India, 778-Kalia Colony, Jalandhar at present 44-A, Kalia Colony Jalandhar.....(**Petitioners**)

**Versus**

- 1) Gurbaksh Singh aged about 66 years son of Late S.S.Banwait, ordinarily resident of Flat No.19-B, Brij Vihar Pitampura, Delhi-110034;
- 2) Satpal Banwait since deceased through his legal heir:  
Girish Banwait (son) aged 45 years, resident of Flat No.48-B Pocket B Gangotri Enclave Alaknanda, New Delhi;
- 3) Maj Gen. (Retd.) Raj Pal aged about 60 years son of Late S.S.Banwait, resident of 102, Ambica Vihar, Delhi-110087;
- 4) Usha Kumari (@ Neelam Saini after marriage) wife of Jagir Singh Saini, resident of Lubi Motors, Jalandhar.
- 5) Col. Yash Pal Banwait, aged about 42 years son of Late S.S.Banwait, ordinarily resident of N. Delhi, now at present resident of D-601, Vikram Vihar, Sector 27, Panchkula.....(**Respondents**)
- 6) The Commissioner, Jalandhar Division-cum-Arbitrator, Jalandhar;
- 7) SDM Dasuya-cum-Competent Authority and Land Acquisition Collector, District Hoshiarpur; and
- 8) State of Punjab through District Collector, Hoshiarpur.

.....(**Performa respondents**)

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| <b>Petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended vide the Arbitration and Conciliation (Amendment) Ordinance Act, 2015 for setting aside the Arbitration Award dated 26.10.2020 (in the case MA No.118 of 2014) made by the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.</b> |
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Present:      Shri D.S.Monga, Advocate for the petitioners.  
                    Shri Vivek Jain, Advocate for respondents Nos.1 to 5.  
                    Remaining respondents are performa respondents.

## **ORDER**

The petitioners have brought the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 whereby they have assailed and prayed for setting aside the Arbitral Award dated 26.10.2020 in the case MA No.118 of 2014 passed by the Commissioner, Jalandhar Division, Jalandhar, performa respondent No.6 while acting as an Arbitrator.

2) Conspectus of the case as it emerges out of records of the case is that for the purpose of widening/Four laning, maintenance, management, operation etc. of the National Highway No.1-A, the Government of India issued a notification under Section 3-A of the National Highways Act, 1956 thereby expressing its intention to acquire the land on the stretch from Km. 26.00 to Km 117.750 of NH 1-A falling in the area of Tehsil Dasuya, District Hoshiarpur including that of the respondents Nos.1 to 5 within the revenue estate of Village Khudda, Tehsil Dasuya, District Hoshiarpur, and the said notification was published in the Gazette of India on **24.12.2004**. After disposal of objections, if any, preferred by the affected land owners under Section 3-C of the National Highways Act, 1956, the Government of India published the notification under Section 3-D of the Act ibid in the Gazette of India on **11.7.2005** thereby declaring that the land specified in the schedule of the said notification should be acquired for the purpose aforesaid. This was followed by invitation for claims from the land owners which were duly considered by the Competent Authority Land Acquisition Collector and considering all the relevant aspects, the compensation for the acquired land was assessed by the Competent Authority vide Award dated **05.05.2007** and the amount assessed was duly paid to and received by respondents Nos.1 to 5.

3) Feeling dis-satisfied with such amount of compensation assessed by the Competent Authority-cum-SDM, the respondents Nos.1 to 5 invoked Section 3(G)(5) of the National Highways Act, 1956 by moving an application before performa respondent No.6 praying for enhancement of the assessed value of the acquired land. In this application, the arbitrator initially passed his Award on **09.05.2011** in MA **No.320/2009** and the said

Award was challenged by the NHAI before Learned Additional District Judge, Jalandhar, who vide her order dated **05.10.2013** set aside the impugned order of the then Arbitrator and remanded the case to the Arbitrator for its decision afresh.

4) After the case was remanded, the learned arbitrator issued notices to both the sides. Reply to the application was filed and after affording due opportunities to the parties to adduce evidence in support of their respective contentions and after taking into consideration all the relevant aspects including the Judgment passed by Hon'ble High Court of Punjab and Haryana in the case FAO No.8219 of 2014, passed his award dated 26.10.2020 whereby he re-assessed the amount of compensation at Rs.1,00,000/- per marla for the acquired land of the respondents Chahi in nature. Besides this, the arbitrator also awarded additional compensation at the rate of 12% p.a. from the date of publication of notification under Section 3-A of the Act upto the date of Award passed by the CALA or the date of taking possession of the land whichever is earlier. Interest at the rate of 9% p.a. for the first year from taking possession and 15% p.a. for the subsequent period as provided by Section 28 of the Land Acquisition Act, 1894 alongwith solatium at the rate of 30%, has also been awarded by the Arbitrator.

5) The present objection petition has been filed by the objectors assailing the said arbitral award dated 26.10.2020 with the submissions that the arbitrator erred in law while awarding the land rate at the rate of Rs.1,00,000/- per Marla i.e. Rs.1,60,00,000/- per acre merely on the basis of assumptions and presumptions without there being any cogent evidence in support of the claim of the land owner whereas the CALA had conducted a strenuous and thorough exercise while maintaining a fine balance between the hope and aspiration of the land owners and taking into consideration the market value of the land as on the date of publication of the notice under Section 3-A of the National Highways Act, 1956. It is further averred that the respondents Nos.1 to 5 were estopped from asking for enhancement of land rate as they had not raised any objection under Section 3-C of the

National Highways Act, 1956. The Award of solatium at the rate of 30%, interest at the rate of 9% p.a. for the first year from the date of taking possession and at 15% p.a. for the subsequent period under Sec.28 of the Land Acquisition Act, 1894 and also the award of additional compensation at the rate of 12% p.a. as provided under Sec.23(1-A) of the Land Acquisition Act, has also been assailed by the petitioners. The petitioners have then reproduced and referred to the grounds provided by Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of an arbitral Award. Non-compliance with provisions of Section 31(5) of the Act *ibid* has also been cited as one of the grounds for setting aside the arbitral Award.

6) On notice of the petition, the respondents Nos.1 to 5 caused appearance and filed their Written reply wherein they raised Preliminary objections assailing the maintainability of the petition. The respondents defended the impugned award passed by the arbitrator with the submission that the higher land rate in respect of the same village as has been allowed by the arbitrator, has already been approved and upheld by the Hon'ble High Court in case **FAO No.8220 of 2014** titled as '**Union of India Versus Sarabjit Singh and others**' decided alongwith bunch of similar FAOs on 27.1.2016 as a result of which no illegality can be said to have been committed by the arbitrator while allowing the same rate of land as has been upheld by the Hon'ble High Court. Award of interest under Section 28 of the Land Acquisition Act, 1894 as also the Award of solatium has also been held to be justified in the light of law laid down by our own Hon'ble High Court in the case of '**Golden Iron and Steel Forging Versus Union of India and others**' reported as **2011(4) RCR Page 375** whereby the provisions of Section 3-J of the National Highways Act, 1956 denying the benefit of solatium and interest to the land owners were struck down by holding the land owners entitled to the grant of solatium and interest as provided by Section 23(2) and 28 of the Land Acquisition Act, 1894. The respondents accordingly made a prayer for dismissal of the objection petition.

7) Records of arbitration proceedings in respect of the Award dated 26.10.2020 were requisitioned from the office of the arbitrator/proforma respondent No.6 and on receipt of such records, I have heard the learned counsel for the petitioners and learned counsel for respondents Nos.1 to 5.

8) As has already been noted above, the acquired land of respondents Nos.1 to 5 is situated within the revenue estate of Village Khudda, District Hoshiarpur in respect whereof the arbitrator has awarded the land rate at Rs.1,00,000/- per Marla which in the considered view of this Court deserves no interference at all keeping in view the fact that much higher rate of land in respect of the acquired land from the same village Khudda to the tune of Rs.1,50,000/- per marla has already been approved and upheld by the Hon'ble High Court in the case of Sarabjit Singh (supra) being FAO No.8219 of 2014. Thus, once it is shown that the rate of land at Rs.1,50,000/- per marla has been approved and upheld by the Hon'ble High Court, how can the land rate as awarded by the arbitrator in this case to the tune of Rs.1,00,000/- per marla only, be said to be unreasonable, unjustified or excessive one. Viewing thus, the land rate as awarded by the arbitrator to the tune of Rs.1,00,000/- per marla does not call for any interference by this Court and the same is accordingly upheld.

9) The petitioners have also assailed the benefit of solatium and interest as has been allowed by the Arbitrator while passing the Award under challenge and have contended that the said benefits are not permissible and not payable to the land owners. On the other hand, the learned counsel for the contesting respondents has argued that the said benefits have been granted by the arbitrator keeping in view the provisions of Land Acquisition Act, 1894 the provisions whereof with regard to payment of interest and solatium were made applicable to the acquisitions under the National Highways Act, 1956 also by virtue of Judgment passed by our own Hon'ble High Court in the case of 'Golden Iron and Steel Forging Versus Union of India' reported as 2011(4) Recent Civil Reports Page 375. He thus contended that there is no illegality or violation of any

law or the public policy of India warranting any interference in the Arbitral Award passed by the arbitrator and the objection petition may be dismissed.

10) As far as award of solatium at the rate of 30% and award of interest at the rate of 9% p.a. for the first year from the date of taking possession and 15% p.a. for rest of the period is concerned, it is worth while to take note of the fact that these benefits are the outcome of the provisions as contained in Section 23(2) and 28 of the Land Acquisition, 1894, which were initially inapplicable to the acquisitions under the National Highways Act, 1956 by virtue of Section 3(J) thereof. However, while rendering a Judgment in a CWP titled as 'Golden Iron and Steel Forging Versus Union of India' (supra), the Division Bench of our own Hon'ble High Court struck down Section 3-J of the National Highways Act, 1956 as arbitrary, irrational and violative of Article 14 of the Constitution as far as they deny payment of solatium and interest and that in respect of all the acquisitions made under the National Highways Act, 1956 solatium and interest will have to be granted in terms of Section 23(2) and Sec.28 of the Land Acquisition Act, 1894. While Section 23(2) of the LAA, 1894 pertains to grant of solatium to the land owners, Section 28 of the said Act pertains to grant of interest at the rate of 9% p.a. for the first year from the date of taking possession of the acquired land and at the rate of 15% for the subsequent period. As a result, no interference in this regard is also warranted by this Court and the Award qua these benefits deserves to be upheld.

11) However, as regards the award of additional compensation at the rate of 12% p.a. as provided under Sec.23(1-A) of the Land Acquisition Act, 1894 is concerned, it is worth while to note that the said provision of law was never made applicable to the acquisitions under the National Highways Act, 1956. The arbitrator has however awarded the said additional compensation at the rate of 12% p.a. also while relying upon a Judgment rendered by Hon'ble Supreme Court of India in the case of 'Union of India Versus Tarsem Singh and others' decided on 19.9.2019 whereby benefits payable under Sec.23(1-A) of the Land Acquisition Act, 1894 were also made payable to the acquisitions under the National

Highways Act, 1956. However, in a subsequent decision rendered by the Hon'ble Supreme Court while deciding a Miscellaneous Application Diary No.2572 of 2020 in the case of 'National Highway Authority of India Versus Tehal Singh and others' clarified that Section 23(1-A) as was included in the Judgment of 'Tarsem Singh (supra)' was infact not present before any authority or the court on the facts of these cases and accordingly the expression/word "(1-A) and" occurring in Paragraph No.41 of the Judgment in the main case was ordered to be deleted. This being the situation, the position as it existed after passing of Judgment in the case of 'Golden iron (supra)' got reverted and only the benefits of solatium under Sec.23(2) and interest payable under Sec.28 of the Land Acquisition Act, 1894 can be said to be payable to the landowners. Thus the said benefit of additional compensation at the rate of 12% p.a. under Sec.23(1-A) of the L.A.Act, 1894 being not permissible in the case in hand, I am of the considered view that this part of the arbitral Award needs to be set aside.

12) Accordingly, taking into consideration all the aspects of the case and in the light of discussion hereinabove, the objection petition filed by the petitioners is allowed partly by setting aside the arbitral award dated 26.10.2020 only to the extent it relates to Award of additional compensation at the rate of 12% p.a. by holding this benefit to be not payable to the land owners-respondents No.1 to 5. The rest of the Award is upheld and the objection petition filed by the petitioners is disposed of accordingly as partly allowed. Memo of costs be prepared and the file be consigned to the Record Room. The records of arbitration be also returned to the quarter concerned.

**Pronounced:**  
**13.09.2024.**

**(Charanjeet Arora)**  
**Additional District Judge, Jalandhar.**  
(UID No.PB0178)

(Charanjeet Arora)  
Additional District Judge, Jalandhar.  
UID No.PB0178.

Memo of costs

| <u>Nature of cost.</u>         | <u>Petitioner</u> | <u>Respondent</u> |
|--------------------------------|-------------------|-------------------|
| Court fee stamp on petition    | Rs.300-00         | Rs.00-00          |
| Court fee on Power of Attorney | Rs. 10-00         | Rs.10-00          |
| Process fee                    | Rs. 50-00         | Rs.00-00          |
| Subsistence for witnesses      | Rs. 00-00         | Rs.00-00          |
| Misc.expenses                  | Rs. 00-00         | Rs.00-00          |
| <b>Total:</b>                  | <b>Rs.360-00</b>  | <b>Rs.10-00</b>   |

Given under my hand and seal of the Court, this 13<sup>th</sup> day of  
September, 2024.

(Charanjeet Arora)  
Additional District Judge, Jalandhar.  
(UID No.PB0178)

