

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

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**CNR No.PBJL010097072021.**

**CIS No.ARB/89/2021.**

**Date of institution: 03.09.2021.**

**Date of Decision: 23.10.2023.**

1) Union of India, through its Secretary, Ministry of Road Transport and Highways, New Delhi; and

2) Project Director, National Highway Authority of India, 44-A, Kalia Colony, Jalandhar.....**(Petitioners)**

Versus

1) Balvir Singh son of Sohan Lal son of Sunder Dass, resident of Village Darapur, Tanda City, Tehsil Dasuya, District Hoshiarpur.

2) Nirmal Singh son of Sohan Singh son of Sunder Dass, resident of Village Darapur, Tanda City, Tehsil Dasuya, District Hoshiarpur.

.....**(Respondents)**

3) Competent Authority-cum-Land Acquisition Collector, Sub Divisional Magistrate, Dasuya, District Hoshiarpur;

4) Commissioner, Jalandhar Division-cum-Arbitrator, Jalandhar.

.....**(Performa Respondents)**

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| <p><b>Petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended vide the Arbitration and Conciliation (Amendment) Act, 2015 for setting aside the Arbitration Award dated <u>15.12.2020</u> (in case <u>MA No.531 of 2013</u> (old MA No.105 of 2010) made by the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar.</b></p> |
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Present: Shri Puneet Sareen, Advocate for the petitioners.  
Shri M.K.Jain, Advocate for respondents Nos.1 & 2  
Respondents Nos.3 and 4 performa respondents.

**O R D E R**

This order of mine is aimed at disposal of an objection petition filed by the petitioner Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 whereby the petitioner has come up with a prayer for setting aside the Arbitration Award dated 15.12.2020 in the case (MA

**No.531 of 2013 (old MA No.105 of 2010)** made by the Arbitrator-cum-Commissioner, Jalandhar Division, Jalandhar, performa respondent No.4.

2. Briefly stated, the factual matrix as it emerges out of records of the case is that with a view to widening/four laning, maintenance, management and operation etc. of National Highway, the Government of India issued a notification under Section 3-A(1) of the National Highways Act, 1956 thereby declaring its intention to acquire certain area of land falling within the area of District Hoshiarpur including the land of the present respondents Nos.1 & 2 situated in the revenue estate of Village Darapur, Tehsil Dasuya, District Hoshiarpur and said notification was published in Gazette of India on **24.12.2004**. After disposal of the objections received against such proposed acquisition, notification under Section 3-D of the Act ibid was issued on **11.07.2005** thereby declaring the land as mentioned in notification under Sec.3-A of the Act should be acquired. The acquired land of respondents No.1 & 2 was in the nature of **Gair Mumkin Taur** in respect whereof the competent authority cum Land Acquisition Collector assessed the compensation at the rate of Rs.1,60,000/- per Marla i.e. Rs.2,56,00,000/- per acre and in respect of their acquired land measuring 3 marlas, the respondent Nos.1 & 2 received the compensation to the tune of Rs.2,40,000/- each at the said assessed rate of land.

3. However, feeling dis-satisfied with the amount of compensation so assessed by the competent authority and considering the same to be inadequate, the land-owners invoked the jurisdiction of the Arbitrator in view of the provisions as contained in Section 3(G)(5) of the National Highways Act, 1956 praying for enhancement of such compensation. The Commissioner, Jalandhar Division, Jalandhar while acting as an arbitrator in the matter, considered all the relevant factors for the purpose and re-assessed the compensation payable to the land-owners at the rate of Rs.**2,50,000/-** per Marla considering the nature as Commercial one and also allowed severance, solatium and interest at the rate of 9% p.a. for the first year from the date of taking possession, with further rider that in case the payment of enhanced price is delayed beyond 90 days, the interest payable would be payable at 15% p.a. and at the rate of 18% p.a. if the payment is delayed beyond 6

months from the date of announcement of his Award passed on **28.6.2011** (**old MA No.105/2010**).

4. However, the said Award of the arbitrator having been assailed by the petitioners by means of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 the then learned Additional District Judge, Jalandhar vide his orders dated **03.11.2012** set aside the Award so passed by the arbitrator and remanded the matter back to the arbitrator for fresh decision.

5. The contentions raised by the land owner-respondents before the arbitrator was that the land was commercial in nature for which a meagre amount of Rs.13,750/- has been assessed by way of compensation. The land was further projected to be abutting the road and that the competent authority had not taken into consideration the relevant prevailing price of the land. The land owner-respondent No.1 and 2 accordingly prayed for enhancement of compensation with other benefits of solatium and interest.

6. The learned arbitrator after taking into consideration all the relevant aspects as also the Judgment rendered by the Hon’ble High Court thereby upholding the rate of land as awarded in certain earlier cases, awarded the compensation in favour of the land owner to the tune of Rs.2,70,000/- per Acre. Additional compensation at the rate of 12% p.a. from the date of first notification till the date of taking possession as provided by Section 23(1-A) of the Land Acquisition Act, Solatium and interest in consonance with the provisions of the Land Acquisition Act, 1894 was also awarded by the arbitrator vide his Award dated **15.12.2020**. It is against the Award so passed by the arbitrator that the objector has filed the instant objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 praying for setting aside of the Award abovesaid with the submissions that the arbitrator has erred while assessing the value of the acquired land at Rs.2,70,000/- per Marla irrespective of the nature of the land without any cogent evidence in support of such assessment. It is also averred that the respondent was estopped from filing the application for enhancement of compensation as no objection of any nature whatsoever was ever raised by the respondent at the time of notification under Secc.3-C of the Act. The

objectors have then reproduced the grounds provided for setting aside the Award as enunciated in Section 34(2) of the Arbitration and Conciliation Act, 1996. It is averred that the arbitrator failed to act in a judicious manner and has simply granted the benefit qua enhancement of land price on the basis of a Judgment passed by Hon’ble High Court in **FAO No.6151 of 2014** and thus the arbitrator failed to act independently. The arbitrator is also claimed to have exceeded his jurisdiction and the Award made by him is without jurisdiction, against law, untenable, passed without adopting legal procedure, not maintainable and nonest in the eyes of law. Non compliance with provisions of Section 31(5) of the Act as regards supply of signed copy of the Award is concerned, has also been set up as one of the grounds to set aside the arbitration Award under challenge.

7. On being put to notice of the petition, the respondent caused appearance and filed his Written reply wherein they raised various Preliminary objections as to maintainability of the petition and that the petitioners are estopped by their act and conduct as they have already paid the compensation at the said awarded rate of Rs.2,70,000/- to the land owner of the adjoining land on the basis of decision rendered by the Hon’ble High Court in the FAO bearing No.6151 of 2014 and did not even bother to challenge the said order of Hon’ble High Court before the Hon’ble Supreme Court and thus when the rate of Rs.2,70,000/- qua other acquired land of Village Darapur has already been upheld by the Hon’ble High Court and payment made by the petitioners at the said rate, nothing wrong can be said to have been done by the arbitrator by following the same rate in the case of the present respondent also. Thus, defending the Award as passed by the arbitrator, the respondents at last made a prayer for dismissal of the objection petition.

8. The records of the arbitral proceedings were also requisitioned from the office of respondent No.4 and on receipt of such records, I have heard the learned counsels for the parties and have perused the records of the case carefully.

9. Taking up first the contention of the petitioners with regard to the aspect of estoppel for want of any objection at the time of notification

under Section 3-C of the National Highways Act, 1956, suffice it to note that such an objection raised by the petitioners is totally mis-conceived as the question of adequate or inadequate quantum of compensation would come into play only on passing of the Award by the Competent authority after final notification under Section 3-D is issued. The scope of objections under Section 3-C of the National Highways Act, 1956 is quite limited one since the objections under the said Section of the Act are contemplated against the acquisition itself and not against the amount of compensation since at that stage no amount of compensation is declared by any authority. The dispute as to inadequacy of the amount of compensation, thus can be raised by a landowner only after passing of the Award by the Land Acquisition Collector which apparently has to be passed after completion of requirements under Section 3-C and 3-D of the National Highways Act. As a result, the objection of the objectors in this regard is totally mis-conceived and has to be repelled and stands repelled accordingly.

10. As regards the objection of the petitioners with regard to non-compliance with provisions of Sec.31(5) of the Arbitration and Conciliation Act, 1996 is concerned, the said objection on the face of it is found to be mis-conceived and factually incorrect. A perusal of the certified copy of the Award appended to the objection petition shows that after the Award was passed on 15.12.2020, the petitioners immediately applied for certified copy thereof on 16.12.2020 which clearly shows that passing of Award was made well known to the petitioners immediately after it was passed. The certified copy of the Award was supplied to the petitioners on 9.6.2021 whereafter the objection petition has been filed on 3.9.2021 well within the prescribed period of 90 days. Hence, this objection of the objectors is also found to be of no avail to them.

11. As has already been taken note of while discussing factual matrix of the case, the land belonging to the respondents which stood acquired by the petitioners is situated in Village Darapur, Tehsil Dasuya and District Hoshiarpur and upon a petition under Section 3(G) of the National Highways Act, 1956 filed by the landowners, the arbitrator has enhanced the amount of compensation as assessed by the Competent Authority-cum-Land

Acquisition Collector and the enhanced compensation has been assessed at the rate of Rs.2,70,000/- per Marla and it is the said enhancement of land price coupled with grant of statutory benefits in the shape of solatium and interest which has now been assailed by the petitioners in their objection petition. However, for the reasons to be followed, I find no merit or substance in the objection petition filed by the petitioners.

12. As regards the assessment of land rate/value at the rate of Rs.2,70,000/- per marla is concerned, the said rate of land awarded in respect of the land acquired out of the same Village i.e. Darapur has already been upheld and confirmed by the Hon’ble High Court in the case **FAO No.6151 of 2014** titled as ‘**Union of India and another Versus Gurdwara Sahib Ji and others**’. Thus, when the rate of land already determined to the tune of Rs.2,70,000/- per marla in respect of the same Village has already been confirmed and upheld by the Hon’ble High Court, could the arbitrator in any manner allow any other rate on either side than the one allowed by the Hon’ble High Court. It is also worth while to add here that the abovesaid FAO No.6151 arose out of acquisition of land of the same Village for acquisition whereof the notification under Section 3-A of the NH Act, 1956 was issued on 24.12.2004. This being the situation, how can the arbitrator be said to have committed any illegality while allowing the compensation at the land rate of Rs.2,70,000/- per Marla which was the determined market price as on the date of notification issued on 24.12.2004. As a result, the objection raised by the petitioners in this regard is found to be unsustainable and stands repelled accordingly.

13. 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.

14. 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 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. The interest in the case in hand having also been awarded at the said rate provided by Section 28 of the Land Acquisition Act, 1894 no interference in that regard is warranted by this Court.

15. However, as regards the Award of additional compensation at the rate of 12% p.a. is concerned, such relief is provided for under Section 23(1-A) of the Land Acquisition Act, 1894, but as per the Judgment rendered by Hon’ble High Court in the case of ‘**Golden Iron (supra)**’, the benefit of Section 23(1-A) of the Land Acquisition Act, 1894 dealing with grant of additional compensation at the rate of 12% p.a. 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. Here it is worth while to take note of the fact that 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’** it stood 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 Pargraph 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 being of the considered view that the said benefit of additional compensation at the rate of 12% p.a. under Sec.23(1-A) of the LAAct, 1894 is not permissible in the case in hand, I am of the considered view that except for modification of the arbitral Award only with regard to the said benefit of additional compensation under Section 23(1-A) of the Land Acquisition Act, 1894 which was never made applicable to the acquisitions under the National Highways Act, 1956, the rest of the Award warrants no interference and deserves to be upheld.

16. Accordingly, while modifying the Award as regards grant of additional compensation at the rate of 12% p.a. under Section 23(1-A) of the Land Acquisition Act by holding the said benefit to be not payable to the respondent/land owner, the rest of the Award is upheld and the objection petition stands dismissed. Memo of costs be prepared and the records be consigned to the Record Room.

Pronounced:  
23.10.2023.

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

**Memo of costs**

| <b><u>Nature of cost.</u></b>  | <b><u>Petitioner</u></b> | <b><u>Respondent</u></b> |
|--------------------------------|--------------------------|--------------------------|
| 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 23<sup>rd</sup> day of October, 2023.

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

