

In the Court of Paras Doger, District Judge, Mandi, District Mandi, H.P.

CIS Registration No. : 183 of 2024  
CIS CNR No. : HPMA01-000946-2024  
Arbitration Act No. : 183 of 2024  
Filing No. : 515/2024  
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Date of decision : 09.06.2025

National Highways Authority of India, PIU Mandi, H.P.  
Now through Varun Chari aged 35 years S/o Sh Suresh Kumar Chari, duly authorized signatory, presently working as Project Director National Highways Authority of India, Project Implementation Unit-Mandi.

...Applicant.

**Versus**

1. Land Acquisition Officer -cum- Competent Authority (SLAU), Bilaspur, District Bilaspur, H.P.
2. Sh. Budhi Ram S/o Sh. Shalig Ram,
3. Sh. Pyare Lal S/o Sh. Shalig Ram,
4. Sh. Anand Ram S/o Sh. Shalig Ram,  
All residents of village Bhated, P.O. Rishikesh, Tehsil Jhandutta, District Bilaspur, H.P.

...Respondents.

**APPLICATION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996, SEEKING SETTING ASIDE THE IMPUGNED AWARD NO.48 OF 2022 DATED 07.08.2023 PASSED BY LEARNED ARBITRATOR -CUM- DIVISIONAL COMMISSIONER, MANDI, DISTRICT MANDI, H.P.**

For the Applicant : Sh. Raghujeet Singh Madan, Ld. Adv.  
For the Respondent No.1 : Sh. Vinod Bhardwaj, Ld. D.A.  
For the Respondent No.2 : Sh. N.S. Thakur, Ld. Adv.

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**ORDER.**

By way of the present application under Section 34 of the Arbitration and Conciliation Act, 1996, the applicant (NHA) has assailed the award dated 07.08.2023 passed by learned Arbitrator-cum-Divisional Commissioner, Mandi Division Mandi, H.P., exercising the power of Arbitrator under the National

Highways Act,1956. (For the sake of convenience the parties hereinafter be referred to as NHAI, Competent Authority and landowners and National Highways Act shall be referred to as “Act”).

2. The Ld. Arbitrator vide impugned award dated 07.08.2023, while deciding the two applications in case No.48 of 2022 titled as NHAI v. Land Acquisition Officer & Ors. and case No.87 of 2022 titled as Budhi Ram & Ors. v. Land Acquisition Officer & Anr. rejected the prayer of the NHAI qua modification/reduction in the compensation as well as claim of the landowners for enhancement of compensation as awarded by the Competent Authority. However, the landowners were held entitled to all the statutory benefits contained under section 30(1) and Section 30(3) of the Act No.30 of 2013 and interest in accordance with law on the amount of compensation, if already not paid.

3. Feeling dis-satisfied, the applicant - NHAI preferred the present application for setting-aside the impugned award passed by the learned Arbitrator on the premise that the respondent No.1/ Competent Authority had wrongly and illegally awarded compensation @ Rs.7,40,000/- per per bigha without taking into consideration the sale deeds, agreements to sell, collector rates etc. in utter violation of section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is submitted that this action is against the substantive law in force and runs contrary to the public policy of India, thus making the impugned award subject to being set aside in view of section 34(2)(a)(iv), 34(2)(b) (ii) and section 34(2-A) of the Arbitration and Conciliation Act, 1996. It is submitted that the reliance on previous award No.27 dated 24.08.2013 is in complete violation of Explanation 3 of Section 26(1) of the Act of 2013.

4. It is submitted that the Ld. Arbitrator failed to take into consideration that once the Collector rate for the year 2021-22 @ Rs.1,35,740/- per bigha of Muhal Bhated is available then as per section 26(1)(a) of the Act of 2013, the compensation should ought to have been determined on the basis of the Collector rate as provided under section 26(1)(a) of the Act of 2013, therefore, the award is patently illegal.

5. Reply has been filed on behalf of the respondent No.2 to 4/ landowners and the claim of the applicant has been contested with vehemence. On the other hand, no reply was filed on behalf of the respondent No.1/Competent Authority.

6. In the reply filed by the respondents No.2 to 4/landowners raised preliminary objections inter alia maintainability and territorial jurisdiction. It is submitted that the Divisional Commissioner has been appointed as an Arbitrator for a common cause to resolve the matter of public at large of Districts Bilaspur, Mandi and Kullu, whose land has been acquired for the construction of four-lane road. It is submitted that now the NHAI is making reference of some decisions of Hon'ble Apex Court regarding the seat of Arbitration under section 42 of the Arbitration Act does not apply upon these cases, because those decisions are in nature of individual dispute before any two parties. Moreover, while earlier the NHAI filed the objection applications under section 34 of the Act before District Judge Bilaspur, District Judge Mandi and District Judge Kullu stating that this Court has got the jurisdiction to hear and decide the objections under section 34 and made the reference of section 42 of the Arbitration Act, hence, the present application is not maintainable in the eyes of law. It is submitted that the respondents/landowners have already filed the application under section 34 of the Act of 1996 before Ld. District Judge Bilaspur

challenging the award No.87 of 2022 passed by the Ld. Arbitrator, Mandi vide common award dated 07.08.2023 and the matter is also sub-judice in nature and the present application is not maintainable.

7. In para-wise reply to the grounds of application, it is submitted that the impugned award is patently illegal and contrary to the settled principle of law and is hit by section 34 of the Arbitration and Conciliation Act, 1996. It is submitted that the impugned award is conflicted with public policy and is not sustainable in the eyes of law. It is submitted that in the year 2014, the land of the village Bhated was acquired by the Competent Authority under the NH Act, 1956 and assessed the market value @ Rs.15 Lakh per bigha acquired for the same purpose, however, when the left out land in the same land was acquired by the NHAI in the year 2022, the compensation was wrongly assessed by the Competent Authority vide its award No.1 of 2022 dated 16.03.2022 to the tune of Rs.7,40,000/- per bigha. It is submitted that the Ld. Arbitrator vide its another award dated 05.09.2018 assessed the market value of the acquired land of the same village to the tune of Rs.20,53,500/- per bigha, whereas, in the present case, the Ld. Arbitrator wrongly dismissed the application of the landowners and considered the market value of the land of village Bhated to the tune of Rs.7,40,000/- per bigha awarded by the Competent Authority in the year 2022 instead of awarding the compensation to the tune of Rs.20,53,500/- assessed by the Ld. Arbitrator on 05.09.2018. Hence, the award passed by the Id. Arbitrator is illegal and beyond the facts and deserves to be set aside. It is submitted that the impugned award dated 07.08.2023 is contrary to law, beyond facts, illegal, against the public policy and contradictory by assessing the low market value of his own previous award dated

05.09.2018, which is also against the principles of natural justice and against the welfare of the applicant and the same has caused grave injustice to the applicant. Hence, it is prayed that the application be dismissed.

8. I have heard Learned counsels for the parties and have gone through the record with minute care.

9. The respondents/landowners have taken the preliminary objection that the present application is not maintainable as this Court has no territorial jurisdiction to decide the application in the case in hand because the land in question has been acquired in District Bilaspur and subject matter lies within the District Bilaspur.

10. Their lordships of Hon'ble Delhi High Court in case titled **Hari Ram & Ors. v. National Highways Authority of India & Ors. 2025:DHC:2436, bearing No. O.M.P. (Comm.) 86/2024, decided 04.04.2025** has observed as under:

*"8. The A&C Act defines 'Court' in the following manner:-*

*2. Definitions.-(1) In this Part, unless the context otherwise requires,-*

*(e) "Court" means- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;...*

*Thus, it is seen that as per the definition extracted above, the relevant Court would be the one having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. Subject matter of Arbitration should not be equated with subject matter of the suit, as the former is related to*

*proceedings initiated under Part I of the Act. The purpose of the provision is to identify the courts having supervisory control over the arbitration proceedings. The Courts have held that territorial jurisdiction lies with the court within whose jurisdiction the subject matter of the suit is situated, as well as the courts within whose jurisdiction the dispute resolution process, i.e., arbitration, is conducted. Furthermore, it has been consistently held that the moment the seat of arbitration is designated, it is akin to an exclusive jurisdiction clause. [Ref: BALCO v. Kaiser Aluminium Technical Services Inc. (Supra) and BGS SGS SOMA JV v. NHPC MANU/SC/1715/2019 : 2019:INSC:1349 : (2020) 4 SCC 234].*

*9. The Supreme Court in the case of Indus Mobile (Supra), while analysing the definition of Court given in the A&C Act, interpreted the same in the following manner:-*

*2. Definitions.-(1) In this Part, unless the context otherwise requires- (a)-(d)\*\*\**

*(e) 'Court' means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;*

*We are of the opinion, the term "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". The term "subject-matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction*

*where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.*

11. Therefore, in view of the above said judgment, it can be concluded that both the courts have jurisdiction where the subject matter of the suit is situated as well as the Courts within whose jurisdiction the dispute resolution process i.e. arbitration is conducted.

12. Ld. Counsel for the NHAI has submitted that the Ld. Arbitrator has failed to appreciate the fact that the Competent Authority has passed the award dated 16.03.2022 in utter violation of section 26 of the Act of 2013 by relying on the previous award No.27 dated 24.08.2013 and determined the compensation @ Rs.7,40,000/- per bigha. It is further submitted that the Ld. Arbitrator has not taken into consideration that the Competent Authority had not followed the due procedure of law while passing the award dated 16.03.2022. It is submitted that the

Competent Authority while relying upon the previous award No.27 dated 24.08.2013 has observed that his predecessor has awarded Rs.15 Lakh per bigha. However, in the present award No.1 of 2022, he has awarded the compensation @ Rs.7,40,000/- per bigha. It is submitted that the Competent Authority has failed to take into consideration the explanation 3 of section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, which reads as under:-

*Explanation 3.- While determining the market value under this section and the average sale price referred to in Explanation 1 and Explanation 2, any price paid, as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.*

13. On the other hand, Sh. N.S. Thakur, Ld. Counsel for the respondents/landowners has submitted that the Ld. Arbitrator has failed to take into consideration that the previous award No.27 dated 24.08.2013 whereby Rs.15 Lakh compensation has been awarded and the Ld. Arbitrator has without taking into consideration the previous award has not enhanced the compensation for the reasons best known to him.

14. Perusal of para No.17 of the impugned award shows that it has been observed by the Ld. Arbitrator that this Authority has to treat the application under section 3G(5) of the NH Act, 1956 as an original proceeding before it and determine the market value afresh on the basis of material produced during proceedings. No doubt, it has been observed by the Competent Authority that no sale transactions were found during relevant period, therefore, the sale deed could not be taken into consideration.

15. It has been observed by the Ld. Arbitrator -cum-

Divisional Commissioner, in para No.13 of the award that in application No.87/2022, the applicant namely Budhi Ram tendered in evidence copy of award No.1 of 2022 dated 16.03.2022 of Muhal Bhated Ext.PW1/B, copy of award No.27 of 2013-14 dated 24.08.2013 of Muhal Bhated Ext.PW1/C, copy of award passed by this authority dated 05.09.2018 Ext.PW1/D. The perusal of the award dated 27 dated 24.08.2013 shows that Rs.15 Lakh per bigha has been awarded in that award. However, the Competent Authority has awarded Rs.7,40,000/- per bigha and the Ld. Arbitrator without assigning any reason despite the availability of evidence placed on record by the respondents in Application No.87 of 2022, has accepted this assessment of the Competent Authority inspite of observing the fact that an application under section 3G(5) of the National Highways Act is an original proceeding before it and the market value is to be assessed on the basis of material produced before the Arbitrator during proceedings.

16. The Ld. Arbitrator without assigning any reason has accepted the market value of the land to the tune of Rs.7,40,000/- against which both the parties to lis have challenged the award on the ground of patent illegality.

17. Section 34(4) of the Arbitration and Conciliation Act, 1996 provides that :-

*(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.*

18. As both the parties are requesting that this petition may be adjourned and the Arbitral Tribunal be given an

opportunity to resume the arbitral proceedings to eliminate the grounds for setting aside the arbitral award. Therefore, as requested by the parties, it is appropriate that matter be referred to the Arbitral Tribunal 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, as prayed under section 34(4) of the Arbitration and Conciliation Act, 1996. As such, the prayer of the parties is hereby accepted.

19. Accordingly, in view of the abovesaid discussion, the present prayer is allowed and the matter is referred back to the Arbitrator under section 34(4) of the Arbitration and Conciliation Act, 1996 with a direction that after affording reasonable opportunity to both the parties, the Ld. Arbitrator shall decide the controversy in lis within three months. Now, file be put up on **15.09.2025** for awaiting the report of the Ld. Arbitrator. Record of Ld. Arbitrator be returned immediately.

**(Paras Doger)**  
**District Judge**  
**Mandi Division Mandi (HP).**

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