



IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

OMP(M) No. 63 of 2023
Decided on 01st May, 2024

Hari Ram and others.

...Appellants

Versus

National Highways Authority of India.

...Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting?

For the appellants : Ms. Devyani Sharma, Senior
Advocate, with Mr. Anirudh
Sharma, Advocate.

For the respondent : Ms. Shreya Chauhan, Advocate.

Ajay Mohan Goel, Judge (*Oral*)

OMP(M) No. 63 of 2023

By way of this application, a prayer has been made
for condonation of delay in filing the appeal.

2. Having heard learned Counsel for the parties and
having gone through the averments made in the application,
the same is allowed, as prayed for and delay in filing the appeal
is condoned. Appeal be registered. The application stands
disposed of.

Arb. Appeal No. ____ of 2024

3. With the consent of the parties, the appeal is being disposed of at this stage itself.

4. By way of this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the 1996 Act'), the appellant has challenged judgment dated 17.05.2022, passed by the Court of learned District Judge, Mandi, District Mandi, H.P., in Arbitration Petition No.72 of 2019, titled as National Highways Authority of India versus Kanhiya Lal and another, in terms whereof, the Arbitration Petition was allowed by the learned District in the following terms:-

"In view of the above, the present application(s) is allowed and an award dated 23.03.2019 passed by the learned Arbitrator is set aside. However, this will not prevent any of the parties from applying for the extension of time, if otherwise legally admissible. Original order be placed in Arbitration Petition No.73 of 2019 [titled NHAJ vs. Kanhiya Lal] and authenticated copy thereof be placed in the other consolidated Arbitration petition(s). Memo of costs be prepared. The record of the learned

Arbitrator along with a copy of this judgment be returned and the record of this Court, after due completion, be consigned to the record room."

5. Brief facts necessary for the adjudication of this appeal are that Central Government issued a Notification on 21.04.2012 for the purpose of acquisition of the land comprised in Revenue Estate Dehar, Hadbast No.75, Tehsil Sundernagar, District Mandi, H.P., for the purpose of four laning of National Highway-21. The Notification under Section 3(A) (1) of the NHA Act, 1956 was published in the official gazette on 21.04.2012. The Notification under Section 3(G)(3) of the said Act was published in the newspapers 'The Tribune' and 'Dainik Jagran' on 22.05.2012. After complying with the other statutory authority, the Competent Authority assessed the market value of the acquired land @ Rs.35/- lac per bigha for all kind irrespective of the classification and nature. Feeling aggrieved by the award of the Competent Authority, the land owner made a Reference under Section 3G (5) of the National Highways Act, 1956 for enhancement of compensation. According to the landlord, the determination of the value of the acquired land @ Rs.35 lac per bigha was unfair, inadequate and unjust as the

market value of the said land was more than Rs.1.00/- Crore per bigha at the time of the issuance of the notification of acquisition. The Reference was answered by the learned Arbitrator vide award dated 22.03.2019, by ordering the enhancement of the compensation to Rs.36.00/- lac per bigha and also ordered payment of 30% solatium and 9% interest thereon to the appellants.

6. Feeling aggrieved, the National Highways Authority of India preferred Arbitration Petition under Section 34 of the Arbitration and Conciliation Act, which has been decided by the learned District Judge in terms of the impugned judgment.

7. In terms of the provisions of Section 29(A) of the Arbitration and Conciliation Act, the award is to be made within a period of 12 months from the date the arbitral tribunal enters upon the Reference and the parties may by consent in terms of Sub-section (3) thereof extend the period specified in Sub-section (1) for making award for a further period not exceeding six months. Learned District Judge held that herein as the award was announced by the learned Arbitrator after the expiry of one year and without their being any express consent of the

parties to extend the period of making the award, therefore, the same was not sustainable in the eyes of law. .

8. I have heard learned counsel for the parties.

9. The findings which have been returned by the learned District Judge with regard to the interpretation of Section 29(A) of the 1996 Act, cannot be faulted with by this Court for reasons assigned therein as well as the judgment of the Hon'ble Division Bench of this Court in Arb. Appeal No.9 of 2023, titled as Rattan Chand and another versus National Highways Authority of India and another, decided on 13.06.2022 a/w another connected matter, which stands affirmed by the Hon'ble Supreme Court by way of SLP (C) No.21144 of 2023, titled as Rattan Chand and another vs. National Highways Authority and another. It is a matter of record that the award was not made by the learned Arbitrator within a period of twelve months from the date of the completion of the pleadings. For this purpose, one has to refer Section 23(4) of 1996 Act, in terms whereof, the statement of claim and defence under Section 23 shall be completed within a period of six months from the date the arbitrator or all the

arbitrators as the case may be received notice in writing of their appointment.

10. However, fact of the matter still remains that on account of the act of omission of the arbitrator, the appellant herein cannot suffer. This is for the reason that as right to property is a Constitutional right under Article 300A of the Constitution of India, therefore, the appellant cannot be deprived of his property except in accordance with law. Herein, as the land of the petitioner has been acquired under the provisions of the National Highways Authority of India Act, 1956, the appellant has a right to be adequately compensated for the land of his which has been acquired as per law. Incidentally, though in terms of Section 29(A) of the 1996 Act, the mandate of the arbitrator terminates after twelve months from the date of completion of pleadings under Sub-section (4) of Section 23 or after a period of six months thereafter if the parties by consent extend the period specified in Sub-section (1) or Section 29(A) for a further period not exceeding six months, yet in terms of Sub-section (4) of Section 29(A) power is conferred upon the Court to extend the period for announcing

the award either prior to or after the expiry of period specified in Section 29(A).

11. This Court again reiterates that as an Arbitrator in terms of the 1956 Act, is a statutory authority, therefore, onus is upon this authority primarily to decide the matter and announce the award within the statutory period and if he has failed to do so and if the parties have not sought extension from the Court be it before or after the expiry of the statutory period for the pronouncement of the award, the parties, more so the landlord cannot be made to suffer. Incidentally, there is no time limit fixed under Section 29(A) as to within which period the parties can approach the Court for extension of time after expiry of the statutory period for the purpose of pronouncement of the award.

12. In this view of the matter, though, while not disturbing the findings returned by the learned District Judge, but on the request made by the learned counsel for the parties, as both the parties are legally bound to comply with the provisions of 1956 Act and as NHAI is legally bound to pay the land owner adequate amount for the purpose of the acquisition

of his land, this appeal is disposed of by remanding the matter back to the learned Arbitrator for adjudication afresh and by extending the time, as agreed, for pronouncing of a fresh award by 21.11.2024. Though the Arbitrator shall be deciding the matter afresh but it will be on the strength of the pleadings and material which is already on record. Parties to appear before the Arbitrator on 21.05.2024, through counsel. Money already released to the appellant be not refunded, but, payment thereof, will abide by the final adjudication on the Reference by the learned Arbitrator as well as subsequent legal proceedings if any initiated by the aggrieved party(s).

13. With these observations, the appeal stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

May 01, 2024
(Shivank)