
(2025) 06 BOM CK 0082

In the Bombay High Court, Nagpur Bench

Case No : Arbitration Appeal No. 39 Of 2023

Alfa Remidis Ltd Nagpur, Through Managing Director
Pritindarsingh S/O Bhupindarsingh Sethi

APPELLANT

Vs

Project Director National Highway Authority Of India,
Thr.Project Director, Nagpur And Ors

RESPONDENT

Date of Decision : 05-06-2025

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19(4), 34, 34(4), 37

National Highways Act of 1956 — Section 3A, 3(G)(5)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 26, 26(1)(b), 28, 31(3)

Citation : (2025) 06 BOM CK 0082

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : C.S. Kaptan, Y.R. Kinkhede, A.A. Kathane, S.C. Joshi

Final Decision : Disposed Of

Judgement

M.S. Jawalkar, J.

(1). ADMIT. Heard finally by consent of learned Counsel for the respective parties.

(2) By the present Appeal, the Appellant is challenging the judgment and order dated 11/09/2023 passed by the learned District Judge-10, Nagpur, in Arbitration Case No. 272/2022, thereby, quashing and setting aside the Arbitral Award dated 22/11/2021, passed in Arbitration Case No. 193/ARB/2019-20 and allowing the Application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") preferred by the Respondent Nos. 1 and 2.

(3) The facts giving rise for filing of the present Arbitration Appeal are as under:-

The Appellant herein is the owner and possessor of all the piece and parcel of prime land bearing Survey No. 66 of total 0.1394 hectares (land acquired) of

Village Mouza Pardi (Rithi) Tahsil-Saoner (Rural), District-Nagpur. On 27/03/2018, the learned Deputy Collector Land Officer (General), Nagpur & the Competent Authority for acquisition of lands for the National Highways, has acquired 0.1394 hectares of land out of 0.91 hectares for the National Highway No. 547-E as per Award in Land Acquisition Case No. 71/A-65/2016-2017. The Appellant was using the acquired land for its industrial purpose for which the Government of Maharashtra, Directorate of Industries has issued the N.?. order and also for commercial purpose.

(4) It is the contention of the Appellant that the Respondent No.3 - Deputy Collector, Land Acquisition (General), Nagpur, has wrongly and falsely treated and mentioned the acquired land as "Dry Crop Land" i.e. as agricultural land, and therefore, has applied the rate of agricultural land.

(5) Being aggrieved by the said Award granting very meager amount of compensation, on 30/12/2019, the Appellant preferred an Application under Section 3(G)(5) of the National Highways Act of 1956 (hereinafter referred to as "the Act of 1956") for proper, just, reasonable and adequate amount of compensation before the learned Additional Commissioner appointed as Arbitrator. The Respondent No. 1 filed its reply before the learned Arbitrator opposing the claim of the Appellant.

(6) It is submitted that on 22/11/2021, the learned Arbitrator has passed an Arbitral Award, thereby partly allowing the Application and granting enhanced amount of compensation @ Rs. 3588/- per Sq. Mtrs. for the acquired land of 1394 Sq. Mtrs. along with statutory benefits. The learned Arbitrator failed to grant statutory benefits including interest arising out of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013").

(7) Being aggrieved by the said Award, the Appellant preferred an Application under Section 34 of the Act of 1996 for grant of statutory benefits. That, the Respondent No. 1 - NHAI also preferred an Application under Section 34 of the Act of 1996, thereby, challenging the Arbitral Award. On 17/12/2022, the Appellant has opposed the Application by filing exhaustive reply and written submissions to the Application filed by the Respondent No.1-NHAI. On 11/09/2023, the learned District Judge-10, Nagpur, after hearing both the parties, passed an order and judgment, thereby allowing the Application under Section 34 preferred by the Respondent No.1-NHAI. The said judgment and order passed by the learned District Judge is the subject matter of challenge in the present Arbitration Appeal.

(8) The learned Senior Counsel for the Appellant Shri Kaptan submits that the learned District Judge observed that the learned Arbitrator has not assigned any reasons in support of the Award in holding that the acquired land is at par with the Non-Agricultural land. The learned District Judge has failed to read and consider that the learned Arbitrator, in its Award, has given detailed reasoning

while holding the said view. That, bare perusal of the Arbitral Award specifically reflects that the learned Arbitrator has taken into consideration all the documentary evidence on record and after considering the same and applying its mind, the learned Arbitrator has observed that the land of the Appellant is Non-Agricultural land. The learned Arbitrator has also given a finding that the sale transaction executed is in nearest vicinity of the acquired land. Therefore, the said Sale-Deed is applicable to the present case for determination of compensation. Hence, the finding given by the learned District Judge that there is no reasoning is completely erroneous and untenable. Since 2004 the factory is being run on the said land, which itself evident that land is Non Agricultural land.

(9) It is submitted that it is the learned District Judge who has given a finding that the Arbitral Award is in contravention of Section 26 of the Act of 2013 and Sections 28 and 31(3) of the Act of 1996, thereby committed patent illegality, however, it is the learned District Judge who has not given any reasoning as to how and why he has come to such conclusion that, the Arbitral Award is patently illegal. The learned District Judge has also not given any reasoning as to how and why the Arbitral Award is against the public policy of India, and therefore, on this ground alone, the impugned judgment and order needs to be quashed and set aside.

(10) It is submitted that the learned District Judge has failed to appreciate the settled law that, the scope of Section 34 of the Act of 1996 is very limited and the Court, while deciding the Application under Section 34 of the Act of 1996, cannot re-appreciate the evidence as the learned Arbitrator has considered all the aspects of the matter and has rendered a reasoned Award on the issues. Hence, the impugned order deserves to be quashed and set aside.

(11) It is submitted that it is a settled principle of law that, under no circumstances, no Court can interfere with the Arbitral Award even on the ground that justice has not been done in the opinion of the Court. This being the law, the learned District Judge under Section 34 of the Act of 1996, cannot set aside the Arbitral Award on the mere ground that the claimant has relied upon single Sale-Deed. Hence, the impugned order required to be quashed and set aside on this ground alone.

(12) It is submitted that Section 19(4) of the Act of 1996 is very clear on the point that the power of Arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of evidence. Therefore, the learned Arbitrator, having its power had applied its mind to the single Sale-Deed relied upon by the Appellant, cannot be interfered with by the learned District Judge. Hence, he prays for quashing and setting aside the impugned judgment and order.

(13) Shri C.S. Kaptan, learned Senior Counsel for the Appellant, in support of his contentions, relied on the following citations:-

"(a) Rashtriya Ispat Nigam Limited vs. Dewan Chand Ram Saran, (2012) 5 SCC

306;

(b) Rishabhkumar S/o Babulal Jejani vs. Secretary to the Government of India & others in Arbitration Appeal No. 06/2015;

(c) S.V. Samudram vs. State of Karnataka, 2024 SCC OnLine SC 19;

(d) Mahesh D. Thirthakar vs. State of Maharashtra, (2009) 11 SCC 141;

(e) First Appeal No. 64/2000 (S.L.A.O vs. Raia Shriniwas Poi Anglo)

(f) State of Maharashtra vs. Mishrilal Jain, 2009 (5) ABR (NOC) 855 (BOM);

(g) Viluben Jhalejar vs. State of Gujarat, (2005) 4 SCC 789;

(h) Digamber & others vs. State of Maharashtra & others, (2013) 14 SCC 406;”

(14) Per contra, Shri A.A. Kathane, learned Counsel for the Respondent No. 1 submits that the entire approach of the learned District Judge, Nagpur, while passing the Judgment dated 11/09/2023, is as per the powers available to it under Section 34 of the Act of 1996. That, the Award of the learned Arbitrator dated 22/11/2021 is totally arbitrary and unjustified and the same has been rightly set aside by the learned District Judge, Nagpur. In view of the same, the present Appeal, being devoid of merits, is required to be dismissed.

(15) It is submitted that proper potentials of the land of the Appellant has been appreciated by the Competent Authority i.e. “fallow land”, and thereafter, only proper compensation amount was awarded to the Appellant for its land acquisition. That, no proper legal evidence, in respect of Non-Agricultural potentiality and various other factors for determination of market value of the acquired land, has been filed by the Appellant on record. The said potential of the land of the Appellant, has been determined by the Competent Authority on the basis of existing factors of the area where the land is situated, it’s vicinity, quality and other factors.

(16) It is submitted that the entire judgment and order dated 11/09/2023, passed by the learned District Judge, Nagpur, is passed by appreciation of the evidence before the learned Arbitrator and by proper adherence to the provisions of the Act of 1996, which is proper and justified. That, the learned District Judge, Nagpur, has properly appreciated the entire evidence before the learned Arbitrator and also appreciated the material before it, for deriving market rate applicable for the Appellant’s land. The Appellant has miserably failed to demonstrate that he is entitled for getting a particular market rate as awarded by the Arbitrator in his Award dated 22/11/2021. The Award of the learned Arbitrator was totally in contravention of the applicable provisions of the Act of 1996 and also, in breach of various provisions of the Act of 2013. The learned District Judge, Nagpur, has given proper reasoning for setting aside the Award of the Arbitrator dated 22/11/2021, which is totally arbitrary and unjustified and has been properly dealt with on merits by the learned District Judge, Nagpur.

(17) It is submitted that the learned Arbitrator who is dealing a statutory Arbitration is bound to follow principles of Civil Procedure Code or/and Evidence Act and also follow basic principles of natural justice, fair play and law; while deciding the case before it. It is apparent from the record of Arbitration Proceedings that the learned Arbitrator had considered only a single Sale-Deed dated 29/03/2017 for applicability of market rate to the land of the Appellant under acquisition. That, the Respondent No. 1 had raised a specific objection in respect of following the parameters of Section 26 of the Act of 2013, while determining the market value of any acquired land. Further, the learned Arbitrator had not taken the average sale price for similar type of land under acquisition as contemplated under Section 26 of the Act of 2013. Said Sale-Deed was of a plot ad-measuring 195.09. meters in residential layout and of Non-Agricultural land. Whereas, the land of the Appellant under acquisition was "Dry Crop" Land and having agricultural potential as per records. In view of the same, the Award of the learned Arbitrator considering the said Sale-Deed dated 29/03/2017 was not in respect of any "Similar Types of Land" and thus, it was not a good example for determination of market value of the acquired land of the learned Arbitrator. In view of the same, the learned Arbitrator had committed gross error of applicable law and also made breach of principles of justice. Therefore, the learned District Judge, Nagpur was justified in quashing and setting aside the said Award of the arbitrator dated 22/11/2021. No claim under Section 23 of the Act of 1996 was ever made by the Appellant in the original Arbitration Application before the learned Arbitrator. Hence, the said claim was not tenable in the eyes of law and was opposed by the present Respondents before the learned Arbitrator. However, the said has not been considered by the Arbitrator and he has passed Arbitrary Award dated 22/11/2021 and granted exorbitant compensation to the Appellant. However, the said vital ground has been considered by the learned District Judge, Nagpur, and it has by proper consideration of said submissions has rightly set aside the Award of the Arbitrator which is totally proper and justified. Hence, it is prayed that the present Arbitration Appeal, being devoid of merits, is liable to be dismissed.

(18) Learned Counsel for respondent vehemently submitted that in view of the basis of sole instance of sale deed the Arbitrator cannot decide the market value. It has to be the average of sale instance.

(19) Learned Counsel for the Respondent No. 1, in support of his contentions, relied on the following citations:-

"(a) Rishabhkumar S/o Babulal Jejani vs. Secretary to the Government of India & others in Arbitration Appeal No. 06/2015;

(b) State of Chhattisgarh & another vs. Sal Udyog Private Limited, (2022) 2 SCC 275;

(c) Ssangyong Engineering and Construction vs. National Highways Authorities of India, (2019) 15 SCC 131;

- (d) NHA I vs. M. Hakeem & others, (2021) 9 SCC 1;
- (e) McDermott International Inc. vs. Burn Standard Co. Ltd. & others, (2006) 11 SCC 181;
- (f) Dyna Tech Private Limited vs. Crompton Greaves Ltd., (2019) 20 SCC 1;
- (g) K. Sugumar & another vs. Hindusthan Petroleum Corp. Ltd., (2020) 12 SCC 539;
- (h) Prakash Kumar vs. K.M. Co. Bank, 2012 (6) Mh.L.J 274; &
- (i) Dr. A. Parthasarathy vs. E. Spring Avenues Private Limited, 2022 Livelaw (SC) 199"

(20) Shri S.C. Joshi, learned AGP, also supports the impugned judgment and order passed by the learned District Judge. The submissions of the learned AGP are in same lines with the submissions made by the learned Counsel for the Respondent No. 1. He submits that the impugned judgment and order does not suffer from any infirmity or illegality and the same is liable to be maintained and the present Appeal filed by the Appellant, being devoid of merits, needs to be dismissed.

(21) Heard learned Counsel for all the parties. Considered documents placed on record. Perused impugned order and also considered the citation relied on by the parties. Admittedly, 0.1394 hectares of land out of 0.91 hectares for National Highway No. 547 - E was required by the Respondent No. 1, NHA I. It is the contention of the Appellant that the said acquired land was being used for industrial purpose, as learned Deputy Collector, Land Acquisition (General), Nagpur, has wrongly and falsely treated and mentioned the acquired land as "Dry Crop Land" i.e. agricultural land and has applied the rate of agricultural land. As amount of compensation was very meager against the said Award Appellant preferred an application under Section 3-G (5) of the Act of 1956, for proper, just, reasonable and adequate amount of compensation before the learned Additional Commissioner was appointed as an Arbitrator. The Arbitrator partly allowed the application and granted enhanced amount of compensation @ Rs.3588/- per Sq. Mtrs. for the acquired land of 1394 Sq. Mtrs. along with statutory benefits. However, learned Arbitrator failed to grant statutory benefits including interest arising out of the Act of 2013. In view of this order, Appellant filed the application under Section 34 of the Act of 1996, for grant of statutory benefits. The Respondent No. 1, NHA I also preferred an application under Section 34 of the Act of 1996, being aggrieved by the Award. The learned District Judge passed an order and judgment, thereby, allowing the application under Section 34 preferred by the Respondent No.1, NHA I.

(22) I have perused the order passed by the Arbitrator Additional Commissioner, Nagpur, dated 22/11/2021. The Award passed by the Land Acquisition Officer mainly challenged on the ground that the Land Acquisition Officer treated the land as "Dry Crop Land" and applied the rate of agricultural land. In fact, the said

land was being used by the Appellant for their industrial purpose, for which, the Government of Maharashtra, Directorate of Industries have issued N.A. order and also for commercial purpose. Without considering this fact, it appears that Land Acquisition Officer treated the land as "Dry Crop Land" and awarded a meager amount of compensation. It also appears that the contention of the applicant was not considered by the learned District Judge that the rates as per Ready Reckoner are the Government rate and therefore, it cannot be ignored while re-determining the just, proper and reasonable compensation by the Arbitrator and to apply appropriate prevailing rate of the year 2010, which is Rs.2020/- per Sq. Mtrs. as per Ready Reckoner. The Appellant herein, placed reliance on registered Sale-Deed dated 29/03/2017, between Renuka Ashish Chandak and Rajendra Devraoji Patte, wherein, 195.09 Sq. Mtrs. land was sold @ Rs.3358/- per Sq. Mtrs. It appears from the averments and documents on record that on the acquired land, the applicants were carrying out their business and running industry for production of paracetamol medicine and the land was used for industrial purpose. It is settled position of law that while fixing the market value of the acquired land, the Competent Authority is required to keep in mind the factors such as (1) Existing geographical situation of the land (2) Existing use of the land (3) Advantage if land is near to National or State Highway and (4) Market value of other land situated in the locality/village/area near to the acquired land.

(23) Admittedly, the Applicant has placed on record copy of certificate of registration, copy of permit for registration and running factory, map and other relevant documents. It is the contention before the Arbitrator by the Applicant that due to acquisition, the right of use in the land is affected and the land is severed into two parts, out of which, one small part is left of no use to the applicant. This fact is not disputed by the non applicant, as such, right of user is affected due to severance of the land due to acquisition. After considering the documents on record, reply, written notes of arguments, the learned Tribunal held that acquired land of the applicant is N.A. land and adjacent to National Highway 547-E. The Competent Authority has not mentioned any specific reason for discarding the N.A. rate for Applicant's land. The learned Arbitrator further held that on perusal of copy of Sale-Deed dated 29/03/2017, for Tahsil Saoner, Ready Reckoner Certificate, Google Map etc. along with copy of Award passed by the Competent Authority dated 27/03/2018, it is observed that the land of the Applicant is in Non-Agricultural use. The Applicant placed on record the documents regarding N.A. use of land. The Land Acquisition Officer has not given Ready Reckoner rate for the year 2017-18 of Rs.2020/- per Sq. Mtrs. for the Applicant's acquired land. In view of provision of the Act of 2013, under Section 26 (1) (b) provides for criteria for determining the market value of the land, average sell price for similar type of land situated in the village of nearest vicinity area should be considered. Applicant placed reliance on Sale-Deed of Saoner, which is near to the village Pardi (Rithi) which can be said to be nearest vicinity or nearest village as per the Act of 2013. On the basis of said Sale-Deed the

Appellant herein, claimed compensation @ Rs.3358/- per Sq. Mtrs. As such, Arbitrator concluded that price of acquired land in question on the date of issuance of notification under Section 3-A dated 09/05/2017 of the Act of 1956, would be Rs.3588/- per Sq. Mtrs. He has also held that the Applicant is entitled for multiplier factor of 2 as specified in the Award passed by the CALA (Competent Authority Land Acquisition) as well as First Schedule as per Section 26 (2) of the Act of 2013. It is held that the Appellant is entitled for additional component @ 12% per annum with 100% solatium. The Respondent herein has not specifically denied this fact that the Applicants were using the acquired land for their industrial purpose for which the Government of Maharashtra Directorate of Industries have issued an order and also for commercial purpose. Therefore, treating the said land as "Dry Crop Land" is patently illegal and erroneous.

(24) The Applicant has placed on record various documents in respect of running of factory and license. On perusal of documents of license, which was issued in the year 1998 and renewed upto 2010, in the name of Alpha Remidis Limited, address is shown as village Pardi, (Rithi) (page 226). The license in respect of factory then permit for registration and running factory issued on 21/04/2004, shows address village Pardi (Rithi) and the permit is granted from 21/04/2004, which was subsequently renewed up to 2010. The Applicant also placed on record certificate of registration which clearly goes to show that the land is being used for production and factory purpose. In view thereof, treating the said land as agricultural land or "Dry Crop Land" is unjustified. The learned Tribunal has rightly appreciated this fact. The main contention of the Respondent No.1 that the Arbitrator relied on a Single Sale Instance for determining the compensation.

(25) Learned Counsel for Appellant relied on the State of Maharashtra Vs. Mishrilal Jain (supra), wherein, the case of the Appellant was that the Lower Court wrongly relied, while determining the market value of acquired land only on Single Sale Instance which is not proper and just. It was further contention of the Appellant that Lower Court was wrong in holding that the Single Sale Instance is a sole guideline for fixing the market value of the acquired land. This Court held in paragraph No. 19 as under :

"19. It is clear that Exhibit 30 sale deed dated 4th June, 1987 from village Bornar is comparable sale deed for determining the market value of the acquired land. The land involved in this sale deed is Jirayat. The rate comes to Rs.37,037/- per Hectar. The sale deed is of 1987 and therefore considering the 10% increase per year in the market price, same can be taken at the rate of Rs.40,740/- per Hectar. The lands involved in the present matter are Bagayat lands. It is the case I of the claimant that he used to take Bagayat crops on the basis of well water. There is no evidence on record to show that the lands involved in the present case are perennially Bagayat lands. Therefore, for determining the market value of acquired land on the basis of sale deed at Exhibit 30, same can be done by awarding 1 and 3/4 time market value of the Jirayat land. Therefore, the claimant is entitled to compensation in respect of

acquired land @ Rs.71,295/-, round up to Rs.72,000/- per Hector in respect of acquired Bagayat land.”

Thus Single Sale Instance can be relied on and there is no infirmity.

(26) Learned Counsel for Appellant also relied on Mahesh D. Thirthakar (supra) in support of his contention that the Respondents failed to adduce any evidence or to place documents on record in support of its claim of sufficiency of the Award, as such, failed to discharge their burden. The Hon’ble Apex Court held in paragraph No. 42 as under :

“42. Given that the appellant has been able to show, by the testimony and valuation report of the expert valuer, that the award of compensation passed by the Land Acquisition Officer was inadequate, the onus now shifts on the respondent to adduce sufficient evidence to sustain the award, as was held clearly in Land Acquisition Officer v. Sidappa Omana Tumarill. We firmly feel that the respondent State has completely failed to discharge this burden. The respondent has been unable to produce any evidence at all to support its claim of sufficiency of the award and the High Court judgment, leave alone the question of having adduced sufficient evidence.”

(27) Learned Senior Counsel for appellant also placed reliance on Viluben Jhalejar (supra), wherein, the Hon’ble Apex Court while discussing the relevant factors to be considered for determination of market value held as under :

“20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive factors are smallness of size, proximity to a road, frontage on a road, nearness to developed area, regular shape, level vis-à-vis land under acquisition, special value for an owner of an adjoining property to whom it may have some very special advantage. The negative factors are largeness of area, situation in the interior at a distance from the road, narrow strip of land with very small frontage compared to depth, lower level requiring the depressed portion to be filled up, remoteness from developed locality, some special disadvantageous factors which would deter a purchaser.”

(28) The judgment in First Appeal No. 64/2000 relied by the Appellant, wherein, this Court (Goa Bench) relied on the judgment of Hon’ble Apex Court in Viluben Jhalejar (supra).

(29) It appears that due consideration was given to the documents placed on record by the Arbitrator. There was no challenge by the Respondents to the documents or its veracity. So far as Sale Instance is concerned, there was no

objection before the Arbitrator that land in Sale-Deed is not within near vicinity. There is no substance in the ground also that land is fallow land specifically when the Appellant herein placed on record various documents about its commercial use and running of factory. These documents were neither disputed by the Respondents nor doubted.

(30) It is the contention of the Respondents that those documents were not duly proved, however, there is no strict rule of evidence applied to the proceedings before Arbitrator. Moreover, the documents were not objected when referred in the written notes of argument. In view of Section 19 of the Act of 1996, the Arbitral Tribunal shall not be bound by the Code of Civil Procedure or the Indian Evidence Act. If anybody has objection in respect of documents placed before the Arbitrator, he should raise before the Arbitrator itself. When the documents are placed before the Arbitrator with the knowledge of other party as those were supplied to Respondents, it is discretion of the Arbitrator to assess it and it has power to determine the admissibility, relevance, materiality and weight of any evidence.

(31) Learned Counsel for Appellant submitted that the scope of District Judge under Section 34 of the Act of 1996 is limited. The Award only can be set aside on the ground mentioned in Section 34, which are not the ground for filing application under Section 34 of the Act of 1996, by the Respondents. The reason given by the learned Courts are in the nature of appreciation of evidence. It appears that District Court has examining material as if he is sitting in Appeal. It is not the case that Award is not supported by any reason.

(32) Learned Counsel for the Appellant relied on SV Samudrum (supra), wherein, the Hon'ble Apex Court in paragraph Nos. 35 to 37 held as under :

"35. The principle stands reiterated as late as 2023 in Larsen Air Conditioning and Refrigeration Company v. Union of India.

36. We may notice certain principles to be considered in adjudication of challenges to arbitration proceedings of this nature. It is a settled principle of law that arbitral proceedings are per se not comparable to Judicial proceedings before the Court (Dyna Technologies Private Limited v. Crompton Greaves Limited). The Arbitrator's view, generally is considered to be binding upon the parties unless it is set aside on certain specified grounds. In the very same decision taking note of the opinion as is in "Russel on Arbitration", reiterated the need for the Court to look at the substance of the findings, rather than its form, stood reiterated and the need for adopting an approach of reading the award in a fair and just manner, and not in what is termed as "an unduly literal way". All that is required is as to whether the reasons borne out are intelligible or not for adequacy of reasons cannot stand in the way of making the award to be intelligibly readable.

37. Emphasizingly, it is reiterated that if the view taken by the Arbitrator is a plausible view, no interference on the specified grounds is warranted (Konkan

Railway Corpn. Ltd. v. Chenab Bridge Project)."

(33) Learned Counsel for Appellant also placed reliance on Digamber and others (supra), in support of his contention that when land is acquired for National Highway, it is one of the consideration for deciding market value. The Hon'ble Apex Court in paragraph No. 20 held as under :

"20. The sale instances in relation to the small residential plots covered in the sale deeds, Exts. 20-21 are situated in the same area, which sales were prior to the issuance of the preliminary notification ie. before 14- 6-1990 and they have similar topographical and physical characteristics and the fact is that the land of the appellants is acquired for the purpose of industrial development, which has got the potentiality for development of the land as industrial estate and to carve out industrial plots in it. That the acquisition of the land is for commercial purpose should be the relevant criterion for determining the market value by both the Land Acquisition Officer and the Reference Court placing reliance upon the sale instances even in relation to small plots of land, though it is shown from the records that the acquired land on the date of notification is an agricultural land. But the acquired land has got non-agricultural potentiality as the said land was proposed by the District Collector after identifying the land for acquisition and stated that it is suitable for the purpose of industrial development. Therefore, the principles laid down at para 16 of Sabhia Mohammed Yusuf Abdul Hamid Mulla case and the principles laid down in Viluben Jhalejar Contractor case referred to supra lay down the criteria for determination of the market value of the acquired land."

(34) As against this, learned Counsel for the Respondent No. 1 relied on judgment in Arbitration Appeal No. 6/2015 and connected matters, however, the judgment refers and relied on the judgment in Associate Builders versus Delhi Development Authorities (2015) 3 SCC 49, wherein, Hon'ble Apex Court observed as under :

"29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective."

"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse."

"33. It must clearly be understood that when a Court is applying the "public policy" test to an arbitration award, it does not act as a Court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts."

40. We now come to the fourth head of public policy namely, patent illegality. It must be remembered that under the explanation to section 34(2)(b), an award is said to be in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

41....."The law on the subject has never been more clearly stated than by Williams, J. in the case of Hodgkinson v. Fernie [CB(NS) p.202: ER p.717]

"The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact.....The only exceptions to that rule are cases where the award is the result of corruption or fraud"

(35) Learned Counsel for the Respondent No. 1 placed reliance on State of Chhattisgarh and another versus salute private limited (supra), in support of his contention that Arbitrator's Award can be set aside on the ground of patent illegality. The Hon'ble Apex Court explained in the said judgment what constitutes "patent illegality". It is held that when Arbitrator fails to decide the matter in accordance with the terms of contract governing parties it will attract "patent illegality ground" as it amounts to gross contravention of Section 28 (3) of the Act of 1996. However, there is no question of Arbitrator who acts as per terms of contract governing parties as Arbitrator is statutory Arbitrator under NHA. Moreover, after going through the documents, there is no case of patent illegality.

(36) Learned Counsel for respondent placed reliance on Ssangyong Engineering (supra), in support of his contention that after the Amendment in the Act of 1996, Section 34 (2-A) has inserted vide 2015 Amendment. The ground "patent illegality" on which domestic Award not arising from an international commercial arbitrations may be set aside. The Hon'ble Apex Court laid down certain guidelines for harmonious construction with 34 (2)(b)(ii) of the Act of 1996.

"(1) There must be patent illegality appearing on the face of the award, which, held, refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law

(2) What is not subsumed within "the fundamental policy of Indian law", namely,

the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. Thus, mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award

(3) If an arbitrator gives no reasons for an award and contravenes S. 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award

(4) Construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under S. 34(2-A)

(5) A decision which is perverse, as understood in paras 31 and 32 of Associate Builders case, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See also Shortnote C, as such ground can also be taken under S. 34(2)(a)(iii)] "

(37) The Learned Counsel for the Respondent No.1 also placed reliance on NHAH Vs. Hakeem and others (supra), wherein, the Hon'ble Apex Court held as under :

"What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award. This becomes even clearer in view of sub-section (4) of Section 34 of the A&C Act, 1996 under which, on receipt of an application under sub -section (1) of Section 34 of the A&C Act, 1996, the Court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award.

Section 34 of the A&C Act, 1996 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, under which no power to modify an award is given to a court hearing a challenge to an award.

Thus, there can be no doubt that given the law laid down by the Supreme Court, Section 34 of the A&C Act, 1996 cannot be held to include within it a power to modify an award. To state that the judicial trend appears to favour an interpretation that would read into Section 34 of the A&C Act, 1996 a power to

modify, revise or vary the award would be to ignore the previous law contained in the Arbitration Act, 1940; as also to ignore the fact that the A&C Act, 1996 was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 of the A&C Act, 1996 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the A&C Act, 1996."

There is no dispute over this preposition of law.

(38) Learned Counsel also placed a reliance on McDermott International Inc. (supra), wherein, the Hon'ble Apex Court explained a role of Courts for the review of the Arbitral Award.

"The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as the parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

The arbitral award can be set aside if it is contrary to (a) fundamental policy of Indian law;

(b) the interests of India; (c) justice or morality; or (d) if it is patently illegal or arbitrary. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Lastly, where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute, would come within the purview of Section 34 of the Act."

(39) Thus, even in the citation relied on by the Respondents, the Respondents are required to establish that grounds for setting aside the Arbitral Award are in existence. The learned Counsel for the Respondent No.1 NHA I also relied on the judgment of Hon'ble Apex Court in Dyna Technologies Private Limited (supra), wherein, it is held as under :

"Held, the passing of a reasoned award is not an empty formulation under the Arbitration Act. Further, the requirements of a reasoned order are that the reasons/reasoning should be: proper, intelligible and adequate. Court while exercising jurisdiction under S. 34 has to adjudicate the validity of an award based on the degree of particularity of reasoning required having regard to the

nature of issues falling for consideration. Further, the degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issues in the facts and circumstances of each case.

Further, held, only when there is complete perversity in the reasoning, can the award be challenged under the provisions of S. 34.

Further, the power vested under S. 34(4) to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge”

(40) However, in my considered opinion, in the present matter the Arbitrator has duly considered the documents on record and held that the land is not agricultural land as treated by the Respondent as “Dry Crop Land”. In the said citation the Hon’ble Apex Court held in paragraph No. 24 as under :

“There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

(41) Learned Counsel also placed reliance on Prakash Kumar Sinha (supra), in support of his contention that Statutory Arbitral Tribunal must take note of the basic principles of the CPC and/or the Evidence Act before assessing and/or giving finding based upon the documents and material placed on record. However, the judgment is not of any help to the learned Counsel for the Respondents, as there is no dispute or any objection raised to the documents or its veracity before the Arbitrator. In fact, there is no specific denial to these documents by the Respondents.

(42) Learned Counsel also placed a reliance on Dr.A. Parthasarathy (supra), wherein, it is held by the Hon’ble Apex Court that under Section 37 of the Act of 1996 the High Court has no jurisdiction to remand matter to the same Arbitrator unless it is consented by both the parties that matter be remanded to the same Arbitrator. The High Court either may relegate the parties for fresh arbitration or to considered appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Act of.

(43) It appears that the present arbitration appeal is filed praying for quashing

and setting aside the impugned judgment and order dated 11.09.2023 passed by the learned District Judge-10 Nagpur, in Arbitration Case No. 272/2022. Though present appellants have filed separate application under Section 34 of the said Act, the order passed by the District Judge therein is not challenged by the appellant herein. The learned Senior Counsel, Shri C.S. Kaptan vehemently argued that the District Judge under Section 34 (4) of the Arbitration and Conciliation Act, adjourned the proceeding for a period of time, determined by it in order to give the arbitral tribunal and opportunity to resume the arbitral proceeding or to take such other action as in the opinion of arbitral tribunal, eliminate the ground for setting aside the arbitral award.

(44) However, the order passed in Arbitration Case No. 124/2023 by the District Judge, Nagpur, is not challenged by the present appellant in the present appeal. The said arbitration case/application was dismissed on the ground that it is the burden on the applicant to prove that due to acquisition right of user or right of easement gets affected. The learned District Judge also observed that the applicant has filed photo of Google map in original record and proceeding before the arbitrator to show that due to acquisition land is severed though major portion of land is with the applicant. Mere severance of land does not ipso facto entitled the applicant to get the damages unless it is shown that he has actually due to acquisition of land sustained damage. The applicants have not placed on record any documentary evidence showing damages caused due to severance of land, or he has sustained any damages. As such, the order passed rejecting application filed by the present appellant i.e. Arbitration Case No.124/2023 cannot be disturbed. However, the order passed by the District Judge in Arbitration Case No. 272/2022 is liable to be set aside for the reason recorded above. Accordingly, I proceed to pass the following order.

ORDER

i) The Arbitration Appeal is allowed.

ii) The impugned judgment and order dated 11.09.2023 passed by the learned District Judge-10 Nagpur, in Arbitration Case No.272/2022, is hereby quashed and set aside.

iii) The award of arbitrator dated 22.11.2021 in Arbitration Case No.193/ARB/2019-20, Mouza Pardi (Rithi), Tahsil Saoner, District Nagpur, is hereby confirmed.

(45) The Arbitration Appeal is disposed of in above terms. No order as to costs.