

**(2022) 04 CHH CK 0015**

**In the Chhattisgarh High Court**

**Case No :** ARBA No. 9, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59 Of 2021

Bhagawat Sonker & Ors

APPELLANT

Vs

Union Of India

RESPONDENT

---

**Date of Decision :** 07-04-2022

**Acts Referred:**

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

Arbitration and Conciliation Act, 1996 — Section 5, 34, 34(1), 34(2), 34(3), 34(4), 37

**Citation :** (2022) 04 CHH CK 0015

**Hon'ble Judges :** Deepak Kumar Tiwari, J

**Bench :** Single Bench

**Advocate :** Dhiraj Kumar Wankhede, Shahil Singh, Sudeep Shrivastava, Yogesh Pandey, Samir Uraon

**Final Decision :** Disposed Of

---

**Judgement**

1. The aforesaid Appeals are being disposed of by this common judgment, as common question of law is involved for adjudication.

2. The admitted facts of the case are as under:-

- it is admitted fact that the NHA had issued a notification under Section 3(A) of the National Highways Act, 1956 (henceforth 'the Act, 1956') with an intention to acquire the land on Bilaspur-Raipur National Highway No.200/30 of Balodabazar-Bhatapara Section for its four-laning/six-laning on 31st May, 2011.
- the claimants are the land owners/land losers whose lands were sought to be acquired for the said project.
- after completing the formalities declaration of acquisition has been made on 11.11.2011 under Section 3 (D) of the Act, 1956.
- under the provisions of Section 3-G of the Act, 1956, the Competent

Authority/Land Acquisition Officer i.e. the Sub Divisional Officer (Revenue), Bhatapara initially passed an award on 11th October, 2012 and calculated the compensation at the rate of Rs.23,76,000/- per hectares according to the guidelines for the market value of agricultural land for the year 2011-12.

- the claimants were not satisfied with the amount so determined for compensation, therefore, the Additional Collector, Balodabazar-Bhatapara was appointed as an Arbitrator under Section 3-G (5) of the Act, 1956. The Arbitrator i.e. the Additional Collector refused to enhance the award amount and confirmed the order passed by the Competent Authority vide its order dated 28th October, 2015.

- the claimants had challenged the arbitral award dated 28th October, 2015 before the District Judge, Balodabazar under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth 'the Act, 1996'). By order dated 17th May, 2018, the District Judge partly allowed the petitions/applications and remitted the matter back to the Arbitrator for fresh adjudication. The District Judge has observed in para-41 of the said order that in the guidelines for the year 2011-12, there was ambiguity in the rates of the lands which are situated to the extent of 20 meter depth from the road and the calculation was made as the land was more than 2020 square meter. Therefore, differentiate rate of per hectare was applicable and not at the rate of per square meter. In such cases though the land is adjoining to the road, therefore, on this score, the District Judge has observed that the rule is not clear and ambiguous and hence the case was remitted back.

- after the remand, the Additional Collector, Balodabazar/Arbitrator instead of passing a fresh award, either enhancing or refusing to enhance the amount of compensation, referred the matter to the Land Acquisition Officer for re-calculating the award amount vide order dated 17th January, 2019. However, in the said order, it was observed that Rs.11,520/- per square meter, the market rate of the land, would be applicable.

- the Land Acquisition Officer/Competent Authority/SDO (Revenue), Simga, District Balodabazar has again recomputed the award amount and passed the order dated 3rd May, 2019 and re-affirmed the calculation and total compensation amount which was awarded earlier by order dated 11th October, 2012.

- the claimants being aggrieved with the order passed by the SDO (Revenue)/Competent Authority on 3rd May, 2019 refusing to amend/modify the original award, challenged the same by way of filing writ petitions bearing number WPC No.1850/2019 and other connected matters. Vide orders dated 17th June, 2019 & 27th June, 2019, liberty was given to the petitioners therein that they may move before the District Judge under Section 34 of the Act, 1996 to assail the order passed by the Competent Authority and also the order passed by the Arbitrator i.e. Additional Collector on 17th January, 2019. It was also

directed that the cases shall be dealt with on its own merits without raising plea of limitation provided the petitioners move before the District Judge within a period of 30 days from the order.

The District Judge, Balodabazar finally passed the impugned award on 12.2.2021.

3. Arbitration Appeals Nos.13/2021, 23/2021, 33/2021, 26/2021, 31/2021, 30/2021, 32/2021, 28/2021, 27/2021, 34/2021, 21/2021, 24/2021, 35/2021, 22/2021, 29/2021, 25/2021, 16/2021, 15/2021, 17/2021, 18/2021, 39/2021, 9/2021, 38/2021 & 20/2021 have been preferred by the Union of India, through the Ministry of Road Transport and Highways against the impugned order dated 12.2.2021 passed by the District Judge, Baloda Bazar in a batch of civil suits whereby the learned District Judge, while partly allowing the claims/applications preferred by the private individuals/land losers under Section 34 of the Arbitration and Conciliation Act, 1996 set aside the orders dated 17.1.2019 and 3.5.2019 passed by the Arbitrator/Competent Authority. The impugned order has been assailed on the ground that the private respondents have deliberately suppressed the fact that against the judgment passed in WA No.7/2019 (Ashutosh Agrawal & another Vs. Union of India & Others), review petition is pending till date. The private respondents/claimants have not affixed the proper Court fee as per the Act, 1996 and the said ground was raised before the learned District Judge, however, the learned District Judge, without considering the same, passed the impugned order. While passing the impugned order, learned District Judge enhanced the solatium by referring the judgment in the matter of Ashutosh Agrawal, referred to above. It is submitted that neither the Right to Fair Compensation Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 nor the judgment in the matter of Ashutosh Agrawal, referred to above, is applicable retrospectively. The order dated 17.5.2018 passed by the District Judge, Baloda Bazar was without jurisdiction and is not binding on the appellant. Since the order dated 17.5.2018 of the learned District Judge was without jurisdiction, any subsequent order flowing therefrom becomes ipso facto without jurisdiction and for this reason, the order dated 17.1.2019 passed by the Arbitrator is also not binding on the appellant. Hence the order passed by the Sub Divisional Officer/Competent Authority/Land Acquisition Officer, Bhatapara (henceforth 'the CALA') on 11.10.2012 in Land Acquisition Case No.01(01)/A-82/2011-12/Simga stood confirmed. The private respondents are not entitled to get 100% solatium provided under the new Land Acquisition Act of 2013, as the said Act is not applicable in the present case. Therefore, it was prayed to quash the impugned order dated 12.2.2021 passed by the learned District Judge in a batch of civil suits.

4. Arbitration Appeals Nos.43/2021, 40/2021, 36/2021, 37/2021, 48/2021, 42/2021, 57/2021, 54/2021 have been preferred on behalf of the private respondents/land losers by Shri Sudeep Shrivastava, Advocate seeking to set aside the compensation calculated with regard to the appellants in the said cases to the extent of market value which was taken as Rs.7031/- sq. meter and

directing the competent authority to recalculate the same on the basis of Rs.11520/- sq. meter and also to enhance the rate of interest from 9% to 15%.

5. Arbitration Appeal Nos.11/2021, 52/2021, 50/2021, 12/2021, 41/2021, 44/2021, 49/2021, 51/2021, 53/2021, 58/2021, 59/2021, 45/2021, 46/2021 have been preferred on behalf of the private individuals/land losers by Shri Yogesh Pandey, Advocate seeking to partly set aside the impugned order dated 12.2.2021 passed in a batch of civil suit and directing the respondents to calculate the amount of compensation strictly in accordance with the order dated 17.1.2019 passed by the Arbitrator by taking the market value at Rs.11,520/- per sq. meter. The learned District Judge by way of order dated 17.5.2018 directed the Arbitrator to re-calculate the market value. In compliance of the order passed by the District Judge, the Arbitrator by way of order dated 17.1.2019 fixed the market value of the land in question but in an arbitrary manner remanded the matter back to the SDO for calculation of compensation whereas the Arbitrator has no jurisdiction to remand the matter back to the SDO. The order passed by the Arbitrator was challenged by the private individuals only and the National Highway Authority had never challenged the same. The learned District Judge has acted like an appellate Court while deciding the application under Section 34 of the Act, 1996. While deciding the case, the learned District Judge has decided the issues which were otherwise decided by his predecessors by way of order dated 17.5.2018. The learned District Judge while calculating the compensation has relied on the guidelines issued by the State Government, whereas his predecessor has already rejected the guidelines issued by the State Government and thus by doing this the learned District Judge has reviewed its own order. Since the Arbitrator has calculated the market value as per the several decisions of the Hon'ble Supreme Court and the order passed by the Arbitrator regarding fixation of market value of land was not challenged before any Court of law, the learned District Judge committed grave error in taking the market value at Rs.2,834/- whereas the arbitrator has fixed the market value at Rs.11,520/- sq. meter. The learned District Judge has calculated the compensation as per the guidelines, whereas as per the order dated 17.5.2018, the learned District Judge has quashed the guidelines issued by the Collector for calculation of market value and hence the learned District Judge has reviewed its earlier order which is impermissible under the law.

6. Facts of the cases are that lands of the private individuals/land losers were sought to be acquired under the National Highways Act, 1956 for widening of National Highway No.200/30 of Baloda Bazar- Bhatapara Section by the National Highway Authority of India. The subject land is situated at Village Simga, Tahsil Simga, District Baloda Bazar-Bhatapara. The award for the said acquisition was passed by the Sub Divisional Officer/Competent Authority/Land Acquisition Officer, Bhatapara (henceforth 'the CALA') on 11.10.2012 in Land Acquisition Case No.6(2)/A/82 for the year 2011-12. The award dated 11.10.2012 passed by the CALA was challenged by the respondents/private individuals/ land losers by way of an application under Section 3G(5) of the Arbitration and Conciliation Act,

1996 (for short 'the Act, 1996') before the Arbitrator and the learned Arbitrator passed an order on 28.10.2015 rejecting the claim of the respondents/private individuals. Being aggrieved by the order passed by the Arbitrator, the respondents/ private individuals preferred an application before the District Judge, Balodabazar under Section 34 of the Act, 1996. The learned District Judge passed an order on 17.5.2018 remanding the matter back to the Arbitrator. On 17.1.2019, the Arbitrator after due consideration sent the matter to the CALA whereupon the Land Acquisition Authority i.e. CALA has not modified the award in any terms and maintained its previous order. The said order has been challenged before this Court by way of Writ Petitions in which it has been ordered that the matter relates to arbitration and the same has to be challenged before the District Judge. In these circumstances, the matter was sent to the District Judge. It is alleged that the learned District Judge instead of setting aside the award or refusing to set aside the award has arbitrarily modified the same which is ultra vires the provisions of Section 34 of the Act, 1996 and passed the impugned order which has been challenged before this Court.

7. Learned counsel appearing for the NHAI would submit that the modified award dated 12.2.2021 passed by the District Judge is arbitrary and ultra vires the provisions of Section 34 of the Act, 1996 in the teeth of judgment delivered by the Hon'ble Supreme Court in the matter of Project Director, National Highways No.45 E and 220 National Highways Authority of India Vs. M. Hakeem and Another {(2021) 9 SCC 1 : 2021 SCC OnLine SC 473}. Learned counsel further relied on a decision of the Hon'ble Supreme Court in the matter of Bhaven Construction Through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. And Another {2021 SCC OnLine SC 8}. Reliance was also placed in the matter of Haryana Tourism Limited Vs. M/s Kandhari Beverages Limited (Civil Appeal No.266/2022) wherein the Hon'ble Supreme Court vide judgment dated 11.1.2022 reiterated that in appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the case, which is not permissible in exercise of powers under Section 37 of the Arbitration Act. Hence learned counsel prays to allow the Appeals and set aside the award passed by the District Judge.

8. Shri Yogesh Pandey, learned counsel appearing for the private individuals/land losers submitted that the District Judge committed grave error in calculating the market value of the land and calculated compensation in the impugned order as per the guidelines whereas, as per the earlier order dated 17th May, 2018 passed by the predecessor District Judge, the guidelines have been quashed and that order has attained finality, as the same was not challenged before any Court. The District Judge has acted like an appellate Court while deciding the application under Section 34 of the Act, 1996, which is not permissible under the Act. He further submitted that the Arbitrator has no jurisdiction to remand the matter back to the SDO/CALA. He also submitted that the order passed by the Arbitrator was challenged by the claimants/appellants only and the National Highway Authority of India had never challenged the order passed by the Arbitrator,

therefore, the market value of the land in question calculated by the Arbitrator has become final. Hence, learned counsel prays to set aside part of the impugned order dated 12.2.2021 and to direct the respondents to calculate the compensation strictly as per the order of the Arbitrator dated 17.1.2019 by taking market value at Rs.11,520/- per square meter.

9. Shri Sudeep Shrivastava, learned counsel appearing for another set of claimants/appellants has put forth his submissions that the impugned order has not modified the arbitral award, as the award passed by the Land Acquisition Officer is not an arbitral award as per the definition of the arbitral award given in the Act, 1996. He further submitted that the District Judge on 17th May, 2018 set aside the arbitral award passed by the Arbitrator in the year 2015 and remanded the matter back and the NHA did not choose to challenge the said order. Thus, it had attained finality. Now, they cannot raise objection that the aforesaid order was bad in law, as they have participated in all the proceedings. He also submitted that the Arbitrator was appointed by the Central Government and not by the choice of the appellants. Therefore, there was no prejudice caused to the NHA. On 17.1.2019 the Arbitrator had passed a fresh arbitral award and upheld the principles for calculation on the basis of square meter rates which were sought by the land losers. However, the Arbitrator instead of calculating compensation on the principle he has relied in his order, sent the matter back to the land acquisition officer for calculating fresh compensation. The Land Acquisition Officer did not comply with the directions contained in the arbitral award and passed contrary order on 3.5.2019. In the impugned order passed by the District Judge, same principle was upheld which was applied by the Arbitrator in its 2019 award and justified calculation of compensation on the basis of square meter rate. Therefore, the District Judge has merely calculated the sums and have not deviated from the principles pronounced by the Arbitrator in its January, 2019 arbitral award. The said act would not amount to modification in the real sense. He also submitted that the High Court has directed the claimants/appellants to appear before the District Judge by way of filing an Appeal under Section 34 of the Act, 1996. Therefore, the District Judge is bound to perform the said duty under the principle of judicial discipline. He further submitted that the District Judge has exercised the powers on the direction of coordinate Bench of the High Court, therefore, another coordinate Bench could not negate the effect of said order. Therefore, the matter should not have been remanded back to the arbitration stage, considering 9 long years for determination of compensation. Alternatively, he submitted that if the matter is remitted back to the Arbitrator, it could only be sent for calculation of compensation amount and not for deciding the claims afresh. Reliance is placed in the matters of Narayan Prasad Lohia Vs. Nikunj Kumar Lohia & Others {(2002) 3 SCC 572}, A.P. Housing Board Vs. Mohd. Sadatullah & Others {(2007) 6 SCC 566}, M. Nagabhushana Vs. State of Karnataka & Others {(2011) 3 SCC 408} & Sri Chittaranjan Maity Vs. Union of India {(2017) 9 SCC 611}.

10. I have heard learned counsel for the parties at length and perused the record.

11. In the matter of M. Hakeem (Supra), the question of law arose as to whether the power of a court under Section 34 of the Arbitration and Conciliation Act, 1996 ["Arbitration Act"] to "set aside" an award of an arbitrator would include the power to modify such an award. In the said case challenge was made against the order of Division Bench of the Madras High Court that has disposed of a large number of appeals filed under Section 37 of the said Act laying down as a matter of law that, at least insofar as arbitral awards made under the National Highways Act, 1956 ["National Highways Act"], Section 34 of the Arbitration Act must be so read as to permit modification of an arbitral award made under the National Highways Act so as to enhance compensation awarded by a learned Arbitrator. The relevant paras of the said decision to understand the said issue settled by the Apex Court are as under :

15. Section 34 of the Arbitration Act, 1996 occurs in Chapter VII under the title "Recourse against arbitral award". We are directly concerned with sub-sections (1) and (4) of Section 34 which are set out hereunder.

34. Application for setting aside arbitral award. —(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

xxx xxx xxx

(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.

16. What is important to note is that, far from Section 34 being in the nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34. Secondly, as the marginal note of Section 34 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3). "Recourse" is defined by P Ramanatha Aiyar's Advanced Law Lexicon (3rd Edition) as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. 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 when we see subsection (4) under which, on receipt of an application under subsection (1) of Section 34, 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. Here again, it is important to note that it is the opinion of the arbitral tribunal which counts in order to eliminate the

grounds for setting aside the award, which may be indicated by the court hearing the Section 34 application.

17. It is important to remember that Section 34 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. The relevant portion of the Model Law reads as follows:

"34. Application for setting aside as exclusive recourse against arbitral award -  
(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (2) of this article.

xxx xxx xxx

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside 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 arbitral tribunal's opinion will eliminate the grounds for setting aside.

41. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in Kinnari Mullick (supra). Also, in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd. , 2021 SCC OnLine SC 157, a recent judgment of this Court also followed McDermott (supra) stating that there is no power to modify an arbitral award under Section 34 as follows : (Dakshin Haryana Bijli Vitran Nigam Case : SCC p.676, para 44)

"44. In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

42. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, 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 is co-terminus with the 'limited right', namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

12. In the matter of Bhaven Construction (Supra), the following has been held in

para-11 :-

"We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. Once such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under " Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this part....."

13. This Court is not convinced with the submissions made by learned Advocate Shri Sudeep Shrivastava that on account of recalculation of compensation by the District Judge, another set of claimants became equally aggrieved and submitted before this Court that the District Judge by modifying the earlier order of his predecessor has acted like an appellate Court, which is not permissible under Section 34 of the Act, 1996. Therefore, the order passed by the District Judge amounts to modification of the award, which is not permissible under the law. In the writ jurisdiction, the order was passed that the matter may be preferred before the District Judge and he will decide the lis on its own merit, in accordance with law. So the District Judge is bound to pass order within the periphery of Section 34 of the Act, 1996 and he has no jurisdiction to pass any such order dehors the law. Therefore, considering the facts and orders, there is no conflict which requires the matter to be settled by the larger Bench. So this Court is not in agreement with such submission and the same is also not acceptable. Hence the case laws referred by learned counsel are of no help to take a different view of the matter.

14. In the present matter the District Judge while exercising the powers under Section 34 of the Act, 1996, passed the order dated 17.05.2018 and set aside the award passed by the arbitrator and also suo motu remitted back the case to the arbitrator to pass fresh award in the light of established principles of law and the guidelines of the Supreme Court.

15. In this regard Section 34(4) of the Act 1996, is relevant, the same reads thus:

"34. (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."

16. The scope of power to be exercised in the aforesaid Section is explained by the Supreme Court in the case of Kinnari Mullick v. Ghanshyam Das Damani reported in (2018) 11 SCC 328, in paras 15 and 16 which read as under :

15. On a bare reading of this provision, it is amply clear that the Court can defer the hearing of the application filed under Section 34 for setting aside the award

on a written request made by a party to the arbitration proceedings to facilitate the Arbitral Tribunal by resuming the arbitral proceedings or to take such other action as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. The quintessence for exercising power under this provision is that the arbitral award has not been set aside. Further, the challenge to the said award has been set up under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. No power has been invested by Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in sub-section (4) of Section 34. This legal position has been expounded in *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181] In para 8 of the said decision, the Court observed thus: (*Bhaskar Industrial case [Bhaskar Industrial Development Ltd. v. South Western Railway*, 2016 SCC OnLine Kar 8330] , SCC OnLine Kar)

"8. ... Parliament has not conferred any power of remand to the Court to remit the matter to the Arbitral Tribunal except to adjourn the proceedings as provided under sub-section (4) of Section 34 of the Act . The object of sub-section (4) of Section 34 of the Act is to give an opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award."

(emphasis supplied)

16. In any case, the limited discretion available to the Court under Section 34(4) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings. It is crystal clear that the Court cannot exercise this limited power of deferring the proceedings before it suo motu. Moreover, before formally setting aside the award, if the party to the arbitration proceedings fails to request the Court to defer the proceedings pending before it, then it is not open to the party to move an application under Section 34(4) of the Act. For, consequent to disposal of the main proceedings under Section 34 of the Act by the Court, it would become functus officio. In other words, the limited remedy available under Section 34(4) is required to be invoked by the party to the arbitral proceedings before the award is set aside by the Court."

17. In *I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd.*, (2022) 3 SCC 121, it was observed that remission of matter to arbitrator under Section 34(4) i.e. for elimination of grounds for setting aside the award cannot be permitted in absence of findings on the contentious issues, and it was held that if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. The relevant para 41 of the said judgment is as under :

41. Under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the arbitrator, where there are no

findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under the guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award."

18. It is not disputed that the said remand order 17.05.2018 was not challenged earlier, and only after the said remand when arbitrator has also remitted the case to CALA, and the CALA, has not enhanced the compensation, and the claimants preferred the writs, the same was also dismissed and on the basis of observation in the said dismissal order, the claimants again filed application under Section 34 of the Act, 1996, in which the objection was taken that the remand was bad in law. However under Section 34(4) of the Act, 1996 the Court has only empowered by the legislature to 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. So, considering the scope and authority vested to the court only to adjourn the matter, so this court is of the view that if any order passed exercising such jurisdiction can not attain finality about the main issues, as the same is required to be kept pending so the arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

19. In *Ashok Kumar Maheshwari (Dr) v. State of U.P.*, (1998) 2 SCC 502 : it was observed in para-20 that the basic principle is that the plea of estoppel cannot be raised to defeat the provisions of a statute. (See: *G.H.C. Ariff v. Jadunath Majumdar Bahadur* [AIR 1931 PC 79 : 58 IA 91] ; *Mathra Parshad & Sons v. State of Punjab* [AIR 1962 SC 745 : (1962) 13 STC 180] ; *Rishabh Kumar & Sons v. State of U.P.* [1987 Supp SCC 306 : 1988 SCC (Tax) 19 : AIR 1987 SC 1576] )

20. In the impugned order, the District Judge has set aside the fresh arbitral award dated 17.01.2019, and the order dated 03.05.2019 passed by the CALA, and thereafter itself recalculated the amount and the order was passed on such fresh computation. The Jurisdiction and power of Court under Section 34 to "set aside" award does not include power to modify such an award. It is settled view that given limited scope of judicial interference with award under Section 34 on extremely limited grounds not dealing with merits of an award.

21. Therefore, in view of above authoritative pronouncement the law becomes explicit that under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award. In all these cases learned District Judge while passing the order under Section 34 of the Act, 1996 partially set aside the award and after recalculation of the compensation a different amount of compensation has

been awarded and directed the NHAI for its implementation, the modification of award is not permissible under S. 34 of the Act, 1996.

22. Reverting to the present matter that both the times while earlier at the time of remand, which is apparent bad in law, and de hors the statute, and in the present impugned order while modifying the award amount, the District Judges have opined that there was material irregularity which shock the conscience of the court, as higher compensation is awarded to the land owners having lesser extent in comparison to the land loser of higher extent/area. In the impugned order an error was also pointed about the rate of solatium and interest.

23. In *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131, when the award was passed ignoring the material evidence, such decision would be perverse and liable to be set aside on the ground of being patent illegality. It was observed in para 41 thus :

"41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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. ....".

24. In *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181, it was settled that 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, and observed thus :

"52. 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. ...."

25. Hence this Court is of the view that the aforesaid appeals are liable to be disposed of on the aforesaid legal premise. The impugned orders dated 12/02/2021 passed by the District Judge, BalodaBazar in the aforesaid cases are accordingly set-aside to the extent the awards were modified and earlier the remand was made, however, setting aside the awards of the Arbitrator are confirmed and the parties are free to resume arbitration again, if they so desire, against the award passed by the CALA initially on 11.10.2012.

26. The question of inadequate amount of Court fee was affixed in the Applications preferred under Section 34 of the Act, 1996 by the appellants/ claimants before the District Judge. According to the Schedule of Chhattisgarh

Arbitration Rules, 2007, Court Fee of Rs.1,000/- was required to be affixed, but the claimants had affixed Court Fee of Rs.500/- only. Such question remained undecided during adjudication by the District Judge, which caused detriment to the revenue. Therefore, it is directed that the claimants/appellants shall pay deficit additional Court Fee of Rs.500/- within a period of 45 days from the date of receipt of copy of this judgment, failing which the application preferred under Section 34 of the Act, 1996 shall be treated as dismissed and consequently, the appellate order shall also not be given effect to.

27. It is made clear that any of the observations made by this Court in the preceding paragraphs shall not come in the way of adjudication before the Arbitrator inasmuch as this Court has not expressed any opinion on the merits of the case. The Arbitrator shall decide the issue considering all the aspects of the matter afresh, which are raised before him, if any. On such application being made before the Arbitrator, the same is expected to be decided expeditiously, preferably within 4 months.

28. Accordingly all the Appeals are disposed of.

29. There shall be no order as to costs.