

(2017) 12 DEL CK 0012

In the Delhi High Court

Case No : 5 of 2017

DEVENDRA KUMAR GUPTA

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 80](#) - Notice
[Arbitration and Conciliation Act, 1996](#), [Section 14](#) - Failure or impossibility to act - Gro

Citation : (2017) 12 DEL CK 0012

Hon'ble Judges : Yogesh Khanna

Bench : SINGLE BENCH

Final Decision : Disposed off

Judgement

1. This petition is under section 12 and 14 of the Arbitration and Conciliation Act .
2. It is alleged on 31.05.2010 a public notice was published in Amar Ujala newspaper for acquisition of land of the petitioner admeasuring 550 square meters in village Kulchandi Tehsil Roorkee for widening of NH 58.
3. In March 2015 the petitioner was paid land compensation at the rate of ? 949/- per square meters and on 20.07.2015 he has made a request to the District Magistrate Haridwar to pay a compensation of Rs.3100/- per square meters plus 10% along with 9% interest, have raised dispute.
4. On 17.01.2017 the NHA I authorities supplied a copy of letter indicating District Collector Haridwar by designation has been appointed as arbitrator for settlement of claims for the acquired land.
5. The petitioner on 18.10.2016 had issued a notice under section 80 CPC to the Secretary (RT&H) to appoint an arbitrator, per provisions of the amended Act of 2015 and on 02.01.2017 issued yet another notice but the respondent gave no

response, hence this petition.

6. Section 3(G) of the NHAI Act of 1956 incorporates the Arbitration clause and it runs as under:

"Central Government Act Section 3G in The National Highways Act, 1956 3G. Determination of amount payable as compensation.-

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or subsection (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act." 7. It is argued that since arbitrator is to be appointed by Central Government having its seat in Delhi hence this application is made here. Further he submits the District Collector Haridwar is controlling authority of the Special Land Acquisition Officer and hence would not be a fit person to adjudicate and settle the disputes of revised compensation of the land acquired and there is every possibility he may not take an opinion other than that of the Land Acquisition Officer.

8. The petitioner refers to Vth Schedule of the Arbitration and Conciliation Amendment Act of 2015 which runs as under:-

"The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators:

Arbitrator's relationship with the parties or counsel 1. The arbitrator is an

employee, consultant, advisor or has any other past or present business relationship with a party. 2. xxx 3. xxx 4. xxx 5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration."

9. In Dream Valley Farms Private Limited vs. Religare Finvest Limited & Ors. ARB . 635/2016 decided on 19.10.2016 which runs as under:

20. While in the normal course, that would be one option, in the present case not only are Clauses 22 and 24 of the Fifth Schedule attracted giving rise to justifiable doubts as to the independence and impartiality of the Arbitrator, but the conduct of the Arbitrator in seeking to mislead the Petitioner and suppress in the first instance the fact of his being a presiding Arbitrator in 27 arbitration matters relating to the Respondent smacks of dishonesty that is unbecoming of an Arbitrator. 21. The Court is satisfied that for the purposes of Section 14 (1) (a) of the Act the Arbitrator becomes de jure disqualified from continuing as an arbitrator. His mandate is accordingly terminated." 10. ASSIGNIA-VIL JV vs Rail Vikas Nigam Limited ARB.P . 677/2015 decided on 29.04.2016 by the Court as under:

"43. The Fifth Schedule i.e. supplementary provision read with Section 12 (I)(b) mandates that the appointment made by any party which would give rise to justifiable doubts as to the independence or impartiality of arbitrator if he has relationship with the parties or counsel or the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party, the same would give rise to justifiable doubts. Similarly the Seventh Schedule read with Section 12 (5) mandates that there shall not be any arbitrator's relationship with the parties or counsel who should also not be an employee, consultant, advisor or has any other past or present business relationship with a party. If the answer is yes, the person should not be appointed as arbitrator in the said matter. In the present case, the suggestion of the respondent to appoint its own employee who is either present employee or retired employee, the request cannot be accepted as the arbitration is invoked after amended Act has come into operation. In case the said request is allowed, the very purpose of amending the Act would be defeated.

44. I am clear in my mind that under the Arbitration and Conciliation (Amendment) Act, 2015, if any such case is covered as referred above in earlier para which cover the supplementary provision of schedule Fifth and Seventh, under those circumstances, the Court is duty bound to secure the appointment of an independent and impartial arbitrator as per Section 12 of the Act (as amended in 2015). As the arbitration is being an employee of one of the parties would definitely give rise to justifiable doubt as to his independence and impartiality."

11. In these circumstances as the District Collector Haridwar is the controlling

authority of concerned Special Land Acquisition Officer, the apprehensions of the petitioner cannot be brushed aside hence it would be appropriate if Mr.Nishit Agrawal, Advocate, Mobile No.7838952060 is appointed as an arbitrator to arbitrate the dispute. Fee shall be paid as per fee Schedule-IV of Arbitration and Conciliation Act to be shared jointly by the parties.

12. Petition stands disposed of.