

(2025) 03 SHI CK 1152

In the High Court Of Himachal Pradesh

Case No : Arbitration Case Nos 457 of 2024 a/w 456, 458, 459 Of 2024

Jaswant Kaur

APPELLANT

Vs

Collector Land Acquisition National Highway Authority Of
India & Others

RESPONDENT

Date of Decision : 07-03-2025

Acts Referred:

Code of Civil Procedure Act, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2025) 03 SHI CK 1152

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : George, Anand Sharma, Karan Sharma

Final Decision : Allowed

Judgement

Ranjan Sharma, J

1. Since common question of facts and law are involved, therefore, with the consent of parties, all these cases, are taken up for adjudication together at this stage, in the interests of justice.

2. Learned Counsel for petitioners states that Arbitration Case No.457 of 2024, titled as Jaswant Kaur versus Collector Land Acquisition, National Highway Authority of India & Others, may be treated as 'Lead Case' for adjudication of all the connected petitions. Prayer not opposed by Learned Counsel for contesting respondents No.1 & 2-NHAI. The prayer is allowed and accordingly, this Court proceeds in the above matters.

3. Petitioner [Jaswant Kaur] in Lead Case i.e. Arbitration Case No.457 of 2024, has come up, before this Court, seeking the following relief(s):-

"It is, therefore, most respectfully prayed that this application/petition may very kindly be allowed and the impugned order dated 08.02.2023 passed in Case No.9/19 alongwith other connected matter may kindly be set aside/quashed and

the time period in this case may kindly be extended and the Ld. Arbitrator-cum-Divisional Commissioner, Mandi Division Mandi may kindly be directed to decide the case No.9/19 in a time bound manner and justice be done.”

FACTUAL MATRIX IN LEAD CASE-ARBITRATION CASE NO.457 OF 2024,

4. Case of petitioner [Jaswant Kaur] in Arbitration Case No.457 of 2024, as set-up by Mr. Subhash Mohan Sneh, Learned Counsel is that pursuant to Notification under Section 3(A) of the National Highways Act, 1956, the Central Government published a Notification to acquire the stretch of land Nerchowk to Manali, National Highway No.21 for building, widening, maintenance, management and operation of said Highway in State of Himachal Pradesh. Consequently, the land belonging to petitioner at Village Trambali, Tehsil & District Kullu [HP] was acquired by CALA i.e. Competent Authority/Land Acquisition in terms of an Award No.104/1, dated 31.05.2017.

4(i). Feeling aggrieved against the Award dated 31.05.2017, passed by Competent Authority for Land Acquisition, the petitioner filed a reference petition before Learned Arbitrator-cum-Divisional Commissioner, Mandi Division, Mandi, which was registered as Reference Petition No.9/19, whereby, Learned Arbitrator continued the arbitral proceedings, but on 08.02.2023 [Annexure P-1, Colly], referred to as the 'Impugned Order', the arbitral proceedings were closed and the mandate of Arbitrator was treated to have been terminated on the ground that arbitral proceedings could not be completed within the time schedule as per Section 29A(1) and Section 29A(3) of the Arbitration and Conciliation Act.

4(ii). Consequent upon the passing of the Impugned Order on 08.02.2023 [Annexure P-1, Colly] terminating the mandate of Arbitrator and in keeping the arbitral proceedings in abeyance till extension was sought from a competent Court, therefore, in these circumstances, since the petitioner was left without any remedy coupled with the fact that the delay in completion of arbitral proceedings was not attributable to the petitioner; and delay in completion of arbitral proceedings was entirely due to administrative reasons, for which, the parties should not be made to suffer, coupled with the fact that termination of mandate of Arbitrator will cause prejudice to the parties therefore, in these circumstances, it was prayed that the time for completion of arbitral proceedings may be enlarged with directions to Learned Arbitrator-cum-Divisional Commissioner concerned to conclude the proceedings.

5. Despite nine opportunities, since 24.04.2024, the contesting respondents 1 & 2-NHAI have chosen not to file any reply in instant proceedings.

5(i). Upon listing of this case today on 28.02.2025 and in response to a query by this Court, Learned Counsel(s) for parties, jointly represented that in similar matters, relating to Nerchowk-Manali, Section of NH-21, this Court had enlarged time for conclusion of arbitral proceedings with direction(s) to Learned Arbitrator-cum-Divisional Commissioner, Mandi [HP] to complete the arbitral proceedings within a reasonable time.

6. Heard Mr. Subhash Mohan Snehi, Learned Counsel for the petitioner, Ms. Shreya Chauhan, Learned Counsel for contesting respondents No.1 & 2 as well as Mr. Gobind Korla, Learned Additional Advocate General for respondent No.3 and have gone through the material on record.

STATUTORY PROVISION:

7. In order to appreciate the claim of the parties herein, it is necessary to have a recap of the statutory provision of Section 29A of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'Act'] which reads as under:-

"29A. Time limit for arbitral award —

(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage

already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

UNDISPUTED FACTS:

8. Undisputed facts are that though the arbitral proceedings could not be completed within maximum period of 18 months [under Section 29A(1) & (3) by the Arbitrator due to COVID Pandemic for almost two years from March 2020 till February 2022; coupled with the fact that the Arbitrator was the Divisional Commissioner who had to look after other administrative work and related exigencies; and the fact that delay in non-completion of arbitral proceedings was attributable to respondents-NHAI, who did not file the reply despite opportunities; and delay in timely completion of the proceedings was not attributable to petitioner who participated in arbitral proceedings then, the petitioner cannot be made to suffer prejudice by abrupt closure of arbitral proceedings which have resulted in depriving the petitioners of the fruits of such reference. Above facts, reveal that arbitral proceedings could not be primarily completed due to administrative and bona fide reasons which were beyond the control of Arbitrator concerned and these circumstances indicate sufficient cause for restoration of Reference Proceedings, which were closed/kept in abeyance by concerned Arbitrator in the instant case.

ANALYSIS:

9. Taking into account the entirety of the facts and circumstances, this Court is of the considered view that the Impugned Order dated 08.02.2023 [Annexure P-1, Colly] terminating the mandate of Arbitrator and in keeping the arbitral proceedings in abeyance deserves to be set-aside; and the claim of petitioner for enlargement of time for concluding the arbitral proceedings needs to be accepted, for the following reasons:-

9(i). Object of the arbitral proceedings is consensual entrustment of parties to an Arbitrator who is bound to complete the arbitral proceedings within a period of 12 months under Section 29A(1) and within extendable period of 06 months under Section 29(A)(3) of the Act. Meaning thereby that arbitral proceeding are to be completed by an Arbitrator within a period of 18 months in totality. Though,

the arbitral proceedings under Section 29A(1) and Section 29A(3) are to be completed within 18 months period yet in case due to unforeseen eventualities the arbitral proceedings are not completed within 18 months, then the law-makers were conscious enough by prescribing a remedy under Section 29A(5), for extending the period of arbitral proceedings, only for sufficient cause and on such terms and conditions, as may be imposed by the Court.

SUFFICIENT CAUSE FOR EXTENSION:

9(ii). Factual matrix and material on record in instant case, indisputably indicate that the arbitral proceedings could not be completed within the maximum stipulated period of 18 months by the Arbitrator concerned on account of COVID Pandemic during the years 2020-2022 and thereafter due to administrative reasons as the arbitrator happened to be Divisional Commissioner of concerned Division and also due to non filing of reply by respondent-NHAI despite several opportunities; and the fact that parties to arbitral proceedings could not be made to suffer due to reasons not attributable to petitioner; and when, the petitioner and respondent-NHAI have participated in arbitral proceedings without any objection beyond 18 months therefore, in order to prevent any prejudice to petitioner who had been litigating since the passing of Award in 2017 and even in Reference Proceedings before the arbitrator since 2019 till the passing of Impugned Order on 08.02.2023, then, the circumstances detailed herein indicate sufficient cause, which appears to be bona fide and therefore, the Impugned Order deserves to be set aside by directing Learned Arbitrator to complete the arbitral proceedings within a reasonable period.

PETITIONER CANNOT BE MADE TO SUFFER DUE TO ABRUPT TERMINATION OF MANDATE:

9(iii). Once the parties to arbitral proceedings have consensually participated in arbitral proceedings since 2019 till February, 2023 then, the Impugned Order terminating the mandate of Arbitrator and keeping the arbitral proceedings in abeyance by passing the Impugned Order on 08.02.2023 [Annexure P-1, Colly], has certainly prejudiced the parties to the arbitral proceedings which cannot be permitted to operate, resulting in prejudice to the parties herein.

9(iv). Once the statute enables the Court to enlarge time for completion of arbitral proceedings subject to its satisfaction based on sufficient cause and such others terms and conditions as the Court deems fit and proper. In the instant case, since non-completion of arbitral proceedings were on account of COVID Pandemic w.e.f. March 2020 [due to Lockdown] till February 2022 and thereafter due to non-filing of reply by NHAI and also due to other administrative reasons being Divisional Commissioner also, then, once the above reasons spelt out sufficient cause, which is bonafide based on sufficient cause and as per the mandate of the Hon'ble Supreme Court in TATA Sons Pvt. Ltd.(Formerly TATA Sons Ltd.) vs. Siva Industries and Holdings Ltd. and others, reported in 2023(1) SCALE 793 mandate of Arbitrator is liable to be extended by the Court under

Section 29A(4) and 29A(5) of the Act, in the following terms:-

"24 The provisions of Section 29A, as originally introduced into the statute, mandated that all awards shall be made within a period of twelve months from the date on which the arbitral tribunal enters upon the reference. The explanation clarified when the arbitral tribunal would be deemed to have entered upon the reference, namely, the date on which the arbitrator has received written notice of the appointment. The mandatory nature of the provisions of Section 29A(1) and their application to all arbitrations conducted under the Act, domestic or international commercial, was evident from the use of the word "shall". In terms of Section 29A(4), in case the arbitral award was not rendered within the twelve or eighteen month period as the case may be, the mandate of the arbitrator(s) would stand terminated, unless on an application made by any of the parties, the court extended time on sufficient cause being shown.

xxxx. xxx... xxx..

26. Sub-section (3) of Section 29A empowers parties, by consent, to extend the period specified in sub-section (1) for making the award by a further period not exceeding six months. Thereafter, if the award is not made within the period which is specified in sub-section (1) or the extended period specified in sub-section (3), the mandate of the arbitrator shall terminate unless the court has extended the period either prior to or after the expiry of the period so specified. In other words, the timeline of twelve months for making the award (in matters other than international commercial arbitration), is qualified by the consensual entrustment to the parties under sub-section (3) to extend the period by six months after which the court is empowered in terms of sub-section (4) to extend the period for making the award. The submission of the second respondent is that the provisions of sub-section (3) and sub-section (4) must also apply to an international commercial arbitration. This would merit close scrutiny. The legislature has not expressly excluded the applicability of sub-sections (3) and (4) of Section 29A to an international commercial arbitration. But, at the same time, it must be noticed that the rationale underlying sub-section (3) is to ensure that despite the stipulation of twelve months for the making of an arbitral award in the domestic context, parties may by consent agree to an extension of time by a further period of six months. Such an extension of six months is envisaged in the case of a domestic arbitration since there is a mandate that the award shall be made within a period of twelve months. A further extension has, however, been entrusted to the court in terms of sub-section (4) of Section 29A.

However, insofar as an international commercial arbitration is concerned, the statutory regime is clear by the substantive part of sub-section 1 of Section 29A in terms of which the timeline of twelve months for making an arbitral award is not applicable to it. In an international commercial arbitration, the legislature has only indicated that the award should be made as expeditiously as possible and that an endeavour may be made to dispose of the matter within a period of twelve months from the completion of pleadings."

(Underlining Ours)

9(v). While dealing with a similar situation, the Hon'ble Supreme Court, in Civil Appeal No._____ of 2024 [Arising out of Special Leave Petition (Civil) No.23320 of 2023] titled as Rohan Builders (India) Private Limited versus Berger Paints India Limited, decided on 12.09.2024, has reiterated that the mandate of an Arbitrator is liable to be extended, in view of sufficient cause, to the satisfaction of the Court, in the following terms:-

"15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. However, it is apposite to note that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application. The judicial discretion of the court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced.²⁸ The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.

16. Lastly, Section 29A(6) does not support the narrow interpretation of the expression "terminate". It states that the court – while deciding an extension application under Section 29A(4) – may substitute one or all the arbitrators. Section 29A(7) states that if a new arbitrator(s) is appointed, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. This obliterates the need to file a fresh application under Section 11 of the A & C Act for the appointment of an arbitrator. In the event of substitution of arbitrator(s), the arbitral proceedings will commence from the stage already reached. Evidence or material already on record is deemed to be received by the newly constituted tribunal. The aforesaid deeming provisions underscore the legislative intent to effectuate efficiency and expediency in the arbitral process. This intent is also demonstrated in Sections 29A(8) and 29A(9). The court in terms of Section 29A(8) has the power to impose actual or exemplary costs upon the parties. Lastly, Section 29A(9) stipulates that an application for extension under sub-section (5) must be disposed of expeditiously, with the endeavour of doing so within sixty days from the date of filing.

17. As per the second proviso to Section 29A(4), the mandate of the arbitral tribunal continues where an application under sub-section (5) is pending. However, an application for extension of period of the arbitral tribunal is to be decided by the court in terms of sub-section (5), and sub-sections (6) to (8) may be invoked. The power to extend time period for making of the award vests with the court, and not with the arbitral tribunal. Therefore, the arbitral tribunal may not pronounce the award till an application under Section 29A(5) of the A & C Act

is sub-judice before the court. In a given case, where an award is pronounced during the pendency of an application for extension of period of the arbitral tribunal, the court must still decide the application under sub-section (5), and may even, where an award has been pronounced, invoke, when required and justified, sub-sections (6) to (8), or the first and third proviso to Section 29A(4) of the A & C Act.

18. While interpreting a statute, we must strive to give meaningful life to an enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios. An interpretation which produces an unreasonable result is not to be imputed to a statute if there is some other equally possible construction which is acceptable, practical and pragmatic.”

PETITIONER CANNOT SUFFER DUE TO PENDENCY OF PROCEEDINGS:

10. In instant case, the arbitral proceedings continued since 2019 till February 2023, in which the petitioner and respondents participated without any objection. These proceedings stretched over for almost four years. Once the Learned Arbitrator permitted the parties to participate in arbitral proceedings beyond the permissible period of 18 months then, the Impugned Order passed by Arbitrator on 08.02.2023 [Annexure P-1], that he cannot proceed because his mandate stood terminated and the arbitral proceedings were kept in abeyance, certainly amounts to prejudicing the petitioner due to an act Arbitrator herein which defeats the principle of “Actus Curiae Neminem Gravabit”.

EXTENSION GIVEN IN OTHER CASES BY CO-ORDINATE BENCH AND THIS COURT IN SIMILAR FACT-SITUATION:

11. Similar issue came up for discussion and Co-ordinate Bench(es) of this Court, granted enlargement-extension of time to Learned Arbitrator to conclude the arbitral proceedings, in the following cases:

(i) Arb. Case No.2 of 2023, titled as Prakash Chand Versus LAC & Others, decided on 13.01.2023.

(ii) Arb. Case No.44 of 2023, titled as Nand Lal alias Nand Lal Vardhan Versus Land Acquisition Collector and others, decided on 18.04.2023.

(iii) Arb. Case No.122 of 2022, titled as Dinesh Kumar Versus Land Acquisition Officer and another, decided on 07.07.2023.

(iv) Arb. Case No.43 of 2019, titled as Devki Nand Thakur Versus State of H.P. through Secretary (PW), decided on 12.07.2019.

11(i). Recently, the Co-ordinate Bench of this Court granted extension of time to complete the arbitral proceedings within six months, in Arbitration Case No.1012 of 2023, titled as NHAI versus Competent Authority of Land Acquisition-cum-SDO Nalagarh & Ors., decided on 09.01.2025.

“3. The arbitral dispute has arisen out of the land acquisition in District Solan,

H.P. for the purpose of construction of the National Highway, land for which has been acquired under the provisions of National Highways Act, 1956. The lands of the claimants have been acquired by the petitioner in the present case in District Solan. On 22.03.2017, the respondent No.1 i.e. competent authority passed an Award No.3 qua village Dadi Bhola, Hadbast No.146, District Solan, HP.

4. Feeling aggrieved by the aforesaid Award, the petitioner has preferred the Reference Petition No.423/2018, before the learned Arbitrator-cum-Divisional Commissioner, Shimla Camp at Solan, District Solan, and non-adjudication of the arbitral proceedings within the statutory period has resulted in filing of the instant petition.

5. The Reference Petition against the Award was filed by the petitioner long back. According to the petitioner, the matter alongwith other cases was posted on various dates and on most of the dates, the proceedings could not be taken further due to administrative reasons/engagements. It has further been submitted that the petition was filed on 14.10.2018 and due to Covid-19 pandemic during 2020-22, no effective hearing could take place. Ultimately the case was ordered to be listed on 23.05.2023, when learned Arbitrator has ordered the proceedings to be closed, on account of the fact that proceedings could not be completed within period prescribed under Arbitration Act.

7. However, at this stage, the Court is restraining from making any further observation in the case save and except that henceforth, if the Court finds the Arbitrator derelicting his duties, then it shall not hesitate to invoke its powers as enshrined in Section 29 (A) (6) of the 1996 Act, to terminate the mandate of the Arbitrator, de hors the fact that the Arbitrator happens to be appointed in terms of the notification issued by the Central Government under Section 3G (a) of the National Highways Act, 1956.

8. In view of the above discussion, the instant petition is allowed and the Arbitrator-cum-Divisional Commissioner, Shimla Camp at Solan, District Solan, H.P., exercising the powers of Arbitrator under Section 3 of the National Highways Act, 1956 is directed to conclude the arbitral proceedings and to pass the arbitral award in Arbitration Case No.423/2018, on or before 8th July, 2024.

Petition stands disposed of, so also the pending miscellaneous applications, if any."

11(ii). Recently, another Co-ordinate Bench in Arbitration Case No.878 of 2024, titled as Deepak Kumar versus UOI & Ors. decided on 10.12.2024, has enlarged time for completion of arbitral proceedings by six months, in the following terms:-

"3. I have heard learned counsel on both sides and considered the case file. It has been informed that in similar matters, taking recourse to Section 29A(4) of the Act, the Courts have extended the period for passing the award by six months.

4. The petitioner has made out a case for extending the period for deciding the

arbitration proceedings by six months. Ordered accordingly. The mandate of learned Arbitrator in deciding the petition under reference is extended by six months from today. The parties, through their learned counsel, are directed to appear before the learned Arbitrator on 27.12.2024. All rights and contentions of the parties are left open to be adjudicated by the learned Arbitrator.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.”

CONCLUSION & DIRECTIONS:

12. In view of the above discussion and for the reasons recorded, here-in-above, all the above petitions are allowed, in the following terms:-

(i). Impugned Orders dated 08.02.2023 [Annexure P-1, Colly] passed in Arbitration Cases No.457 & 458 of 2024, passed by Learned Arbitrator- cum- Divisional Commissioner, Mandi, in Arbitration Reference Petition Nos. 9/19, & 11/19, are quashed and set- aside.

(ii). Impugned Orders dated 07.02.2023 [Annexure P-1, Colly] passed in Arbitration Cases No.456 & 459 of 2024, passed by Learned Arbitrator- cum- Divisional Commissioner, Mandi, in Arbitration Reference Petition Nos. 9/19, & 10/19, are quashed and set- aside.

(iii). All the Arbitration Reference Petition(s) as in (i) & (ii) supra, shall stand restored to their original position;

(iv). Learned Arbitrator-cum-Divisional Commissioner, Mandi, is mandated to complete the arbitral proceedings and to pass the Award in accordance with law within six months from date of receipt of copy of this judgment.

(v). Costs made easy for respective parties.

In aforesaid terms, the instant petitions and all pending application(s) if any, shall stand disposed of.