
(2018) 07 CHH CK 0246
In the Chhattisgarh High Court
Case No : ARBA No. 23 Of 2018

Kanhiya Lal Kalar

APPELLANT

Vs

Land Acquisition Officer And Ors

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

National Highways Act, 1956 — Section 3A(1), 3G(6)
Arbitration And Conciliation Act, 1996 — Section 34(2), 37(1)(b)
Land Acquisition Act, 1894 — Section 18

Citation : (2018) 07 CHH CK 0246

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Anup Majumdar, Arun Sao

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. The Land Acquisition Officer passed an award in favour of petitioner under Section 3A(1) of the National Highways Act, 1956 (hereinafter called as 'Act of 1956'), feeling aggrieved against which the petitioner preferred an application for final determination of compensation to the Arbitrator appointed by the Central Government. That award, by its order dated 7.12.2011, rejected the application of petitioner finding no merit, against which petitioner preferred an application under Section 34(2) of Arbitration and Conciliation Act, 1996 (hereinafter called as 'Act of 1996') read with Section 3G(6) of the Act of 1956 which has been rejected by the learned District Judge holding that appropriate remedy for petitioner is to file an application under Section 18 of the Land Acquisition Act, 1894 (hereinafter called as 'Act of 1894') and the application filed under Section 34(2) of the Act of 1996 is not maintainable. Aggrieved against which, this appeal under Section 37(1)(b) of the Act of 1996 has been preferred by the petitioner.

2. Learned counsel appearing for the petitioner would submit that the learned

District Judge went wrong in holding that the appropriate remedy for petitioner is to file an application under Section 18 of the Act of 1894 since, the acquisition was made under the Act of 1956 therefore, the appropriate remedy would be to file an application under Section 3G(6) of the Act of 1956 for setting aside the award before the Arbitrator appointed by the Central Government.

3. On the other hand, learned State counsel would support the impugned order passed by the learned District judge.

4. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.

5. It is not in dispute that acquisition was made under the provisions of the Act of 1956 and award was passed by the competent officer under the Act of 1956 and, therefore, the application for determination of compensation would lie before the arbitrator appointed by the Central Government under Section 3G(5) of the Act of 1956 and against the order of Arbitrator, by virtue of Section 3G(6) of the Act of 1956, application under Section 34(2) of the Act of 1996 would be maintainable.

6. Section 3G(6) of the Act of 1956 provides as under :-

"3G. Determination of amount payable as compensation.-

(1) to (5) xxx xxx xxx

(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) xxx xxx xxx

7. Thus, from the aforesaid provision, provisions of the Arbitration and conciliation Act has been made applicable to the Arbitration under the Act of 1956.

8. This Court, in the matter of Surendra Kumar Chhabda v. State of chhattisgarh and others W.P. (C) No. 3170 of 2017, has categorically held that the applicability of Section 34(2) of the Act of 1996 in view of acquisition made under the provisions of National Highways Act, 1956 as under :-

" Apart from the fact that the order passed by the Additional Commissioner being an arbitrator is not final and does not attain finality and it can be questioned by the party aggrieved before the District Judge under Section 34(2) of the Act of 1996 and thus, applying the principle of law laid down in Hindustan Petroleum Corporation Ltd. v. Yashwant Gajanan Joshi's and others AIR 1991 SC 933 and also merely because the arbitrator IAS officer has been appointed by the Central Government there is likelihood of bias, it cannot be held that the Additional commissioner has suffered disqualification under clause 1 of the Seventh

Schedule enacted under Section 12(5) of the Act of 1996, particularly when the petitioner has not appeared before the said authority and has not challenged his authority and has not placed any material even. As such, the decision of the Supreme Court cited by Mr. Malviya i.e. TRF Limited v. Energo Engineering Projects Limited (2017) 8 SCC 377, is not applicable to the facts of the present case."

9. In view of the aforesaid discussion, I have no doubt in my mind that the impugned order passed by the learned District Judge is contrary to the provisions contained under Section 3G(6) of the Act of 1996 and, therefore, it deserves to be and is hereby set aside.

10. The matter is remitted to the District Judge, Raigarh for hearing the application under Section 34(2) of the Act of 1996 afresh in accordance with law and to pass order after hearing the parties. Such an exercise shall be undertaken by the learned District Judge within a period of three months from the date of receipt of copy of this order. No cost(s).