
(2016) 11 AHC CK 0188

In the Allahabad High Court

Case No : Writ-C No. 58723 of 2015 and C.M. Correction Application No. 107579 of 2016

Nakli Singh

APPELLANT

Vs

Commissioner Saharanpur Region

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, Section 37

Citation : (2017) 4 ADJ 366 : (2017) 121 ALR 411

Hon'ble Judges : Hluvadi G. Ramesh and Shamshe Bahadur Singh, JJ.

Bench : Division Bench

Advocate : V.C. Dixit, Advocate, for the Petitioners; C.S.C., Vivek Singh, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Hluvadi G. Ramesh and Shamshe Bahadur Singh, JJ.—We have heard Sri V.C.Dixit, learned counsel for the petitioners and Sri Vivek Singh, learned counsel for the respondent nos. 2 and 3.

2. This writ petition has been filed with a prayer to issue a writ, order or direction in the nature of mandamus commanding the respondents to enhance the compensation at the rate of Rs.10,000/- per sq. meter along with interest @ 9% from the date of acquisition for the acquired land of the petitioners of Gata No.582, Area 0.1632 hectare situated in village Damanhedi, Pargana and Tehsil Sadar, District Muzaffar Nagar. Further prayer is to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the enhance amount to the petitioners along with interest as just compensation for the land of the petitioners which was acquired by the respondents.

3. Learned counsel for the petitioners has submitted that the value assessed by the Special Land Acquisition Officer (hereinafter referred to as the "SLAO") is much lower than the market value as the land of the petitioners is adjacent to

the market and industrial area. In this regard the petitioners have filed several evidences to establish the value of the land before the Commissioner, Saharanpur/Arbitrator who without considering the potential value of the land had passed the award dated 14.5.2013 holding that the rate fixed by the SLAO is just and proper. Thereafter the petitioners have filed Arbitration Case No.390 of 2013 before the District Judge, Muzaffar Nagar, under Section 34 of Arbitration and Reconciliation Act, 1996 for enhancement of compensation challenging the award of Commissioner, Saharanpur/ Arbitrator dated 14.5.2013 which was dismissed by the learned District Judge, Muzaffar Nagar vide judgement dated 13.12.2014 as not maintainable holding that the Court has no authority to enhance the amount of compensation under Section 34 of Arbitration and Reconciliation Act, 1996.

4. Learned counsel for the petitioners has come up before this Court with a prayer to direct the respondents to enhance the compensation at the rate of Rs.10,000/- per sq. meter along with interest @ 9% from the date of acquisition for the acquired land of the petitioners Nos 1 to 3 of Gata No.128, Area 0.8576 hectare situated in village Sandhawali, Pargana, Tehsil and District Muzaffar Nagar to their ?th shares.

5. Learned counsel for the respondents has stated that the award dated 14.5.2013 passed by the Arbitrator/Commissioner, Saharanpur Division, Saharanpur under Section 20f(6) of the Indian Railways Amendment Act in respect of the compensation to be awarded to the petitioners is just and proper. The petitioners, if aggrieved in any manner by the said judgement and award, the remedy available to them to file an application under Section 34 of the Arbitration and Conciliation Act before the District Judge, Muzaffar Nagar and this writ petition under Article 226 of the Constitution of India challenging the award under Section 37 of the Arbitration and Conciliation Act is not maintainable.

"37. Appealable orders. -(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely :-

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the

Supreme Court."

6. In view of the provisions of Section 37 of the Arbitration and Conciliation Act, this writ petition against the award passed by the authorities concerned is not maintainable and has wrongly been filed before this Court and the same stands dismissed as not maintainable. However, it is for the petitioner to seek appropriate remedy to file miscellaneous appeal in the forum (FAFO) before this Court, wherein re appreciate the finding of Commissioner in passing of award requiring enhancement etc.

7. Certified copy of the award passed by the District Judge be returned to the learned counsel for the petitioners. Office to do needful.