(2010) 07 AHC CK 0187

In the Allahabad High Court

National Highway Authority of India APPELLANT

Vs

Jai Kumar Singh and Others RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 23, 34, 37, 75, 81

NATIONAL HIGHWAYS ACT, 1956 — Section 3A, 3C, 3D, 3G, 3H

Citation : (2010) 07 AHC CK 0187

Hon'ble Judges : P.C. Verma, J;B.K. Narayana, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The present First Appeal From Order arises from the below- mentioned set of facts:

A notification u/s 3A(1) of the National Highway Act, 1956 (hereinafter referred to as the Act) was issued by the Central Government on 29.4.2002 proposing to acquire 13,395 Sq. Meters (about 3.04 acres) land of the six plots owned by respondents Jai Kumar Singh and others situated in Village Bagahi Kumbapur, Pargana Narwan, Tahsil and District Chandauli for the purpose of construction of Syed Raza Bypass to G.T. Road. The publication of Notification u/s 3D of the Act was made in the extra ordinary Gazette on 4.12.2002. Thereafter, in pursuance of the Gazette Notification u/s 3A(1) of the Act, the respondents No. 1 to 4 filed their objection u/s 3C of the Act contending that their land are agricultural and they were sowing and harvesting the crops at the time of Gazette Notification. The competent Authority appointed under the Highway Act after considering the objection of the opposite parties in regard to the determination of the compensation, determined the compensation of the entire acquired agricultural land u/s 3G(1) of the Act at the rate of Rs. 2,50,000/- per acre which comes about Rs. 71/- per square meter. The basis of award of the competent authority was Collector''s circle Rate effective for the period 30.6.1999 to 31.7.2001. This rate of compensation was not acceptable to the petitioners hence the Central

Government appointed Arbitrator to determine the Compensation u/s 3G(5) of the Act but in the present case the Competent Authority did not refer the matter for Arbitration and aggrieved thereby the respondents preferred a writ petition being Civil Misc Writ Petition No. 55258 of 2003 Jai Kumar Singh and Ors. v. Union of India and Ors. before this Court and the same was disposed of vide order dated 16. 12.2003.

2. Thereafter, the Central Government appointed Sri R.P. Singh, Addl. District Magistrate (Finance & Revenue), Varanasi as Arbitrator, who issued notices to the respondents. The respondents thereafter filed an objection under the provisions of Section 23 of the Arbitration & Conciliation Act 1996 and claimed compensation at the rate of Rs. 3,50,000/- per Biswa i.e. 2771/- per square meters. The said claim was opposed by the petitioners by way of filing their reply and affidavit before the Arbitrator. That on 5.8.2004 the respondents claimants filed an application on 5.8.2004 before the Arbitrator for making an spot inspection which was opposed by the appellant. The objection of the appellant was rejected by the Arbitrator and the arbitrator on 27.9.2004 made spot inspection in presence of the parties and prepared a spot inspection report and came to the conclusion that the lands acquired are of high commercial value.

3. Vide order dated 5.10.2004 the Arbitrator directed the Sub-Divisional Officer, Chandauli to produce the Circle Lekhpal of Circle Saiyad Raja and Dailupatti and Village Baghahi Kumbhapur fixing 12.10.2004. Pursuant to the order dated 5.10.2004, Lekhpal concerned appeared before the Arbitrator on 18.10.2004 along with site plan showing the location of the respondents'' lands in dispute and made his oral statement and submitted the site plan before the Arbitrator. Thereafter, the respondents No. 1 to 4 examined themselves and filed their affidavits before the Arbitrator. The union of India respondent No. 6 adduced no oral or documentary evidence in rebuttal as such evidence of the respondents went uncontroverted.

4. The Arbitrator after hearing the appellant and claimants respondents vide order dated 16.3.2005 passed an award enhancing the amount of compensation of the agricultural land from Rs. 2,50,000/- acre to Rs. 836.89 per square meter which comes to approximately Rs. 37 lacs per acre relying on the exemplars filed by the claimants-respondents in accordance with law. Aggrieved by the arbitral award dated 6.3.2005 the appellant filed an application u/s 34 of the Arbitration and Conciliation Act 1996 before the District Judge for setting aside the Arbitral Award dated 16.3.2005 which was registered as Arbitration Petition No. 3 of 2005. The claimants respondents filed an objection against the application filed by the appellant u/s 34 of the Act and denied the allegations made in the application stating that no ground is made out to set aside the arbitral award.

5. Learned District Judge, Chandauli after going through the record and after hearing the parties dismissed the application filed by the appellant u/s 34 of the Arbitration and Conciliation Act 1966 and also the Arbitration Petition No. 3 of 2005 vide order dated 17.2.2007, hence this First Appeal From Order is preferred.

6. Heard learned Counsel for the parties and perused the material on record.

7. In the present case, no ground has been made out by the appellant either u/s 34 or u/s 37 of the Arbitration and Conciliation Act 1996 to set aside the arbitration award. An arbitral award can be set aside only on the ground mentioned in Section 34(2) and (3) of the Arbitration and Conciliation Act 1996. Court has to examine only whether any ground has been made out by the appellant for setting aside the award as mentioned u/s 34(2) (a) and (b) of the Arbitration and Conciliation Act 1996.

8. The argument of the counsel for the appellant that the award is against the public policy is misconceived. The appellant in support of his argument relied on principle of law laid down in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., and argued that the award can be set aside if the same is against the public policy of India. In the aforesaid case, it is defined that award can be said to be against the public policy when it is contrary to:

(a) Fundamental Policy of Indian Law or

(b) The interest of India or

(c) Justice or morality or

(d) It is patently illegal.

9. The aforesaid four conditions are not fulfilled in the present case. Hence the impugned award cannot be said to be against the public policy.

10. In the present case, the explanation of Section 75 or Section 81 of the Act 26 of 1996 has not been violated. Learned District Judge has dealt with the aforesaid argument of the appellant in para 12 and 13 of the judgment relying on the judgment of this Court as well as Hon''ble Apex Court. Learned District Judge has held that in the present case explanation of Section 75 or Section 81 of the Act has not been violated and the arbitral award is not against the public policy. The District Judge has also held that the application for setting aside the award u/s 34 of the Act cannot be termed as an appeal. The application u/s 34 of the Act is heard on limited ground as contemplated u/s 34(2)(a) and (b) of Act No. 26 of 1996. The learned District Judge rightly dismissed the application filed by the appellant u/s 34 holding that none of the grounds mentioned in the application is covered by the provision of Section 34(2)(a) and (b) of Act No. 26 of 1996.

11. The Arbitrator has held that according to the decision of the Hon''ble Apex Court in Civil Appeal No. 7463 of 1997 (with Civil Appeal No. 7459, 7462, 7464 and 7465 of 1997 Krishi Utpadan Mandi Samit Sahaswan District Budaun through its Secretary v. Vipin Kumar and Ors. the market value cannot be determined on the basis of the circle rate fixed by the Collector for collection of Stamp Duty. Therefore, on the facts of the present case, the sale deeds filed by way of exemplars, should be considered for fixation of the market value.

12. Dealing with 14 exemplars filed b y the claimants, the arbitrator held that

when the sale deeds at Sl Nos. 7 to 14 of Village Bagahi Kumbhapur are available, it is not necessary to consider the sale deeds at Sl. Nos. 1 to 6 of the adjoining village, Dailupatti. Since the sale deeds noted at Sl Nos. 12, 13 and 14 are of the subsequent date from the publication of the Notification dated 5.6.2002, therefore, that should also not be taken into account. The remaining sale deeds noted at Sl Nos. 7 to 11 are of within one year''s period from the date of Notification dated 5.6.2002. However, the sale deed dated 29.3.2002 noted at Sl No. 11 is of the closest period prior to 5.6.2002, therefore, that is more relevant and that was taken as relevant exemplar by the Arbitrator. In this sale deed the 217.47 Sq. Meter land of Plot No. 576 was sold for total Rs. 2,60,000/- at the rate of Rs. 1195.56 per sq. meter.

13. Rules 98 and 99 of the Land Acquisition Manual provide that if the land is agricultural and is likely to be used for Abadi or commercial establishment, specially when the residential and commercial constructions are already situated in the adjoining lands, that is also relevant for fixation of compensation of that land. In view of the aforesaid facts, according to the provisions of Land Acquisition Manual, to determine the market value of the land in dispute, its spot position, its vicinity from the market and residential complex and local inspection report are to taken into consideration.

14. According to Rules 100 and 101 of the Land Acquisition Manual, if the acquired land is larger in area than the exemplar, some deduction in the market value of the exemplar should be made. In civil Appeal No. 9205-03 of 2007 The Land Acquisition Officer, Kammarapalli v. Nukla Rajamullu and Ors. the Hon''ble Supreme Court has held that if there is no development in the acquired land on the date of its acquisition, then at the time of fixation of potential value of that land, necessary deduction may be made. In Civil Appeal No. 6267 of 1999 Ahad Brothers v. State of M.P. and Anr. decided on 19.11.2004 the Hon''ble Apex Court has held that development charges should be deducted while fixing the potential value of any land, and 30 % deduction was made in that case by the Hon''ble Apex Court.

15. Accordingly, 30 % deduction in the rate of the exemplar sale- deed was made in the present case and thereafter the rate has been fixed by the Arbitrator at Rs. 836.89 per sq. Meter and the total market value, according to aforesaid rate, comes to Rs. 1,12,10,141.55.

16. The Arbitrator lastly rightly computed the compensation at the rate of Rs. 836.89 per Sq. Meter, and total amount to be paid to the claimants /opposite parties Nos. 1 to 4 is Rs. 1,12,10,141.55, on which, according to the provisions of Section 3H(5) of the National Highways Act, 1956, an interest of 9 % is also payable to the claimants from the date of acquisition to the date of actual payment and the National Highway Authority of India was directed to make payment of the aforesaid amount within a period of 30 days from the date of Award dated 16.3.2005.

17. In view of the fact that an arbitral award can be set aside only on the grounds mentioned in Section 34(2) and (3) of the Arbitration and Conciliation Act, 1996. Section 34(3) of the aforesaid Act and appellant having failed to make out any of the ground enumerated herein above. The objection filed by the appellant u/s 34 of the Act was rightly rejected by the Court below.

18. In the result, the appeal filed by the appellant has no force and is liable to be dismissed and is hereby dismissed.