

(2009) 01 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 11287 of 2008

National Highway Authority of India, Project Implementation Unit APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(1)
Control of National Highways (Land and Traffic) Act, 2002 — Section 14, 26, 27, 28, 36
National Highways Act, 1956 — Section 3G(5), 3G(6)

Citation : AIR 2009 Patna 66 : (2009) 57 BLJR 1101 : (2009) 2 PLJR 884 :
(2010) 8 RCR(Civil) 2693

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the petitioner, National Highway Authority of India, learned Counsel for the Union of India and for the State of Bihar. No one appears for respondent No. 3 despite service of notice upon him.

2. The petitioner is aggrieved by the order dated 5.6.2008 passed by the District Judge, Rohtas at Sasaram in Civil Misc. (Arbitration) Case No. 27 of 2008, by which the application filed by the petitioner u/s 34 of the Arbitration and Conciliation Act, 1996 has been dismissed holding that in view of the provisions of the Control of National Highways (Land and Traffic) Act, 2002 the court has no jurisdiction to hear the objections against the award of Arbitrator/Authority.

3. The facts involved in the present case fall within a narrow compass. The petitioner National Highway Authority of India (in short, NHAI) had acquired certain lands for the construction of Sasaram Bypass on the National Highway No. 2 in village kota, Anchal Sasaram, District Rohtas under the provisions of the National Highways Act, 1956 in the year 2001. Against the compensation

determined by the competent authority under the said Act an Arbitrator was appointed by the Central Government, namely, Additional Collector, Rohtas (Sasaram) and by his arbitral award dated 9.8.2007 the rate of compensation of the land was enhanced from Rs. 1,83,333/- per acre to Rs. 4,46,000/- per acre.

4. Against the said arbitral award the petitioner NHA filed an application u/s 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Rohtas at Sasaram.

5. However, by the impugned order dated 5.6.2008, the learned District Judge has dismissed the appeal holding that he had no jurisdiction to admit the appeal for determining the compensation in view of the fact that the National Highway Tribunal has already been constituted at Lucknow u/s 5 of the Control of National Highways (Land and Traffic) Act, 2002.

6. Learned Counsel for the petitioner submits that the learned District Judge has committed a serious error of law by holding that he has no jurisdiction in the matter. In this regard he refers to the provisions of Section 3G(5) and (6) of the National Highways Act, 1956, which are quoted hereinbelow:

(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.

He refers in this connection to Section 34(1) of the Arbitration and Conciliation Act, 1996, which is in the following terms:

34. Application for setting aside arbitral award.- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3) .

7. Learned Counsel for the petitioner on the basis of the aforesaid provisions contends that after the compensation has been determined by the Arbitrator appointed u/s 3G(5) of the Act, the only remedy before the aggrieved party is to invoke the jurisdiction of the District Judge u/s 34 of the Arbitration and Conciliation Act in view of what has been provided under Sub- section (6) of Section 3G of the National Highways Act, 1956.

8. In this regard, learned Counsel for the petitioner also points out that from the preamble to the Control of National Highways (Land and Traffic) Act, 2002 it is evident that the same has been enacted to provide for control of land within the National Highways, right of way and traffic moving on the National Highways and for the removal of unauthorized occupation thereon. He refers to Section 14 of the said Act, which is in the following terms:

14. Jurisdiction, powers and authority of Tribunal- A Tribunal shall exercise, on

and from the appointed day, the jurisdiction, powers and authority to entertain appeals from the orders passed or actions (except issuance or serving of notices) taken under Sections 26, 27, 28, 36, 37 and 38 by the Highway Administration or an officer authorized on its behalf, as the case may be.

9. The provisions of Section 26 of the said Act relate to removal of unauthorized occupation; Section 27 provides for recovery of cost of removal of unauthorized occupation and fine imposed; Section 28 provides for right of access to Highway; Section 36 provides for prevention and repair of damage to Highway; Section 37 is a prohibition to leave vehicles or animals in dangerous position and Section 38 relates to construction on Highway land. It is, thus, submitted that the power of the Tribunal constituted under the Control of the National Highways (Land and Traffic) Act, 2002 is only against the appeals from the orders passed or action taken under the said Sections and the said Tribunal has no jurisdiction at all to consider a matter relating to compensation awarded on the acquisition of land for the purpose of construction of National Highways.

10. On a consideration of the aforesaid provisions of the three Acts as also the submissions of learned Counsel for the petitioner, this Court finds sufficient force in the contention of learned Counsel for the petitioner. It is evident that the National Highways Tribunal has no jurisdiction at all to entertain any matter with respect to any compensation that may have been awarded on the acquisition of the land for the purpose of construction of National Highway. The said matter is squarely governed by the provisions of the National Highways Act, 1956 which provides that upon the fixation of compensation by the competent authority under the Act, an aggrieved party can move before the Arbitrator appointed by the Central Government and the arbitration by the said Arbitrator would be governed by the provisions of the Arbitration and Conciliation Act, 1996. It is, thus, evident that any action or award of the Arbitrator is only subject to challenge within the parameters prescribed by the Arbitration and Conciliation Act, 1996. The Control of National Highways (Land and Traffic) Act, 2002 can have no application to the determination of compensation in the acquisition of land for the purpose of construction of National Highways and the said enactment has been brought into force for entirely different purposes in connection with the control of land within the National Highways and other matters mentioned in the said Act.

11. Thus, in the light of the aforesaid discussions, the writ application is allowed.

12. The order dated 5.6.2008 passed by the District Judge, Rohtas at Sasaram in Civil Misc. (Arbitration) Case No. 27 of 2008 is set aside and the matter is remanded to the District Judge, Rohtas at Sasaram to decide the same in accordance with law.