

(2019) 11 MP CK 0130

In the Madhya Pradesh High Court

Case No : Arbitration Appeal No. 45 Of 2014

National Highway Authority Of India Through Project

APPELLANT

Vs

Ratnesh Kumar

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 37

National Highways Act, 1956 — Section 3A, 3D, 3G(7)(a), 3(g)(v)

Citation : (2019) 11 MP CK 0130

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : K.N. Pethia, Bramhdatt Singh

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the appellant/ National Highway Authority of India under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "AC Act") against the order dated 29.9.2014 passed by the First Additional District Judge, Narsinghpur in MJC No.49/2011, whereby the application filed by the appellant under Section 34 of the AC Act arising out of an order dated 15.4.2010 passed by the Commissioner/ Notified Arbitrator in Case No.63-A/82-09/10 has been dismissed and the orders of the Arbitrator as well as competent authority have been affirmed.

2. In brief the facts of the case are that the appellant is an authority constituted under the Government of India (Ministry of Road Transport and Highways) for development and reconstruction of National Highways for providing better transport services/facilities to the transporters and public at large. According to the appellant the Government decided to widen the four lane road from Jhansi to Lakhnadon at NH-26 in the State of Madhya Pradesh, which is a part of North-South Corridor for which a notification has also been issued under Section 3A of the National Highways Act, 1956 (for short "Highways Act, 1956") in the Official Gazette of India for acquisition of the land beside the adjacent roads of the said

corridor and after inviting the objections a further notification has also been issued under Section 3 'D' of the Highways Act, 1956, which was also published in the Gazette of India. According to the appellant, for the fulfillment of aforesaid object, an area ad-measuring 2.83 hectare i.e. 2830 square meter in Khasra No.163/2 belonging to respondent-Ratnesh Kumar situated at Village Lolari District Narsinghpur was sought to be acquired and accordingly a land acquisition proceeding was initiated. In respect of the aforesaid land, an award to the tune of Rs.12,52,036/- was passed by the competent authority viz., the Joint Collector, Narsinghpur on 24.4.2008 in Case No.5/A-82/2006-07. However, being aggrieved of the aforesaid order of compensation passed by the competent authority the respondent herein preferred an appeal before the Arbitrator/Commissioner, Jabalpur Division, Jabalpur, who is also designated arbitrator under Section 3(g)(v) of the Highways Act, 1956 to decide the dispute and the Arbitrator, vide order dated 15.4.2010 has enhanced the compensation from Rs.12,52,036/- to Rs.26,60,405/-.

3. Being aggrieved of the aforesaid award dated 15.4.2010, the appellant/National Highway Authority preferred an appeal before the First Additional District Judge, Narsinghpur under Section 34 of the Act, 1996, which was registered as MJC No.49/2011. The aforesaid appeal was dismissed by the learned Judge of the appellate Court vide its order dated 29.9.2014, hence this appeal.

4. Learned counsel for the appellant has vehemently submitted that the notification under Section 3A of the Highways Act, 1956 was issued in the year 2005 for acquisition of the land, therefore the compensation ought to have been computed as per the guidelines prevailing in the year 2004-05 only. It is further submitted that the land in question is recorded in the revenue record as agriculture land, and therefore, while calculating the compensation by the competent authority as well as the Arbitrator the land in question should have been assessed as agriculture land which is actually an agriculture land, whereas the Arbitrator has assessed the compensation treating the same to be commercial land. It is further submitted that while passing the award the Arbitrator has calculated the compensation for 70% land out of 2330 square meter land @ Rs.863.50 per square meter whereas the compensation ought to have been determined for 30% of the land out of 2330 square meter land as per the Collector guidelines and the rates prevailing at the time of issuance of Notification under Section 3A of the Highways Act, 1956.

5. It is further submitted by the learned counsel for the appellant that the finding recorded by the Arbitrator in para 4(1) is unwarranted and against the provisions of Section 3G(7)(a) of the Highways Act, 1956 which says that the market value of the land on the date of publication of notification should be applied. It is further submitted that subsequent events pursuant to the notification issued under Section 3A of the Highways Act, 1956 were inconsequential for determining compensation of the respondent. It is further submitted that in para

7 of the impugned judgment it is held that the land acquired is residential one, which is also against the provisions of the Highways Act, 1956. Thus it is submitted that the entire land being agricultural land ought to have been assessed for compensation treating the same to be the agriculture land and not the land for residential/commercial purpose. It is further submitted that the guidelines value of the year 2004-05 ought to have been taken into consideration instead of 2007-08 as has been done by the Arbitrator. Lastly it is submitted that the award is exorbitant and being on higher side, is liable to be set aside, as the amount has been increased by more than 2 times by the arbitrator which has been affirmed by the learned Judge of the lower Court in the application filed under Section 34 of the AC Act, 1996.

6. On the other hand, Shri Brahmddatta Singh, learned counsel for the respondent has opposed the prayer of the appellant and has submitted that no case for interference is made out, as the appeal itself being devoid of merit is liable to be dismissed.

7. It is further submitted that no grounds as provided under Section 34 of the AC Act, 1996 are available to the appellant and even in the application filed under Section 34 of the AC Act, 1996 the appellant has not stated as to on which grounds as provided under Section 34 of the AC Act, 1996 the application has been filed challenging the award passed by the Arbitrator.

8. It is further submitted that initially the authorized officer did not grant any amount towards lapse of time, which was spent by the appellant from the date of initial acquisition of the land till the final award was made and in view of the same the Arbitrator has rightly awarded 10% of the award amount to which the respondent was entitled to on account of delay in making the award.

9. Shri Singh has further stated that the appellant has no right to raise the objection in respect of the rate applied by the competent officer in passing the original order of compensation as the aforesaid order was never challenged by the appellant before the appellate authority/arbitrator. In support of his contention learned counsel for the respondent has relied the judgment of the Rajasthan High Court in the case of Aditya Kumar Samariya Vs. Union of India & others, reported in 2019(1) RLW 144 (Raj.) and the judgment of Karnataka High Court in the case of National Highway Authority of India Vs. Durgappa Bharamappa Sannagudi & others, decided on 18.7.2014 in MFA No.23385/2013 (A & C).

10. Heard the learned counsel for the parties and perused the record.

11. The present appeal has been filed under Section 37 of the AC Act, 1996 arising out of an order passed on an application filed by the appellant under Section 34 of the AC Act, 1996, hence it would be necessary to see as to which grounds have been raised by the appellant in their application filed under Section 34 of the AC Act, 1996, as the scope of Section 34 is limited to the grounds available therein only to challenge the award passed by the Arbitrator.

12. On perusal of the entire application filed under Section 34 of the AC Act, 1996 by the appellant this Court is sorry to observe that in the said application the appellant has not even made a passing reference of the grounds available under Section 34 of the AC Act, 1996. In the entire application filed under Section 34 of the AC Act, 1996 it is nowhere mentioned as to under which of the grounds as enumerated under Section 34 of the AC Act, 1996 the application has been preferred. It is a rather badly drafted application filed by the appellant. The grounds have been raised in a routine manner without having any overtones of Section 34 of the AC Act. It appears that while filing the aforesaid application, the appellant has left it solely to the discretion to the Court concerned to find on its own as to on which ground the application under Section 34 has been filed by the appellant. However, in the interest of justice this Court has considered the grounds raised by the appellant and has also gone through the application and found that no illegality or jurisdictional error has been committed by the authorities below.

13. However, this Court has considered the grounds raised by the appellant on merits and found that so far as the original order dated 24.4.2008 is concerned, the respondent has been granted compensation in the following manner:

(a) Value of the land upto 500 sq. meters @ Rs.1296.90 per sq. meters-
Rs.6,48,450=00

(b) 30% of the remaining 2330 sq. meters of land i.e. 699 sq. meters @
Rs.863.50 Rs.6,03,586=00

Whereas the Arbitrator in his order has modified the aforesaid order in the following manner:-

(a) Value of the land upto 500 sq. meters @ Rs.1296.90 per sq. meters 500 x
1296.90 Rs.6,48,450=00

(b) 70% of the remaining land i.e. 863.50 sq.
meters Rs.14,08,368=00

(c) 10% of the aforesaid amount as
compensation Rs.2,05,681=00

Total-

Rs.22,62,499=00

Admittedly the compensation granted by the original authority and the rates applied therein have not been challenged by the appellant before the Arbitrator and it was the respondent who had approached the Arbitrator challenging the aforesaid award of compensation in which also the Arbitrator has applied the same rates as have been applied by the original authority and only the method of calculation has been changed. Thus, in view of the same, the appellant cannot raise any ground regarding the rates of the land as determined by the competent authority.

14. So far as the calculation of compensation by the Arbitrator by applying the ratio in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer Puna and others, reported in AIR 1988 SC 1652 is concerned, in which it is held as under:-

"8.....

The first two grounds are devoid of merit. It is common knowledge that when a large block of land is required to be valued, appropriate deduction has to be made for setting aside land for carving out roads, leaving open spaces, and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the Court having regard to shape, size and situation of the concerned block of land etc. There cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially a question of fact depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law. It cannot be said that the High Court has committed any error in forming the opinion that having regard to the facts and circumstances of the case 25% deduction was required to be made in this connection. The High Court cannot be faulted on this score."

(emphasis supplied)

In the aforesaid judgment it is further held as under:-

"3. Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the Trial Court has virtually treated the award rendered by the Land Acquisition officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized.

4. The following facts must be etched on the mental screen:

1 to 14 (not reproduced)

15.....The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards ."

(emphasis supplied)

The learned Arbitrator after relying upon the aforesaid dictum has left 20% of the land acquired for the road and 10% for open land and as such total 30% land has been left for residential plots and rest of the plot i.e. 70% was held to be liable to be used for the purposes of acquisition, hence the aforesaid conclusion

drawn by the Arbitrator cannot be said to be arbitrary, unjust or uncalled for.

15. In view of the aforesaid discussion, as also on the ground that the appellant has miserably failed to make any any ground under Section 37 of the AC Act, 1996, the appeal being misconceived, is liable and is hereby dismissed. No cost.