
(2025) 12 UK CK 0045

In the Uttarakhand High Court

Case No : Appeal From Order No. 253 Of 2022

National Highway Authority Of India

APPELLANT

Vs

Balkar Singh & Others

RESPONDENT

Date of Decision : 03-12-2025

Acts Referred:

Arbitration & Conciliation Act, 1996 — Section 34, 34(2A), 37
National Highways Act, 1956 — Section 3A, 3D, 3G, 3G(5)
Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 143
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 26, 26(a), 26(1)(a), 26(3), 27, 28, 29, 30

Citation : (2025) 12 UK CK 0045

Hon'ble Judges : Alok Mahra, J

Bench : Single Bench

Advocate : Naresh Pant, Raunak Pant, Siddhartha Sah, V.D. Bisen

Final Decision : Allowed

Judgement

Alok Mahra, J

1. The National Highway Authority of India (hereinafter, 'NHAI') feeling aggrieved against the dismissal of its application on 21.05.2022 under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter, 'the Act') by the learned District Judge, Udham Singh Nagar has taken recourse by way of the present appeal under Section 37 of the Act.

2. Facts giving rise to the present appeal are:-

i. A notification dated 19.03.2014 came to be issued under Section 3A of the National Highways Act, 1956 (hereinafter referred NH Act), whereby the land of respondent nos. 1 to 3, bearing Khasra No. 117, admeasuring 0.0544 hectare, situate in Village Mahtosh, Tehsil Gadarpur, District Udham Singh Nagar, was notified for acquisition for the purpose of construction of National Highway No. 74.

ii. Subsequently, vide notification dated 12.09.2014 issued under Section 3D of the NH Act, the aforesaid land vested with the Central Government, free from all encumbrances.

iii. The Special Land Acquisition Officer, Nainital/Udham Singh Nagar, thereafter, passed an award under Section 3G of the NH Act on 16.04.2015, determining compensation payable to the respondents at the rate of ₹ 500/- per square metre, and further valuing 18 shops standing on the acquired land at ₹ 2,78,540/-, thus awarding total compensation of ₹ 5,77,740/-. The Special Land Acquisition Officer computed the market value of the land treating it as Bhumidhar land, as no declaration under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 had been obtained by the respondents.

iv. Being aggrieved by the award so passed, the respondents preferred an arbitration application dated 08.06.2015 under Section 3G(5) of the NH Act. The learned Arbitrator/District Magistrate, Udham Singh Nagar, vide award dated 30.12.2015, enhanced the compensation from ₹ 500/- per square metre to ₹ 14,000/- per square metre for the land, and determined the compensation for the 18 shops at ₹ 44,35,381/-.

v. Aggrieved thereby, the appellant preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of the arbitral award before the learned District Judge, Udham Singh Nagar. The said application was dismissed by the learned District Judge vide judgment dated 21.05.2022, upholding the arbitral award. Hence, being dissatisfied with the said judgment and award, the appellant has preferred the present appeal before this Court.

3. Learned counsel for the appellant vehemently contended that the arbitral award impugned herein suffers from patent illegality and manifest error on the face of the record. It is argued that, while determining the compensation, the learned Arbitrator failed to adhere to the mandatory provisions contained under Sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013"). In particular, it is submitted that the Arbitrator did not take into consideration any exemplar sale deeds of comparable lands pertaining to the three years immediately preceding the issuance of the notification under Section 3A of the NH Act, as required by Section 26(1)(a) of the Act of 2013, for the purpose of determining the market value of the acquired land. Section 26 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is reproduced below:

"26. Determination of market value of land by Collector.-(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11."

4. It is further contended that the determination of valuation in respect of the shops and other structures standing on the acquired land was not made strictly in accordance with Section 29 of the Act of 2013, which mandates valuation based upon the latest schedule of rates or cost of construction prevailing in the locality. The learned Arbitrator, according to the appellant, adopted an arbitrary and inflated rate of ₹ 14,000/- per square metre without any cogent material or documentary evidence to substantiate such enhancement while totally bypassing Section 26 of the Act of 2013.

5. Learned counsel argued that the subject land was recorded as Bhumidhar land in the revenue records, and since the respondents had not obtained any declaration under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, the nature of the land continued to be agricultural land and the market value should have been assessed as provided in Section 26 (a) of the Act of 2013. It is submitted that, in disregard of this legal position, the learned Arbitrator erred in treating the acquired land as commercial land while fixing the market value, instead of applying the prevailing circle rate applicable to agricultural lands in the area at the relevant time. In support of his submissions, learned counsel for the appellant placed reliance upon judgment rendered in the case of *State of Chhattisgarh and another Vs. SAL Udyog Private Ltd.*, (2022) 2 SCC 275. Relevant paragraph of the said judgment is extracted below:

"26. To sum up, existence of Clause 6(b) in the agreement governing the parties, has not been disputed, nor has the application of the Circular dated 27-7-1987 issued by the Government of Madhya Pradesh regarding imposition of 10% supervision charges and adding the same to cost of the Sal seeds, after deducting the actual expenditure been questioned by the respondent Company. We are, therefore, of the view that failure on the part of the learned sole arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said "patent illegality" is not only apparent on the face of the award, it goes to the very root of the matter and deserves interference. Accordingly, the present appeal is partly allowed and the impugned award, insofar as it has permitted deduction of "supervision charges" recovered from the respondent Company by the appellant State as a part of the expenditure incurred

by it while calculating the price of the Sal seeds, is quashed and set aside, being in direct conflict with the terms of the contract governing the parties and the relevant circular. The impugned judgment dated 21-10-2009 is modified to the aforesaid extent.”

6. Learned counsel for the appellant has also placed reliance on the judgment rendered in the case of Delhi Airport Metro Express Private Ltd. Vs. Delhi Metro Rail Corporation Limited, (2022) 1 SCC 131. Relevant paragraph of the said judgment is reproduced below:

“29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression “patent illegality”.”

7. Learned counsel for the appellant, by relying on the aforesaid judicial pronouncements laying down the settled position, submits that an arbitral award contrary to statutory provisions amounts to patent illegality and is liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996. It is thus contended that the impugned award, being contrary to law and unsupported by evidence, is unsustainable in the eyes of law and deserves to be set aside.

8. Per contra, learned counsel for respondent nos. 1 to 3 refuted the contentions advanced on behalf of the appellant and submitted that the learned Arbitrator had rightly and lawfully determined the amount of compensation payable to the respondents. It is contended that the procedure adopted by the Arbitrator was in strict conformity with the provisions of the Act of 2013 and that there was no violation of Sections 26 to 30 thereof, as alleged by the appellant.

9. Learned counsel submitted that, as per sub-section (3) of Section 26 of the Act of 2013, the market value is to be determined on the basis of the sale deeds or agreements to sell of comparable lands, executed during the three years

immediately preceding the date of the preliminary notification. However, in the present case, no such sale deeds relating to similarly situated or comparable lands were placed on record by the acquiring authority before the Arbitrator. Consequently, in the absence of reliable documentary evidence of the prevailing market rate, the Arbitrator was fully justified in adopting a reasonable and pragmatic approach, taking into account the potential and location of the acquired land, its proximity to commercial establishments, and the nature of constructions existing thereon.

10. Learned counsel further argued that the Arbitrator was competent to take into consideration the intrinsic value of the land as reflected by the evidence adduced during the proceedings, including the presence of 18 constructed shops and the commercial viability of the area, which warranted compensation at a higher rate than that applicable to purely agricultural lands. The contention of the appellant that the land ought to have been valued at the agricultural circle rate was, according to the respondents, wholly misconceived and devoid of merit.

11. In support of his submission, learned counsel for the respondent nos.1 to 3 placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Periyar and Pareekani Rubbers Ltd. Vs. State of Kerala*, (1991) 4 SCC 195, wherein it was held that in cases of compulsory acquisition, the best indicator of market value would be the price reflected in a bona fide sale transaction relating to the very property or a property adjoining it, and not merely the circle rate fixed by the revenue authorities. It was thus submitted that the Arbitrator, having acted within the parameters of law and in accordance with the principles laid down by the Hon'ble Supreme Court, rightly enhanced the compensation, and the same has been rightly upheld by the learned District Judge in appeal.

12. Learned counsel for the appellant contends that the judgment in the case of *Periyar and Pareekani Rubbers Ltd.* (supra) relied upon by the respondent nos.1 to 3 was rendered in the year 1991; whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, came into force much later. Therefore, it is submitted that the ratio of the said judgment is not applicable to the facts of the present case.

13. Learned counsel for the respondent nos.1 to 3 submits that this Court, while exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996, is not empowered to re-appreciate the evidence or enter into the factual matrix of the dispute, the scope of interference being narrowly circumscribed. It is further contended that no modification or alteration of the arbitral award on merits of dispute is permissible in view of the authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court in the case of *Gayatri Balasamy Vs. ISG Novasoft Technologies Limited*, reported in (2025) 7 SCC 1. It is submitted that the learned Arbitrator has rendered a reasoned and well-considered award based on the material available on record and, therefore, no interference with the impugned order is warranted in the facts and circumstances of the case.

14. After a detailed and careful examination of the arbitral award and the material available on record, along with the submissions of learned counsel for both parties, this Court finds that the impugned award suffers from serious legal infirmities amounting to patent illegality warranting its setting aside.

15. The Arbitration and Conciliation Act, 1996, under Section 34, prescribes specific and exhaustive grounds on which arbitral award may be set aside. The scope of judicial review under Section 34 and appellate interference under Section 37 is narrowly confined. Nevertheless, patent illegality, perversity, or conflicts with the public policy of India remain valid grounds for interference as laid down by the Hon'ble Supreme Court in Gayatri Balasamy's case (Supra).

16. In the case in hand, non-application of mind and departure from evidentiary record amounts to patent illegality and perversity that shocks the conscience of the Court.

17. Hon'ble Supreme Court in the case of State of Chhattisgarh & another Vs. SAL Udyog Private Ltd., reported in (2022) 2 SCC 275 has reiterated that patent illegality is not any legal mistake, but arises when an arbitral Tribunal blatantly disregards the express terms of the contract or the law, the appellate jurisdiction under Section 37 aligns with that of Section 34 and therefore Section 34(2A)'s threshold for patent illegality applies equally under Appeals under Section 37.

18. Further, the Constitution Bench of the Hon'ble Supreme Court in Gayatri Balasamy's case (Supra) has affirmed that Courts have narrow (limited) circumscribed powers of modification.

19. Considering the facts and circumstances of the present case, this Court is of the considered view that the impugned award is vitiated by patent illegality and suffers from non-application of mind. The Arbitrator failed to take into account the mandatory provisions of Sections 26 and 29 of the Act of 2013 while determining the compensation. It is evident from the record that no exemplar sale deeds of comparable land for the period of three years preceding the date of notification were examined for determining the market value. The market value has thus been arrived at on the basis of mere presumptions and conjectures. Furthermore, the valuation of structures and buildings existing over the acquired land was required to be assessed strictly in accordance with Section 29 of the Act of 2013. However, the Arbitrator has erroneously relied upon reports furnished by private valuers, who were not authorized or approved by the competent Government Authority. Such reliance is impermissible in law and renders the award unsustainable.

20. The award also suffers from patent illegality for the reason that the acquired land was agricultural in nature on the date of notification. In the absence of any contemporaneous sale transactions of similar land within a span of three years from the date of issuance of notification under Section 3A of the NH Act, the only lawful basis for determining the market value was the rate specified by the Collector under the Indian Stamp Act. Failure to adopt this statutory guideline

further vitiates the award.

21. The impugned award falls squarely within these parameters of patent illegality and non-application of mind, justifying interference. The legal principles laid down by the Hon'ble Supreme Court in the aforementioned judgments mandate setting aside such award in the interests of justice.

22. Accordingly, this Court is satisfied that the impugned arbitral award dated 21.05.2022 is liable to be set aside.

23. The Appeal from Order is allowed and the impugned arbitral award is hereby set aside in its entirety and the matter is remitted back to the learned Arbitrator for fresh consideration and decision in line with this judgment. Since the proceedings were initiated in the year 2014, the learned Arbitrator is requested to conclude the arbitration proceedings expeditiously, preferably within a period of three months from the date of production of certified copy of this judgment. Parties are directed not to seek any unnecessary adjournments.