
(2023) 06 GAU CK 0087
In the Gauhati High Court
Case No : Arb.A. No. 3 Of 2020

Rajib Kumar Bora

APPELLANT

Vs

National Highways Authority Of India And 2 Ors.

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37
National Highway Act, 1956 — Section 3A, 3G(5), 3G(6), 3G(7)

Citation : (2023) 06 GAU CK 0087

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : S. Biswas, R. Borah, K. K. Bhattacharyya

Final Decision : Allowed

Judgement

1. Heard Mr. S. Biswas, learned counsel for the appellant. Also heard Mr. R. Borah, learned for the respondent No.1 and Mr. K. K. Bhattacharyya, learned Government Advocate representing the respondent Nos.2 & 3.

2. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the impugned judgment and order dated 19.08.2019 passed by the District Judge, Nagaon, in Misc(J)Case No.118/2009 allowing the petition under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the respondent No.1 and for setting aside the Arbitral Award dated 10.11.2008, which was passed in Arbitration case No.05/2008.

3. The brief facts leading to the filing of the present petition is that, as per Section 3(A) of the National Highway Act, 1956, the National Highway Authority of India (in short 'NHAI') made a request to the Government of Assam for acquisition of land from the respective owners covered by different Dag and Patta numbers of village Bhelowguri Kissam, Mouza-Jamunamukh, under Doboka revenue Circle, District-Nagaon. Accordingly, the Deputy Commissioner, Nagaon, issued notices to the Patta holders, who are represented by the present appellant

for acquisition of land. The land was supposed to be acquired for the purpose of construction of National Highway No.36 four lane by the NHAI. And, the land acquired under Kampur Revenue Circle which is contiguous with the land of the appellants under Doboka Revenue Circle and are of same category. Although, Rs.4,00,000/-(Rupees four lakhs) per bigha was assessed for homestead land, Rs.6,00,000/-(Rupees Six lakhs) for commercial land and Rs.9,00,000/-(Rupees nine lakhs) per bigha for agricultural land under Kampur Revenue Circle. However, Rs.1,30,000/-(Rupees one lakh thirty thousand) per bigha was fixed and later on awarded to the appellants for acquisition of their homestead land and Rs.59,000/-(Rupees fifty-nine thousand) per bigha for the agricultural land and only Rs.240/-(Rupees two-forty) for each betel nut tree and Rs.500/-(Rupees five hundred) for each coconut tree which were the rate fixed by the Government in the year 1990.

4. On being highly aggrieved, the appellant filed a petition before the respondent No.3 on 30.11.2006 for enhancement of the rate of compensation along with the details of their individual lands. But, as nothing was done in this respect, the appellant filed a petition for arbitration before the respondent No.2 on 18.12.2006, which was registered under Section 3(G)(5)(6) and (7) of the NHAI, Act, 1956 and under the provisions of the Arbitration and Conciliation Act, 1996. On 20.08.2008, the appellants were present and also submitted their written statements along with a copy of land valuation of Doboka Revenue Circle and Kampur Revenue Circle. In the meantime, the appellants under compelling circumstances and on protest accepted the compensation.

5. The North Assam Commissioner, Tezpur, was accordingly appointed as the Arbitrator-cum-Commissioner by the Central Government, and vide order dated 10.11.2008 in Arbitration Case No.05/2008, the Arbitrator had directed to pay compensation @ of Rs.3,00,000/-(Rupees Three lakhs) only per bigha to the appellants/pattadars, minus the amount already paid to them earlier within 01.12.2008 and also directed the respondents to submit their report on the action taken within 12.12.2008.

6. By challenging the aforesaid arbitral award dated 10.11.2008 the NHAI filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the learned District Judge, Nagaon, which was registered as Misc. (J) case No.118/2009. The said Court, in wrong appreciation of the provisions of law as well as fact held that there is no provision in Land Acquisition Act for referring the dispute or disagreement with regard to the compensation for land acquired to an Arbitrator for an arbitral award after the compensation for acquired land was assessed by the collector, and accordingly, set aside the arbitral award, though the land in question was admittedly acquired by the NHAI in accordance with the principles contained in Sub-Section(7) of Section 3(G) of NHAI, 1956 and there being provision for the aggrieved person to approach Arbitrator.

7. On being highly aggrieved and dissatisfied by the above judgment and order, the appellant preferred an Arbitration Appeal before this Court being Case No.

Arb.A.No.12/2017. After hearing the parties, this Court has held that, if the amount determined by the competent authority is not acceptable to either of the parties, the amount shall be determined by the Arbitrator as per the provision Under Section 3(G)(5) of National Highway Act, 1956 and the provision of Arbitration and Conciliation Act, 1996 shall be applied to every Arbitration proceedings under the National Highway Act, as per the Sub-Section 3(G) 6, and this Court vide order dated 21.02.2018 set aside the above judgment dated 05.06.2015 and remanded back to decide the same a fresh within a period of 3(three) months.

8. The learned District Judge again in wrong appreciation of provision of law as well as the facts has held that the learned Arbitrator has compared the compensation paid to the persons involved in Kampur Revenue Circle which is another Revenue Circle, but in his award he has not reflected the date of notification under Section 3 (A) of the Act on which date the valuation of the land under Kampur Revenue Circle was assessed. Also, held that the learned Arbitrator has no authority to fix the valuation of land and vide impugned Judgement and Order dated 19.08.2019 allowed the petition Under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the present respondent No.1 and set aside the Arbitral Award dated 10.11.08 passed in Arbitration Case No.05/08.

9. On being highly aggrieved and dissatisfied by the impugned Judgment, passed by the learned Trial Court, the appellant has preferred this present appeal on the following grounds:-

9.1. The learned District Judge has failed to appreciate the provisions of law as well as the fact that the land in question was acquired from the pattadars/appellants under Doboka Revenue Circle under the National Highways Act, 1956 and the land in Kampur Revenue Circle, which is contiguous with the land of the appellants also acquired for the same purpose. The land under Kampur Revenue Circle and Doboka Revenue Circle falls under same category of land and the entire Bhelowguri area falls under commercial area and taking all this aspects for consideration and after hearing the parties including the respondent No.1 the Arbitral Award dated 10.11.2008 was passed which does not suffered from any arbitrariness and illegality. In the said Arbitration Case No.05/2008, the respondent No.1 never raised any issue about the quantum of compensation nor disputed the quantum of compensation claimed by the appellant. As such, the observation of the learned District Judge is misdirected and therefore, the impugned judgment and order is illegal, arbitrary and bad in law, and liable to be set aside and quashed.

9.2. The learned District Judge has also failed to appreciate the fact that the quantum of compensation awarded for similar land under Doboka Revenue Circle are of contiguous with the land acquired under Kampur Revenue Circle are similar status and value, but, the quantum of compensation awarded to the pattadars/appellants is much lesser than awarded for the land under Kampur

Circle.

9.3. The learned District Judge raised the issue of the date of publication of Notification under Section 3(A) of the Act, although the same was not in the pleading of the National Highway Authority and the said issue was never raised by them. The learned Court below also has deviated from the main issue and come to a wrong finding and conclusions.

9.4. The learned District Judge has failed to appreciate that the learned Arbitrator has directed the concerned revenue officials to reassess the value of the land and zirats at the prevailing market rate in the year when it was first assessed/acquired and also at the market rate of the 2008 which is only within two years from the year of acquisition i.e. 2006 for convenience of arbitration and in doing so the learned Arbitrator has acted in compliance of the provision of Section 3 (G) (7) of the Act and on the basis of the material available on record has passed the Arbitral Award which does not suffer from any illegalities or infirmities that may warrant its interference.

9.5. The learned District Judge has failed to appreciate the evidences and contention of the appellants/pattadars and tilted towards the misleading facts in the provision of law adduced by the NHAI and arrived at a wrong decision, which is liable to be interfered by this Court. It is also a fact that the appellant have received the compensation award, but, it was received under protest.

10. The learned counsel for the appellant further submitted that, the compensation awarded by the competent authority to the appellant was not acceptable, and was not assessed properly. It is also submitted that the arbitral award can be set aside only under Section 34 of the Arbitration & Conciliation Act, 1996 only on some limited ground and under Section 37 of the Arbitration Act, the appellate Court also has the jurisdiction in examining the order only on some limited ground.

11. In support of his argument the learned counsel for the appellant relied on the following decisions of the Hon'ble Apex Court;-

i) In the Case of UHL Power Company Lmt. Vs. State of Himachal Pradesh reported in 2022 (4) SCC 116.

ii) In the Case of K. Sugumar & Anr. vs. Hindustan Petroleum Corporation Limited & Anr. reported in (2020) 12 SCC 539.

iii) In the Case of Project Director NHA's No.45 E & Anr. Vs. M. Hakeem & Anr. reported in 2021 (9) SCC 01 and

iv) In the Case of MMTC Limited Vs. Vedanta Limited reported in 2019 (4) SCC 163.

12. Further, relied on another decision of the Hon'ble Apex Court in the Case of DYNA Technologies Private Limited Vs. Crompton Greaves Limited reported in (2019) 20 SCC 01, wherein, the paragraph 24 of the said judgment, reads as

under:-

" 24..... There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

13. In this context, Ms. R. Bora, learned Standing counsel, NHA has submitted that the learned District Judge has committed no error or mistake while allowing the petition under section 34 of the Arbitration and Conciliation Act, 1996 and by setting aside the Arbitral award dated 10.11.2008 passed in Arbitration Case No.05/2008. It is also submitted that the appellant has not raised any objections while accepting the compensation award in the year 2007. After a long gap of 17/18 years the appellant came up with a prayer for enhancement of the compensation award. It is rightly held by the learned District Judge that Arbitrator has no authority to fix the revenue of the land and the value of the land. Also there is no provision in Land Acquisition Act for referring the dispute with regard to the compensation for land acquired to an Arbitrator for an arbitral award after the compensation for acquired land was assessed by the collector. The learned Trial Court had rightly discussed the entire provisions under Arbitration & Conciliation Act, 1996 and accordingly, arrived at a conclusion that the learned Arbitrator has acted beyond the scope of Section 3(G)(7), National Highway Act, 1956 by directing to assess the value of the land at present market rate of 2008 for convenience of arbitration. The learned Arbitrator while fixing the compensation has compared the compensation paid to the persons involved in Kamrup Circle at the rate of ₹ 3 Lakhs per bigas, which are contiguous to the Doboka revenue circle, and both the land belongs to same class. The learned District Judge had passed the order, considering all the facts and circumstances of the case as well as considering all the required provisions under the Arbitration & Conciliation Act, 1996 as well as the National Highway Act, 1956. Hence, the interference of this Court does not arise at all.

14. Mr. K. K. Bhattacharyya, the learned Government Advocate appearing on behalf of the respondent Nos. 2 and 3 has submitted that the judgment is actually wrong. He also submitted that the Deputy Commissioner has the authority to be appointed as a Commissioner. It is also fact that the appellant approached before the Deputy Commissioner for the enhancement of the award

compensated, though the land acquisition was completed in the year 2006. The present Arbitrator was appointed by the Central Govt. and accordingly, directed the Deputy Commissioner, Nagaon to submit a report of compensation amount and the Executive Engineer, PWD Nagaon was asked to re-assess the value of the house of those who had complained against low valuation of their house. Accordingly, the arbitrator or the competent authority has the authority to assess the value of compensation as the appellants' were aggrieved by the compensation received by them. The present appeal preferred under Section 37 (G) Arbitration & Conciliation Act has been filed by challenging the order passed by the learned District Judge dated 05.06.2015 in Misc. Case No.118/2016. And, the Government has not challenged the order passed by the learned Arbitrator.

15. After hearing submissions made by the learned advocates of both sides and also considering the documents annexed along with the petition, it is seen that the assessment was done on the acquired land in the year 2006 and the appellant has already received the compensation in the year 2007. Further, it cannot be denied that in the year 2006 they filed objections claiming compensation at an enhance rate before the Deputy Commissioner, Nagaon for proper assessment of their compensation amount. But, no steps was taken by the Deputy Commissioner for reassessment of the compensation amount. It is also seen that the appellant had received their compensation award on protest for their land, which is acquired for the purpose of construction of 4-lane National Highway. It is also a fact that land was under acquisition for 4-lane construction under National Highways Act, 1956, after issuing notice under Section 3(G) of the said Act. The learned counsel for the NHAI raised the issue that they have not filed any objections under section 3 (G) for the acquisition of the land. But, it is a fact that the appellant did not raise any objections for acquisition of land for construction of Highway by the authority concerned. But, filed objections before the Deputy Commissioner only for enhancement of their compensation amount, as the acquisition land under Kampur Revenue Circle has assessed the compensation in higher amount, though land under the Doboka revenue circle which is contiguous were given lesser compensation. From the annexure 5 & 6 order passed by the arbitrator, it is seen that he had discussed as to why the petition was filed by the appellant in the year 2006 could be disposed in the year 2008.

16. So considering the grievances of the appellant the arbitrator-cum-Commissioner, Assam, Tezpur passed the arbitral award after assessing the value of the land. It is also a fact that assessment was done after long gap of period and in the same time, it cannot be denied that the appellant approach with the application praying for enhancement of their award in the year 2006, though the award was passed subsequently. The earlier arbitration appeal No.12/17 was remanded back with a direction to the learned District Judge for fresh disposal. However, the learned trial Court failed to consider the provision under section 3(G) 5 & 6 of National Highways Act, 1956 and also failed to consider the fact that land was acquired only under National Highway Act and not under land

acquisition Act, and the learned District Judge disposed the matter under Section 34 of the Arbitration & Conciliation Act by setting aside the arbitral award.

17. It is observed that arbitrator acted beyond the scope of 3(5) (6) of NHA 1956. The learned District Judge disposed the matter in fresh and while disposing the petition under section 34 of the Arbitration & Conciliation Act, it is observed that, the arbitrator acted beyond the scope of Section 3(G) (7) of the National Highways, Act and directed to assess the land and jirat at present market rate of 2008. It is also observed by the learned District Judge that without mentioning the date of notification under section 3(A) of this Act, the learned arbitrator compared the compensation paid to another circle without mentioning the date of acquisition of the land, after issuing notice under Section 3(A) of the Act. Accordingly, under Section 34 of the Arbitration & Conciliation Act, the arbitral award was set aside, allowing the petition under section 34 of the Arbitration & Conciliation Act.

18. As per Section 3(G)(5) of the said act either of the party can approach before the competent authority with an application, if, the compensation is not acceptable in any cost. The dispute can be resolved by arbitrator appointed by the Central Government. Section 3(G), of the said Act read as under:-

“3G. Determination of amount payable as compensation.—

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration.”

(a) The market value of the land on the date of publication of the notification under section 3A;

(b) The damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) The damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) If, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

19. It is seen that as per proviso under Section 3(G)(6), the provisions of Arbitration & Conciliation Act, 1996 shall be applicable in every arbitration matter under this Act. In the same time, as per section 3(G) (7) the arbitrator/competent authority is authorised to assess the market value of the land on the date of publication of the notification and may give any cost to the parties or any damage sustained by the person interested at the time of taking possession of the land, and if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change while determining the amount under sub-section (1) or sub-section (5) of this Act.

20. In the present case also it is seen that objection was filed by the appellant in 2006 after the notification of the assessment of compensation, but, due to ignorance of the Government side the petition was disposed only in the year 2008 by the commissioner-cum-arbitrator. As per proviso under section 3(G) (5), the appointed arbitrator has directed to reassess the compensation, which was awarded to the appellant. It is a fact that Doboka circle has assessed compensation from the date of publication under section 3 (A) of this Act as the dispute between the parties is only in regards to amount of compensation and for the purpose of arbitrator was appointment by the central Government and hence, the arbitrator cannot be said as acted without any authority. Merely on the ground that the date was not mentioned on which the notification under Section 3(A) was published for Kampur circle, the entire exercise made by the arbitrator while passing the arbitration award cannot held illegal or without any authority. The appointment of the arbitrator was also provided under 3(G) (7) and hence, the award passed by the arbitrator after assessment of the compensation cannot be set to be illegal.

21. In view of the above discussion, it is seen that there is no patent illegality

committed by the Arbitrator and award has been passed complying the provision under Sections 3(G)(5)(6)(7) of the National Highway Act.

22. In view of the above observations, I find that there are sufficient and justifiable ground to interfere in the impugned judgment and order dated 19.08.2019 passed by the District Judge, Nagaon, in Misc(J)Case No.118/2009 allowing the petition under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the respondent No.1 and for setting aside the Arbitral Award dated 10.11.2008, which was passed in Arbitration case No.05/2008. Accordingly, the same is set aside. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed and disposed of.

23. LCR be returned accordingly.

24. No order as to cost.