(2016) 01 P&H CK 0262

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 216 of 2016 (O&M)

Union of India and Others APPELLANT

Vs

Swaran Singh and Others RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 34, Section 34(3)
National Highways Act, 1956 — Section 3G(7)(a)

Citation : (2016) 01 P&H CK 0262

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : R.S. Madan Singh, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Amit Rawal, J.—1. The appellants-National Highway are in appeal against the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short ''1996 Act''), whereby, the Award dated 22.04.2013 was sought to be set aside.

2. Mr. R.S. Madan, learned counsel for the appellants submits that the Objecting Court vide its order has dismissed the objections on the ground of limitation, as well as, on merits which is not sustainable in the eyes of law for the following reasons:-

i) The award was pronounced on 22.04.2013. No copy of the award was supplied by the Arbitrator or was received through a separate communication and from the date of the knowledge of the award, objections should be construed within the period of limitation.

ii) Award of the Arbitrator is against the public policy, therefore, the objections were within the realm of Section 34 of 1996 Act.

iii) The Arbitrator has taken into consideration the potentiality of the land being commercial and in the absence of any evidence being led, the Land Acquisition Collector awarded the compensation of the land @ Rs. 3.076 lacs per marla, whereas, assessing authority assessed the compensation as Rs. 6,875/- per marla. Even no sale deed of the area showing potentiality of the land has been placed on record, much less, nature of the land being taken commercial or residential and therefore, the assessment of the compensation @ Rs. 3,00,000/- per acre is phenomenon.

3. I have heard learned counsel for the appellants and appraised the paper book.

4. No explanation has come forth in delivering the certified copy of the award on 24.06.2014, though the award has been pronounced on 22.4.2013. Even before the Arbitrator, the parties were duly represented through their representatives and had the knowledge of the award. Instrumentality of Central Government cannot be expected to remain ideal, silent and keep on waiting for receipt of copy of the award by a separate communication and thereafter, to form an opinion for filing the appeal beyond the law of limitation as per the provisions of Section 34(3) of 1996 Act.

5. Be that as it may, as regards the merits of the matter, the Arbitrator, in my view, has given cogent reasons in assessing the compensation which cannot be subject matter of objections under Section 34 of 1996 Act, yet I am not prevented to examine the contents of the Award to find out whether the same is within jurisdiction of 1996 Act or not, much less, would fall within the realm of provisions of Section 34 of 1996 Act. For the sake of brevity, it would be apt to reproduce the relevant portion of the award which reads thus:-

(b) The payment of land was made at the Collector/Chhant rate. The collector rate is never the market rate. The collector rate is the minimum rate fixed by the revenue administration to ensure that there is no evasion of stamp duty. Some time collector rate is revised more than once in a year. The LAC cum Competent Authority did no exercise to determine the market price of land so that there is reasonable and logical payment of land price to the applicants. In view of this the price paid to the applicant was nowhere near the market price. The rate per marla on GT Road in 2004-2005 mentioned as Rs. 33,000/- per marla. Whereas payment was made @ Rs. 6875/- per marla.

c) I have visited the spot along with the Revenue Officers on 25.07.2009. Aima Mangat is 5KM from Mukerian Town. The land in the entire village along the National Highway have high commercial potential or there are showrooms, commercial establishments, petrol pumps and educational institutions.

d) The NHAI have paid 5 times than Collector rate in all cases of Kapurthala District and many times (ranging from Rs. 62,500/- to Rs. 2.50 lac per marla) in 629 cases of Dasuya Sub Division. The comparative collector rates and payments paid by the NHAI is reproduced below just to show that how much difference is there in collector rate and market rate or price paid by the NHAI to the land owners:-

NHAI filed SLP No. 14863-14864 of 2008, dated 11.8.2008 in Punjab Haryana High Court. Hon''ble Apex Court remanded the case to arbitrator/Tribunal for decision. Following land prices was awarded by arbitrator/Tribunal which stands implemented and payments made to the land owners by NHAI as under:-

A) Dasyua/Tanda Municipal Area

Category 1 Commercial (Shops/Showrooms etc.)

Rs. 2,50,000/- per marla (20 marlas in a Kanal & 8 kanals in a acre). (Rs. 4.0 crores per acre).

Category 2 Residential Rs. 2,00,000/- per marla.

[Rs. 2.56 Crores per acre]

Category 3 Vacant plots/commercial/residential

20% less than category 2 i.e. 1,60,000/- per marla. [Rs. 2.56 crores per acre]

Category 4 Agricultural Land/Rastas

50% less than category 2 i.e. Rs. 1,00,000/- per marla.

[Rs. 1.60 crores per acre]

B) Rural Areas

Comparing the collector rate and price paid by NHAI there seems to be big difference some time as high as more than 10 time in collector rate and land price paid by the NHAI.

a) For the purpose of deciding the award in this case, I want to reproduce the relevant judgment announce by Hon''ble Apex Court of India in case No. , 2010(3) Civil Court Cases 623 (S.C.) Special Land Acquisition Officer vs. Karigowda & others. In this case it was observed by the Apex Court that what is required to be assessed, is the land and its existing potentiality alone as on the date of acquisition - potentiality has to be directly relatable to the capacity of the acquired land to produce agricultural products or, its market value relatable to the known methods of computation of compensation. Compensation - Extent of compensation depends on the facts and circumstances of each case and it is not possible to set any absolute legal principal as a panacea which uniformly will be applicable or capable of being applied as a binding precedent de hors the facts of a given case.

Compensation - Where there is commonality of purpose and common development, compensation based on statistical date of adjacent villages was held to be proper. Compensation - Whatever benefit accrues to the claimants from the record produced and proved by the respondents, cannot be denied to them just because they have not produced evidence by way of sale instances.

Compensation - Court in given facts and circumstances of the case and keeping in mind and potentiality and utility of the land acquired, can award higher compensation to ensure the injustice is not done to the claimants and they are not deprived of their property without grant of fair compensation.

Compensation - Comparable sales methods of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land, which is willing purchaser would pay for the acquired land, if it has been sold in open market at the time of issue of notification.

h) As per Section 3G(7)(a) of the National Highway Act 1956, the compensation is worked out as under:-

i) Village Harse Mansar, Chak Alla Baksh and Jandwal are adjoining villages of Mukerian Town on Dasuya side. As per Apex Court judgment the same rate of adjoining villages/states can be adopted. Therefore, the same rate of adjoining villages/states can be adopted. Therefore, if we adopt abadi rate as Rs. 4.0 lac per marla for abadi area in 2008, then if 10% is taken as increase in the market value of land then in 2004 it will come to Rs. 2.85 lac per marla for abadi deh land.

ii) If we take case of 629 cases as example awarded on 28.01.2009, then the land rate awarded in Dasuya was 2.50 lac/marla, which is similar to the rate awarded in Mukerian Town also.

iii) Keeping in view the above two examples and Apex Court judgment the average of (i) and (ii) is awarded to village Aima Mangat i.e. (2.85+2.50)/2 = Rs. 2.675 for abadi deh land.

For agricultural land 15% rate is presumed to be reduced and for commercial type of land 15% will be increased. The above rate is also supported by the following evidences:-

i) Affidavit of the petitioner is not rebutted by NHAI by applicant.

ii) Copy of awards of village Harse Mansar, Chak Alla Bax and Jandwal which are within the 2 to 3 KM distance have been paid @ Rs. 1.40 lac per marla and Rs. 4.0 lac per marla. As per Apex Court judgment similar rate can be applied to adjoining villages as the potential of land is same.

3. The detailed coloured map shows Dana Mandi nearby Khasra numbers acquired. Adda Mangat is close by the other Dhabas and shops are also clearly nearby. This shows that acquired land have high commercial potential.

4. APRs shows no payment made for structure. Only land price was paid.

5. Aks Sajra on record shows land abuts National Highways.

6. Copy of jamabandi and copy of award dated 28.1.2009 is placed on record as a matter of evidence."

6. I am of the view that the reasons assigned by the Arbitrator are perfectly fair,

legal and justified, much less, National Highway cannot be indulged into classification vis-a-vis the land acquired in Kapurthala District, whereby, it had awarded compensation 5 times more than the Collector rates vis-a-vis land acquired in district Hoshiarpur.

7. It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon''ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31(3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon''ble Supreme Court in Associate Builders Vs. Delhi Development Authority , (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J.M. Combines , (2015) 5 SCC 698. In the aforementioned judgment the Hon''ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

8. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

9. In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

10. There is no merit in the aforementioned appeal.

11. The appeal is accordingly dismissed.

