
(2016) 09 RAJ CK 0123
In the Rajasthan High Court
Case No : Arbitration Application No. 2 of 2015

Vijyant Davra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11
National Highways Act, 1956 — Section 3G(5)

Citation : (2017) 1 WLC 475

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Mr. Prateek Kasliwal, Advocate, for the Applicants; Mr. Sandeep Pathak, Advocate, for the Non-Applicants

Final Decision : Dismissed

Judgement

Mr. Mohammad Rafiq, J. - These two applications have been filed by applicants under Section 11 of the Arbitration and Conciliation Act, 1996 praying for appointment of independent Arbitration Tribunal for resolving their disputes with non-applicants, namely, Union of India through Secretary, Ministry of Road Transport & Highways, and Competent Authority, Land Acquisition (Sub Divisional Officer), Amber, District Jaipur.

2. Since facts of both the applications are almost similar, facts of Arbitration Application No. 2/2015 are taken for consideration for the purpose of their disposal. Facts, as averred in the application, are that applicant is an owner of land bearing khasra no.425 situated at National Highway No. 8, Village Salarwas, Tehsil Amber, District Jaipur. A part of that land, admeasuring 593 square meters, is subjected under proposed acquisition proceedings by the Central Government for acquisition of land for National Highways. The applicant received a letter from the authority whereby it was informed that compensation has been determined under Section 3(g) of the National Highways Act, 1956, in lieu of land admeasuring 593 square meters of khasra no.425. The applicant appeared

before the competent authority and objected to the proposed acquisition and determination of the amount of compensation on the ground of its unjust and unfairness. The applicant even filed application under Section 9 of the Arbitration and Conciliation Act, 1996 (Annexure-A) before learned Single Judge praying that an independent commissioner may be ordered to be appointed by the nonapplicant no.1 to assess the true market value of the land with attached trees and other constructed structures. The applicant received a notice dated 30.05.2014 on 16.06.2014 calling upon the applicant to surrender the said land within seven days, otherwise competent authority will be authorised to take possession thereof and to demolish the construction/trees. If the competent authority is permitted to proceed then it will lead to irreparable loss to the applicant and that if the non-applicant is allowed to take possession of the land in question then the applicant will not be in a position to show the actual loss suffered by him due to in-existence of the demolished structures. To protect the interest and rights and in order to ascertain the real loss/damage, the applicant moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the District & Sessions Judge, for interim measures, which subsequently got transferred to the court of Additional District & Sessions Judge No. 14, which came to be dismissed vide order dated 30.09.2014. Aggrieved thereby, the applicant preferred an appeal before this court, which is pending consideration.

3. Mr. Prateek Kasliwal, learned counsel for applicants, argued that a piece of land out of the same khasra no.425 was required by the Central Government in the year 2009 and in lieu thereof the competent authority was pleased to determine the market value of the land on the date of publication of the notification under Section 3A of the National Highways Act, 1956 at the rate of Rs.4280/- per square yards, whereas the market value of the purportedly acquired land is assessed to be Rs.2270/- per square yards. It is contended that no valuation has been done for the construction on the said land and also number of trees is not counted in the record. It is contended that for protection of the rights of the applicant, a letter dated 30.06.2014 was written to the non-applicant for appointment of the arbitrator as per the mandate of law but the non-applicant did not pay any heed thereto. There has been no appointment of the arbitrator till date and applicant has been continuously under pressure for securing his rights. It is contended that in order to protect the interest and rights and in order to ascertain the real loss/damage, the applicant moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the District & Sessions Judge, for interim measures, which subsequently got transferred to the court of Additional District & Sessions Judge No. 14, which came to be dismissed by cryptic and non-speaking order.

4. Learned counsel for the applicants argued that the competent authority is bound to determine just and fair amount of compensation after providing opportunity given to the applicant. Neither any opportunity has been granted to the applicants nor the amount of compensation determined by the competent

authority is just and fair. The competent authority has not made any valuation of the construction existing on the land nor any valuation of the number of trees standing on the land has been made. No compensation is being paid to the applicant on that count. The applicant was earlier offered almost double the rate than what is being now proposed to be given. Action of the competent authority is wholly illegal and arbitrary. Despite request of the applicant, the non-applicant has failed to make appointment of the arbitrator in terms of Section 3(G)(5) of the National Highways Act, 1956.

5. Mr. Prateek Kasliwal, learned counsel for applicants, in support of his arguments, has relied on judgment of Calcutta High Court in *Tosiur Rahaman v. The Union of India* ? 2014 (3) CHN (CAL) 262. In view of Section 11(6) of the Arbitration and Conciliation Act, 1996, non-applicants now forfeited the right to make appointment. Thus prayer is made that this court may refer the dispute to an independent arbitrator.

6. Mr. Sandeep Pathak, learned counsel for non-applicants, opposed the applications and submitted that since there is no arbitration agreement between the applicants and non-applicants, provisions of Section 11 of the Arbitration and Conciliation Act, 1996 would have no application. The acquisition of the land is being made under the statutory scheme envisaged in the National Highways Act, 1956. Reference to the arbitration is also made as per the said statutory scheme by the Central Government in accordance with the provisions of Section 3(G)(5) of the National Highways Act, 1956. Other provisions of the Arbitration and Conciliation Act, 1996 than Section 11 thereof, have been made applicable only for the purpose of regulating procedural aspect of the arbitral proceedings, which is evident from sub-section (5) of Section 3(G) of the National Highways Act, 1956. As far as appointment of arbitrator is concerned, it is exclusive prerogative of the Central Government, which has already issued an order on 06.09.2010 with regard to various districts of the State of Rajasthan for appointment of arbitrators whereby District Collectors of respective districts have been appointed as arbitrators within the local limits of their respective jurisdiction. The District Collector, Jaipur has, for this purpose, already notified in the scheme of the Arbitration and Conciliation Act, 1996. Section 3(G)(5) of the National Highways Act, 1956, provides that 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. Now, therefore, the District Collector, Jaipur has been designated as arbitrator and the applicant has to submit his claim before him.

7. Learned counsel for the non-applicants, in support of the arguments, has relied on the judgment of this court dated 22.07.2015 in a bunch of writ petitions leading one being S.B. Civil Writ Petition No. 5328/2014 titled *Madhavi Sharma v. National Highways Authority and Others*, and judgment dated 10.05.2013 of the Allahabad High Court in *Sardar Amardeep Singh v. Union of India* and three

others. He argued that this court in Madhavi Sharma, supra, has held that Article 137 of the Limitation Act would be applicable to the claim that has been filed under Section 3(G)(5) of the National Highways Act, 1956, and therefore, the applicants could file their claim before the District Collector even now as period of limitation therein would be three years from the date on which right to submit such claim arose.

8. I have given my anxious consideration to rival submissions of learned counsel for the parties and perused the material on record.

9. The High Court of Calcutta in Tosiur Rahaman, supra, relied on by learned counsel for applicants, considered the argument of the applicant that since the arbitrator was not appointed by the Central Government in accordance with Section 3(G)(5) of the National Highways Act, 1956, despite his request, the Chief Justice or his designate would be competent under Section 11 of the Arbitration and Conciliation Act, 1996, to make appointment of arbitrator. The High Court of Calcutta in taking that view differed with the view expressed by the Allahabad High Court in Sardar Amardeep Singh, supra. Relevant discussion is made in para 7 of the judgment in Tosiur Rahaman, supra, which reads as under:-

"The 1956 Act provides for statutory arbitration and also provides the manner in which the appointment of the arbitrator or the arbitral tribunal is to be secured. The 1956 Act does not provide for the manner in which the composition of the arbitral tribunal would be secured if the Central Government did not pay heed to a request by a party aggrieved by the compensation awarded by the competent authority for the adjudication to be made by an arbitrator. If the 1956 Act expressly provided for such situation, notwithstanding Section 3G(6) of the 1956 Act and, indeed, by virtue thereof, the special procedure under the 1956 Act would have been applicable. However, since the 1956 Act does not expressly provide for a default mechanism upon the Central Government failing to appoint an arbitrator despite due request under Section 3G(5) of the 1956 Act, it is the procedure under Section 11 of the 1996 Act which would apply. The order of the Allahabad High Court relied upon by the petitioners is, respectfully, disagreed from."

10. The Allahabad High Court was considering the application for appointment of arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1940 read with Section 3G(5) of the National Highways Act, 1956 because the applicant was not satisfied with the amount of compensation determined by the competent authority in lieu of his acquired land. The Allahabad High Court took the view that in view of clear stipulation in sub-section (6) of Section 3G of the National Highways Act, 1956, Section 11 of the Arbitration and Conciliation Act, 1996, cannot be invoked. Relevant discussion made therein reads as under:-

"The aforesaid issues are not relevant in the present case because it is apparent that the appointment of Arbitrator in the present case is not on the basis of any

arbitration agreement, but is governed by the statutory provisions noticed above. Sub-section (6) of Section 3-G of the National Highways Act, 1956 contains a clear stipulation that subject to the provisions of the National Highways Act, 1956, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to arbitration under the National Highways Act, 1956. Hence, the provisions of Arbitration and Conciliation Act, 1996 cannot be invoked as they are not available because of clear stipulation in sub-section (6) of Section 3-G of the national Highways Act, 1956, for appointment of Arbitrator by the Chief Justice under Section 11 of the Arbitration and Conciliation Act, 1996."

11. Question that arises for consideration of this court is whether as to which of the two views should be accepted as correct and whether despite the order of the Central Government dated 06.09.2010 produced by the non-applicants showing the appointment of the District Collector, Jaipur, as arbitrator in terms of Section 3G(5) of the National Highways Act, 1956, an independent arbitrator should yet be appointed invoking Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996.

12. In so far as right of the land owner, whose land is acquired for the purpose of construction/widening of national highways, to apply for enhancement of the amount of compensation is concerned, unlike Section 18 of the Land Acquisition Act (Old) and Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the scheme envisaged in Section 3G of the National Highways Act, 1956, confers right on both the land owner, whose land is acquired, and also the National Highways Authority, to approach the Central Government for appointment of arbitrator, if either of them is not satisfied with the amount determined by the competent authority under sub-section (1) of Section 3G of the National Highways Act, 1956.

13. In order to better appreciate the scheme of the National Highways Act, 1956, it would be apposite to reproduce the provisions of Section 3G, which reads 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 subsection (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."

14. No doubt, sub-section (6) of Section 3G of the National Highways Act, 1956, provides that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under this Act, but it begins with the wordings "Subject to the provisions of this Act". That would mean that the Parliament intended to give an overriding effect to the provisions of the National Highways Act, 1956 in so far as anything is specifically provided for a particular situation in the Act itself. The proceedings under sub-section (5) of Section 3G specifically provide for appointment of arbitrator by the Central Government. That would therefore by necessary implication exclude the applicability of Section 11 of the Arbitration and Conciliation Act, 1996, although for the purpose of other procedural aspects, rest of the provisions of the Arbitration and Conciliation Act, 1996 would apply to the proceedings. Thus only such provisions of the Arbitration and Conciliation Act, 1996, would apply, which are not inconsistent with the provisions contained in the National Highways Act, 1956. In my considered view, the High Court of Calcutta in *Tosiur Rahaman*, supra, was not correct in not agreeing with the view propounded by the Allahabad High Court in *Sardar Amardeep Singh*, supra, which rightly held that provisions of Arbitration and Conciliation Act, 1996 cannot

be invoked as they are not available for this purpose because of clear stipulation in sub-section (6) of Section 3G of the National Highways Act, 1956, for appointment of Arbitrator by the Chief Justice under Section 11 of the Arbitration and Conciliation Act, 1996.

15. Section 3G(5) of the National Highways Act, 1956 presupposes a dispute between the parties for the purpose of reference to arbitration, not on the basis of any arbitration agreement but because of the proceedings for acquiring the land for building or widening the highway/roads by the National Highways Authority. Therefore, sub-section (5) of Section 3G by statutory prescription provides for appointment of arbitrator only by the Central Government. The High Court of Calcutta in *Tosiur Rahaman*, supra, has differed with the view expressed by the Allahabad High Court in *Sardar Amardeep Singh*, supra, only because it found that the National Highways Act, 1956 does not expressly provide for a default mechanism, upon the Central Government failing to appoint an arbitrator despite due request under Section 3G(5) of the National Highways Act, 1956. But even if the District Collector is not appointed as Arbitrator, it would not by default make the provision of Section 11 of the Arbitration and Conciliation Act, 1996, applicable. This is because sub-section (6) of Section 3G of the National Highways Act, 1956, while making arbitral procedure and other provisions contained in the Arbitration and Conciliation Act, 1996 applicable to the proceedings of arbitration envisaged under Section 3G(5) of the National Highways Act, 1956, subject it to all such provisions of the National Highways Act, 1956, including sub-section (5) of Section 3G, which specifically provides for appointment of arbitrator by the Central Government. In a given case, if the Central Government fails to make appointment of an arbitrator, the remedy of the aggrieved party would lie in approaching the competent court seeking a direction by way of mandamus or otherwise to the Central Government to make made appointment of the arbitrator rather than approaching the Chief Justice or his designate under Section 11 of the Arbitration and Conciliation Act, 1996. Besides, it appears from the judgment of the Calcutta High Court in *Tosiur Rahaman*, supra, that view was taken primarily because in that case the court was, as a question of fact, not informed about the appointment of arbitrator by the Central Government, whereas in the present case, the non-applicants have, by production of positive order dated 06.09.2010, proved the appointment of District Collector, Jaipur, as arbitrator.

16. I had the occasion to deal with the question of limitation in *Madhavi Sharma*, supra, for filing the claim under Section 3G(5) of the National Highways Act, 1956 by the aggrieved person. In that case, while relying on the division bench judgment of Karnataka High Court dated 12.10.2012 in *T. Yunis v. National Highways Authority of India and Others* in W.A. No. 31066/2012 and 31094-96/2012 (GM-RES), which was rendered in a petition filed by the National Highways Authority of India itself, it was held that since no period of limitation is stipulated in Section 3G(5) of the National Highways Act, 1956, the Article 137 of the Limitation Act, which applies in a situation when no period of limitation is

provided in the said Act, would be attracted where-under period of three years has been prescribed as the limitation to file such an application/claim from the date on which the right to apply accrues. In the present case, it would therefore be open to the applicants to even now approach the District Collector by filing his claim for enhancement of compensation.

17. In that view of the matter, the present applications fail and are dismissed, however, with aforesaid observations.

18. Office to place a copy of this judgment in connected file.