

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 7052 of 2023

Petitioner :- Smt Dayawati

Respondent :- Prescribed Authority And 53 Others

Counsel for Petitioner :- Ram Ashish Pandey, Sanjeev Singh

Counsel for Respondent :- C.S.C., Akanksha Gaur, Chandan Agarwal

Hon'ble Jayant Banerji, J.

1. Heard Mr. Sanjeev Singh, Advocate appearing for the petitioner, Ms. Akanksha Gaur, Advocate appearing for respondent No.2 and learned Standing Counsel appearing for respondent Nos. 1 and 3.

2. This petition has been filed seeking the following relief:

"(a) To issue an appropriate Order or Direction to the court of learned District Judge, Auraiya to decide the Execution Case No.17 of 2022 (Madan Lal and others Vs. Prescribed Authority/Additional District Magistrate (Finance and Revenue), Auraiya and another) filed under Section 36 of the Arbitration and Conciliation Act, 1996 within specified period as this Hon'ble Court may deem fit for disbursement of the arbitral award dated 28.03.2022;

(b) To issue such other and further appropriate order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(c) to award the cost of petition in favour of the petitioner."

3. The contention of the learned counsel for the petitioner is that the arbitration award was made on 28.3.2022 by the arbitrator/Additional Commissioner (Administration), National Highway Authority of India. It is stated that an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act, 1996') was filed by the respondent No.2 before the District Judge, Kanpur Nagar, which came to be registered as Arbitration Case No.84 of 2022. It is stated that along with the aforesaid arbitration application, an application 9C2 was filed under the provisions of sub-section (3) of Section 34 of the Act, 1996. It is stated that till now, the application 9C2 has not been decided by the District Court and neither has any stay of execution been ordered by the court. It is stated that in the meanwhile, an Execution Case No.17 of 2022

was instituted before the District Judge, Auraiya [Madan Lal and others Vs. Prescribed Authority/Additional District Magistrate (Finance and Revenue) Auraiya and another] on 11.8.2022, which is not being executed by the court. The entire order-sheet of the Arbitration Case No.84 of 2022 and of the Execution Case No.17 of 2022 have been filed along with the supplementary affidavit filed today in the Court. Learned counsel for the petitioner has pointed out that in the execution case, the name of the petitioner appears at serial No.22.

4. Learned Standing Counsel as well as learned counsel for the National Highway Authority of India have opposed this petition.

5. Section 36 of the Act, 1996 provides that unless the court grants an order of stay of the operation of the arbitral award in accordance with the provisions of sub-section (3) of Section 36, mere filing of an application under Section 34 shall not by itself render the award unenforceable.

6. Under the circumstances and without entering into the merits of the case, the executing court in seisen of the Execution Case No.17 of 2022 is requested to proceed with the execution of the award without granting any unnecessary adjournment to either of the parties. This is subject to any legal impediment which may include passing of any stay order by the court hearing the Arbitration Case No.84 of 2022.

7. This petition is, accordingly, **disposed of**.

Order Date :- 8.11.2023

K.K.Tiwari

(Jayant Banerji, J.)