

Court No. - 9

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 322 of 2022

Appellant :- National Highways Authority Of India

Respondent :- Additional Commissioner And 2 Others

Counsel for Appellant :- Anuj Agrawal

Counsel for Respondent :- Rishi Raj Kapoor

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Anuj Agarwal, learned counsel for the appellant and Sri A.K. Babbar, learned counsel for respondent no. 3.

2. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been preferred against the judgment and order dated 03.08.2022 passed by Additional District Judge, Kanpur in Arbitration Misc. Case No.24 of 2022 as well as Arbitral Award dated 23.11.2021 and Review Award dated 07.12.2021 made by the Arbitrator/Additional Commissioner (Administration), Kanpur Division, Kanpur.

3. Facts, in nutshell, are that the land of respondent no.3 was acquired by the appellant, the National Highway Authority of India (*hereinafter called as 'NHAI'*) for broadening of road from four lane to six lane. Respondent no.3 was the owner of Gata No.123, measuring 0.0221 hectares of land. The competent authority exercising the power under Section 3-G(3) of the National Highway Act, 1956 made an award on 10.07.2020 treating the land of the respondent no.3 as the non-agricultural land.

4. During the proceedings before the competent authority, the respondent no.3 did not appear. The matter was referred on the application of the respondent no.3 to the Arbitrator under Section 3-G(5) of the Act of 1956. The Arbitrator, on 23.11.2021, made an award in respect of Gata No.123, measuring 0.0221 hectares of

land and held that the contesting respondent no.3 was entitled to compensation treating the land to be land for residential purpose. The stand taken by the appellant was not accepted by the Arbitrator.

5. It appears that a correction application for correcting the award was moved by the respondent no.3, which was allowed *ex-parte* vide order dated 07.12.2021, and the award dated 23.11.2021 was amended to the extent that in paragraphs no.4 and 5, the word 'residential' be read as 'commercial'.

6. Against the award and the amended award made by the Arbitrator, objections under Section 34 of the Arbitration and Conciliation Act, 1996 were filed by the NHA before the Court of Additional District and Sessions Judge, Court No.9, Kanpur Nagar. The said objections were rejected by order dated 03.08.2022, hence the present appeal.

7. Learned counsel for the appellant submitted that though, the award made by the competent authority had held the land of the appellant to be a non-agricultural land and declaration having been made under Section 143 of the U.P.Z.A. & L.R. Act, the said land cannot be treated as non-agricultural as no activity other than agricultural activity is going on in the said land. According to him, the necessary permission for ingress and egress from the land was not taken by the respondent no.3, which could demonstrate the fact that commercial activity is going on. Lastly, it was contended that the award made under Section 3-G(5) was amended on 07.12.2021 by an *ex-parte* order and no notice was given by the respondent no.3 before the award was amended.

8. Learned appearing for the contesting respondent no.3 submits that the power is vested in the Arbitrator under Section 33(3) of the Act of 1996 for correcting any computation errors, any clerical or

typographical errors in the award. According to him, the non supply of copy to the other party would not make the amended award redundant. He then contended that the Court below while deciding the objections under Section 34 of the Act has recorded categorical findings that NHAI was heard when the award was passed on 23.11.2021, there was no need for hearing at the stage when the award was amended.

9. I have heard learned counsel for the respective parties and perused the material on record.

10. The short question involved in the present appeal is as to the necessity of supplying a copy to the other party in case of correction and interpretation of award, or in case of additional award.

11. Section 33 of the Act of 1996 takes care of the fact that where an arbitral award is made within 30 days from the receipt of such award, the party with notice to the other side may request the Arbitral Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award. Further, Section 33 (3) mandates that in case the Arbitral Tribunal finds that any error has occurred as provided in clause (a) of sub-section 1 of Section 33, it may on its own initiative within 30 days from the date of arbitral award, correct any such error. For ready reference, Section 33 of the Act is extracted here as under:-

"33. Correction and interpretation of award; additional award.—(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may

request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

12. In the instant case, it is admitted to both the parties that the award under Section 3-G(5) was made by the Arbitrator on 23.11.2021 holding that the respondent no.3 was entitled to compensation in respect of Gata No.123, measuring 0.0221 hectares treating it to be a residential plot. It is also not in dispute that an application was moved by the contesting respondent before the Arbitrator for correcting the award and treating the land to be commercial land instead of residential land.

13. By an amended award dated 07.12.2021, correction was made, but before passing the amended award, the copy of the application was not served upon NHAI. Section 33 (1)(a) is clear to the effect that where any error has occurred in the award, a party with notice to the other party may move for correcting such error within 30 days from the date of award. In the instant case, NHAI was not put

to notice by the contesting respondent no.3 before the Arbitrator amended the award and passed *ex-parte* order.

14. Argument raised by respondent counsel to the extent that Section 33 (3) provides that the Arbitral Tribunal has *suo motu* power to correct such error as mentioned in Section 33 (1) (a) cannot be accepted as no such initiative was taken by the Arbitral Tribunal itself, but it was on the application of the contesting respondent no.3 that the award was modified.

15. The Modification made in the award on 07.12.2021 has financial implication as the earlier award dated 23.11.2021 was made treating the Gata No.123 as residential land, while the modified award made on 07.12.2021 makes it as commercial land.

16. Considering the facts and circumstances of the case, this Court finds that the action of the Arbitrator in amending the award dated 07.12.2021 was not justified and correct and was against the provisions of Section 33 (1)(a) of the Act.

17. In view of the said fact, the amended award dated 07.12.2021 is hereby set aside as well as the order passed by the Court below dated 03.08.2022, the matter is remitted back to the Arbitrator to pass the amended award after hearing both the parties strictly in accordance with law, within a period of three weeks from the date of production of certified copy of this order.

18. The appeal stands partly **allowed**.

19. It is made clear that the contesting respondent no.3 shall handover a copy of the correction application as sought by them before the Arbitrator to the NHAI before the matter is heard by the Arbitrator.

Order Date :- 17.10.2023

SK Goswami