

Court No. - 19

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 55 of 2023

Appellant :- Hemant Kumar Mishra And 3 Others

Respondent :- The District Magistrate, Sultanpur/ Arbitrator Sultanpur And 2 Others

Counsel for Appellant :- Vinod Kumar Pandey

Counsel for Respondent :- Sarvesh Kumar Dubey,C.S.C.

Hon'ble Jaspreet Singh,J.

Heard Sri Vinod Kumar Pandey, learned counsel for the appellant as well as Sri Sarvesh Kumar Dubey, learned counsel for the NHA, respondent no. 2.

The instant appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 whereby the petitioner assails the order dated 31st March, 2023 passed by the Additional District Judge, Court No. 13, Sultanpur in Misc. Case No. 306 of 2019 whereby the petition preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 was rejected.

The submission of learned counsel for the appellant is that the Court under Section 34 of the Act of 1996 did not consider the fact that some part of the land of the appellant which was required of which he has a declaration in terms of Section 143 of the U.P.Z.A. & L.R. Act, 1950 was not noticed.

It has also been submitted that the appellant was using the said land for the commercial purpose, however, this aspect has also been considered rather the provisions of Section 3(g) read with Section 26 of the Act of 2013 has also not been appropriately considered and thus the order passed by the Arbitrator dated 16.09.2016.

Sri Sarvesh Dubey, learned counsel appearing for the NHA submits that the contention of the appellant is not tenable for the reason that the Arbitrator having considered the various aspects of the matter by means of its award dated 16.09.2016 had already taken note of this aspect and found that the Competent Authority had not calculated or assessed the compensation in accordance with law and therefore a direction was given to the Competent Authority to look into the various facets as applicable and re-determine the compensation and

since the matter is yet to be re-determined, the appellant has no cause of concern as of today and for the aforesaid reason, the appeal is not maintainable.

The learned counsel for the appellant at this stage submits that since the matter is yet to be determined by the Competent Authority, accordingly, at this stage, he does not wish to press the present appeal which may be dismissed as withdrawn, however, in case if any cause of action for assailing the re-determination of compensation arises, the appellant may be granted the liberty to avail his remedy as available in law.

In view of the aforesaid and noticing the award passed by the Arbitrator dated 16.09.2016, the instant appeal is ***dismissed as withdrawn*** with the liberty that in case if in future after the compensation is re-determined, any cause still survives for the petitioner, he shall be at liberty of approaching the Court as may be permissible in law. The record of the Lower Court shall be returned forthwith.

Order Date :- 1.11.2023

Asheesh