

Neutral Citation No. - 2023:AHC-LKO:84102
Reserved

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 28 of 2019

Appellant :- Nitin Maheshwari And Another

Respondent :- U.O.I. Thru. Secy. Ministry Of Road Transport And Highways and ors

Counsel for Appellant :- Shyam Mohan Pradhan

Counsel for Respondent :- Mohit Jauhari, Sarvesh Kumar Dubey

Hon'ble Jaspreet Singh, J.

1. The appellants have approached this Court invoking the jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act of 1996") assailing the judgment dated 12.09.2019 passed by the District Judge, Bahraich in Misc. Case No. 2/70/2019 whereby the petition of the appellants preferred under Section 34 of the Act of 1996 has been dismissed and the award dated 31.07.2018 passed by the Arbitrator under Section 3-G (5) of The National Highways Act, 1956 (hereinafter referred to as the "Act of 1956") has been affirmed.

2. The appellants were the recorded owners of Plot No. 635 M measuring 0.5590 hectares situate in Village Sisai Haider, Pargana Pakharpur, Tehsil Mahasi, District Bahraich.

3. It is stated that the said land was declared as non-agricultural in accordance with Section 143 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as the "Act of 1950") by the order of Sub Divisional Officer dated 19.12.2015 which was duly entered and incorporated in the revenue records.

4. The respondent no. 2 in order to widen the National Highway 28-C between Barabanki to Rupaia 92.7 Kilometers to 99 Kilometers proposed

to acquire the land. In furtherance thereof the notification under Section 3-A of the Act of 1953 was published on 16.09.2015. In response to the notification the objections were invited and later the notification under Section 3-D was published on 01.10.2016. The appellants had filed their objections indicating that the plot of the appellants bearing No. 635M measuring 393.34 square meters was non-agricultural and it was encircled by a boundary wall wherein two rooms and two tin shed shops were also constructed. The objections required the Authorities to consider the land as non-agricultural and pay the appropriate compensation treating the said land as such.

5. Later, on 04.08.2017, the Executive Engineer, National Highway-28-C P.W.D, Lucknow after making a spot inspection submitted its report wherein it was stated that the land of the appellant comes within the category of general land as it was situate on Lucknow-Bahraich main road and as per the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 (hereinafter referred to as the “LARA Act of 2013) the compensation was to be determined as per the market value to be determined as per the Act of 2013.

6. It is in furtherance thereof, the compensation of the land was determined by means of order dated 12.02.2018 by the Competent Officer (Land Acquisition, Bahraich). This order of the Competent Officer, Land Acquisition was challenged under Section 3-G (5) in Arbitration by filing a statement of claim wherein it was stated by the appellants that the circle rate of 20,000 per square meter which has been determined by the Collector

of the land situate at Bahraich Bye-pass from Kisan Degree College to Tikhora Mall covering villages on both sides of the road in terms of the circle rates notified on 30th July, 2015.

7. Since the land of the appellants is situate in Village Sisai Haider, the State Highway, accordingly, the compensation which was awarded by the Competent Officer was inadequate and the Competent Officer had committed an error in not noticing that the land of the appellants had been declared as non-agricultural under Section 143 of the U.P.Z.A. & L.R. Act.

8. The Arbitrator by means of its award dated 31.07.2018 did not find favour with the claims and the averments made by the appellant, hence, dismissed the claim for higher compensation. This award dated 31.07.2018 passed by the Arbitrator in Case No. 222 of 2018 was assailed by the appellant by filing a petition under Section 34 of the Act of 1996.

9. The District Judge, Bahraich by means of its judgment dated 12.09.2019 dismissed the petition by confirming the findings given by the Arbitrator and it also held that the Court was not sitting as an Appellate Authority, hence, it did not have the power to re-appraise and examine the findings recorded by the Arbitrator or the evidence led before the Arbitrator, accordingly, the petition stood dismissed.

10. Being aggrieved against the order of dismissal of the petition under Section 34 of the Act of 1996 confirming the award passed by the Arbitrator, the appellants have approached this Court by means of the instant appeal.

11. Sri Shyam Mohan Pradhan, learned counsel for the appellants while

attacking the award as well as the order passed by the District Judge, Bahraich submitted that while considering the issue of compensation payable to the appellants, the provisions of Section 3-G (7) of the Act of 1956 is to be considered along with Section 26 of the LARA Act of 2013.

12. Relying upon the aforesaid provisions, the learned counsel for the appellants further states that as per Section 26 (1) (a) while determining the market value of the land, the Competent Officer (Land Acquisition) is required to assess the market value in accordance with the mode and procedure made in the Indian Stamp Act for the registration of sale deeds or agreement to sale, as the case may be, in the area where the land is situate. It is further submitted that it is in this view that the appellants had filed the Collector's rate list which is the criteria and is adopted by the Collector to assess the stamp duty payable in respect of sale or purchase of the land in respect of the area.

13. He has further pointed out that as per the Collector's rate list notified on 30th July, 2015, it clearly indicated that any land which had its opening on any road will be calculated on the minimum rates relating to the property situate on such road. It further goes on to state that all those villages which are included in the urban area or semi-urban area, the details of which have been mentioned in Appendix-IV and the agricultural land of such villages which are situate on the road or is situate near the Abadi then their value is to be computed in terms of the table which is mentioned in Clause 12 of the Collector's rate list of 30th July, 2015.

14. It has further been pointed out that the village where the land of the appellants is situate i.e. Village Sisai Haider is included in the semi-urban

area and accordingly this is to be read in context with Clause 12 in order to determine the market value, however, this aspect has not been considered by either the Collector or the Arbitrator which has resulted in sheer miscarriage of justice, inasmuch as, the applicability of the relevant provisions have been incorrectly ignored by the Authority.

15. The learned counsel for the appellants has further submitted that on one hand the land of the appellants have been acquired and despite the Act providing for determination of compensation in a particular manner adopting the Collector's rate list as a base, however, the same has been ignored and the State or the National Highway Authority which is an instrumentality of the State created under a Statute while paying the compensation has adopted a double standard, inasmuch as, where a private sale is concerned, the State charges the stamp duty in accordance with the rates as mentioned in the Collector's rate list from its citizens, however, once the land is acquired by exercising the power of eminent domain but while disbursing the compensation, a different method is adopted which is per se arbitrary and against the public policy and even though this issue was raised before the Arbitrator, it has not been considered and even the Court while exercising powers under Section 34 of the Act of 1996 has completely ignored this aspect contrary to the spirit of the provisions contained in Section 34 of the Act of 1996 and is a clear case where the Court which is vested with jurisdiction to consider this aspect has abdicated its duties by holding that the Court does not sit over the award as an Appellate Court. It is thus urged that for the aforesaid reasons, the determination of compensation has been incorrectly made which is against

the public policy as well as in ignorance of the applicable provisions of the law and rules necessitating the interference of this Court in exercise of Appellate powers under Section 37 of the Act of 1996.

16. The Court has heard the learned counsel for the appellant and in absence of the counsel for the respondents as noticed in the order dated 02.11.2023 and also perused the material on record.

17. At the outset, before considering the submissions of the learned counsel for the appellant, it will be worthwhile to take a glance at the relevant provisions as mentioned and its interplay and applicability to the present facts of the case:-

18. In so far as the facts are concerned, there is not much dispute between the parties, inasmuch as the appellants in the appeal was the recorded tenure holders and their land has been acquired in exercise of powers contained under Section 3-A and Section 3-D of the NHAI Act, 1956. The possession has also been taken by the National Highway Authority of India in terms of Section 3-D and once the acquisition is made then as a necessary corollary the determination of the amount payable as compensation to the appellants assumes great significance.

19. In this regard, Section 3-G (7) of the NHAI Act, 1956 shall be important and is being reproduced hereafter for easy reference:-

“Section 3 G (7) Determination of amount payable as compensation.—

(1) xxx

(2) xxx

(3) xxx

(4) xxx

(5) xxx

(6) xxx

(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.]”

20. Simultaneously it will also be relevant to notice Section 26 of the

Right to Fair Compensation and Transparency in Land Acquisition

Rehabilitation and Resettlement Act, 2013, which reads as under:-

*“26. Determination of market value of land by Collector.
(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—*

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this

section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

21. Upon taking a look at the aforesaid provisions, this Court finds that while determining the compensation, the authority is required to take into consideration the market value of the land on the date of publication of the notification under Section 3-A of the NHAI Act, 1956. In order to determine the market value, it will also have to be seen what was the nature of the land, which is sought to be acquired. It will also be relevant to notice

that wherever the Collector makes or publishes a rate list regarding ascertaining the market value for the purposes of stamp duty, the same also becomes applicable as provided under Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

22. From the provisions of Section 3-G(7) of the NHAI Act, 1956 read with Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it would be clear that compensation is made in respect of the land which is acquired and the status of the land is to be seen in context with the nature and the category in which it is recorded on the date of notification under Section 3-A of the NHAI Act, 1956. The provisions for grant of compensation, which have been noticed here-in-above also indicates that once the land is acquired at the given rate noticing the status and nature of the land as recorded on the date of notification any improvement made on the said land is then assessed and calculated to determine the final compensation and while doing so it will include various factors such as **(a)** the average sale price for same type of land situate in the nearest village or vicinity; **(b)** the damages sustained by the person interested by reason of taking of any standing crop or trees, which may be on the land at the time of taking possession; **(c)** the damages, if any, sustained by a person interested at the time of Collector's taking possession which affects his other immovable property; **(d)** damages in case, if suffered relating to the acquisition by virtue of which the person interested is compelled to change his residence or place of business and reasonable expenses incidental to such change and

any other ground which in the interest of equity justice and is beneficial to the affected families.

23. After having noticed the aforesaid provisions regarding the determination of compensation, at this very stage, it will be relevant to notice the scope of an appeal under Section 37 of the Act of 1996 and in this regard the decision of the Apex Court in *NMTC Vs. Vedanta Ltd. 2019 (4) SCC 163* can be gainfully referred wherein the Apex Court has held as under:-

“10. Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996 (for short ‘the 1996 Act’). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.

*11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the ‘fundamental policy of Indian law’ would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. Furthermore, ‘patent illegality’ itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not

trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re appreciation of evidence.

As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

24. At this very stage, in order to examine whether an award is bad or against the public policy or it suffers from patent illegality, it will be worthwhile to notice a recent pronouncement of the Apex Court in **Batliboi Environmental Engineers Limited Vs. HPCL and another [2023 SCC online SC 1208** and the relevant paragraphs 31, 32, 34 to 38, 41, 42 and 44 read as under:-

"31. ... The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an arbitral tribunal, whose decision is binding on the parties. 23 It is argued that the purpose of arbitration is fast

and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is unwarranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party to have its claim or dispute adjudicated by the judiciary. The process is informal, and need not be legalistic. Per contra, it is argued that party autonomy should not be treated as an absolute defence, as a party despite agreeing to refer the disputes/claims to a private tribunal consensually, does not barter away the constitutional and basic human right to have a fair and just resolution of the disputes. The court must exercise its powers when the award is unfair, arbitrary, perverse, or otherwise infirm in law. While arbitration is a private form of dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a 'judicially' sound and objective outcome. If these requirements, which are equally fundamental to all forms of adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.

32. To disentangle and balance the competing principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise. We begin by first referring to the views expressed by this Court in interpreting the width and scope of the post award interference by the courts under Section 34 of the A&C Act.

34. Sub-section (1) to Section 34 of the A&C Act requires that the recourse to a court against an arbitral award is to be made by a party filing an application for setting aside of an award in accordance with sub-sections (2) and (3) of Section 34. Sub-section (2) to Section 34 of the A&C Act stipulates seven grounds on which a court may set aside an arbitral award. Sub-section (2) consists of two clauses, (a) and (b). Clause (b) consists of two sub-clauses, namely, sub-clause (i) which states that when the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, and sub-clause (ii), which states that the court can set aside an arbitral award when the award is 'in conflict with public policy of India'. We shall subsequently examine the decisions of this Court interpreting 'in conflict with public policy of India' and the explanation.

35. Under sub-clause (a) to sub-section (2) to Section 34 of the A&C Act, a court can set aside an award on the grounds in sub-clauses (i) to (v) namely, when a party being under some incapacity; arbitration agreement is not valid under the law for the time being in force; when the party making an application under Section 34 is not given a proper notice of appointment of the arbitrator or the arbitration proceedings, or was unable to present its case; and when the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties, unless such agreement was in conflict with the

mandatory and binding non-derogable provision, or was not in accordance with Part I of the A&C Act. Sub-clause (iv) states that the arbitral award can be set aside when it deals with a dispute not contemplated by, or not falling within the terms of submission of arbitration, or it contains a decision on matters beyond the scope of submission to arbitration. However, the proviso states that the decision in the matters submitted to arbitration can be separated from those not submitted, then that part of the arbitral award which contains the decision on the matter not submitted to arbitration can be set aside. In the present case, we are not required to examine sub-clauses to clause (a) to sub-section (2) to Section 34 of the A&C Act in detail. Hence, this decision should not be read as making any observation, even as obiter dicta on the said clauses.

36. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act No.3 of 2016, had postulated and declared for avoidance of doubt that an award is 'in conflict with the public policy of India', if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while 'fraud' and 'corruption' are two specific grounds under 'public policy', these are not the sole and only grounds on which an award can be set aside on the ground of 'public policy'.

37. Act No. 3 of 2016 with retrospective effect from 23.10.2015 has substituted the explanation referred to above, by two new explanations that are differently worded.²⁵ Sub-section (2-A) to Section 34 of the A&C Act, which was instituted by Act No. 3 of 2016 with retrospective effect from 23.10.2015, states that the arbitral award arising out of arbitrations other than international commercial arbitrations can be set aside by the court, if it is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence. The aforesaid sub-section need not be examined in the facts of the present case, as we are not required to interpret and apply the substituted explanations to (ii) to sub-clause (b) to 34(2) of the A & C Act in the present case.

38. The expression 'public policy' under Section 34 of the A&C Act is capable of both wide and narrow interpretation. Taking a broader interpretation, this Court in ONGC Limited. v. Saw Pipes Limited., held that the legislative intent was not to uphold an award if it is in contravention of provisions of an enactment, since it would be contrary to the basic concept of justice. The concept of 'public policy' connotes a matter which concerns public good and public interest. An award which is patently in violation of statutory provisions cannot be held to be in public interest. Thus, expanding on the scope and expanse of the jurisdiction of the court under

Section 34 of the A&C Act, it was held that an award can be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Nevertheless, the decision holds that mere error of fact or law in reaching the conclusion on the disputed question will not give jurisdiction to the court to interfere. However, this will depend on three aspects: (a) whether the reference was made in general terms for deciding the contractual dispute, in which case the award can be set aside if the award is based upon erroneous legal position; (b) this proposition will also hold good in case of a reasoned award, which on the face of it is erroneous on the legal proposition of law and/or its application; and (c) where a specific question of law is submitted to an arbitrator, erroneous decision on the point of law does not make the award bad, unless the court is satisfied that arbitrator had proceeded illegally. In the said case, the court set aside the award on the ground that the award had not taken into consideration the terms of the contract before arriving at the conclusion as to whether the party claiming the damages is entitled to the same. Reference was made to the provisions of Sections 73 and 74 of the Contract Act, which relate to liquidated damages, general damages and penalty stipulations. This view had held the field for a long time and was applied in subsequent judgments of this Court in **Hindustan Zinc Ltd. v. Friends Coal Carbonisation**²⁷, **Centrotech Minerals and Metals Inc. v. Hindustan Copper Limited**²⁸, **Delhi Development Authority v. R.S. Sharma and Co**²⁹, **J.G. Engineers (P) Ltd. v. Union of India and Another**³⁰, and **Union of India v. L.S.N. Murthy**.

41. Subsequently, in **ONGC Ltd. v. Western Geco International Ltd.**, a three Judge Bench of this Court observed that the Court, in **Saw Pipes Ltd.**, did not examine what would constitute 'fundamental policy of Indian law'. The expression 'fundamental policy of Indian law' in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of 'fundamental policy of Indian law'. The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the arbitral tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of

the decision. As noticed above, Section 31(3)(a) of the A&C states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness. At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute 'fundamental policy of Indian law', as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an arbitral tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

*42. The decision of this Court in **Associate Builders** elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head 'fundamental policy of Indian law'. It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.*

*44. As observed previously, we need not examine the amendment made to the A&C Act vide Act No. 3 of 2016 with retrospective effect from 23.10.2015 and the judgments that deal with the amended Section 34 of the A&C Act. Pertinently, the amendment to Section 34 of the A&C Act was effected, pursuant to the observations of the Supplementary Report to Report No. 246 on Amendments to Arbitration and Conciliation Act, 1996 by the Law Commission of India, titled 'Public Policy – Developments post-Report No. 246' published in February 2015. This Supplementary Report observed that the power to review an arbitral award on merits under Section 34 of the A&C Act, as elucidated in the case of **Western Geco**, subsequently followed in **Associate Builders**, is contrary to the object of the A&C Act and international practice on minimization of judicial intervention. A reference can also be conveniently made to **MMTC Ltd. v. Vedanta Ltd., and Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India** which examine the scope of intervention of courts under Section 34 of the A&C Act as amended by Act No. 3 of 2016. **MMTC Ltd. and Ssangyong Engg.**, and other judgments which deal with the amended Section 34 of the A&C Act that are not applicable in the present case.*

25. The Apex Court in **Batliboi (supra)** has also noticed and followed its earlier decisions in **Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd (2003) 5 SCC 705** and **Associate Builders vs Delhi Development**

Authority (2015) 3 SCC 49.

26. Once the factual caricature coloured with statutory provisions including the authoritative pronouncements of the Apex Court, is seen and appreciated, it would reveal that the Arbitrator in its award has clearly mentioned that in so far as the nature of the land of the appellants is concerned, the order passed by the SDM concerned, declaring the said land as non-agricultural, was passed on 19.12.2015 and the same was also incorporated in the Khatauni. The Arbitrator further noticed that in terms of report of the SDM, Mahsi dated 19.04.2018 it revealed that the land of the appellants bearing Plot No. 635 situate on, Bahraich-Lucknow State Highway No. 28-C ahead of Golala Ghat Bridge, is adjacent to and on the eastern side of the main road. It has also noticed that the appellant had filed documentary evidence in shape of an award made by the Competent Officer dated 12.02.2018, the Khatauni relating to the land in question of the Fasli year 1422 to 1427 as well as the Collector's rate list dated 01.08.2014.

27. The Arbitrator thereafter considered that the compensation is to be determined in accordance with the provisions contained in the Act of 1956 and admittedly the crucial date for consideration is the date on which the notification under Section 3-A is made which will be relevant to ascertain the nature of the land. In the instant case, it found that the notification is dated 16.09.2015 whereas the order by which the land was declared as non-agricultural is dated 19.12.2015 i.e. it was passed after about 3 months from the date of the notification made under Section 3-A of the Act of 1956. It is taking note of the aforesaid that the land relating to village Sisai

Haider has been taken at the rate of Rs. 50,00,000/-per hectare and in case if the land is situate on the road, the rate is 70,00,000/- per hectare and it is on the aforesaid basis that the award made by the Competent Officer dated 12.02.2018 has been calculated at the rate for the land of the appellants which is in accordance with the provisions and it cannot be said that there is any error therein.

28. The District Judge while considering the petition under Section 34 of the Act of 1996 held that it does not sit as the Court of appeal and does not have the power to re-evaluate the compensation.

29. This Court upon considering the submissions of the learned counsel for the appellant and perusal of the award passed by the Competent Officer finds that it considered the case of the appellants and noticed that though the appellants had sought compensation at residential/commercial rates but did not file any evidence in respect of its plea and therefore the contention of the appellants was not found acceptable. However, what is noticeable is that the Arbitrator did not consider the plea regarding the applicability of the Collector's rate list. It is true that the nature of the land is to be seen in context with the date of notification under Section 3-A of the Act of 1956.

30. The learned counsel for the appellants could not dispute the fact that on the date of the notification under Section 3-A i.e. 16.09.2015, the land of the appellants was recorded in the revenue records as agricultural. In view thereof, it is not correct for the appellants to urge that the land of the appellants should have been treated as non-agricultural but what needs to be seen is the fact that on the date of the notification even if the land was agricultural, what would be the effect of Clause 4 and Clause 12 in context

with the chart mentioned in the Collector’s rate list dated 30th July, 2015 which has not been noticed at all by either the Competent Officer (Land acquisition), the Arbitrator or the Court in exercise of powers under Section 34 of the Act of 1996.

31. For ready reference, it will be appropriate to take a look at the contents of the Collector’s rate list dated 30.07.2015.

"कार्यालय जिलाधिकारी, बहराइच

पत्रांक: /स्टाम्प लिपिक-2015
32. दिनांक:- .2015

उत्तर प्रदेश स्टाम्प (सम्पत्ति का मूल्यांकन) नियमावली, 1997 के नियम 4 के अधीन जनपद बहराइच के क्षेत्राधिकार में स्थित सम्पत्तियों के न्यूनतम मूल्य निर्धारण हेतु संलग्न सूची दिनांक 01.08.2015 से प्रभावी की जाती है। इस सूची के क्रियान्वयन हेतु निम्नलिखित निर्देश का अनुपालन भी सुनिश्चित किया जा-
1... ..
2... ..
3... ..
4. विलेख में अंकित सम्पत्ति, जिसका निकास किसी सड़क पर हो, के न्यूनतम मूल्य की गणना उस सड़क पर स्थित सम्पत्ति की सुसंगत दर के अनुसार ही किया जायेगा।
5.... ..
6... ..
7... ..
8... ..
9... ..
10... ..
11... ..
12. नगरीय क्षेत्र तथा अर्धनगरीय क्षेत्र के अधीन आने वाले समस्त राजस्व ग्राम तथा ग्रामीण क्षेत्र के विकासशील ग्राम जिनकी सूची प्रारूप 4 के अन्त में दी गयी है, की ऐसी कृषि भूमि, जो किसी सड़क पर स्थित है अथवा आबादी से सटी हुये गाटा नम्बर की है, की जो दरे सम्बन्धित सूचियों में निर्धारित की गयी है वे 0.15 हे० से अधिक क्षेत्रफल के अन्तरण हेतु निर्धारित है, 0.15 हेक्टेयर या उससे कम क्षेत्रफल के अन्तरण से सम्बन्धित विलेख में न्यूनतम मूल्य की गणना निम्न प्रकार से की जायेगी-

श्रेणी	क्षेत्रफल	न्यूनतम मूल्य
1	0.04 हेक्टेयर तक	इस सूची के भाग-2 के प्रारूप 2, 3 व 4 जैसे भी स्थिति पायी जाये या यथा स्थिति में दी गयी अकृषिक भूमि की सुसंगत दर से निकाला गया न्यूनतम मूल्य।
2	0.04 हे० से अधिक परन्तु 0.08 हेक्टेयर तक	0.04 हे० तक का उपरोक्त श्रेणी-1 के अनुसार निकाले गये मूल्य तथा शेष भूमि का इस सूची के भाग-2 के प्रारूप 2, 3 व 4 जैसे भी स्थिति पायी जाये या यथा स्थिति में दी गयी अकृषिक भूमि की दर से 50 प्रतिशत से निकाले गये मूल्य का योग।
3	0.08 हे० से अधिक परन्तु 0.15 हे० तक	0.08 हे० तक का उपरोक्त श्रेणी-2 के अनुसार निकाले गये न्यूनतम मूल्य तथा शेष भूमि का इस सूची के भाग-2 के प्रारूप 2, 3 व 4 जैसे भी स्थिति पायी जाये या यथा स्थिति में दी गयी अकृषिक भूमि की दर के 25 प्रतिशत से निकाले गये मूल्य का योग।
4	0.15 हे० से अधिक	0.15 हे० तक उपरोक्त श्रेणी 1, 2, 3 के अनुसार निकाले गये न्यूनतम मूल्य व 0.15 हे० से अधिक सम्पत्ति के

		मूल्यांकन का योग। 0.15 हे० से अधिक सम्पत्ति का मूल्यांकन सम्पत्ति की स्थिति (यथा आबादी/ सड़क किनारे) के अनुसार निर्धारित कृषि दर से किया जाएगा।
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13... ..
14... ..
15... ..
16... ..
17... ..
18.

उप जिला के अन्तर्गत सम्पत्ति की औद्योगिक दरें एवं प्राविधान-
औद्योगिक भूमि की दरें उसी भूमि के लिये लागू होगी जिसे शासन/उद्योग विभाग/असिस्टेन्ट कलेक्टर/ परगनाधिकारी द्वारा औद्योगिक भूमि घोषित किया जा चुका है, जिस भूमि पर उद्योग स्थापित है इसकी पुष्टि हेतु सक्षम अधिकारी द्वारा प्रदत्त प्रमाणपत्र प्रस्तुत करना अनिवार्य होगा। कोल्ड स्टोरेज/ भट्टे/ बेयर हाउस व अन्य औद्योगिक संस्थानों की भूमि का मूल्यांकन उस क्षेत्र हेतु निर्धारित अकृषक भूमि की दर में प्रति वर्गमीटर 20 प्रतिशत कम करते हुए किया जाएगा। स्थापित औद्योगिक संस्थानों में लगी मशीनों व अन्य उपकरणों का मूल्यांकन मान्यता प्राप्त पंजीकृत विशेषज्ञ/ वैल्यूअर से प्राप्त रिपोर्ट के आधार पर किया जायेगा।"

33. From the perusal of the aforesaid provisions, even if at all, the land may not be non-agricultural yet Clause 12 clearly provides that in cases of all such agricultural land which are adjacent and close to the main road, the minimum value as provided in the chart is applicable.
34. Thus, despite the fact that that the land of the appellants was agricultural on the date of the notification under Section 3-A of the Act of 1956 yet in terms of the Section 26 of the LARA Act of 2013, the market value ought to have been considered in terms of the market value as determined in accordance with the Indian Stamp Act. This aspect has not been noticed either by the Arbitrator and in any case the District Judge has refused to look into the aforesaid aspect.
35. At this state, it will be relevant to state that in furtherance of the powers conferred upon the State, the acquisition is made under the powers of eminent domain. On one hand, the land which is acquired by exercising the power of eminent domain is a sense is a proceed sale for the land owner

and is entitled to get the compensation strictly as per the provisions contained in law. Thus, to state that once the Competent Officer has determined the compensation and if it is assailed before the Arbitrator for enhancement and if the person does not succeed then he has a right to assail the award in court provided he is able to establish that the grounds for challenge is within the spectrum of Section 34 of the Act of 1996 and it enables the Court to interfere.

36. The very fact, that, whether the appropriate provisions have been applied for determining the compensation or not is an issue which can be scrutinized by the Court under Section 34 of the Act of 1996. This Court in case of ***Chandra Kishori Vs. Union of India and Others; 2023:AHC-LKO:69836*** had the occasion to consider this aspect of the matter and in paragraph 19 it held as under:-

“19. From the perusal of the aforesaid dictum and applying the principles to the instant case, this Court finds that where the land is acquired by the State, which is in the nature of compulsory acquisition, in exercise of its powers of eminent domain and the compensation which is payable as per the guiding factors enumerated in Section 3-G (7) of the NHAI Act, 1956 read with Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, apparently is an issue, which is absolutely core of the controversy, which requires consideration. Since the award passed by the Arbitrator in violation of the said provisions would definitely be a ground to invoke the jurisdiction of the Court under Section 34 of the Act 1996 on the ground of ‘the Public Policy of India’. More so, where the land of a person, over which he has a constitutional right in terms of Article 300-A of the Constitution of India, is taken away by the State by compulsory acquisition and the requisite provisions for grant of compensation is not adhered then it would definitely incur the scrutiny of the Court in terms of Section 34 of the Arbitration & Conciliation Act, 1996.”

37. It is in the aforesaid backdrop if the award passed by the Arbitrator and the order of the Court under Section 34 of the Act of 1996 is seen, it

would be found that both the Authorities have not exercised the jurisdiction vested in them in law. Both the Authorities failed to consider and ignored the provisions relating to computation of compensation. In light thereof, this Court is of the clear view that the District Judge while considering the petition under Section 34 of the Act of 1996 erred in not examining the core issue of application of court provisions and procedure for computing the compensation and it ignored the grounds upon which the petition was filed as it required to determine and ascertain whether correct provisions were adopted by the Competent Officer (Land Acquisition) to determine the compensation. It was the duty of the Court to ascertain whether the settled legal principles have been made applied or not especially when an issue was raised that the compensation has not been determined in accordance with the applicable rules and provisions whereas the Competent Officer and the Arbitrator was bound to consider and deal with the provisions including the Collector's rate list and its clause as made applicable for treating the land at a higher rate even if it was agricultural, if it is falling within the list of villages in semi-urban area as mentioned in the said list and its appendix. Thus, if it had been considered, it would have given a different complexion to the compensation which was in the domain of the Arbitrator, but unfortunately not considered.

38. This Court in exercise of powers under Section 37 of the Act of 1996 is not empowered to enter its factual methodology for computing the compensation nor can it correct the award. If the the Court is not satisfied with the orders impugned and the award it can set aside the same and remit the matter for re-consideration.

39. In view of the aforesaid, the instant appeal is allowed. The judgment passed by the District Judge, Bahraich dated 12.09.2019 in Case No. 2/70 of 2019 and the award made by the Arbitrator dated 31.07.2018 are set aside. The Arbitrator shall re-determine the compensation afresh in light of the observations made by this Court including taking note of the relevant clauses of the Collector's rate list dated 30.07.2015 and its uapplicability including considering the evidence already produced and placed on record by the parties in light of the provisions contained under Section 3-G (7) of the National Highways Act, 1956 read with Section 26 and 28 of the LARA Act of 2013 including the Collector's rate list and decide the matter afresh expeditiously as possible preferably within a period of six months from the date, a certified copy of this order is placed before the Authority concerned. It is clarified that the appellants shall not be permitted to lead any fresh evidence. Subject to the aforesaid, the appeal shall stands *allowed*. In the aforesaid facts and circumstances, there shall be no order as to costs. The records of the Court below shall be returned forthwith.

Order Date :- 20th December, 2023

Asheesh

(Jaspreet Singh, J.)