

Court No. - 19

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 36 of 2022

Appellant :- Dr. Mohd. Amir Jamal

Respondent :- Chairman Of National Highway Authority Of India And Others

Counsel for Appellant :- Abhay Raj Singh

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

Hon'ble Jaspreet Singh,J.

Heard Shri Abhay Raj Singh, learned counsel for the appellant and Shri Sanjay Tripathi, learned counsel appearing for the respondent-National Highway Authority of India (hereinafter referred to as 'NHAI').

The instant appeal has been preferred under Section 37 of the Act of 1996 against the order dated 01.09.2022 passed in Arbitration Case No.2/2020, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), as a result the award passed by the District Magistrate, Barabanki dated 23.10.2019 has been affirmed.

Shri Abhay Raj Singh, learned counsel for the appellant has raised a solitary question in the instant appeal. It is urged that the land of the appellant was acquired by the National Highway Authority of India in pursuance of the notification dated 19.10.2016 issued under Section 3(a) of the National Highway Authority of India Act, 1956.

It is further urged that the appellant had already got the land in question i.e. Plot No.933 measuring 0.0720 hectares declared as non-agriculture under Section 143 of the U.P. Zamindar Abolition and Land Reforms Act, 1950 under the orders of the Sub Divisional Magistrate dated 02.03.2012.

It is further urged that the appellant was utilizing the said land for the purpose of constructing a hospital. It is urged that the District Magistrate, Barabanki while acting as an Arbitrator failed to consider the fact that the land was already declared as non-agriculture on 02.03.2012 but it failed to take note of the said fact and while computing the compensation the appellant has been granted the price of the land treating it to be an agricultural land.

It is urged that this issue was raised before the Arbitrator and from a perusal of the award made by the District Magistrate, Barabanki acting as an Arbitrator it held that the Sub Divisional Magistrate, Fetehpur by its award dated 02.03.2012 had declared the land as non-agriculture land, but it did not indicate that any commercial activity was being done, hence, the compensation as awarded on the basis of agricultural land is appropriate.

It is further urged that this issue was also raised before the District Judge in a petition preferred under Section 34 of the Act of 1996 and the Court by summary order held that the Court did not had power under Section 34 of the Act of 1996 to consider and re-evaluate the value of the land and thus rejected the petition under Section 34 of the Act of 1996 and both the orders are under challenge before this Court in appeal.

In support of his submission, learned counsel for the appellant has further stated that this aspect has already been considered by this Court in **Chandra Kishori v. Union of India and others, Neutral Citation No.2023:AHC-LKO:69836** wherein the Court had also taken note of an earlier decision rendered in **Arbitration Appeal No.1/2019 (National Highway Authority of India v. Pankaj Singh and others)** decided on 22.01.2020.

Shri Sanjay Tripathi, learned counsel for the respondent has submitted that even though the land was declared as non-agriculture but in any case the appellant is not entitled to the land price as that of commercial land. It is further urged that merely because the appellant was undertaking constructions for the purpose of raising a hospital but the fact remains that on the date of the notification, no such commercial activity was going on, therefore, the Land Acquisition Officer has rightly calculated and awarded sum by giving him compensation for the construction and since the land was being not used for any commercial or non-agriculture purpose, hence, the award was rightly passed by the District Magistrate, Barabanki and this aspect was not open to be considered in a petition under Section 34 of the Act of 1996. Hence, the appeal is devoid of merit and is liable to be dismissed.

The Court has heard learned counsel for the parties and has also perused the material on record.

Apparently, only one issue has been raised by the learned counsel for the appellant that is that though the land was declared as non-agricultural yet the Special Land Acquisition Officer has awarded compensation considering the land to be agricultural. The appellant had raised the issue before the

arbitrator, who did not find favour with it so also the Court under Section 34 of the Act of 1996.

This issue may not be detain this Court for long as in the case of Chandra Kishori (supra), this Court had dealt with this issue in detail in Paragraph 22 to 30 of the said report and it was held that once the land was declared as non-agricultural even though no activity may have taken place yet the authorities are required to calculate the compensation considering the land as non-agricultural.

In the instant case as well, both the arbitrator as well as the Court in exercise of powers under Section 34 of the Act of 1996 failed to take note of this aspect and erred in dismissing the arbitration claim as well as the petition under Section 34 of the Act of 1996. The appellant herein is also entitled to the benefit as noticed by this Court in the case of Chandra Kishori (supra).

In view of the aforesaid, this Court is of the clear opinion that the Additional District Judge, Court No.45, Barabanki erred by holding that it does not find any error in the award and moreover it requires re-calculation and this cannot be done in a petition under Section 34 of the Act of 1996. The Additional District Judge did not apply the settled legal principles applicable defining the realm of jurisdiction of the Court while exercising powers under Section 34 of the Act of 1996.

For the aforesaid reasons, the appeal is allowed. The judgment dated 01.09.2022 passed by the Additional District Judge, Court No.45, Barabanki in Arbitration Case No.2/2020 as well as the award passed by the District Magistrate acting as an Arbitrator dated 23.10.2019 passed in Case No.04144/2018 is set aside. The arbitrator is directed to re-determine the compensation afresh in light of the observations made by this Court taking note of the decision of this Court in Chandra Kishori (supra) expeditiously preferably within six months from the date a certified copy of this order is placed before the Arbitrator concerned.

In the facts and circumstances, there shall be no order as to costs. The record of the court below be returned forthwith.

Order Date :- 29.11.2023

Rakesh/-