

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 58 of 2022

Appellant :- Harish Tripathi

Respondent :- Competent Authority, National Highway Addl. S.D.M. Sultanpur And Ors.

Counsel for Appellant :- Sharad Pathak,Piyush Pathak

Counsel for Respondent :- Vimlesh Kumar

Hon'ble Jaspreet Singh,J.

1. The Court has heard Sri Sharad Pathak, learned counsel for the appellant and Sri Vimlesh Kumar for the National Highway Authority of India.

2. The instant appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act of 1996) against the order dated 03.11.2022 in Civil Misc. Case No. 156 of 2018 whereby the petition of the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 was partly allowed as a consequence the award dated 23.03.2018 passed by the Arbitrator/the Collector was set aside only in respect of the compensation relating to the cost of construction upon the acquired land.

3. Briefly, the facts giving rise to the instant appeal are being noticed hereinafter, first:-

4. That the appellant was the recorded owner of Khasra Plot No. 108 measuring 0.1032 hectares situate in Village Bikahar Pargana Chanda, Tehsil Lambhua, District Sultanpur.

5. In the year 2012, the National Highway Authority had acquired the

land for the purpose of widening the National Highway-56, Lucknow to Varanasi and for the aforesaid purpose, the land of the appellant was also acquired and in lieu thereof the appellant was granted a compensation of Rs. 2,07,81,620/-.

6. The petitioner filed a petition before the Collector who acts as a Statutory Arbitrator under Section 3-G (5) of the National Highway Act, 1956 (hereinafter referred to as the “Act of 1956”). The Arbitrator rejected the petition of the appellants vide its award dated 23.03.2018. This was challenged by the appellant before the District Judge, Sultanpur by filing a petition under Section 34 of the Act of 1956 which has been decided by means of order dated 03.11.2022 whereby the award dated 23.03.2018 has been partly set aside only on one ground and the matter was remitted to the Arbitrator for passing a fresh award.

7. The contention of learned counsel for the appellant is that the Arbitrator as well as the Court in exercise of powers under Section 34 of the Act of 1996 committed an error of law in failing to consider that the appellant was utilizing the land acquired for commercial purposes as admittedly a petrol pump was running on the said land.

8. It is further urged that the provisions of Section 3 -G of the Act of 1956 are to be read with Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “LARA Act of 2013”) and this has not been appropriately considered.

9. From a conjoint reading of Section 3-G of the Act of 1956 with

Section 26 of the LARA Act, 2013, it would indicate that there are certain factors which have to be taken note of while determining the compensation which has not been done.

10. It is also urged that the reasoning given by the Court while rejecting the petition under Section 34 of the Act of 1996 is also erroneous, inasmuch as, it has been noticed by the Court below that even though the appellant was running a petrol pump but since that petrol pump was only the commercial activity being done in the area, hence, it cannot be said that the said land is commercial to attract rates as applicable to commercial lands.

11. It is further submitted that the Court while rejecting the application under Section 34 of the Act 1996 further erred in stating that had there been other members of the Society doing commercial activity only then the said land could have been treated to be commercial, which is not quite correct and the reasoning is flawed.

12. It is submitted that under law once the land is declared as non-agricultural, it can be utilized for residential, commercial or even industrial purposes but the fact remains that it is the activity which is being done on the said land which will determine as to what rate is applicable for the grant of compensation.

13. It is further submitted that there is no provision in law which declares a land as non-agricultural with a further classification of declaring it as commercial. In the instant case, since the land admittedly was used for commercial purposes where the appellant had got himself registered under

the U.P. Shop and Commercial Establishment Act, 1962 and the activity being run was definitely commercial in nature, hence, by denying the compensation of the land at the commercial rates, the Arbitrator as well as the Court has committed an error.

14. It is further submitted that as per the Collector's rate list which was applicable to the case in hand dated 07th July, 2012 whereas the notification under Section 3-A was made on 12th December, 2012, hence, the Collector's rate list has also been ignored which clearly provides the rates regarding non-agricultural land and for the aforesaid reasons, the order turning down the contentions of the appellant and partly allowing the petition only on the ground relating to computation of compensation relating to construction has caused injustice to the appellant, hence the appeal.

15. It is further urged that the the Authorities have failed to consider the interest on delayed payment as the petitioner was entitled to get the interest from the date the possession was taken and this aspect has also not been properly considered.

16. The learned counsel for the appellant has relied upon the decision of the Apex Court in *National Highways Authority of India Vs. P. Nagaraju alias Cheluvaiah and Another*; 2022 SCC Online SC 864, *Reddy Veerana Vs. State of U.P. and Others*; 2022 SCC Online SC 562, *Union of India Vs. Parimal Singh and Others*; 2009 (1) SCC 618 and *Gajanan and Others Vs. State of Maharashtra and Another*; (2011) 12 SCC 286 and also on a decision of this Court in *Chandra Kishori Vs. Union of India and Others*; 2023:AHC-LKO:69836.

17. Sri Vimlesh Kumar, learned counsel appearing for the National Highway Authority has submitted that from the bare perusal of the provisions contained in the National Highway Act, 1956, it would reveal that the compensation is granted for the land and for determining the compensation it is the date on which the notification under Section 3-A is issued is important. The nature of the land as recorded in the revenue records on the date of notification under Section 3-A of the Act of 1956 is to be seen. Once the compensation of land is determined thereafter but simultaneously recourse is taken to other provisions for the purposes of calculating the value of constructions, trees or other improvements made on the land which is the subject matter of acquisition as per the provisions of the Act of 1956 read with LARA Act of 2013.

18. Sri Vimlesh Kumar further submits that in the instant case, the land apparently was recorded as non-agricultural and the Competent Authority has rightly computed the compensation as per the non-agricultural rate of Rs. 4,000/- per square meter which is in consonance with the rates as mentioned in the Collector's rate list and therefore it cannot be said that the appellant has suffered any prejudice. This aspect has also been noticed by the Competent Authority, the Arbitrator as well as the Court in exercise of powers under Section 34 of the Act of 1996 and it cannot be said that there is any error therein.

19. The further submission of learned counsel for the respondents is that the issue has already been considered by this Court in Arbitration Appeal No. *1 of 2019; National Highway Authority of India Vs. Pankaj Singh* decided on *22.01.2020* and thus it is no more open for the appellant to urge

that appropriate rates have not been awarded to the appellant insofar as the land is concerned.

20. It is further submitted that regarding the interest, the Competent Authority has appropriately calculated the interest and it shall be evident that the same has been calculated in accordance with the rules from the date of the notification till the date of the award and to that extent the submission made by learned counsel for the appellant does not stand to reason.

21. It is further submitted that in so far as the calculation regarding the compensation for construction is concerned this issue, has already been remitted for a fresh determination by the order passed by the Court on 03.11.2022 and as such the same has to be recalculated, hence, at present, the contention of learned counsel for the appellant is not tenable and is liable to be turned down and the appeal deserves to be dismissed.

22. Sri Vimlesh Kumar, learned counsel for the respondent has relied upon the decisions of the Apex Court in ***Union of India Vs. Savitri Devi and Another; 2018 (12) SCC 545, MMTC Vs. Ltd. Vs. Vedanta Ltd. 2019 (4) SCC 163*** as well as a decision of this Court in ***Arbitration Appeal No. 1 of 2019 National Highway Authority of India Vs. Pankaj Singh*** decided on **22.01.2020**.

23. This Court at the outset is of the view that in order to test the submissions of the respective parties, it will be relevant first to notice the statutory provisions applicable to the controversy at hand.

24. In this regard, Section 3-G of the National Highway Act, 1956 is

being reproduced as under:-

“Section 3 G:- Determination of amount payable as compensation.—

1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government--

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(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.]”

25. Simultaneously it will also be relevant to notice Section 26, 27 to 30 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.

27. Determination of amount of compensation.—*The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.*

28. Parameters to be considered by Collector in determination of award:—*In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—*

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;
secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;
thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;
sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and
seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

29. Determination of value of things attached to land or building.—*(1) The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.*

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

30. Award of Solatium:—*(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award,*

impose a "Solatium" amount equivalent to one hundred per cent of the compensation amount.

Explanation.---For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

26. Upon taking a look at the aforesaid provisions, this Court finds that while determining the compensation, the authority is required to take into account 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 have to be seen as to what was the nature of the land and how and under what category was it recorded in the revenue records. 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.

27. From the provisions of Section 3-G(7) of the Act, 1956 read with Section 26 to Section 29 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 Act, 1956. The provisions which have been noticed here-in-above also indicates that construction, trees or other improvements made on the said land has to be considered and while determining the final compensation 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, is also to be taken into account.

28. 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."

29. At this juncture, 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."*

30. 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**.

31. Having noticed the statutory provisions as well as the scope of appeal and the scope of interference in a petition under Section 34 of the Act of 1996 which has been delineated by the Apex Court in **Batliboi (supra)** and if the principles as extracted above are applied to in the instant case, it would be seen that it is not disputed between the parties that on the date of notification issued under Section 3-A of the Act of 1956, the land in question was recorded as non-agricultural. It is also not in dispute that on the said date of acquisition, the petitioner was running a petrol pump on the said land.

32. It is the case of the appellant that his entire land was not acquired rather only a part abutting the main road was acquired, as a consequence, the appellant had to demolish such constructions which remained on his unacquired land and after purchasing additional land, had to shift his petrol pump for which he had to obtain fresh clearances and raise fresh constructions for setting up a fresh petrol pump site.

33. This Court now proposes to examine the first submission of the learned counsel for the appellant regarding the compensation for the acquired land to be granted at commercial rates.

34. At this stage, if the Collector's rate list is seen, it clearly indicates that certain rates are prescribed for villages which are situate on the

road/highway.

35. For better appreciation the relevant portion of the Collector's rate list is being reproduced hereinafter:-

"प्रेषक,

जिलाधिकारी,

सुलतानपुर।

सेवा में,

सचिव,

कर एवं निबन्धन अनुभाग-5,

उ०प्र० शासन, लखनऊ।

संख्या 859/स्टाम्प लिपिक

दिनांक 7 जुलाई, 2012

विषय:-जनपद सुलतानपुर के उपजिलों में सम्पत्ति के मूल्यांकन हेतु सर्किल रेट सूची प्रभावी किया जाये।

महोदय,

अवगत कराना है कि जनपद सुलतानपुर के उप जिलों में स्थित परिसम्पत्तियों के मूल्यांकन/स्टाम्प शुल्क निर्धारण हेतु सर्किल रेट सूचियों का पुनरीक्षण दिनांक 10.07.2012 से प्रभावी किया जा रहा है। मूल्यांकन सूचियों की प्रति संलग्न कर अवलोकनार्थ प्रेषित की जा रही है।

संलग्नक -यथोक्त।

भवदीय

(राकेश)

जिलाधिकारी,
सुलतानपुर

"उत्तर प्रदेश स्टाम्प (सम्पत्ति का मूल्यांकन) नियमावली, 1997¹

भारतीय स्टाम्प अधिनियम, 1866 (अधिनियम संख्या 2 सन् 1866) की धारा 27, 47-क और 75 के अधीन शक्ति का प्रयोग करके राज्यपाल निम्नलिखित नियमावली बनाते हैं:-

1.....

2.

(क).....

(ख).....

(ग).....

(घ) "वाणिज्यिक" भवन का तात्पर्य उत्तर प्रदेश दुकान और वाणिज्य अधिष्ठान अधिनियम, 1962 की धारा 2 के खण्ड (4) और (16) में यथापरिभाषित वाणिज्य अधिष्ठान दुकान से है।

(ङ).....

ग्रामीण क्षेत्रों में आने वाले सामान्य ग्राम-
1. कृषिक भूमि की दरें

कृषि भूमि	राष्ट्रीय/प्रान्तीय मार्ग पर दर रु० प्रति 0.001 हे०	जनपदीय मार्ग मार्ग पर दर रु० प्रति 0.001 हे०	सम्पर्क मार्ग मार्ग पर दर रु० प्रति 0.001 हे०	अन्य दर
क) कृषि भूमि 0.050 हे० तक	15400	14000	10500	7000
ख) 0.050 हे० से अधिक तथा 0.100 हे० तक	6500	5200	3700	3300
ग) 0.100 हे० से अधिक	3500	2500	2100	1400

2. गैर कृषिक भूमि की दरें-(applicable in the instant case)

- क) राष्ट्रीय एवं प्रान्तीय मार्ग पर सड़क के मध्य से 70 मीटर तक सम्पत्ति का मूल्य 4000 रु०/वर्ग मी०
- ख).....
- ग)....
- घ).....

3. व्यवसायिक भवन

- क. राष्ट्रीय एवं प्रान्तीय मार्ग का मासिक किराया 80 रु० प्रति वर्गमीटर
- ख.
- ग.

भाग-3

ग्रामीण क्षेत्रों में स्थित भवनों का मूल्यांकन (भवनों) के निर्माण का न्यूनतम मूल्यांकन रु० प्रति वर्ग मी०।

- 1... .
- 2... ..
- 3... ...
- 4... ..
- 5... ..
- 6... .

- 7. गैर वाणिज्यिक/आवासीय भवनों का मूल्यांकन सम्पत्ति मूल्यांकन नियमावली के सुसंगत प्रावधानों के अनुसार भूमि की दर X क्षेत्रफल + निर्मित क्षेत्रफल X निर्धारण निर्माण की दर को जोड़कर किया जायेगा। यदि भवन कई मंजिल का हो तो प्रत्येक मंजिल के आच्छादित क्षेत्रफल का अलग-अलग मूल्य जोड़कर सम्पूर्ण मंजिल का मूल्य माना जायेगा।
- 8. वाणिज्यिक/व्यवसायिक भवनों का मूल्यांकन सम्पत्ति मूल्यांकन नियमावली के सुसंगत प्रावधानों के अनुसार निर्धारित मासिक किराये की दर X निर्मित क्षेत्रफल X 300 करके किया जायेगा।

भाग-4
सामान्य निर्देश

- 3... ...
- 4. ऐसे कृषि बैनामें जिनके 100 मीटर की त्रिज्या के अन्तर्गत गैर कृषिक क्रिया कलाप/ आबादी होंगे तो उसके मूल्यांकन निर्धारित दर से 40 प्रतिशत अतिरिक्त दर जोड़कर किया जायेगा।
- 5... ...

36. From the perusal of the aforesaid portion, it would be clear that in so

far as the agricultural land is concerned, if it is situate on State Highways or other roads, it would still be assessed at the minimum rates at serial no. 1, however, in so far as the non-agricultural land is concerned which is situate on national/state highways up to 70 meters, they are assessed at Rs. 4,000/- per square meter as per clause 2.

37. This apparently is the rate which has been adopted in the case of the petitioner, however, the contention of the learned counsel for the petitioner is that he must be granted the rate as applicable to commercial land Rs. 80/- per square meter. This submission may not be correct as the said rate is applicable to commercial building contained in Clause 3 and is not applicable to land.

38. From the provisions contained in Section 3-G read with Section 26, it can safely be inferred that the market value has to be determined in light of the provisions contained in Section 26 of the LARA Act of 2013 relating to the land. This has also been reiterated by the Apex Court in ***P. Nagaraju (Supra)*** wherein in paragraph 18 the Apex Court has held as under:-

“In that view of the matter, though Section 3G(7)(a) of the NH Act provides the parameters to be taken into consideration, it only provides the basic parameters to be taken note of, for determining the amount payable as compensation. While applying the said parameters for determination of compensation, since RFCTLARR Act, 2013 is also applicable as NH Act is contained in Fourth Schedule, the factors as provided under Section 26 and 28 RFCTLARR Act, 2013 including the seventh factor will also be applicable in appropriate cases for the determination of the market value as fair compensation for the acquired land. When land is acquired from a citizen, Articles 300A and 31A of the Constitution will have to be borne in mind since the deprivation of property should be with authority of law, after being duly compensated. Such law should provide for adequately compensating the land loser keeping in view the market value. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired. In

that light, if Section 28 of RFCTLARR Act, 2013 is held not applicable in view of Section 3J of NH Act, the same will be violative of Article 14 of the Constitution. In that circumstance, the observation in Tarsem Singh (supra) that Section 3J of NH Act is unconstitutional to that extent though declared so while on the aspect of solatium and interest, it is held so on all aspects relating to determination of compensation. In any event, the extracted portion of the notification dated 28.08.2015 is explicit that the benefits available to the land owners under RFCTLARR Act is to be also available to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, among which NH Act is one. Hence all aspects contained in Section 26 to 28 of RFCTLARR Act for determination of compensation will be applicable notwithstanding Section 3J and 3G(7)(a) of NH Act.

39. Apparently, the land which is acquired by exercising the power of eminent domain, in a sense, is a forced sale for the land owner who is entitled to get the compensation, strictly, as per the provisions contained in law. Once the Competent Officer has determined the compensation and if the compensation amount is not acceptable to the land owner then he can assail it before the Arbitrator for enhancement and if the land owner 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 to such an award is within the spectrum of Section 34 of the Act of 1996 which enables the Court to interfere and it is subject to further scrutiny under Section 37 of the Act of 1996.

40. 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.

In this regard, the observations of the Apex Court in **P. Nagaraju (supra)** is worthwhile to be noticed and the relevant portion thereof is being reproduced hereinafter:-

“.....26.....The terms of arbitration and the rights and obligations will also be a part of the agreement and a reference to the same in the award will constitute sufficient reasons for sustaining the award in terms of Section 31(3) of Act, 1996. Whereas, in the arbitration proceedings

relating to NH Act, the parties are not governed by an agreement to regulate the process of arbitration. However, in the process of determination of just and fair compensation, the provisions in Section 26 to 28 of RFCTLARR Act, 2013 will be the guiding factor. The requirement therein being adverted to, should be demonstrated in the award to satisfy that Section 28(2) and 31(3) of Act, 1996 is complied. Therefore, what is also to be kept in perspective while noticing the validity or otherwise of an award regarding which the non-furnishing of reasons is contended as patent illegality is the reason assigned for determining just compensation in terms thereof. The situation which may arise in cases when a lesser compensation is determined in the arbitration proceedings and the land loser is complaining of the award is also to be kept in perspective since the requirement of reasons to be given by the learned Arbitrator in cases for determination of market value and compensation should indicate reasons since the same will have to be arrived at on a comparative analysis for which the reasons should be recorded and Section 26 to 28 of RFCTLARR Act will be relevant. Neither the land loser nor the exchequer should suffer in the matter of just and fair compensation. Hence the reasons under Section 31(3) is to be expected in that manner, the absence of which will call for interference under Section 34 of Act, 1996.”

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“.....33.Be that as it may, in our opinion the mere provision as contemplated under Section 3G(5) of NH Act providing for either of the parties to assail the determination made by the SLAO by itself does not provide a better status to the award passed by the SLAO. Even the award passed by the SLAO under the provisions of NH Act would still continue to remain as an offer of compensation by the Acquiring Authority to the land loser and the materials relied on by the SLAO even if discussed in detail does not provide the status of a judicially considered order so as to interfere with the same only if error is pointed out. It is not necessary to critically examine the award made by SLAO before considering enhancement. Notwithstanding the documents relied upon by the SLAO it would still be open for the learned Arbitrator to rely upon any additional material that may be brought before the learned Arbitrator not necessarily to point out an error in the consideration made by SLAO but such material could be considered despite the consideration made by the SLAO if such material aids in deciding just and fair compensation. Though, as contended by the learned Additional Solicitor General it is seen that in Tarsem Singh (supra) it is held that there is a regime change and the stage to offer an amount by way of compensation is removed, it only means that the process of award notice etc. from Section 9 to 15A, before possession under Section 16 of L.A. Act is removed, which only alters the procedure and enables immediate vesting of the land with the acquiring authority but does not take away the character of the SLAO award from being an offer of compensation. Hence, in the present case, though the SLAO has taken note of the guideline dated 07.11.2014 it would be open for the learned Arbitrator to take note of any other evidence that would be more relevant than the said guideline to re-determine the compensation in terms of the parameters under Sections 26 and 28 of RFCTLARR Act, 2013.”

41. Even, 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.”

42. In the aforesaid backdrop, what is to be noticed is the fact that while determining the compensation even though the land was non-agricultural, the rate has been adopted as mentioned in the rate list as noticed hereinabove but at the same time for the constructions which are of commercial in nature, the rates mentioned in the Collector’s rate list also ought to have been considered.

43. This Court is not in agreement with the submission of learned counsel for the appellant on this point that even for the land, the commercial rates must be given for the reason that the land which is situate in villages even though for the purposes of stamp duty is governed by the rates prescribed by the Collector’s rate list but the land primarily is of two types and i.e. agricultural or non-agricultural.

44. It is only a Development Authority or the State which can declare a land as commercial or industrial. This is to be seen where any land is within the development area as governed by the Uttar Pradesh Urban Planning and Development Act or the Masterplan which are published and

notified by the State Government and other Development Authorities who create certain zones for commercial and industrial activity and unless such land is notified as such and the land acquired falls within it, it cannot be said that only because the land owner is undertaking commercial activity, the land is to be treated as commercial which otherwise is not within the development area or and has been declared as commercial or industrial by either the State or any Competent Authority.

45. The reasoning given by the District Judge in its order dated 03.11.2022 that even though the land is being used for commercial purpose but since it is only the single enterprise of the appellant, hence, the land cannot be treated as commercial and had the commercial activities being done by several members of the society in and around the vicinity where the land in question is located then it could be considered as commercial, is also not based on sound reasoning.

46. In the humble opinion of this Court, the land if it is outside the development area can only be agricultural or non-agricultural unless it is declared by the Development Authority or the State for a certain specific purpose and the land acquired falls within such notified area till then the land shall continue to be governed as such and as recorded in the revenue records on the date of the notification. It is for the said reason that the Collector in his rate list has taken the land which though non-agricultural but as it situate on the Highway or the State Highways, a specific value has been ascribed. In the instant case, it is the rate prescribed by the Collector which has been adopted for computing the compensation of land especially when the exemplars for past two years were also considered and higher

rate as ascertained from the two modes considered has been adopted, hence, it cannot be said that the basis for computing the compensation for the land is erroneous.

47. The Collector's rate list would also indicate that separate rates have been prescribed for agricultural lands situate on main roads/State/National Highways. So also, separate rates have been prescribed for non-agricultural lands. Similarly, separate rates and mode of calculation for arriving at market value relating to buildings both commercial and non-commercial has been mentioned.

48. Distinctly, there is a clear divide for rates prescribed for lands and buildings and one cannot be interchanged for the other. Thus while computing and ascertaining market value the rates and mode for computation for land and building is also different. Buildings situate in rural areas which includes both residential and commercial are assessed separately for computing market value and this shall be evident from Part 3 of the Collector's rate list reproduced hereinabove in para 34 of the judgment.

49. This also is a clear indicator that the rates for land and the building thereon is computed differently. Moreover, Section 3-G of the Act of 1956 clearly states that the compensation is paid for the land which is acquired under the Act of 1956 but while determining the compensation the market value has to be ascertained, however, certain other criteria is specially provided in Section 3 (G) (7) (c) and (d) which is to be noticed for determining the wholesome compensation.

50. Thus, though the reasoning of the District Judge may not be sound but for the reasons as noticed aforesaid, this Court also arrives at the conclusion that appropriate rate has been adopted for ascertaining the compensation for the land alone, but for different reasons as indicated hereinabove. Thus, this Court turns down the first submission of the learned counsel for the appellant.

51. Now, considering the second submission which is also an offshoot of the first but relating to compensation of constructions. The District Judge has merely found that the Project Director had computed a higher sum of Rs. 31,57,247/- but the Competent Authority granted only Rs. 13,07,433/- and for the aforesaid reason simplicitor an error has been committed, as a result, the District Judge has set aside only part of the award.

52. Nevertheless, what this Court finds is that for computing the compensation for constructions/improvements, the Competent Authority as well as the Arbitrator were also required to consider the provisions of Section 3-G (7) (b) (c) and (d) read with Section 28 and Section 29 of the LARA Act of 2013 and then it ought to have arrived at a finding relating to compensation which also form part of the final determination of the compensation. Needless to say this aspect has not been considered either by the Competent Authority or the Arbitrator and not even by the Court in Section 34 of the Act of 1996 nor there is any conscious deliberation on the said issue and further it does not reflect from the award of the statutory Arbitrator or the order of the Court under Section 34 of the Act of 1996 that the provisions of Section 3-G (7) (b) (c) and (d) read with Section 28 and 29 of the LARA Act of 2013 were kept in mind while determining the

compensation for construction.

53. In so far as the compensation for the construction is concerned, it is true that there was a commercial enterprise run by the appellant. Collector's rate list specifies a different rate for commercial buildings, accordingly, the petrol pump being a commercial enterprise, the constructions raised by the appellant was of a commercial nature and the calculation for the aforesaid construction ought to have been considered as per the Collector's rate list and on basis of cogent material on record.

54. The Authorities below including the Court ought to have considered the parameters enumerated in Section 3-G (7) (b) (c) and (d) read with Sections 28 and Section 29 of the Act of the Act of 2013 in light to the evidence led by the appellant in this context before it. Needless to say, there has been no considerations in this regard nor any finding that for want of such evidence the appellant was not entitled to claim compensation as claimed by him. How was the construction valued by the NHAI or how much would be ascertained, if the compensation for construction as per the mode and rate prescribed by the Collector is applied. Whether the appellant was able to prove his claim for specific head under Section 3-G (7) (b) (c) and (d) read with Section 28 and 29 of the LARA Act of 2013 has not been appropriately considered, hence, this also needs a re-look.

55. This Court in exercise of powers under Section 37 of the Act of 1996 is not empowered to enter into 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./*See NHAI v. M. Hakeem and Another*

(2021) 9 SCC 1 and P. Nagaraju (supra).] Hence, the award and the order of the District Judge in Section 34 of the Act of 1996 is not tenable and the same is liable to be set aside.

56. Lastly, turning to the submission of the learned counsel for the appellant regarding non-payment of interest, this Court finds that the interest has been awarded from the date of notification under Section 3-A of the Act of 1956 till the date of award passed by the Competent Authority and hence it cannot be said to be bad. No statutory provision has been pointed out under which the appellant can get interest for a larger period than already provided. Accordingly, this Court is not inclined to accept the submission of the learned counsel for the appellant for grant of inadequate interest.

57. In view of the aforesaid, the instant appeal is ***allowed***. The judgment passed by the District Judge dated 03.11.2022 in Civil Misc. Case No. 156 of 2018 and the award made by the Arbitrator dated 23.03.2018 are set aside to the extent as mentioned herein. 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 and relating provisions and its applicability including considering the evidence already produced and placed on record by the parties and shall also take into account the specific provision contained in Section 3-G (7) (b) (c) & (d) of the National Highways Act, 1956 along with Sections 28, Section 29 of the LARA Act of 2013 in respect of the constructions as applicable to the commercial building and shall also determine whether the appellant is entitled to damages as provided in the above quoted provisions and for the

aforesaid purpose, aid shall be taken of the Collector's rate list and the matter be decided afresh, expeditiously, 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 stand *allowed* in the aforesaid terms. 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 :-22nd December, 2023

Asheesh

(Jaspreet Singh, J.)