

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.215 of 2016 (O&M)
Date of decision:13.01.2016**

Union of India and another ... Appellants

Vs.

Sumitri Devi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. R.S.Madan, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.542-CII-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 11 days in re-filing the appeal is condoned.

C.M. stands disposed of.

FAO No.215 of 2016 (O&M)

The appellants-National Highway are in appeal against the order dated 20.08.2015, passed by the Additional District Judge, Jalandhar, whereby, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act') seeking setting aside of the Award dated 27.06.2013 passed by the Arbitrator-cum-Commissioner, Jalandhar Division,

Jalandhar, in respect of the acquisition of land acquired for widening of the National Highway No.1-A, have been dismissed.

Mr. R.S.Madan, learned counsel appearing on behalf of the appellants, in support of his grounds of appeal, has raised multi-fold arguments, which are enumerated herein below:-

- i) The objecting Court has dismissed the objections not only being barred by law of limitation, as well as, on merits also. He further submits that copy of the award was never supplied to the National Highway, therefore, the objections could not be filed under the provisions of Section 34(3) of the 1996 Act.
- ii) The award of the Arbitrator is not only erroneous, much less, capricious for the reasons that compensation assessed vis-a-vis residential house adjacent to the National Highway was not permitted as per the Punjab Scheduled Roads and Controlled Area Restriction of Un-Regulated Development Act, 1963 (for short '1963 Act').
- iii) The Arbitrator has awarded the compensation with regard to change of land @ ₹10 lacs per marla without there being any evidence on record which is legally not permissible.
- iv) The Arbitrator has also awarded interest as per the provisions of Section 34 of the Land Acquisition Act, 1894 (for short 'Act 1894').

In support of his aforementioned contentions, he has relied upon the judgment of the Hon'ble Supreme Court in **Oil Natural Gas Corporation Ltd. vs. Western Geco International Ltd. 2015 AIR (SC) 363** to contend that award of the Arbitrator was against the public policy and therefore, the objections were within the realm of Section 34 of 1996 Act. Even the judgment rendered by the Division Bench of this Court in **M/s Golden Iron and Steel Forging vs. Union of India and others 2011(4) RCR (Civil) 375** does not envisage the granting of interest as per Section 34 of 1996 Act and thus, prays for setting aside of the order under challenge, much less, award.

I have heard learned counsel for the appellants and appraised the paper book.

The appellants have acquired the land for widening of the National Highway No.1-A belonging to the respondents, who had raised the residential house comprising of one hall room with CC flooring, one Verandah with lintel roof marked ABCDEFGHIJ constructed over area measuring 967.01 sq.ft. (0-4.29 Marlas). The parties before the Arbitrator agreed to lead the evidence as per the procedure, i.e., in the shape of affidavit and documents and if any side wanted to cross-examine any witness, liberty was granted to file specific application. No evidence has been placed on record before the Objecting Court or arbitrator to show that copy of the award was not handed over at the time of its passing. Both the parties to the lis

represented before the Arbitrator and addressed arguments. Instrumentality of Central Government cannot be expected to remain ideal, silent and keep on waiting receipt of award by a separate communication, thereafter, to form an opinion for filing of appeal beyond the period of limitation as per the procedure prescribed under Section 34(3) of 1996 Act. No explanation, much less, affidavit in this regard had been filed before the Objecting Court, much less, any letter enclosing the copy of the award received on particular date bringing objections within a period of limitation. It is settled law that the provisions of Section 5 of the Limitation Act in arbitration proceedings do not apply for seeking condonation of delay.

Be that as it may, the Arbitrator, in my view, has taken into consideration that the land acquired in respect of the land situated in village Saili Kulian and Daulatpur which are both within the Municipal limits of Pathankot. The Arbitrator, considering the land having some potential, assessed the rate given in respect of land acquired in village Daulatpur. The construction of the super structure had been proved from the report of the valuator. The appellants have not moved any application for cross examination of the aforementioned witness. Thus, report has ex facie been proved, this fact has also been noticed by the Arbitrator. The relevant portion of the findings rendered by the Arbitrator reads thus:-

“All the above facts and supporting affidavit which are not rebutted by the respondent. The Ld. Counsel for NHAI

signed a declaration that he have nothing to say/submit in this case. Thereof the claim of the petitioner goes unrebutted.

Thus structure loss stands also proved. The cost of structure is awarded as per evaluation report.”

The Arbitrator, on the basis of the evaluation report assessed the compensation of Rs.10, 00,000/- for the change of the land for residential purpose by taking into consideration the fact that the land was situated in city like Pathankot and the costs of living have arisen many fold. The Arbitrator could have awarded interest by invoking the provisions of Section 31(7) of 1996 Act instead award 6% as provided under Section 34 of the Land Acquisition Act, 1894 (repealed Act). In my view, the awarding of interest @ 9% is still less than 18% provided under Section 31(7) of 1996 Act, therefore, the award cannot be said erroneous on this account.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49** and

Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5

SCC 698. In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view the award of the Arbitrator does not suffer from any illegality, in as much as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

January 13, 2016
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