221

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-6151-2014 (O&M)
Date of decision : 17.11.2016

Union of India and another ..... Appellants

VERSUS

Gurudwara Sahib Ji and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Satbir Rathore, Advocate for respondent No.1.

*****

AMIT RAWAL, J.(Oral)

The National Highway is in appeal against the order dated 06.05.2014, whereby objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 against the award dated 25.07.2011 has been dismissed.

Mr. R.S. Madan, learned counsel appearing on behalf of the appellants submits that the National Highway had caused the notification under Section 3-A of the National Highway Act, 1956 in respect of village Darapur, Tehsil Dasuya, District Hoshiarpur and various other villages for widening of National Highway from Jallandhar to Pathankot and the date of notification was 24.12.2004. The competent authority under the Act, assess the amount of compensation at the rate of ₹ 2,50,000/- per marla for commercial land and ₹ 2,00,000/- for gair mumkin land. The land owners being aggrieved of the aforementioned decision of the competent authority, sought the reference through the intervention of the arbitration, as per the provisions of the Act, and the arbitrator has enhanced the lump sum amount of compensation from ₹ 2,50,000/- to ₹ 2,70,000/- i.e. for both proportionate gair mumkin and also awarded ₹ 1,50,000/- lump sum for severance but without any evidence granted the following relief:-

(i) ₹ 450/- per sq. ft. average for all types of structure,

(ii) ₹ 25,000/- lump sum for shifting of structure and

(iii) ₹ 1,00,000/- per shop compulsion to change of business/loss of income.

He submits that the aforementioned relief is based upon the report of the surveyor, who had not actually gone to the spot and it was only on the asking of land owners. In fact, no sale deed of the area, much less, any evidence qua loss of business or shifting of the business has been led. Thus, the amount of compensation, aforementioned, is liable to be set aside. He further submits that the award is not in consonance with the ratio decidendi culled out 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,*** qua interest as solatium is inconsonance with the aforementioned judgment.

Per contra, Mr. Satbir Rathore, learned counsel appearing on behalf of land owners submits that report of the evaluator has been cross-examined, but nothing has been surfaced and thus, the report has rightly been looked into, much less, taken into consideration, for the purpose of awarding the compensation as noticed above. The construction was erected on the National Highway and appellants-land owners were doing the business. The award of the arbitrator cannot be set aside, even on re-examination of the evidence in view of the law laid down in ***Navodya Mass Entertainment Limited Vs. J.M. Combines, 2015 (5) SCC, 698,*** and thus, prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that the enhancement from ₹ 2,50,000/- to ₹ 2,70,000/- for all pieces of land including commercial and gair mumkin land etc. is the most reasonable as there is marginal increase of ₹ 20,000/- per marla and even ₹ 1,50,000/- severance is also justified as other piece of land has been left and, therefore, the land owners could not utilize the land for the purpose they intend to use. As regard the other benefits as noticed above, the valuator admitted that he had prepared the valuation report on the basis of market rate and the information given by land owners, in essence, the valuator did not inspect the premises and conducted the survey by visiting the spot and thus, formed an opinion that land owners were actually raised the construction. Neither the revenue record, i.e., khasra, girdawari regarding the alleged construction or structure has been proved on the record.

In my view, the award of the arbitrator is liable to be modified. The compensation to the extent of ₹ 450/- per sq. ft. for all structure, ₹ 25,000/- lump sum for shifting and ₹ 1,00,000/- per shop as compensation for business/income loss and compulsion to change business, is hereby set aside. The awarding of interest at the rate of 9%, 15% and 18% is in consonance with the provisions of Section 34 of the Land Acquisition Act, 1887, which is not permissible in view of the ratio decidendi culled out by Division Bench of this Court in ***M/s Golden Iron and Steel Forging Vs. Union of India and others, 2011 (4) RCR (Civil) 375,*** in essence, the land owners would be only entitled to solatium i.e., as per the provisions of Section 23(2) and 28 of the erstwhile Land Acquisition Act, 1887.

Accordingly, the award of the arbitrator is modified to the aforementioned extent and the appeal is partly allowed and there shall be no modification in the grant of solatium @ 30%.

(AMIT RAWAL)
JUDGE

November 17, 2016
Ramandeep Singh / Rajeev Purohit

Whether speaking / reasoned Yes / No

Whether Reportable Yes / No