

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.4361 of 2016 (O&M)

Date of Decision.26.09.2016

M/s Mukerian Papers Ltd. and another

.....Appellants

Vs

Union of India and others

.....Respondents

Present: Mr. Satbir Rathore, Advocate
for the appellant.

Mr. Ish Puneet Singh, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-land owner is aggrieved of the impugned order passed under Section 34 of the Arbitration and Conciliation Act, 1996 whereby the objection at the instance of the National Highway has been accepted, in essence, the Award dated 01.07.2013 has been set aside.

Mr. Satbir Rathore, learned counsel appearing for the appellant submits that land measuring 5 kanals 2 marlas was acquired for widening of the National Highway No.1-A as per notification issued under Section 3-A of the National Highway Act, which was published on 24.12.2004. The competent authority assessed the amount of compensation to the tune of ₹34,000/- per marla for the gair mumkin and ₹6000/- for the Chahi land. Since the land owners were not satisfied with the aforementioned assessment and the provisions of the National Highway Act envisage the resolution of dispute through appointment of the Arbitrator, they filed the petition before the Arbitrator for seeking enhancement. The parties before the Arbitrator agreed for the following procedure:-

- “1. The respondents will be given a maximum of three opportunities to file their reply.*
- 2. The claimant will be given a maximum of three opportunities to adduce his evidence.*
- 3. Thereafter the respondent side will also be given a maximum of three opportunities to adduce their evidence.*
- 4. Thereafter the claimant will be given one opportunity to adduce evidence in rebuttal, if required.*
- 5. It was agreed that the evidence will be in the shape of affidavit and documents. If any side wants to cross examine any witness, it shall file specific application to that effect.*
- 6. On the request of either side or suo moto the arbitration may ask for spot inspection report.*
- 7. After this the case will be fixed for final arguments and award.”*

In view of the aforementioned procedure, the counsel made statement as indicated in the impugned Award which is reproduced as under:-

“We the following counsels for both the parties have gone through the entire record on file including documents/evidence, revenue record and affidavit etc. We are satisfied with the procedure adopted and we are ready to submit the arguments. The award may be announced after hearing arguments of the parties. We both the counsels do not want to tender any further evidence and the award may be announced after arguments.”

The Arbitrator on the basis of the documentary and oral evidence and the affidavit of the parties, much less, after having taken into consideration the rate per marla given on GT road in the year 2004-2005 @₹2.50 lacs per marla in Mukerian Town and ₹2.30 lacs per marla in village Chak Alabaksh and the present acquisition is also to be stated in the village Chak Alabaksh. Taking into consideration the aforementioned facts,

the Arbitrator assessed the compensation @2.50 lacs per marla.

He submits that no doubt the Arbitrator while awarding the compensation has taken into consideration the ratio decidendi culled out by Hon'ble Division Bench of this Court in *M/s Golden Iron and Steel Forging Vs. Union of India and others 2011(4) RCR Civil 375* by ordering solatium @30% when he has already awarded compensation as per the provisions of section 34 of the 1894 Act. He submits that the aforementioned Section 34 as per the judgment cited supra, the land owners were not entitled to.

Mr. Ish Puneet Singh, learned counsel appearing for the National Highway submits that the aforementioned finding can always be challenged by invoking the provisions of Order 41 Rule 33 CPC as the land owners can only be entitled to benefits under Section 23(2) and 28 of the 1894 Act. He further submits that during the pendency of proceedings before the Arbitrator, the land owner submitted an affidavit dated 22.04.2003 enclosing a copy of the Award dated 28.02.2007 passed by the competent authority-cum-Land Acquisition Collector as Ex.P1, jamabandi Ex.P2 and report of the Tehsildar which was against the previous report where the price of the property was assessed was ₹48,000/- per marla. He submits that the National Highway was not allowed to confront with the aforementioned affidavit though the Award was passed in the month of July, 2013 and it is in this backdrop of the matter, the Objecting Court has set aside the Award.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt the land is situated within the municipal area of Mukerian but land in village Chak Alabaksh is also within municipal

limit of Mukeria and the competent authority already assessed the compensation @₹2.50 lacs per marla. In my view, the Objecting Court ought to have noticed the aforementioned vital fact as the setting aside the Award would only entail into second round of litigation for appointment of the Arbitrator and the National Highway would be burdened with the recurring interest.

In my view, the previous Award of the Arbitrator was known to all the parties. Even if the opportunity had been given, the National Highway could not have confronted the same rather it should have saved itself from burden of the payment of interest, which is too phenomenal. The National Highway Authority could have also been within its right to point out anything before the Arbitrator by invoking provisions of Section 33 (3) of the Arbitration and Conciliation Act, 1996 seeking rehearing of the matter in case the application had been moved within 30 days. Even no such affidavit had been filed before the Objecting Court while filing the objection. All these facts have not been taken consideration by the Objecting Court. In my view, the award *viz-a-viz* assessing amount of compensation is as per the order of the competent authority whereby the amount of compensation has been assessed as ₹2.50 lacs. No doubt the Arbitrator has awarded the benefits under Section 34 of the 1894 Act but in my view, the landlords are not entitled for the same except the benefits under Section 23(2) and 28 of the 1894 Act.

Accordingly, the Award of the Arbitrator under challenge is hereby modified to the extent of setting aside the benefits granted under Section 34 of the 1894 Act while upholding the compensation @₹2.50 lacs and the appellants-landlords shall be entitled to the benefits under Section

23(2) and 28 of the 1894 Act as per the ratio decidendi culled out in M/s Golden Iron's case (supra).

The impugned order is set aside and the appeal stands disposed of with the above modification.

(AMIT RAWAL)
JUDGE

September 26, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes