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

FAO-5429-2015

Date of decision : 08.02.2016

Balwinder Singh and others

...Appellants

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kaushal, Advocate
for the appellants.

Mr. R.S. Madan, Advocate
for NHA.

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

AMIT RAWAL, J. (ORAL)

The appellants-landowners are aggrieved of the order dated 13.11.2014, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') against the award of the Arbitrator dated 26.06.2013, awarding the compensation in respect of the land acquired under the National Highways Act, 1956 (hereinafter called 'the 1956 Act'),

have been allowed and the matter has been remanded back to the Arbitrator.

Mr. Naresh Kaushal, learned counsel appearing on behalf of the appellants-landowners, submits that in view of the ratio culled out by the judgment of Division Bench of Bombay High in case titled as "**Geojit Financial Services Ltd. Vs. Kritika Nagpal**" decided on 25.06.2013, the matter cannot be remanded back. The Arbitrator has already assessed the compensation and in this regard, this Court had already upheld the award of the Arbitrator in **FAO No.9108 of 2014** titled as "**Union of India and another V/s Gurdeep Singh and others**" decided on 27.01.2016, as it pertains to village Chowdharpur, Teshil and District Gurdaspur.

Mr. R.S. Madan, Advocate, learned counsel appearing on behalf of NHAI, submits that there is no illegality and perversity in the order and prays for dismissal of the appeal.

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

I am of the view that the appeal deserves to be allowed as there is no provisions under the Act for remanding back the matter except, where the Arbitrator has failed to address to certain claims. In order to appreciate the finding, it would be apt to reproduce para No.14 of the judgment cited supra, which reads thus:-

"14. Under sub-section 4 of Section 34, the Court is

vested with the discretion, where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal will eliminate the grounds for setting aside the award. Subsection 4 of Section 34, therefore, does not contemplate a situation where the proceedings are remanded back to the arbitrator after setting aside the arbitral award. Once an arbitral award is set aside under Section 34, that brings to a conclusion a proceeding before the Court. What sub-Section 4 of Section 34 envisages is an opportunity to the arbitral tribunal to resume the arbitration proceedings or to take such other action as would eliminate the grounds for setting aside the award. Without meaning to be exhaustive, we can conceive of a situation where the arbitral tribunal has overlooked a particular item of claim on which parties have led evidence and have addressed arguments. A challenge to the arbitral award in such a case would be on the ground that the arbitral tribunal has failed to decide a claim which was raised, controverted and submitted upon. The provisions of Section 34 enable the Court to adjourn the petition under Section 34 so that instead of setting aside the award, the arbitral tribunal can resume the proceedings and take necessary steps to eliminate a ground of challenge. Section 34(4), however, does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court has set aside the award. Once an award has been set aside, recourse cannot be taken to Section 34(4) since it is evident that the power can be exercised by the Court while adjourning a petition under Section 34.”

Since, this Court vide order dated 28.01.2016 in **Union of India's case (supra)**, has already upheld the Award of the Arbitrator, the order of the Objecting Court accepting the objections and remanding back the matter to the Arbitrator, is not sustainable. Accordingly, the order dated 13.11.2014 allowing the objections, is hereby set aside and the Award of the Arbitrator is upheld.

With the aforesaid observations, the appeal stands allowed.

The landowners shall be entitled to all the statutory benefits as per the provisions of Sections 23 (2) and 28 of the Land Acquisition (Amendment) Act, 1984 and in view of the judgment rendered by the Division Bench of this Court in **'M/s Golden Iron and Steel Forging V/s Union of Indian and others" 2011(4) RCR (Civil) 375.**

08.02.2016
yogesh

(AMIT RAWAL)
JUDGE