

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 65 of 2017**

Mukesh Bawariya S/o Late Nagardas Bawariya Aged About 55 Years R/o
21/987 Civil Line, Post Ravigram, Thana Civil Line, Tahsil & District Raipur
Chhattisgarh

---- Petitioner

Versus

1. Additional Collector and Arbitrator (N.H.I.), Raipur District Raipur Chhattisgarh
2. Competent Authority (Land Acquisition) and Sub- Divisional Authority, Abhanpur, Tahsil Raipur Chhattisgarh
3. National Highways Authority of India, Through Project Director, Project Implementation Unit, Shankar Nagar, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Varun Sharma, Advocate.
For Respondent No. 3	:	Ms. Fouzia Mirza, Advocate.
For State	:	Mr. Shashank Thakur, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****10/11/17**

1. By the impugned order dated 25.09.2017, learned District Judge, Raipur has rejected the petitioner's application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "Act of 1996").
2. Learned counsel appearing on behalf of petitioner would submit that the trial Court has committed illegality in rejecting the petitioner's said application.
3. Ms. Fouzia Mirza, learned counsel appearing on behalf of respondent No. 3- National Highways Authority of India would submit that the matter is pending before the Arbitrator under Section 3(G)(5) of the National Highways

Act, 1956 (for short “ Act of 1956”) and the petitioner ought to have preferred an application under Section 17(1) of the Act of 1956 before the Arbitrator as by virtue of Section 9(3) of the Act of 1996, once the arbitral tribunal has been constituted, the Court cannot entertain the application filed under Section 9(1) of the Arbitration and Conciliation Act, 1996.

3. I have heard learned counsel for the parties at length and perused the impugned order with utmost circumspection.

4. Admittedly, the Arbitral Tribunal has already been constituted under Section 3(G)(5) of the National Highways Act, 1956 and seized with the matter from 14.10.2016 and as such the application filed under Section 9(1) of the Act of 1996 is barred under the provisions of Section 9(3) of the Act of 1996 and the petitioner has not shown that the remedy under Section 17 of the Act of 1996 is not efficacious.

5. In view of the above, the petitioner is granted liberty to file an application under Section 17(1) of the Act of 1956 and, in that event, the learned Arbitrator will decide the petitioner's application for interim measures strictly in accordance with law without being prejudiced by any finding or any observations recorded by the learned District Judge while rejecting application under Section 9 of the Act of 1996.

6. Accordingly, the arbitration appeal stands finally disposed of. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge