

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4319 of 2019

=====

Mumtaz Ali S/o Tasduque Hussain, Resident of Village- Kanhauli, Ward No.2,
Police Station-Jhanjharpur, District-Madhubani

... .. Petitioner

Versus

1. The Union of India through the Chairman National Highways Authority of India
2. The Project Manager, 57 National High Ways Muzaffarpur Division, Muzaffarpur Bihar
3. The State of Bihar through the Principal Secretary Revenue Department Government of Bihar, Patna
4. The District Magistrate, Madhubani Bihar
5. The District Land Acquisition Officer, Madhubani Bihar
6. The Arbitrator Officer-Cum-Additional Collector, Madhubani Bihar
7. The Sub-Divisional Officer jhanjharpur P.S. Jhanjharpur District-Madhubani Bihar
8. The Deputy Collector land Reforms Jhanjharpur, P.S. Jhanjharpur, District-Madhubani Bihar
9. The Anchal Adhikari, Jhanjharpur P.S. Jhanjharpur District-Madhubani Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Prasad
For the Respondent State:	:	Ms. Prakritita Sharma, AC to SC-25
For the NHAI	:	Mr. Anshay Bahadur Mathur, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

- 2 07-03-2019 The petitioner has put to challenge the orders, dated 07.06.2018 and 09.06.2018 (Annexure-5 Series), passed by the Arbitrator -cum- Additional Collector, Madhubani, in Land Acquisition Case No. 03/2017-18 and Land Acquisition Case No. 04/2017-18 and Land Acquisition Case No. 05/2017-18, whereby and whereunder the aforesaid land acquisition cases



filed by the petitioner have been rejected.

At the very outset, a preliminary objection has been taken on behalf of the National Highway Authority over maintainability of the writ application, under Article 226 of the Constitution of India, against the impugned award made by the Arbitrator. Reliance has been placed in support of the said preliminary objection, on a Division Bench decision of this Court, in the case of *The Project Director, National Highway Authority Araria at Purnea, Bihar and Another v. Md. Gufran Alam and Others*, reported in **2014 (1) PLJR 207**. This Court, considering various provisions of the National Highway Act, 1956, and the Arbitration and Conciliation Act, 1996, has clearly held, in paragraphs 9 and 10, as follows:-

“9. As recorded hereinabove, the proceedings before the Arbitrator are governed by the Act of 1996. Section 34 of the Act of 1996 provides for a remedy against the arbitral award by an application for setting aside the arbitral award before the Court. The "Court" is defined under Clause (e) of sub-section (1) of Section 2 of the Act of 1996 to mean, "the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes." Hence, it is evident that the remedy against the arbitral award lies before the civil Court. Section 36 of



the Act of 1996 provides for enforcement of the arbitral award under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Thus, the statutory remedy for enforcement of the arbitral award made under Section 3-G(5) of the Act of 1956 lies before the civil Court.

10. In view of the statutory remedy for execution of the arbitral award being available, a petition under Article 226 of the Constitution would not lie. The learned single Judge has erred in entertaining the writ petition under Article 226 of the Constitution in the subject matter.”

In view of the law as discussed in the case of *Md. Gufran Alam* (supra), this writ application cannot be maintained and is accordingly dismissed.

It is, however, clarified that dismissal of the writ petition will not come in the way of the writ petitioner from availing statutory remedy, as available under the Arbitration and Conciliation Act, 1996.

It is also indicated that if any question of limitation arises before the Court, while considering any application for condonation of delay, it is to be kept in mind that the petitioner was pursuing his remedy before this Court under Article 226 of the Constitution of India.

(Chakradhari Sharan Singh, J)

Pawan/-

U			
---	--	--	--

