

\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 07.08.2019

+ O.M.P. 13/2018 & IA 7719/2018

GURDAYAL SINGH

..... Petitioner

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Mr.Gautam Kumar,
Ms.Jyoti Nagpal, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD

..... Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. By a separate order passed today in OMP No.11/2018, the petition has been allowed and the Impugned Arbitral Award has been set aside.

2. A copy of the order in O.M.P. No.11/2018 is placed below.

NAVIN CHAWLA, J

AUGUST 07, 2019

RN

\$~26 to 40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 07.08.2019

+ O.M.P. 11/2018 & IA 6965/2018

SURENDRA PAL & ANR.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD

..... Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(27) O.M.P. 12/2018 & IA 6978/2018

DHARAMVEER@KARAMVEER

..... Petitioner

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD

..... Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(28) O.M.P. 13/2018 & IA 7719/2018

GUARDAYAL SINGH

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak

Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(29) O.M.P. 14/2018 & IA 7722/2018
SAI DASS THROUGH: LEGAL HEIRS & ANR.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(30) O.M.P. 15/2018 & IA 7746/2018
VED PAL & ORS.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(31) O.M.P. 20/2018 & IA 11761/2018
SH.AJAY GUPTA & ORS.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(32) O.M.P. 21/2018 & IA 11765/2018
SH.JAGDISH KUMAR & ORS.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(33) O.M.P. 22/2018 & IA 11767/2018
SURESH PAL

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(34) O.M.P. 24/2018 & IAs 13666/2018, 5826/2019
SH.AMAR SINGH Petitioner

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(35) O.M.P. 2/2019 & IAs 1508, 5827/2019
SH.JASWINDER SINGH Petitioner

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(36) O.M.P. 3/2019 & IA 1511/2019
SH.SAJJAN KUMAR

..... Petitioner

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(37) O.M.P. 13/2019
SH.HARPREET SINGH & ANR.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

(38) O.M.P. (COMM) 295/2019
SURJEET SIGH & ANR.

..... Petitioners

Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak

Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

- (39) O.M.P. (COMM) 296/2019
ANIL KUMAR THR. LRS. & ANR. Petitioners
Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

- (40) O.M.P.(COMM) 297/2019
NASEEB SINGH Petitioners
Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.Niraj Singh, Mr.Deepak
Jaiswal and Ms.Jyoti Nagpal,
Mr.Gautam Kumar, Advs.

versus

TRUE ZONE BUILDWELL PVT. LTD Respondent

Through: Mr.Amit Mahajan, Mr.Akshay
Ringe, Mr.Siddharth Joshi &
Mr.Dhruv Pandey, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. These petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') have been filed challenging the Arbitral Awards passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreement(s) to Sell executed between the petitioner(s) and the respondent.
2. Though there are different Agreement(s) to Sell executed in each of the petitions, as also the date of the Award varies, however, as a common question of law and facts has arisen in all these petitions, they are being disposed of by this common order. The facts are being taken from OMP No.11,2018 titled *Surendra Pal & Anr. vs. True Zone Buildwell Pvt. Ltd.*
3. The parties had entered into an Agreement to Sell dated 16.02.2006 with respect to the agricultural land allegedly owned by the petitioners in Village Phoosgarh, Tehsil Karnal, District Karnal (Haryana).

4. The said Agreement records that the entire sale consideration for the land has been paid by the respondent to the petitioners. Clause 3 of the Agreement to Sell further records as under:

“3. That the first party hereby assures the second party that the said property under sale is free from all sorts of encumbrances i.e. Agreement to Sell/sale mortgage, gift, lien, legal flaws, court decrees or injunctions or lis pendens, claims or attachments whatever. No notice of any default or re-entry or acquisition etc., have been issued or received in respect of the subject property and the first party has not committed and will not commit any default of any term/condition imposed by law or the lessor or any other authority or set out in any other agreement concerning the property which shall prejudice the rights of the Second Party.”

5. Clause 5 of the Agreement further records that notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 have been issued against the said land. Clause 7 of the Agreement to Sell further records that the petitioners have been left with no right, title or interest whatsoever in the land and/or in the compensation to be received from the State Government of Haryana or the competent Authority. Clause 7 is quoted hereinunder:

“7. That the first party has not been left with any rights, title and interest whatsoever in the said Land and / or in the compensation to be received from the Haryana Government or competent Authority. The Second party has become absolute owner of the said property as well as shall have right to received the compensation from the Government/Authority.”

6. Alongwith the Agreement to Sell, the petitioners had also executed various other documents such as receipt for the payment received by them, affidavit, indemnity bond, Possession Letter, Special Power of Attorney and the General Power of Attorney in favour of the respondents, authorizing the respondent to act on behalf of the petitioners with respect to the said parcel of land.

7. The respondent claims that it filed Writ Petitions challenging the acquisition proceedings before the High Court of Punjab and Haryana, wherein by an order passed, the respondent was granted liberty to file a representation before the High Powered Committee of the State Government to seek release of the parcel of land from acquisition. The respondent duly made such representation on behalf of the petitioners, however, by a decision dated 01.09.2008, the High Powered Committee rejected such representations, *inter alia*, observing as under:

“7. It was observed by the committee that the award was announced in accordance with law on 21.12.2004 and the possession was delivered to HUDA on the same day. This fact is evidenced from the revenue record i.e. a copy of rapat roznamcha dt. 21.12.2004 wherein the transfer of possession from land owners to HUDA has been recorded. The pleading of the petitioner that the award was announced on 21.12.2004 to save the notification from lapsing is without any basis. The acquisition has been done as per process of law. After the announcement of award, it is for the land owners to take compensation

and not taking of compensation, is no ground for releasing the acquired land.

8. It is also observed that the petitioner Company has entered into collaboration agreements with original owners of land which is subsequent to the date of announcement of award and transfer of possession. Agreements entered into after 21.12.2004 are void abinitio since the land owners had no title of land on the date of entering into agreement.

The plea taken by the petitioner that the case of M/s True Zone Buildwell Pvt. Ltd. is similar to theirs is not true. M/s True Zone Buildwell Pvt. Ltd. applied for licence for an area of 55.175 acres in sector 32, Karnal on 14.9.2004, they had entered into collaboration with individual land owners on 28.8.2004, the land was released by Director, Urban Estate Development on 6.12.2004. All these activities were completed well before the date of announcement of award i.e. 21.12.2004. Where as, in the case of petitioners even the application for license was filed on 17.12.2004 i.e. much after announcement of award. Not only this, the petitioners approached Hon'ble High Court on 26.10.2005 i.e. more than eleven months after the announcement of award and handing over the possession to HUDA. The collaboration agreement was executed on 29.12.2004. The application for license can be considered only in case the applicant has a title to the land. In this case neither the applicant companies nor the land owners with whom it had entered into agreement have any title of land in question.”

(Emphasis supplied)

8. A reading of the above observation would clearly show that the respondent was fully aware of the Award having been passed pursuant to the acquisition proceedings way back on 21.12.2004 and of the possession of the parcel of land also having been delivered to Haryana Urban Development Authority (HUDA) on the same day. This is important because in the Statement of Claim a plea was taken that the respondent was not aware of these facts and became aware on a much later date. Though no date for such knowledge was disclosed in the Statement of Claim, it can at least be gathered as 01.09.2008, when the order was passed by the High Powered Committee.

9. Thereafter, on passing of the above order of the High Powered Committee, it was evident that the parcel of land would not be released from acquisition proceedings. The petitioners thereafter filed an application to the Land Acquisition Collector seeking reference for enhancement of the compensation. The same was decided by the Collector vide an Award dated 11.05.2009, enhancing the compensation payable for the said land. The petitioners thereafter filed an execution petition seeking payment of the original as well as the enhanced compensation.

10. During the pendency of the said execution petition, the respondent filed an objection petition under Section 47 of the Code of Civil Procedure, 1908 (CPC) read with Section 30 of the Land Acquisition Act claiming rights to receive the compensation under the Agreement to Sell. This application was filed sometime on or around

26.05.2010. In the objection petition, the respondent *inter alia* pleaded as under:

“6. That at the time of entering into the above said Agreement to Sell and executing the above said documents, the decree holder deliberately concealed the fact that notification under Section 9 of the Land Acquisition Act has already been issued with respect to the subject property and it was given to the above said company in written in the Agreement to Sell that notification only under Sections 4 and 6 of the Land Acquisition Act have been issued and that no proceeding of acquisition have been issued regarding the subject property. In this way, the above said company was cheated and trapped into purchasing the subject property. The above said company was under a genuine belief that since notice under Sections 4 and 6 of Land Acquisition Act have been issued regarding the subject property and that since process of acquisition has not yet been initiated, therefore, it agreed to purchase the subject property. However, later on, it has been revealed that not only process of acquisition under Section 9 of Land Acquisition Act has been initiated, even the process of acquisition has been completed under Section 11 of the Land acquisition Act and reference under Section 18 of Land Acquisition at has already been filed by the decree holder, which, after being referred to this Hon’ble Court have already been decided and the amount of compensation to be paid to the decree holder has been enhanced vide award dated 11.05.2009 and the decree holder has also filed the execution petition seeking the payment of original as well as enhanced compensation, which is pending before this Hon’ble Court and is fixed for 27.5.2010.”

11. The respondent further pleaded that full consideration having been paid to the petitioners, the respondent was entitled to receive the original compensation as well as the enhanced compensation for the acquisition of land.

12. From the above sequence of events, it was clear that at least as on 26.05.2010, the respondent was aware that not only the land could not have been transferred in its favour as it already stood acquired, but also that the petitioners had made a claim for the original compensation as also enhanced compensation before the competent Authority. The respondent, however, chose not to enforce its rights under the Agreement to Sell by filing a suit of enforcement and/or damages against the petitioners.

13. The petitioners opposed the above application of the respondent and by an order dated 27.03.2012, the application of the respondent was dismissed by the Land Acquisition Collector holding that the Agreement to Sell did not confer any title over the land on the respondent and therefore, the respondent was not entitled to receive any part of the compensation. It was further held that there could not legally be any transaction of sale/purchase of the acquired land and any dispute between the petitioners and the respondent, could not be adjudicated in those proceedings.

14. The respondent thereafter, filed an application under Section 9 of the Act. The said application was also dismissed by the Court of learned Additional District Judge, Karnal, by an order dated 24.05.2012, *inter alia*, on the ground of lack of territorial jurisdiction.

However, in the said order, the learned Additional District Judge further observed as under:

“11..... Thus, the cause of action to initiate a legal action against the respondents accrued to the petitioner on 05.09.2008 with the rejection of the representation but no step under the alleged arbitration agreement was initiated till the filing of present petition i.e. after more than three years. Moreover, the land of the respondents was notified for acquisition and the LAC assessed compensation vide Award No.23 dated 21.12.2004 and with the announcement of the award, the land owned and possessed by the respondents vested in the State of Haryana / HUDA and as such, there could not be a lawful agreement to the land in question between the parties and thus, prima-facie it appears that object of the alleged agreement stands frustrated. Certainly all these factors were required to be examined prima facie to decide the impugned application. Thus, prima-facie no case at all made out in favour of the petitioner and balance of convenience is also not in its favour as petitioner entered into alleged agreement knowing the status of the land and it is also not likely to suffer any irreparable loss because the monetary loss is not an irreparable loss as if later on, the petitioner is found entitled to the amount, it can recover the same from the respondents as per law. In the circumstances, facts of the authority cited by learned counsel for the petitioner are not applicable to the facts of the present case. Accordingly, finding no merits, the application filed by petitioner under Order 39 Rules 1 & 2 read with section 151 CPC is dismissed.”

15. As the petitions had been dismissed also on the ground of lack of territorial jurisdiction, the respondent filed another application

under Section 9 of the Act before this Court, which was eventually disposed of by an order dated 04.07.2014, granting liberty to the respondent to file an application under Section 17 of the Act before the Arbitrator.

16. The Arbitrator, by way of the Impugned Award has directed the petitioners to refund the sale consideration received by them under the Agreement to Sell along with interest @ 12% per annum from the date of the Agreement to Sell till the date of actual payment.

17. The learned senior counsel for the petitioners submits that the Impugned Award is liable to be set aside inasmuch as the claim of the respondent was barred by law of limitation. He submits that as per the pleadings of the respondent in the Statement of Claim, a case of fraud and misrepresentation was alleged against the petitioners. Infact, the Arbitrator has also passed his Award, upholding the contention of the respondent and finding the petitioners to be guilty of fraud and misrepresentation. Such fraud and misrepresentation, even assuming such a case to be made out, would have come to the knowledge of the respondent with the order passed by the High Powered Committee on 01.09.2008. The respondent had invoked the arbitration proceedings only on 19.02.2013 by issuing a notice under Section 21 of the Act. He submits that therefore, the claim of the respondent was barred by law of limitation. He further submits that even otherwise, the respondent was aware of the petitioners having filed a claim for enhanced compensation and thereafter the execution petition seeking recovery of such enhanced compensation before the Land Acquisition

Collector, but instead of filing a claim before the Arbitrator, the respondent chose to pursue its remedy before the Land Acquisition Collector by filing petitions under Section 30 of the Land Acquisition Act read with Section 47 of the CPC. The period of limitation could not have been extended by a mere filing of such application. He relies upon Section 17 of the Limitation Act, 1963 and Article 137 of the Schedule thereto.

18. Learned senior counsel for the petitioner further submits that the Arbitrator has completely erred in holding that the cause of action would accrue in favour of the respondent only on dismissal of such objections by the Land Acquisition Collector on 27.03.2012 and the final dismissal of the application under Section 9 of the Act by the learned Additional District Judge, Karnal on 24.05.2012. He submits that these orders can have no bearing on the accrual of the cause of action which had arisen way back in 2008 itself.

19. Learned senior counsel for the petitioners further submits that even otherwise, the claim of the respondent was barred by the principles of *res judicata*. He submits that the learned Additional District Judge, Karnal having held the Agreement to Sell to be illegal and the claim of the respondent to be barred by limitation, it was not open for the Arbitrator to have held otherwise.

20. On the other hand, counsel for the respondent submit that in terms of the Agreement to Sell, the respondent was entitled to receive the compensation for the land under the Land Acquisition proceedings. He submits that inspite of having received the complete

sale consideration from the respondent, the petitioners chose to file an application seeking enhancement of compensation under the Land Acquisition proceedings and thereafter to execute and recover the original and the enhanced compensation. On receiving knowledge of the same, the respondent filed an application/objections under Section 47 of the CPC read with Section 30 of the Land Acquisition Act before the Land Acquisition Collector. The respondent was therefore, pursuing its remedy in accordance with law. It is only on the rejection of such application by the Land Acquisition Collector on 27.03.2012, that the cause of action would accrue to the respondent to commence the arbitration proceedings against the petitioners. He submits that therefore, the arbitration having been commenced on 19.02.2013, was within the period of limitation.

21. The learned counsel for the respondent further submits that the plea of *res judicata* has absolutely no merit inasmuch as the order passed by the Additional District Judge, Karnal was on an application under Section 9 of the Act. He submits that an order passed on an interim application cannot act as *res judicata*. Even otherwise, the Additional District Judge, Karnal having held that he lacked territorial jurisdiction to entertain the said petition, could not have proceeded to make any observations on merit, much less those binding on the Arbitrator.

22. I have considered the submissions made by the learned counsels for the parties.

23. At the outset, certain averments made in the Statement of Claim filed by the respondent before the Arbitrator need a specific reference. In paragraph 12 of the Statement of Claim, the respondent described the accrual of cause of action in the following words:

“12. That the cause of action to file the present petition accrued when the Agreement to Sell, receipt and an agreement for appointment of Arbitrator was executed between the parties regarding the subject property. The cause of action further accrued when despite having transferred all his rights in the subject land in favour of the Claimant, the Respondent filed execution petition seeking the payment of compensation as well as the enhanced amount of compensation. The cause of action is still continuing as the respondents are not paying the sell consideration including compensation as well as the enhanced compensation with the compounding interest.”

24. A reading of the above would show that the respondent hinges the accrual of cause of action to the filing of the application by the petitioners seeking payment of compensation as well as enhanced compensation. The same, as noted hereinabove was filed in 2009.

25. Further reference is to be made to paragraph 7 of the Statement of Claim as this declares the basis for making of the claim before the Arbitrator. It is quoted hereinbelow:

“7. That at the time of the entering into the above said Agreement to Sell and executing the above said documents, the Respondent deliberately concealed the fact from the Claimant that Notification under Section 9

of the Land Acquisition Act has already been issued with respect to the Subject property and it was given to the Claimant in writing in the Agreement to Sell that Notifications only under Sections 4 & 6 of the Land Acquisition have been issued and that no proceedings of acquisition have been issued with regard to the subject property. In this way, the Claimant was cheated and trapped into obtaining the subject property. The Claimant was under genuine belief that since notice under sections 4 & 6 of Land Acquisition Act have been issued regarding the subject property and that since process of acquisition has not yet been initiated, therefore it agreed to purchase the subject property. However, later on the Claimant came to know that not only the process of acquisition under Section 9 of the Land Acquisition Act has been initiated, even the process of acquisition has been completed under Section 11 of the Land Acquisition Act and reference under Section 18 of the Land Acquisition Act has already been filed by the Respondent which further being referred to the Court of Ms. Shalini Singh, the then Additional District Judge, Karnal have already been decided and the amount of compensation to be paid to the Respondent has been enhanced vide award dated 11.5.2009 and the Respondents have also filed execution petition seeking payment of original as well as enhanced compensation. It is further submitted that since the claimant has no documents in his possession at this stage about the outcome of that proceedings therefore, he seeks and reserve his right to file the related documents at later stage when he will be able to get the same, however, he has definite knowledge about the same.”

26. A reading of the above paragraph would show that the respondent had based its claim on the alleged fraud by the petitioners in concealing the factum of passing of the Award and completion of acquisition proceedings from the respondent. The alleged fraud, if any, would have come to the knowledge of the respondent, if not earlier, then at least on 01.09.2008 with the order of the High Powered Committee on the representation of the respondent against the Land Acquisition proceedings. As provided in Section 17 of the Limitation Act, 1963, the period of limitation would begin to run on discovery of the fraud. Therefore, the cause of action in favour of the respondent would accrue on 01.09.2008. The respondent, as noted hereinabove, invoked the Arbitration Agreement on 19.02.2013, that is, beyond the period of limitation.

27. The orders passed by the Land Acquisition Collector under Section 30 of the Land Acquisition Act and/or the order passed by the learned Additional District Judge, Karnal on an application filed under Section 9 of the Act by the respondent could not have extended this period of limitation. If the cause of action is based on the fraud, the same as noted hereinabove, would have accrued on the discovery of the same.

28. As far as the submission of the learned counsel for the respondent, that in terms of the Agreement to Sell, the respondent is entitled to receive compensation and therefore, the cause of action would have accrued only on the rejection of the application of the Land Acquisition Collector, in my opinion the same again cannot be

accepted. The cause of action in that case would have arisen when the petitioners, in spite of having transferred the right to receive compensation to the respondent, had filed an application seeking enhancement of the compensation before the Land Acquisition Collector under Section 18 of the Land Acquisition Act or thereafter, on filing of the execution petition, seeking payment of such compensation and enhanced compensation. The respondent asserts that it was not aware of the filing of the above proceedings, however, in the Statement of Claim it is not alleged when it came to know of such proceedings. One fact which clearly emerges from the record is that it filed an objection against the execution proceedings on 26.05.2010, therefore, the knowledge of these proceedings has to precede this date. It was for the respondent to have clearly pleaded the date of knowledge of such proceedings. In any case, the filing of an objection against the execution petition of the petitioners or an application under Section 9 before the learned Additional District Judge, Karnal cannot again extend the period of limitation, once it has accrued in favour of the respondent.

29. It is also of importance to note that by the impugned Award, the Arbitrator has not awarded in favour of the respondent, the compensation received by the petitioner from the State Government / Land Acquisition authorities, in fact has awarded refund of Sale Consideration received by the petitioners from the respondent under the Agreement to Sell. The Award is based on the finding of the Arbitrator that the petitioners have played a fraud on the respondent

and induced the petitioner to enter into the Agreement to Sell through misrepresentation, and not on a finding of breach of the Agreement by the petitioners.

30. Be that as it may, the Arbitrator rejects the objection of the petitioners on the claim being barred by the limitation by holding as under:

“26. The High Powered Committee dismissed the representation of the Claimant on 05.09.2008. Thereafter the objection of the Claimant under Section 30 of the Land Acquisition Act was also dismissed on 27.03.2012. Thereafter, the Claimant filed Section 9 petition before the Ld. ADJ, Karnal for seeking the compensation awarded to the Respondents. The Ld. ADJ dismissed the Section 9 petition on 24.05.2012 and held that the land owned and possessed by the Respondents vested with the Govt and that there could not be a lawful agreement in favour of the Claimant for the land in question. From the above facts, it is evident that upto 2012, parties were making efforts to transfer land to the Claimant. In my opinion, the cause of action in favour of the Claimants for recovering the amounts paid to the Respondents arose for the first time when the Ld. ADJ dismissed the Section 9 petition of the Claimant and held that there could not be a lawful agreement between the Claimant and the Respondent as the Award had already been passed and the land did not vest with the Respondents. Until this time, the Claimant believed and was given an impression by the Respondents that the land was vesting with the Respondents and that they had every right to legally transfer the land to the Claimants. However, once the decision of the Ld. ADJ was rendered on the Section 9 petition, it became clear to the Claimant that no transfer of the land could take place in their favour, at that point in time, a right accrued in favour of the Claimant for recovering back the amounts paid to the Respondent. Thereafter, the Claimant within the prescribed time period, initiated the arbitration process in February 2013

in accordance with the arbitration agreement for recovering back the amounts paid to the Respondents. Therefore, the claims preferred by the Claimant are well within the period of limitation. I, therefore, reject the contention of the Respondents that the Claims preferred by the Claimant are barred by limitation. The Respondents have referred to several case laws in support of its contention regarding limitation. I do not dispute the proposition laid out in the various case laws cited and relied upon by the Respondents. However, the same has no applicability under the facts and circumstances of the present case”. (Emphasis Supplied)

31. A reading of the above would show that the Arbitrator has in fact proceeded on the basis that there was no dispute between the parties till 2012, when the Land Acquisition Collector rejected the application of the respondent. Infact, he holds that till that date the parties were making efforts to transfer the land to the respondent. This was not the case of the respondent itself. The Arbitrator has, therefore, rejected the submissions of the petitioners on a completely incorrect basis, which cannot be sustained.

32. Though, I am aware of the limitation on the power of the Court under Section 34 of the Act, the Arbitrator having proceeded on a completely incorrect basis and on a basis, which is not even contended by the respondent, such an Award cannot be sustained.

33. In view of the above, the Impugned Award is liable to be set aside. The petitions are allowed, with no order as to costs.

NAVIN CHAWLA, J

AUGUST 07, 2019/RN