

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.7870 OF 2019

(Ashok s/o Shrihari Jiwtode Vs. Additional Commissioner, Nagpur Division, Nagpur
and others)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.*

Court's or Judge's orders.

 Shri S.O. Ahmed, Advocate for Petitioner.
 Shri A.M. Balpande, AGP for Respondent Nos.1 to 3.
 Shri A.A. Kathane, Advocate for Respondent No.5.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 3rd JANUARY, 2020.

1] The petitioner has put-forth the following prayer
in clause (i):

- i) Call for the records of Arbitration Case No.2/ARB/2013-14 Mouza Malegaon (T) from Additional Commissioner Nagpur Division Nagpur and the Arbitrator under Section 3 G (5) of the National Highways Act, 1956 and modify the judgment and order dated 05/12/2015 passed in Arbitration Case No.2/ARB/2013-14 Mouza Malegaon (T), Additional Commissioner Nagpur Division Nagpur and the Arbitrator under Section 3 G (5) of the National Highways Act, 1956 (ANNEXURE-C) and thereby grant 30% solatium on the entire amount of compensation and 12% interest on the said amount from the date of notification till the date of award and 9% interest from the date of award till the date of actual realization of amount in the interest of justice.*

2] It is obvious that the petitioner is challenging an arbitral award directly by filing a writ petition in this Court. So also, the date of the arbitral award is 05.12.2015.

3] The learned Advocate appearing on behalf of the respondent no.5 submits that this writ petition would not be maintainable before this Court keeping in view Section 34 of the Arbitration and Conciliation Act, 1996. A statutory remedy is available and if this petition is beyond limitation, then even their challenge to the arbitral award would not be maintainable.

4] The Hon'ble Apex Court has recently held in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. v. Tuticorin Education Society & Ors.* 2019 SC Online that if a statutory remedy is available, the supervisory jurisdiction of this Court under Section 227 of the Constitution suffers a 'near total bar' and this Court should not entertain a Writ Petition. In the matter of *Genpact India Private Limited v. Deputy Commissioner of Income Tax and another* in Civil Appeal No.8945/2019 dated 22.11.2019, the Hon'ble Apex Court held that if a statutory remedy is available, even an admitted petition should be dismissed and the litigants should be relegated to the statutory remedy.

5] The learned Advocate for the petitioner submits that respondent no.5 acquiring authority under the National Highways Act, is considering payment of solatium at the rate of 30% by way of a uniform policy. The learned Advocate for respondent no.5 submits that he would be

taking instructions in such matters as to whether, considering the law laid down by the Hon'ble Apex Court in the matter of *Union of India and another v. Tarsem Singh and others* reported in (2019) 9 SCC 304, solatium is payable even to the persons like the present petitioner.

6] Considering the above, this petition is disposed off as being untenable under the writ jurisdiction. Respondent no.5 would maintain parity amongst similarly situated persons as like the petitioner and if the acquiring body intends to comply with the directions and conclusions drawn by the Hon'ble Apex Court in paragraph 52 of the Tarsem Singh (*supra*), the case of the petitioner would be considered, notwithstanding that this petition is disposed off.

(Ravindra V. Ghuge, J.)