

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

WRIT PETITION NO.6775/2018

Rushi D/o Gopal Agrawal

..V/s..

Special Land Acquisition Officer (General) and Competent Authority, Nagpur

AND WRIT PETITION NO.4513/2018

Komal D/o Gopal Agrawal

..V/s..

Special Land Acquisition Officer (General) and Competent Authority, Nagpur

AND WRIT PETITION NO.4515/2018

Rajesh S/o Ramkisan Mittal

..V/s..

Special Land Acquisition Officer (General) and Competent Authority, Nagpur

AND WRIT PETITION NO.4517/2018

Kajal D/o Gopal Agrawal

..V/s..

Special Land Acquisition Officer (General) and Competent Authority, Nagpur

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

Court's or Judge's orders

Shri P.R. Agrawal, Advocate for the petitioner.
Ms K.R. Deshpande, A.G.P. for respondent Nos.1 and 3.
Shri A.A. Kathane, Advocate for respondent No.2.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 14.1.2020.

1] At the request of the learned Advocate for the petitioner, W.P. Nos.4513/2018, 4515/2018 and 4517/2018 are taken on board and heard together.

2] The petitioner has put-forth the following

prayer in Clause (i):-

“i) Quash and set aside the impugned order dated 03/08/2017 passed by learned Additional Commissioner, Nagpur Division, Nagpur in Case No.56/ARB/2015-2016 Wagholi by which the application for condonation of delay in filing application under section 3G(5) of National Highways Act, 1956 was rejected (Annexure -D).”

3] 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.

4] The learned Advocate appearing on behalf of 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.

5] 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 litigant should be relegated to the statutory remedy.

6] The learned Advocate appearing on behalf of respondent No.2 Acquiring Body relies upon a judgment of the Hon'ble Apex Court in the matter of *Indian Farmers Fertilizer Cooperative Limited V/s. Bhadra Products*, **2018 (2) SCC 534** wherein the Hon'ble Apex Court has concluded that even an interim award would amount to an award and will have to be challenged by availing of the statutory remedy. The principles of limitation applicable to a regular award would equally apply to an interim or partial award.

7] 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.

8] 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.)

Tambaskar.