

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

ARBITRATION APPEAL (AA) NO.6/2019

Murlidhar s/o Suganchand Agrawal and another

...Versus...

Secretary, Government of India, Ministry of Shipping, Road Transport and
Highways, New Delhi and others

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

Court's or Judge's orders

Shri Sunil V. Manohar, Sr. Counsel with Shri H.R. Gadhia, Counsel for appellants
Shri A.A. Kathane, Counsel for respondent no.2
Mrs. Geeta Tiwari, AGP for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 27/02/2020

1. Shri Kathane, learned Counsel for the respondent no.2 submits that he has no instructions as on date regarding filing of curative petition before the Hon'ble Apex Court, as recorded in the order dated 6/2/2020 and therefore, the matter can be heard.

2. Heard Shri Sunil Manohar, learned Senior Counsel with Shri Gadhia, learned Counsel for the appellants, Shri Kathane, learned Counsel for the respondent no.2 – National Highways Authority of India (N.H.A.I.) and Mrs. Tiwari, learned Assistant Government Pleader for respondent nos.3 and 4. None appears for the respondent no.1.

3. The facts necessary for deciding this appeal are as under :-

(a) The appellants are the owners of land admeasuring 0.02. HR situated at Mouza Kapsi, Nagpur Rural.

(b) On 21/9/2009, a notification under Section 3-A of the National Highways Act (for short, “the N.H. Act”), came to be published expressing the intention of the respondent no.2 to acquire the said land.

(c) Notice under Section 3-D of the N.H. Act came to be published on 13/10/2010.

(d) On 31/10/2012 the respondent no.4 – Land Acquisition Officer passed an award granting compensation of Rs.66,000/- for the above said land.

(e) An application under Section 3-G (5) of the N.H. Act came to be filed by the appellants, claiming solatium and interest at 30% in addition to the enhancement of the rate.

(f) The Arbitrator on 17/7/2015, passed an award, enhancing the compensation to Rs.6,18,400/- and granting 10% additional amount under Section 3-G (2) of the N.H. Act for loss of easementary rights and interest at 9% per annum w.e.f. 13/10/2010. The Arbitrator, however, did not grant solatium as claimed.

(g) An application under Section 34 of the Arbitration and Conciliation Act, 1996 was filed by the

respondent no.2 – N.H.A.I. before the District Judge, Nagpur challenging the award passed by the Arbitrator, dated 17/7/2015. An application under Section 34 of the Arbitration and Conciliation Act was filed by the appellants against the refusal of the relief claiming grant of solatium.

(h) In proceedings under Section 34 of the Arbitration and Conciliation Act, an application under Order 41 Rule 22 read with Rule 33 of Code of Civil Procedure came to be filed by the present appellants claiming that the Arbitrator had committed a mistake in not granting solatium.

(i) The application under Section 34 of the Arbitration and Conciliation Act as filed by the respondent no.2 came to be rejected by the learned District Judge, confirming the enhancement of compensation and other reliefs, as granted by the Arbitrator.

(j) The application under Order 41 Rule 22 read with Rule 33 of the Code of Civil Procedure, as filed by the present appellants claiming solatium also came to be rejected.

(k) The present appeal under Section 37 of the N.H. Act has been filed by the appellants against the rejection of the claim for solatium.

4. It is contended by Shri Manohar, learned Senior Counsel for the appellants, by relying upon the judgment of the Hon'ble Apex Court in the case of **Union of India and**

another Vs Tarsem Singh and others, reported in *(2019) 9 Supreme Court Cases 304* and specifically on paragraph no.52, that the declaration of law as made by the Hon'ble Apex Court to the effect that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23 (1-A) and (2) and interest payable in terms of proviso to Section 28 of the Land Acquisition Act, 1894, will apply to applications made under the National Highways Act is a law, which would equally apply to the present appellants. He further contends that even if no application under Section 34 of the Arbitration and Conciliation Act was filed by the appellants, in light of the observations in paragraph no.52 of the Judgment in *Tarsem Singh* (Supra) the same would not create any obstruction in the right of the appellants to have solatium.

5. By placing reliance upon the judgment of the Hon'ble Apex Court in the case of *Narain Das Jain Vs Agra Nagar Mahapalika, Agra*, reported in *(1991) 4 SCC 212* specifically paragraph nos.7, 9 and 10 he contends that solatium is an integral part of the compulsory nature of acquisition and therefore, once the Hon'ble Apex Court holds that the provisions of Section 23 (1-A), (2) and 28 of the Land Acquisition Act are applicable to proceedings under the N.H. Act, it would be obligatory on the part of the respondent no.2 to grant solatium and other reliefs as contemplated and provided for by the above provisions.

6. Shri Kathane, learned Counsel for the respondent no.2 on the other hand, contends that since an application under Section 34 of the Arbitration and Conciliation Act was not filed by the appellants, it would not be permissible for the appellants to raise the plea of non-grant of solatium before this Court. He further contends that the application under Order 41 Rule 22 read with Rule 33 of the Code of Civil Procedure cannot be said to be a replacement of the application under Section 34 of the Arbitration and Conciliation Act, 1996, more so, in light of the limitation as provided under Section 34 (3) of the Arbitration and Conciliation Act. He further contends that the application under Order 41 Rule 22 read with Rule 33 of Code of Civil Procedure was filed after a year, in light of which also, the rigour of Section 34 (3) of the Arbitration and Conciliation Act would come in its way to be entertained by the Court. He further contends that in light of the judgment in the case of *Golden Iron & Steel Forgings Vs Union of India & others*, and *Sunita Mehra and another Vs Union of India and others*, reported in *2016 (8) SCALE 582* the cut-off date was 28/3/2008 and in the instant case, the notification is of a later date, i.e., 21/9/2009 and therefore, the finding as rendered by the Principal District Judge, Nagpur in paragraph no.18 of the impugned order, cannot be faulted with.

7. Shri Kathane, learned Counsel for the respondent no.2 in all fairness admits that the appellants are entitled for solatium, in light of the judgment of the Hon'ble Apex Court in ***Tarsem Singh*** (Supra).

8. Having heard learned Counsel for the parties, it is pertinent to note that the claim for solatium was already made by the appellants in the application under Section 3-G (5) of the National Highways Act, which is of December, 2013.

9. The nature of solatium, has been enunciated by the Hon'ble Apex Court in paragraph nos.6 and 7 in ***Narain Das Jain*** (Supra) as under :-

“6.Solatium, as the word goes, is “money comfort”, quantified by the statute, and given as a conciliatory measure for the compulsory acquisition of the land of the citizen, by a welfare State such as ours.

7. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by

the court “in every case” leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.”

10. It is, thus, apparent that solatium is an integral part of the compulsory nature of acquisition and has a statutory mandate in Section 23 (2) of the Land Acquisition Act, 1894, which the Hon’ble Apex Court has held to be applicable to acquisition under the National Highways Act, in the case of **Tarsem Singh** (Supra). Thus, the grant of solatium, would clearly be a statutory obligation of the authorities, namely, the Land Acquisition Officer, whether the land owner demands it or not. That being the position, the solatium ought to have been granted by the Arbitrator himself, however, in absence of judicial pronouncement, which came later in **Tarsem Singh’s** case, he could not have done so. The dictum in **Tarsem Singh’s** case, however, clearly covers the issue that the appellants are entitled for grant of solatium. It is material to note that the learned Counsel for the respondent no.2 has conceded to this position regarding

entitlement of the appellants for solatium, in the light of the mandate of Hon'ble Apex Court in ***Tarsem Singh's*** case.

11. That takes me to the argument that in absence of an application under Section 34 of the Arbitration and Conciliation Act, 1996 the plea regarding non-grant of solatium cannot be considered in these proceedings, more so, when the learned Principal District Judge, Nagpur has rejected the application under Order 41 Rule 22 read with Rule 33 of the Code of Civil Procedure, as filed by the appellants. Paragraph no.52 in ***Tarsem Singh's*** case, cited supra, is relevant in this context, which is quoted as under :-

“52.This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the

Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23 (1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional Accordingly, appeal arising out of SLP (C) No.9599 of 2019 is dismissed.”

12. That being the position, I do not think that non-filing of an application under Section 34 of the Arbitration and Conciliation Act, 1996 would create a bar in the appellants in filing the present appeal or further in raising the issue of non-grant of solatium.

13. In fact, the dictum in **Narain Das Jain** (Supra) to the effect that since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the Court to award and supply the omission at any stage where the Court gets occasion to amend or rectify and that this is the provision, wherever made, is squarely applicable in the present matter.

14. Further, the impugned order passed by the learned Principal District Judge, Nagpur in the proceedings under Section 34 of the Arbitration and Conciliation Act

considers the application under Order 41 Rule 22 read with Rule 33 of the Code of Civil Procedure, as filed by the appellants and rejects the same not on the ground of its maintainability but on account of the claim for compensation being made consequent to the cut-off date in ***Golden Iron & Steel Forgings*** (Supra).

15. In that light of the matter, once the learned Principal District Judge, Nagpur has entertained that application and rendered a finding, in its jurisdiction under Section 34 of the Arbitration and Conciliation Act, it would be permissible for the appellants to file an appeal under Section 37 of the Arbitration and Conciliation Act, raising the grievance for non-grant of solatium. Even otherwise, in light of the dictum of the Hon'ble Apex Court, as contained in paragraph no.52 of the judgment in ***Tarsem Singh's*** case, this argument, is clearly not available to the respondent no.2, who was a party to the proceedings therein and is, thus, bound by the statements, as made and recorded therein.

16. The argument by Shri Kathane, learned Counsel for the respondent no.2 that the cut-off date as indicated in ***Golden Iron & Steel Forgings*** (Supra) was 28/3/2008 and the notification in the instant case was later in point of time, i.e., dated 21/9/2009 and therefore, the dictum, as laid down therein was inapplicable, does not hold water, for the reason that once the provisions of the Land Acquisition Act in relation of solatium and interest are held to apply to

acquisitions made under the National Highways Act, the cut-off date loses its significance as by virtue of the dictum in *Tarsem Singh's* case the provisions of Section 23 (1-A) (2) and Section 28 Land Acquisition Act will have to be held to be applicable to all proceedings initiated under the National Highways Act irrespective of the date.

17. That being the position, there is no merit in the submissions made by learned Counsel for the respondent no.2. The arbitration appeal, therefore, succeeds and it is held that the appellants are entitled for solatium and other reliefs, as per paragraph no.52 of the judgment in the case of *Tarsem Singh* (Supra). The reliefs to which the appellants are entitled to be calculated and paid to the appellants, within a period of six months from today.

The arbitration appeal is accordingly disposed of.
No order as to costs.

JUDGE