

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-5104-2015 (O&M).
Date of Decision:- 27.11.2020.

Renu Mehra and others

..... Appellants.

Versus

National Highway Authority of India

..... Respondent.

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Argued by: Mr. Vikas Bahl, Senior Advocate, with
Mr. Nikhil Sabharwal, Mr. Naresh Kaushal and
Mr. Vikram Rathore, Advocates for the appellants.

Mr. Puneet Bali, Senior Advocate, with
Mr. Raghujeet Singh Madan and Mr. Irshan Singh Kakkar,
Advocates for the respondent.

SANJAY KUMAR, J. (Oral):

CM-7233-CII-2020 filed by the respondent-National Highway Authority of India to take up this appeal for rehearing is allowed to that limited extent. CM-7479-CII-2020 filed by the appellants for interim enhanced compensation is rendered infructuous in the light of this final order and is accordingly dismissed as such. CM-8035-CII-2020 filed by the appellants is allowed only to the extent of taking on record their reply but not the new documents filed therewith.

Rehearing of this appeal was taken up pursuant to the order dated 11.02.2020 passed by the Supreme Court in Civil Appeal Nos.1432 and 1433 of 2020. By the said order, the Supreme Court set aside the final order dated 26.10.2016 passed by this Court in the present appeal as well as the order dated 10.05.2018 passed in Review Application No.24-CII-2018 filed therein and remitted the matter for hearing afresh. This remand was occasioned by the fact that the final order dated 26.10.2016 was passed in the appeal without formal notice to the respondent, the National Highway Authority of India (for brevity, 'the NHAI').

This appeal arises under Section 37 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996'). It was filed against the order dated 06.01.2015 of the learned Additional District Judge, Amritsar, in Arbitration Case No.9 of 2012. This was a petition filed by the appellants herein under Section 34 of the Act of 1996 to set aside the Arbitral Award dated 15.11.2011 of the Deputy Commissioner, Amritsar, who was appointed as the Arbitrator under Section 3 G(5) of the National Highways Act, 1956 (for brevity, 'the Act of 1956'). By the said Arbitral Award, the Arbitrator dismissed the plea of the appellants herein to enhance the compensation granted to them under Award No.18 dated 31.05.2010 of the Sub-Divisional Magistrate-cum-Land Acquisition Collector, Amritsar. This compensation was awarded to them for the acquisition of their land in Village Verka, District Amritsar, under the provisions of the Act of 1956.

Pertinent to note, before the institution of this appeal, FAO Nos.8650 and 8090 of 2014 were filed before this Court by other

landowners affected by this acquisition, who were also dissatisfied with the quantum of compensation awarded to them. FAO No.8650 of 2014 was filed by Tejpal Singh and others while FAO No.8090 of 2014 was filed by Nirmal Kumar and others. The objections filed by these persons under Section 34 of the Act of 1996, in relation to the compensation awarded to them under the very same Award No.18 dated 31.05.2010 and confirmed by the Arbitral Award dated 15.11.2011, were rejected by the learned Additional District Judge, Amritsar, *vide* orders dated 21.03.2014. The acquired lands of these persons fell in Categories A and B, unlike the appellants in the case on hand, whose land falls in Category C, as determined by the Sub-Divisional Magistrate-cum-Land Acquisition Collector, Amritsar, in his Award No.18 dated 31.05.2010.

By common order dated 19.05.2016, a learned Judge of this Court allowed both the aforestated appeals applying the compensation rate of ₹ 20,000/- per square yard determined under Award No.1 dated 17.02.2009, on the ground that the acquired lands under both the Awards were identical. In consequence, the learned Judge held that the appellants in FAO No.8650 of 2014 were entitled to compensation @ ₹ 20,000/- per square yard and the appellants in FAO No.8090 of 2014 were entitled to compensation @ ₹ 30,000/- per square yard, with all statutory benefits. Thereafter, the appellants in FAO No.8650 of 2014 filed a review application therein, in RA-CR-213-CII-2016, contending that the appellants in FAO No.8090 of 2016 whose lands were in Category B had been

awarded ₹ 30,000/- while they had been awarded only ₹ 20,000/- per square yard, though their lands were in Category A. The learned Judge thereupon passed order dated 05.09.2016, allowing the review application and enhancing the compensation payable to the appellants in FAO-8650-2014 to ₹ 30,000/- per square yard. Again, by common order dated 20.12.2017 passed upon the NHAI's review applications in FAO Nos.8090 and 8650 of 2014, and also FAO No. 2848 of 2016 filed by Sunil Kumar and others, the learned Judge held that the landowners were entitled to only 30% increase on the compensation rate of ₹ 20,000/- per square yard fixed in Award No.1 of 2009 and uniformly reduced the rate to ₹ 26,000/- per square yard.

In the meanwhile, on 26.10.2016, when the present appeal came up before the same learned Judge, it was disposed of in terms of the order dated 05.09.2016 passed in RA-CR-213-CII-2016 in FAO-8650-2014, awarding compensation to the appellants @ ₹ 30,000/- per square yard. Thereafter, RA-CR-24-CII-2018 came to be filed by the NHAI to review the order dated 26.10.2016 in the light of the later order dated 20.12.2017 passed in the review applications filed in the other appeals. This application was ordered by the learned Judge on 10.05.2018 and the compensation rate applicable to the appellants was also reduced to ₹ 26,000/- per square yard. As stated *supra*, the aforestated two orders were set aside by the Supreme Court on the short ground that the respondent-NHAI was not put on notice prior to the initial disposal of the appeal.

During the rehearing of this appeal, much stress was laid on the fact that the Supreme Court dismissed the appeals filed by the NHAI against the orders passed in the connected appeals and it was contended that the rate of compensation adopted in those matters should be applied to the appellants also. However, in its order dated 11.02.2020, the Supreme Court not only expressed grave reservation about the manner in which the NHAI prosecuted the case relating to the acquisition in different proceedings but also made it clear that this appeal should be decided on its own merits and that all points of law and fact were left open for consideration by this Court. That being so, this Court is not persuaded to agree with the contention of Mr. Vikas Bahl, learned senior counsel, that determination of the rate of compensation in the other appeals would be of guiding value, much less, binding value. No doubt, the Supreme Court observed in para 8 of the remand order that if this appeal could not be taken up immediately, some interim arrangement, based on the Award of the Collector and the orders passed in other matters, may be considered by this Court for releasing suitable enhanced compensation on terms. However, consideration of the orders passed in the other matters was limited only to this restricted purpose and the said orders were not to be of any guidance for adjudication of the main appeal. This is clear from para 9 of the remand order, which categorically records that this appeal is to be decided on its own merits and that all points of law and facts were available to both sides to urge before this Court.

It is also relevant to note that in its order dated 27.09.2019 passed in Review Petition (Civil) No.823 of 2019 in SLP (Civil) No.9063 of 2018 arising out FAO No.2848 of 2016 filed by Sunil Kumar and others, the Supreme Court refused to interfere on the sole ground that the landowners had already received the compensation and would have utilized the same. The Supreme Court further observed that as the SLP pertaining to the appellants herein was still pending consideration, the aspects raised by the NHAI could always be examined in those proceedings, as the same would have a further cascading effect on a large number of lands. The review petition was accordingly closed with liberty to the NHAI to urge those contentions in the appellants' case. Significantly, one of the contentions raised by the NHAI before the Supreme Court was that a parameter of proximity of the area had been applied even though all the lands were not being used for the same purpose and the net effect thereof was that commercial rate had been applied to non-commercial lands.

Therefore, no seal of approval was affixed to the determination of the rate of compensation in the other appeals, whereby any precedential value can be attached thereto. *Ergo*, this appeal has to be considered on its own merits, independent of the result and the conclusions in the other appeals arising out of the same acquisition.

Coming to the facts, the appellants owned an extent of land admeasuring 61 kanals and 17 marlas, bearing Khewat Khatauni Nos.78/1286, 959/1269, 984/1294, Khasra Nos.168/1/2, 2/1/2, 2/2, 9/1, 2/1/1, 1/3, 10, 11, 155/18, 22/2, 22/3, 23/1, 23/2, 169/6, 7, 15/1, 15/2 and

155/27 in Village Verka, Tehsil and District Amritsar. Of this, 42 kanals and 19 marlas were notified for acquisition for the widening and four-laning of the Pathankot-Amritsar National Highway (NH) No.15, from Km. 97.700 to Km. 102.860, running through three villages in District Amritsar. The notification under Section 3 A(1) of the Act of 1956 was issued on 23.05.2008. The declaration under Section 3 D was published in the Gazette dated 13.05.2009. The total extent of land acquired for the widening of NH No.15 from Km. 6.082 to Km. 108.502 is stated to be about 122 acres.

The Sub-Divisional Magistrate, Amritsar, was nominated as the Competent Authority-cum-Land Acquisition Collector (for brevity, 'the CALA') under Section 3 (a) of the Act of 1956 and he determined the compensation payable for the acquired lands in Village Verka, *vide* Award No.18 dated 31.05.2010. Thereunder, he categorized the acquired lands under 9 heads – Category A to Category I. Category A comprised lands with running commercial industries. Category B covered commercial plots on NH No.1 that were being used as godowns, offices or for small businesses. Category C consisted of agricultural plots adjoining Category B lands which had future commercial potential, such as for establishment of Engineering Colleges etc. Categories D to I comprised agricultural lands, demarcated on the basis of their location.

The CALA also took note of temporally proximate land acquisitions in Amritsar District, including the acquisition of land in Village Verka for widening of NH-1 under Award No.1 of 2009 dated 17.02.2009. Compensation was awarded thereunder at the rate of ₹ 20,000/- per square

yard (₹ 9.6 crore per acre) for commercial land. The rate for such commercial land was fixed on the strength of the Collector's rate for commercial land on the main Batala Road of Village Verka. The rate fixed for agricultural land thereunder is of no relevance.

The CALA noted that the land that was being acquired for NH-15 was of a peculiar nature as it involved all types of land – agricultural, commercial and land with commercial potential. He further noted that as one moved on NH-15, Verka was the first town within the limits of the Municipal Corporation, Amritsar, and that it had seen tremendous growth in commercial/industrial activities in the last 30 years. He also took note of the various industrial units that were established and operating there. He noted that when one moved from Village Mudhal on the proposed Verka By-pass towards NH-1 Verka-Vallah By-pass, the rates of agricultural land increased in a gradual manner and that this area was witnessing the development of residential townships by reputed builders. He observed that the sale deeds which were made the basis for determining compensation in Award No.1 of 2009 dated 17.02.2009 were, in fact, for lands bought by such builders for setting up townships while the sale deeds dated 16.11.2007 were for lands which were approximately 20 acres away from the main NH-1 By-pass. He observed that when one moved from Verka to Vallah on the main NH-1, on the right side of the highway there existed industrial units of Swadeshi Woolen Mills and NMT Textile Mills, Dharam Kanda and godowns and, therefore, the land on the right side was

totally commercial in nature. He noted that the Collector's rate for commercial land for 2006-07 for the land situated on Batala Road was ₹ 20,000/- per square yard (₹ 9.60 crore per acre) and for other commercial areas, it was ₹ 6,000/- per square yard (which was stated to work out to ₹ 2.88 crore per acre, though it falls short mathematically). He further noted that rates had not been fixed for commercial lands situated on NH-1 By-pass and observed that the Collector's rate for the area on the right side of NH-1 By-pass should have been fixed as it was more important and commanded a higher market price as compared to lands situated in the *abadi* of Verka away from NH-15 and lands situated on main NH-15. He adopted the Collector's rate for the year 2006-07, viz., ₹ 6,000/- per square yard, for the land not situated on the main road as the base point for calculating the compensation payable to affected landowners on the right side of NH-1 Verka-Vallah By-pass. It is in this context that he remarked that the Collector's rates were approximately 50% of the market rates. He, therefore, added a 10% annual increase to arrive at the Collector's rate for the year 2008-09 in addition to 30% solatium and 12% additional interest for these lands. He noted that on the right side of this By-pass there were also factories and commercial plots as well as some agricultural lands, abutting NH-1, and divided the rates under 3 heads - Categories A to C. Opposite to the land on the right hand side, he noted that the land on the left hand side also had commercial potential, being situated between factories and DAV International School on the main NH-1. This land was also included by him

in Category C, subject to having frontage on main NH-1 till the last point. The appellants' land fell in this category.

The CALA extended the Collector's rate of 2006-07, viz., ₹ 6,000/- per square yard to Category A lands and applying 10% annual rise plus 30% solatium and interest @ 12%, the land cost was fixed at ₹ 9,000/- per square yard. Further, damages @ ₹ 3,000/- per square yard were awarded under Section 3 G(7) of the Act of 1956, bringing the compensation rate applicable to this commercial land to ₹ 12,000/- per square yard (quantified at ₹ 5.76 crore per acre, though not mathematically so). Category B included godowns, offices and the Dharam Kanda. The CALA awarded the same base rate of ₹ 9,000/- per square yard (quantified at ₹ 4.32 crore per acre, though not mathematically so) as compensation for this category.

Coming to Category C lands, the CALA observed that this category included agricultural land adjoining Categories B and C lands on the right hand side and land with commercial potential having frontage on the left hand side of NH-1 Verka-Vallah By-pass up to the depth of 3 acres or the last point of plots of the front land holders. He applied the Collector's rate for commercial land for the year 2006-07 to this land, viz., ₹ 6,000/- per square yard (which was stated to work out to ₹ 2.88 crore per acre, though not mathematically so). He also awarded easement money, as per Section 3 G(2) of the Act of 1956, @ 10% of the compensation.

Dissatisfied with the compensation awarded by the CALA, the appellants moved an application under Section 3 G(5) of the Act of 1956. Therein, they asserted that their land was not agricultural and that it was industrial and commercial in nature. They claimed that it had been purchased by them for expansion of the industrial unit and that it was an industrial plot. According to them, this land adjoined the property wherein industries, in the name and style of M/s Shree Ganapati Creations and M/s Kashika Trading Company, were being run. Renu Mehra and Mani Mehra, the first and second appellants herein, were stated to be partners in Shree Ganapati Creations while Mani Mehra, the second appellant, was stated to be a partner in Kashika Trading Company. The third, fourth, fifth and sixth appellants were stated to be whole-time working employees of these concerns. They claimed that the acquired land was a compact piece having access from the main road and the primary objective in purchasing it was to set up an industrial unit as part of the expansion plan of the existing units. They further claimed that they had entered into an agreement on 01.04.2008 in this regard and had made all requisite preparations for setting up the unit in the acquired land. They claimed that they had sought quotations from companies situated abroad for purchase of machinery. They asserted that all relevant paper work for the purpose of raising constructions over the land in question had already been done but installation of the industry could not be carried out on account of the acquisition. They stated that the land in the vicinity was the hub of industrial and commercial

activities and claimed that the acquired land had a lot of potential on account of its location.

The appellants also referred to Award No.1 of 2009 dated 17.02.2009, whereunder the compensation was pegged at ₹ 20,000/- per square yard (₹ 9.68 crore per acre) and claimed that their land was also situated on the main By-pass road and had more commercial potential. According to them, their land was as good as the land mentioned in Category A and the market rate of the land would be not less than ₹ 35,000/- per square yard. They claimed that the balance 18 kanals and 18 marlas of their land that was left after the acquisition lost its prime value and utility and sought compensation therefor under Section 3 G(7)(b) of the Act of 1956 @ 75 % of the rate fixed for the acquired land. They also sought damages due to relocation and shifting of their business from the existing place under Section 3 G(7)(c) of the Act of 1956 to the tune of ₹ 50,00,000/- on account of loss of earnings and a sum of ₹ 50,00,000/- towards incidental charges, due to change of place of business, under Section 3 G(7)(d).

However, by Arbitral Award dated 15.11.2011, the Deputy Commissioner, Amritsar, rejected their pleas. Therein, he noted the contents of Award No.18 dated 31.05.2010 passed by the CALA and more particularly, the fact that the land in question was treated as commercial land under Category C, whereby compensation @ ₹ 2.88 crore per acre had been determined. He also examined the record of the Patwari Halqa and

found that the land in question was agricultural in nature and situated 01 quila away from Verka-Vallah By-pass and was lying vacant, as no industry was situated nearby. He opined that as per the location and situation of the land, it fell in Category C and the rate of compensation was rightly fixed. He noted that the rate of ₹ 30,000/- per square yard was not applicable to the land in question and that all necessary aspects about the acquired land had been considered while fixing the rate of compensation in the Award. He also noted that the CALA had considered the objections raised by the parties and had personally inspected the acquired lands to determine the factual position. He accordingly held that there was no cause made out for enhancing the compensation and dismissed the application.

Aggrieved by the aforestated nil Award dated 15.11.2011, the appellants filed Arbitration Case No.9 of 2012 before the learned Additional District Judge, Amritsar, under Section 34 of the Act of 1996 to set it aside and to allow their claim for enhancement. Therein, they contended that the compensation awarded by the CALA was inadequate and that the Arbitrator had erred in rejecting their claim for enhancement. They contended that the objections and pleas raised by them had not been considered in the proper perspective and that their land was not agricultural but, rather, industrial and commercial in nature. They referred to various documents, which were stated to have been filed before the Arbitrator, and asserted that these documents clearly established that their land was an industrial land and not agricultural land. They pointed out that their land abutted the Verka-Vallah By-pass and claimed that the market rate thereof would be not less than

₹ 35,000/- per square yard. They prayed for setting aside of the Award dated 15.11.2011 and to allow their claim petition under Section 3 G(5) of the Act of 1956.

Only one witness was examined by the appellants before the learned Additional District Judge, Amritsar, viz., Gian Chand, the husband of Renu Mehra, the first appellant herein. All the appellants jointly executed Special Power of Attorney dated 17.04.2013 in his favour authorizing him to appear on their behalf in relation to the acquisition. Gian Chand filed an affidavit in lieu of chief-examination. Therein, he referred to the aforesaid power of attorney, which was marked as Ex. A-1. He claimed that the appointment of the Arbitrator was vitiated as the consent of the landowners was not obtained; that a proper opportunity of hearing was not afforded to them; that the Arbitrator erred in failing to frame issues; and in rendering a non-speaking Award. He further stated that the objections and pleas raised by the appellants had not been considered and that their land was not agricultural but, rather, industrial and commercial in nature. He referred to the documents mentioned *supra* and claimed that the same established that the land was an industrial land and not agricultural land. Surprisingly, he claimed that copies of the documents were filed but the learned Additional District Judge, Amritsar, recorded in his order that only Ex. A-1 was filed by the appellants and no further evidence was led by them. Gian Chand asserted that the market rate of the land would be not less than ₹ 35,000/- per square yard.

In his cross-examination, Gian Chand stated that the subject land was purchased in the year 2003. He admitted that he had not brought the original sale deeds with him or placed the same on record. He claimed that he did not remember the consideration for which the sale deeds were gotten executed by him. He admitted that the CALA had visited the spot prior to fixation of the compensation amount and that compensation was awarded at commercial valuation. He stated that the same was in accordance with the market value but asserted that it was wrong to suggest that the Collector's rate at that time was ₹ 2.88 crore per acre. He admitted that the compensation had been awarded at that rate and claimed that it was received under protest. He admitted that the property under acquisition was a vacant plot but claimed that a boundary wall had been erected around the same.

By order dated 06.01.2015, the learned Additional District Judge, Amritsar, dismissed the objections raised by the appellants under Section 34 of the Act of 1996. Therein, he observed that the scope of inquiry under Section 34 of the Act of 1996 was limited as he could not sit as an appellate authority to re-appreciate the evidence. Referring to case law in this regard, he noted that he could not substitute his own evaluation on facts. The learned Judge observed that the Arbitrator had considered all the pleas/objections raised and had given reasons for his decision. He noted that law did not require the Arbitrator to frame issues or write a judgment on par with a Court of law and observed that that once intelligible reasons were given in support of the conclusions, the sufficiency of such reasons could not be gone into. He adverted to the fact that the nature of the land had been

considered on the basis of the revenue record, whereby the Arbitrator agreed with the CALA on the rate of compensation. He also noted that Gian Chand (AW-1) had conceded that the CALA had visited the spot prior to determining the compensation and that he admitted that the compensation had been awarded on commercial valuation of the property in accordance with the market value.

Further, the learned Additional District Judge drew an adverse inference from Gian Chand's claimed ignorance of the sale consideration paid in the year 2003 for the acquired land and his failure to produce the sale deeds. He observed that this amounted to intentional withholding of documents so that the price at which the acquired land was purchased in the year 2003 should not come on record. He noted that there was no evidence adduced to prove that the market price of the land would be ₹ 35,000/- per square yard or that the compensation awarded was inadequate. He accordingly held against the appellants and rejected their petition.

It is against the aforestated order dated 06.01.2015 that the present appeal was preferred under Section 37 of the Act of 1996.

At this stage, it may be noted that acquisition of land for the NHAI under the provisions of the Act of 1956 is not to be treated on par with acquisition of land for other public purposes, under regular land acquisition laws, in all respects. A separate procedure has been provided under the Act of 1956 and only that procedural scheme requires to be adhered to in true letter and spirit.

This fact was recognized by the Supreme Court in its decision dated 27.08.2019 in **National Highways Authority of India vs. Sayedabad Tea Company Limited and others [2019 SCC OnLine SC 1102]**. Therein, a 3-Judge Bench of the Supreme Court observed that the Act of 1956 is a comprehensive code in itself and was a special legislation enacted by the Parliament for the acquisition and determining of compensation and its disbursement in accordance with the mechanism provided under Section 3G of the Act of 1956. The earlier view of a 2-Judge Bench of the Supreme Court, in **General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. Vs. Prakash Chand Pradhan and others (Civil Appeal No. 5250 of 2018, decided on 16.05.2018)**, to the effect that the Act of 1956 is a special enactment and that Section 3G therein provides an inbuilt mechanism for appointment of an Arbitrator by the Central Government, was approved and affirmed. The Supreme Court further observed that the Act of 1956 was enacted under Entry 23 of the Union List in the Seventh Schedule to the Constitution, which conferred exclusive power to legislate with respect to national highways and that it was a comprehensive code, being a special enactment which provided an inbuilt mechanism not only for initiating acquisitions but also culmination of the proceedings in determining the compensation and its adjudication by the Arbitrator to be appointed by the Central Government, and if parties still remain dissatisfied, by a Court of law. The Supreme Court also referred to Section 3 J of the Act of 1956,

which eliminated the application of the Land Acquisition Act, 1894, to the acquisitions made under the Act of 1956.

However, it may be noted that in **Union of India and another vs. Tarsem Singh and others [(2019) 9 SCC 304]**, a decision rendered a few days later, viz., on 19.09.2019, the Supreme Court held that Section 3 J of the Act of 1956, to the extent it excluded the provisions of the Land Acquisition Act, 1894, relating to payment of solatium and interest to acquisitions made under the Act of 1956, was violative of Article 14 of the Constitution and declared it unconstitutional.

The above decision however did not make other procedures obtaining under the Land Acquisition Act, 1894, applicable to acquisitions under the Act of 1956 or to determination of the compensation payable thereunder.

Though the aforestated observations in **General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. Vs. Prakash Chand Pradhan and others (supra)** were made in the context of appointment of an Arbitrator under Section 3 G(5) of the Act of 1956 and the inapplicability of Section 11 of the Act of 1996 in that regard, they are indicative of the exclusivity given to the procedure adumbrated by the Act of 1956, a special enactment, that would override the procedure prescribed under the general law.

Under Section 3 G, the entire gamut of issues arising in relation to compensation payable under the Act of 1956 has been covered. The

competent authority designated under Section 3 (a) of the Act of 1956 is required to determine the compensation payable for the acquisition under sub-sections (1) and (2) of Section 3 G. If the amount so determined is not acceptable to either of the parties, Section 3 G(5) provides that upon an application made by such party, the compensation shall be determined by the Arbitrator to be appointed by the Central Government. Section 3 G(6) states that, subject to the provisions of the Act of 1956, the Act of 1996 would apply to every arbitration under the Act of 1956. Section 3 G(7) enumerates the factors that should be taken into consideration by the competent authority/Arbitrator while determining the compensation.

It is therefore clear that, to the extent the Act of 1956 is silent on issues pertaining to the arbitration undertaken under Section 3 G(5), the Act of 1996 would apply. In consequence, if either party is aggrieved by the determination of compensation by the Arbitrator under Section 3 G(5), its remedy would be under Section 34 of the Act of 1996, *viz.*, by way of a petition to set aside the said Award on any of the grounds set out in Section 34 itself. This aspect stands settled by the fact that, in **Union of India and another vs. Tarsem Singh and others (*supra*)**, the Supreme Court refused to examine issues that were not raised or argued in the petitions filed under Section 34 of the Act of 1996 and dismissed appeals on that sole ground.

Once an order is passed upon a petition filed under Section 34, it would be appealable under Section 37 of the Act of 1996.

Fairly well settled are the parameters of the scope of interference by the Court, be it upon a petition filed under Section 34 of the

Act of 1996 or an appeal filed under Section 37 thereof. The scope of such proceedings cannot be equated with reference proceedings under Section 18 of the Land Acquisition Act, 1894, or an appeal filed under Section 54 thereof. The very purpose of devising a separate procedure under the special enactment, viz., the Act of 1956, would be defeated if the general procedure prescribed under the land acquisition laws is adopted in relation to this type of acquisition and determination of compensation therefor. In effect, no parallel can be drawn with proceedings under general laws in all respects.

In **Associate Builders vs. Delhi Development Authority [(2015) 3 SCC 49]**, the Supreme Court considered the scope of interference under Section 34 of the Act of 1956. Referring to its earlier judgment in **ONGC Ltd. vs. Saw Pipes Ltd. [(2003) 5 SCC 705]**, the Supreme Court affirmed that it is only when the Arbitration Award is not in conformity with public policy that the merits thereof can be looked into under certain specified circumstances, i.e., if it is contrary to (a) the fundamental policy of Indian law, or (b) the interest of India, or (c) justice or morality, or (d) it is patently illegal. It was further observed that the illegality must go to the root of the matter and if the illegality is of a trivial nature, it cannot be held that the Award is against public policy. The Supreme Court further held that the Award could also be set aside if it was so unfair and unreasonable that it shocked the conscience of the Court.

In **The State of Jharkhand and others vs. M/s HSS Integrated SDN and another [(2019) 9 SCC 798]**, the Supreme Court

reiterated that an Award passed by an Arbitral Tribunal can be interfered with under Sections 34 or 37 of the Act of 1996 only if the finding is perverse and/or contrary to the evidence and/or the same is against public policy. Reference in this regard was made to **Associate Builders (*supra*)**.

In **P.R. Shah, Shares & Stock Brokers (P) Ltd. vs. B.H.H. Securities (P) Ltd.**, [(2012) 1 SCC 594], the Supreme Court observed that the Court does not sit in appeal over the Award of an Arbitral Tribunal, by reassessing or reappreciating the evidence, and an Award can be challenged only on the grounds mentioned in Section 34(2) of the Act of 1996.

In **MMTC Ltd. vs. M/s Vedanta Ltd.** [(2019) 4 SCC 163], the Supreme Court observed that interference under Section 37 of the Act of 1996 with an order made under Section 34 thereof cannot travel beyond the restrictions laid down under Section 34. *Per* the Supreme Court, the Court could not undertake an independent assessment of the merits of the Award and could only ascertain that the exercise of power by the Court under Section 34 had not exceeded the scope of the provision.

In **Mahanagar Telephone Nigam Ltd. vs. Fujitsu India Private Ltd.** [2015 SCC OnLine Del 7437], a Division Bench of the Delhi High Court observed that the extent of judicial scrutiny under Section 34 of the Act of 1996 is limited and the scope of interference is narrow. It further observed that under Section 37 thereof, the extent of judicial scrutiny and scope of interference is further narrower and such an appeal is like a second appeal, the first appeal being to the Court by way of objections under

Section 34. It was further stated that where there are concurrent findings on facts and law, first by the Arbitral Tribunal which are then affirmed by the Court while dealing with objections under Section 34, the appellate Court under Section 37 would be very cautious and reluctant to interfere with such findings. These observations were relied upon and reiterated in **Union of India vs. M/s Sikka Engineering Company [2019 (3) ArbiLR 358 (Del)]**.

In **M/s. L.G. Electronics India (P) Ltd. vs. Dinesh Kalra [2018 SCC OnLine Del 8367]**, another Division Bench of the Delhi High Court observed that the position of law stands crystalized that findings of fact as well as of law of the Arbitrator are ordinarily not amenable to interference under Sections 34 or 37 of the Act of 1996 and the scope of interference is only where the finding of the Arbitrator is either contrary to the terms of the contract between the parties or, *ex facie*, perverse.

Before applying the aforestated legal principles to the case on hand, certain crucial facts may be noted. In terms of Section 3 G(3) of the Act of 1956, which requires the competent authority to give a public notice in two newspapers inviting claims from all persons interested in the land to be acquired before proceeding to determine the compensation therefor, the CALA issued and got published such notices in two newspapers on 17.06.2009. His Award dated 31.05.2010 records that all the claims received by the scheduled date, viz., 15.07.2009, were considered on merits. Though the complaint of the appellants herein before the Arbitrator was that the CALA had not considered various aspects that were substantiated by

them through documents, there is no evidence of any written claim petition having been filed by them before the CALA, duly supported by documents. Even as on date, there is no evidence forthcoming from the appellants in this regard.

Further, though the petition filed by the appellants before the Arbitrator mentioned several documents and averments were made therein to the effect that copies had been filed, no proof is available of the same. The Arbitral Award dated 15.11.2011 is altogether silent on this aspect. Before the learned Additional District Judge, Amritsar, in Arbitration Case No.9 of 2012, their petition under Section 34 of the Act of 1996, the appellants failed to produce any such documents, as already noted *supra*. Even in this appeal, the appellants have not chosen to produce any such documents in proof of their claims that they had any connection with the existing industrial units nearby; that they had bought the acquired land only for expansion of such existing units by constructing a new unit; and that they had taken various measures in that regard, including execution of agreements and placing of orders for machinery. In effect, no material has been placed on record by the appellants to substantiate any of these pleas.

Further, as no claim petition seems to have been filed by the appellants before the CALA or, at least, a copy thereof was never produced by them in later proceedings, it is not clear whether the appellants raised any claim for damages under Section 3 G(7)(b), (c) and (d) of the Act of 1956. Whether the acquisition caused any damage due to severance of land; whether other immovable property or earnings of the landowner were

injuriously affected by the acquisition; and whether the acquisition compelled change of place of business and the reasonable expenses, if any, incidental to such change, were all issues of fact that had to be determined by the CALA in the first instance. However, there is no evidence of the appellants even raising such claims before the CALA. Significantly, the CALA did accept the claim and award damages under Section 3 G(7) to the owners of Category A lands in his Award dated 31.05.2010. There is no reason why he would not have adverted to such claims by the appellants, had they been made. It was only before the Arbitrator that the appellants raised this issue but they failed to produce any documentary proof in support of any of their claims under Section 3 G(7) of the Act of 1956. In these circumstances, they have no sustainable ground to complain that the Arbitral Award dated 15.11.2011 did not address such claims. Significantly, the appellants never raised any issue as to these claims in Arbitration Case No.9 of 2012, their petition filed under Section 34 of the Act of 1996.

More fatal is their failure to raise the issue of their claimed parity with the landowners covered by Award No.1 of 2009 dated 17.02.2009. Surprisingly, they had adverted to this Award in their petition before the Arbitrator and asserted that their land had more commercial potential, but their petition under Section 34 of the Act of 1996 maintained complete silence on this aspect. The Order dated 06.01.2015 passed in Arbitration Case No.9 of 2012 demonstrates that no arguments were advanced before the learned Additional District Judge, Amritsar, touching upon Award No.1 of 2009. In that view of the matter, it would not be open

to the appellants to raise any argument based upon the said Award No.1 of 2009 in the present appeal filed under Section 37 of the Act of 1996. In the light of the case law cited above and the recent observations made by the Supreme Court in **Union of India and another vs. Tarsem Singh and others**, referred to *supra*, this Court cannot permit the appellants to raise any point not urged and argued by them in their petition under Section 34 of the Act of 1996 in this appeal under Section 37, a continuation thereof. Similarly, this Court cannot consider any aspect raised afresh by the NHAI. Award No.1 of 2009 dated 17.02.2009 and all new issues raised by the NHAI therefore stand eschewed from consideration.

It may be noted that the constant clamour of the appellants at every level has been that their land is not agricultural in nature but rather, industrial and commercial. Strangely, the appellants seem to have lost sight of the fact that the CALA did not treat their land as agricultural land, falling under one of Categories D to I, in his Award No.18 dated 31.05.2010. On the other hand, he recorded that it had commercial potential and dealt with it under Category C. The revenue record clearly showed that the appellants' land was still agricultural in nature but despite the same, the CALA took note of its commercial potential and applied Category C land rate to it, which was admittedly a commercial rate. Gian Chand, the appellants' sole witness, himself admitted that the land was vacant and that the CALA had applied commercial rate to determine the compensation payable for it. Consequently, the appellants' reliance upon **Harchal Singh vs. State of**

Punjab [1990 SCC OnLine P&H 690] and Gurvinder Singh and others vs. Haryana State [2004 SCC OnLine P&H 358], which dealt with valuation as agricultural lands, is misconceived.

Gian Chand further claimed that it was wrong to suggest that the Collector's commercial rate at that time was ₹ 2.88 crore per acre but failed to produce any document in proof of a different rate. In this regard, it may be noted that the observation made by the CALA that the Collector's rate would be indicative of approximately 50% of the market rate was in the context of the lands on the right side of NH No.1 only and it was not applicable to the land on the left side of NH No.1. Admittedly, the appellants' land is on the left side of NH No.1. No evidence was adduced by the appellants to establish parity between these two sets of lands.

Merely because all the lands were situated in and around Village Verka, it did not automatically mean that they were similar in all respects, warranting an identical valuation.

Notably, in **Printers House Pvt. Ltd. vs. Mst. Saiyadan (Deceased) by her L.Rs. [(1994) 2 SCC 133]**, the Supreme Court observed that where the evidence established that different plots of the acquired land varied greatly as to the size, shape and location, they could not have fetched a uniform rate if sold in the open market and that being so, their market value could not be determined at a uniform rate on the wrong assumption that all the plots of acquired land would have fetched the same rate if sold in the open market.

Similarly, in **Ludhiana Improvement Trust, Ludhiana vs. Nirmala Devi [AIR 1983 (P&H) 193]**, a Division Bench of this Court considered the issue as to whether an acquired land, even if it was used for agricultural purpose, would have to be treated as urban property if it was situated within the municipal limits of Ludhiana Town and had the potential to be used as urban property. The Division Bench concluded that the entire land within the municipal limits of Ludhiana could not be treated on par and that the judgment in **Sh. Lakhmi Dass vs. The Punjab State [1977 PLJ 464]** turned upon the finding that the acquired land therein had assumed urban character and ceased to be agricultural in nature owing to its potential for development as a residential colony within the municipal limits.

The appellants therefore had to establish parity with any other land that was valued higher, but they did not endeavour to do so.

The record reflects that the CALA took note of the commercial rate fixed by the Collector and applied it with suitable modifications to differently situated lands, as assessed by him. Be it noted that he personally visited all the lands, as admitted by Gian Chand, the appellants' own witness, and only thereafter, he determined the separate rates of compensation applicable to the different categories of land in Village Verka. He also noted the points of difference between the lands on the right and the left sides of NH No.1, warranting the application of different rates of compensation. He also explained as to why he had extended a 10% increase on the base rate for the lands falling under Categories A and B, viz., lands

that were already developed commercially, as opposed to Category C lands, which only had commercial potential and therefore did not warrant any accretion on the base commercial rate.

In the light of the intelligible differentia adopted and applied by the CALA, this Court finds no grounds to hold that the appellants' land was undervalued or that the rate of compensation fixed therefor was on the lower side. The determination of compensation was therefore based on cogent reasoning and does not, by any stretch of imagination, shock the conscience of the Court.

In this regard, the decisions cited on behalf of the appellants are distinguishable on facts and in law. In **Mahabiri Devi vs. State of Haryana [2005 SCC OnLine P&H 692]**, a division Bench of this Court held that when large tracts of land are acquired for urban and commercial development and there is development all around, short distances between the two chunks of land lose importance as no portion of the acquired land was better located or was in any advantageous position when compared to the remaining portion of the acquired land. In consequence, all the landowners were held entitled to similar treatment and uniform compensation.

More recently, in **Dharam Chand vs. Haryan State [2016 SCC OnLine P&H 13776]**, a learned Judge of this Court held, on facts, that the acquired land was situated at a prime location and had immense

potential as it could be easily put to residential, industrial as well as commercial use.

Earlier, in **State of Punjab vs. Sohan Singh [1997 SCC OnLine P&H 1075]**, an appellate Bench of this Court refused to upset the view taken by the learned single Judge that the acquired land should not be divided into different blocks, owing to the placement of the land, which was in the vicinity of a municipality. This case turned on its own facts and no general principle or *ratio* was laid down to the effect that all lands in the vicinity of a municipality would have the same market value.

That apart, there is no possibility of applying the principles laid down in the above cases presently, as the appellants never demonstrated parity between their land with any other land that was more valuable, whereby they could seek a higher rate of compensation.

Further, the burden of proof was upon the appellants to establish their claim that their acquired land was undervalued by the CALA and thereafter, by the Arbitrator. It was for them to prove this fact by adducing evidence of the market value of the acquired land as on the date of the notification, in terms of Section 3 G(7)(a) of the Act of 1956 (see the general law laid down in this regard in **Apeejay School, Charkhi Dadri, and others vs. Sh. Ravidas Seva Ashram, Charkhi Dadri, and another [CR-7078-2018 decided on 10.07.2019]; Anil Rishi vs. Gurbaksh Singh [(2006) 5 SCC 558]** and **Bajaj Auto Ltd. vs. TVS Motor Company Ltd. [2010 SCC OnLine Madras 5031]**).

However, the appellants never produced any documentary evidence in proof of their tall claim that their land would fetch not less than ₹ 35,000/- per square yard in the open market. Without discharging the burden that rested upon them, the appellants cannot be permitted to baldly claim that their land has been grossly undervalued.

An adverse inference was rightly drawn against the appellants for their failure to produce their title documents of 2003, under which the acquired land had been purchased. Gian Chand, their sole witness in the Section 34 proceedings, admitted the existence of these documents but failed to produce them. Surprisingly, he also claimed ignorance of the sale consideration named therein, though he admitted that it was he who got the sale deeds executed. These facts would have been within the knowledge of the appellants and their failure to come clean on this crucial factual aspect indicates their lack of *bonafides* (see **S.P. Chagalvaraya Naidu (dead) by Lrs vs. Jagannath (dead) by LRs. and others [Civil Appeal No. 994 of 1972, decided by the Supreme Court on 27.10.1993]**).

Lastly, the appellants' contention that the order under appeal is cryptic does not merit acceptance and requires mention only to be rejected. The technical grounds urged by the appellants were appropriately dealt with by the learned Additional District Judge, Amritsar. Their objection that the arbitration proceedings stood vitiated as their consent was not obtained beseeched rejection, as Section 3 G(5) of the Act of 1996 makes it clear that the Arbitrator is to be appointed by the Central Government alone and not

by way of mutual consent. Further, once the Arbitral Award contained reasons accounting for the ultimate decision therein, there was no necessity for the Arbitrator to frame issues and write a judgment on par with a Court of law. Sufficiency of such reasons was beyond the pale of appellate review, as rightly observed by the learned Additional District Judge, Amritsar. This Court therefore finds no grounds to remand Arbitration Case No.9 of 2012 for consideration afresh. The decisions in **NHPC Ltd. vs. Patel Engineering Ltd. and others [2015 SCC OnLine P&H 17482]**, **Union of India and another vs. D.D. Sharma [2016 SCC OnLine Gau 721]** and **M/s Ved Contracts Pvt. Ltd. vs. Radnik Exports and another [2015 SCC OnLine P&H 8212]** are therefore of no avail to the appellants.

On the above analysis, this Court finds that the order dated 06.01.2015 passed by the learned Additional District Judge, Amritsar, in Arbitration Case No.9 of 2012 brooks no interference, be it on facts or in law.

The appeal is therefore bereft of merit and is accordingly dismissed.

Parties shall bear their own costs.

(SANJAY KUMAR)
JUDGE

November 27, 2020.

Kang/sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.