

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

Sr. No.211

FAO-6707 of 2016

Date of decision: 04.03.2020

Union of India and another

....Appellants

versus

Tirath Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R.S. Madan, Advocate with
Mr. Mahender Joshi, Advocate
for the appellants.

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DEEPAK SIBAL, J. (Oral)

The present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short – the Act) is directed against the order dated 05.04.2016 passed by the Additional District Judge, Jalandhar through which an application filed by the appellants under Section 34 of the Act was dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present appeal are that 7/36 share of the acquired land in Khasra No.7965/6958 measuring 8 marlas and 7/12 share in Khasra No.7964/6958 measuring 9 marlas which was owned and possessed by respondents No.1 to 3 (for short – the land owners) was acquired for a public purpose namely widening and four laning of Jalandhar-Pathankot section of National Highway No.1/A. Under Section 3G(1) of the National Highways Act, 1956 (for short – the 1956 Act), the Competent Authority determined the compensation payable to the land owners @ ₹ 60,000/- per

marla for commercial property and @ ₹ 33,400/- per marla for the remaining land. The land owners were dissatisfied with the awarded compensation whereas according to the appellant-NHAI just and fair compensation had been awarded by the Competent Authority. Accordingly, a dispute came into existence and the same, under Section 3G(5) of the 1956 Act, was referred to be determined by an Arbitrator to be appointed by the Central Government. Through Award dated 13.08.2010, the appointed Arbitrator determined the payable compensation towards the market value of land @ ₹ 80,000/- per marla; towards business loss @ ₹ 2 lakhs per shop; for shifting of business/house @ ₹ 50,000/- and for built up structure @ ₹ 500/- per square feet or ₹ 5 lakhs in lump sum whichever was less. Against the said Award the appellant filed objections under Section 34 of the Act which on 18.08.2011 were accepted by the Additional District Judge, Jalandhar, who remanded the matter to the Arbitrator to pass a fresh Award. On remand, the land owners presented evidence before the Arbitrator to claim enhancement in the compensation awarded to them by the Competent Authority. On the other hand, the appellant-NHAI sought to justify the compensation so awarded by the Competent Authority. Through Award dated 16.05.2013, the Arbitrator, after considering the compensation assessed and paid by the appellant-NHAI qua land in rural areas on the same highway and which was situated less than five kilometers from the acquired land assessed the compensation for the acquired commercial land @ ₹ 1,50,000/- per marla; for residential land @ ₹ 1,25,000/- per marla and for vacant plots @ ₹ 1,00,000/- per marla. Since after acquisition only a part of the land of the land owners remained with them they were also granted compensation qua severance of their land @ ₹ 50,000/- per marla for

commercial land and @ ₹ 41,677/- per marla for Gair Mumkin Abadi land. Since three shops of the land owners had been acquired, the Arbitrator assessed and granted to them @ ₹ 2,40,000 per shop towards loss of business. For the structures a lump sum amount of ₹ 2,49,555/- was also awarded. In addition solatium and interest, as per the provisions of the Land Acquisition Act, 1894, were also granted.

The appellant filed an application under Section 34 of the Act seeking setting aside of the afore-said Award. It was submitted that enhanced compensation towards price of land; towards severance; cost of super structures and loss of business had been granted by the Arbitrator without there being any material/evidence before him. The Award was also challenged on the ground that the same was against public policy and that the same was vague and non-speaking. Per contra, the land owners justified the Award.

The Additional District Judge, Jalandhar, after considering the law laid down by the Supreme Court with regard to the power of the Courts under Section 34 of the Act, found the Award to be reasonable; within the four corners of the statutory provisions and not perverse. Resultantly, the appellants' application was dismissed through the order under challenge in the present appeal.

Mr. R.S. Madan, learned counsel appearing for the appellants submitted that Arbitrator's Award dated 16.05.2013 as also the impugned order passed by the Additional District Judge, Jalandhar are liable to be set aside as both the Award and the impugned order had illegally granted and affirmed enhanced compensation to the land owners as there was no evidence on the record to grant the same. It was further submitted that grant

of damages towards loss of business could not have granted as the same were beyond the pleadings. Grant of compensation towards severance of land was challenged on the ground that there was no evidence on the record to show that acquisition of the respondents' land had resulted in severance of their land holdings. Grant of damages for the three shops of the land owners were also assailed on the ground that the same were excessive.

On a query posed by the Court, Mr. Madan did not dispute that for commercial land in rural areas in and around the town of Dasuya, the appellant-NHAI has accepted the grant of and paid compensation @ ₹ 1.5 lakhs per marla and that for residential property in the same area compensation accepted and paid by the appellant is @ ₹ 1.25 lakhs per marla. It is further not disputed by him that the land in question which falls on the same National Highway is less than five kilometers away from the afore-referred land and that at the time of acquisition there existed on the land in question three shops of the land owners clearly giving a commercial colour to the acquired land.

Admittedly, the acquired land has three shops built thereupon and therefore, there can hardly be any doubt that the acquired land was commercial in nature. It also cannot be a matter of any debate that on loss of these three commercial shops the land owners would have lost business and that their livelihood would have also been affected. It will also take some time for them to rehabilitate elsewhere and to set up their business at a new place. In the light of these facts, in a moderately sized town like Dasuya, estimation of income from each of the shops @ ₹ 10,000/- per month cannot be considered to be unreasonable or which would shock the conscious of the

Court warranting any interference. A period of two years granted to the land

owners to rehabilitate them for setting up their business elsewhere is also not found to be unreasonable.

So far as damages qua severance of land is concerned the same have been awarded to the land owners for 9 marlas of their land which remained out of their land holdings of 1 kanal 8 marlas and for 8 marlas of their land out of their land holdings of 1 kanal 6 marlas. To arrive at such a finding the Arbitrator has relied upon the revenue record/jamabandies produced by the land owners. No evidence to the contrary is found to have been produced by the appellants in this regard. The afore-referred small tract of land remaining with the land owners can hardly be put to any use especially when the Arbitrator has recorded a specific finding that a flyover has come up in front of the acquired land decreasing the commercial potentiality of the same.

In view of the above discussion this Court finds the impugned award to be reasonable; it does not contravene any substantive provision of law and that it does not shock the conscious of the Court. Resultantly, the impugned award and the order warrant no interference.

Dismissed.

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March 04, 2020
Jyoti 1

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No