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

* * *

LPA-2037-2019

Date of Decision: 9th December, 2020

Project Director, National Highways Authority of India and another

Petitioners

Versus

S.D.M.-cum-Land Acquisition Collector, Pathankot and others

Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

* * *

Present: Mr. Chetan Mittal, Senior Advocate with Mr. R.S. Madaan,
Advocate for the Appellants.

Ms. Lavanya Paul, Assistant Advocate General, Punjab.

Mr. Deepak Verma, Advocate with Mr. Paramjit Rajput,
Advocate for the Applicants/ Respondents No. 3 to 23.

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Dr. S. Muralidhar, J.

1. The present appeal by the National Highways Authority of India ('NHAI') is directed against an order dated 2nd December, 2019 passed by the learned Single Judge of this Court dismissing the NHAI's writ petition CWP No. 34579 of 2019, whereby the NHAI had challenged an order dated 28th August, 2019 passed by the Commissioner, Jalandhar Division, Jalandhar-cum-Arbitrator (Respondent No. 2), exercising powers under Section 33 of the Arbitration and Conciliation Act, 1996 ('A&C Act') read with Section 152 of the Code of Civil Procedure, 1908 ('CPC'). By the impugned order dated 28th August, 2019 the Respondent No. 2 acceded to the prayer of the land owners i.e. Respondent Nos. 3 to 23, for rectification in the Award dated 19th June, 2013 to the effect that the acquired land was located in rectangle No. 9 and not rectangle No. 5

2. The background to the present appeal is that a notification dated 3rd April, 2008 under Section 3A of the National Highways Authority of India Act, 1956 ('NHA I Act') was issued for acquiring land in village Fangrian, District Pathankot for the purpose of widening of the Pathankot to Amritsar NH-15 from 6.082 KM to 108.502 KM. This was followed by a notification dated 31st March, 2009 under Section 3D of the NHA I Act. Thereafter, an order dated 13th April, 2010 was passed by the Competent Authority under Section 3G (1) of the NHA I Act, determining the payable compensation at Rs. 20 lakhs per acre i.e. Rs. 12,500/- per *marla* for the land within 80 *karams* and Rs. 10 lakhs per acre i.e. Rs. 6,250/- per *marla* for the agricultural land beyond 80 *karams*. It is stated by the NHA I that consequent upon the above Award, the private Respondent Nos. 3 to 23 were paid Rs. 44,34,949/-.

3. On 29th April 2011, Respondent Nos. 3 to 23 filed an application under Section 3G (5) of the NHA I Act before the Respondent No. 2, seeking enhancement of compensation. This application was, in terms of Section 3 G (5) of the NHA I Act to be determined by an arbitrator appointed by the central government. Section 3 G (6) of the NHA I Act states that subject to the provisions of the NHA I Act, the provisions of the A&C shall apply to every arbitration under the NHA I Act.

4. A perusal of the application for enhancement shows that Respondent Nos. 3 to 23 erroneously indicated therein that the land was located in rectangle No. 5 instead of rectangle No. 9. By an Award dated 19th June, 2013 the said application for enhancement came to be decided by the learned Arbitrator i.e. Respondent No. 2. The compensation was enhanced to Rs.1.15 lakh per *marla* along with solatium interest. It appears that at this stage, the error committed by the private land owners/Respondent Nos. 3 to 23 in mentioning the wrong rectangle number i.e. rectangle No. 5 instead of rectangle No. 9 was not noticed. Thus, the same mistake crept into the Award passed by Respondent No. 2 on 19th June, 2013.

5. The NHA I, on 29th November 2013, filed objections under Section 34 of the A&C Act to the Award dated 19th June, 2013 in the Court of Additional

District Judge (ADJ), Jalandhar. These objections were negated by the learned ADJ by an order dated 16th August, 2016.

6. Following the dismissal of the NHAI's objections by the learned ADJ, Respondent Nos. 3 to 23 filed an execution petition on 31st May, 2017 before the learned District Judge, Jalandhar (hereinafter 'Executing Court'). Interestingly, even in para 1 of the execution petition, the same mistake of mentioning the land as being located in rectangle No. 5 was committed by Respondent Nos. 3 to 23. On 31st August 2017, calculations were provided by the SDM-cum-Land Acquisition Collector ('LAC'), Pathankot (Respondent No. 1) to the Executing Court, whereby the net amount payable by the NHAI to Respondent Nos. 3 to 23 was calculated as Rs. 6,24,25,159/-. Admittedly, this calculation was made on the basis that the land fell in rectangle No. 5.

7. It must be noted here that throughout the aforementioned stages, no objections were raised by the Respondent Nos. 3 to 23, about a mistake having been committed by them in describing the location of the land, both in the application seeking enhancement of compensation, as well as in the execution petition. On the basis of the above calculation, the NHAI deposited the amount together with further interest on 7th March, 2018 before the Competent Authority.

8. On 2nd May 2018, the execution petition was disposed of by the Executing Court noting the deposit of the sums by way of cheques in favour of some of the individual land owners. The said order noted the submission of counsel for the Execution Petitioners that he had received, on behalf of the Execution Petitioners, 11 cheques. The statement of counsel for the Execution Petitioners that "he has no objection if the present case is disposed of partly satisfied" was also noted. On basis of the aforesaid statements, the Executing Court by the aforementioned order dated 2nd May 2018 disposed of the execution petition by noting the following:

"In view of the above, the present execution petition is allowed as partly satisfied in the above terms with a liberty to the aforesaid remaining petitioners as mentioned in this order to file fresh execution petition with respect to remaining amount, if any. File be consigned to the record room."

9. Interestingly, in the above order dated 2nd May, 2018 there is no mention of the counsel for the land owners informing the Executing Court that a mistake had been committed by them in describing the location of the land in question both in the application seeking enhancement of compensation before the learned Arbitrator/Respondent No. 2 as well as in the execution petition.

10. According to both Mr. Deepak Verma as well as Mr. Paramjit Rajput, learned counsel appearing for Respondent Nos. 3 to 23, it is only after the aforementioned order dated 2nd May, 2018 was passed by the Executing Court that “it came to the knowledge” of Respondent Nos. 3 to 23 that the above error in indicating the location of the land in question had crept in. This is what triggered an application being filed by Respondent Nos. 3 to 23 on 4th May, 2018 under Section 152 CPC before the learned Arbitrator/Respondent No. 2 seeking amendment of the Award dated 19th June, 2013 to the extent of correcting the mistake of mentioning rectangle No. 5 instead of rectangle No. 9.

11. NHAI submitted a reply to the above application objecting to its maintainability by pointing out that under Section 33 of the A&C Act, the said application had to be moved within 30 days from the date of the Award, whereas the application was being filed nearly 5 years thereafter.

12. By the order dated 28th August 2019, the learned Arbitrator/Respondent No. 2 negatived the above objections and proceeded to allow the application by directing that the necessary correction be made both in the application for enhancement as well as in the corresponding Award dated 19th June, 2013 by reflecting the location of the land as being in rectangle No. 9 instead of rectangle No. 5.

13. The effect of the above correction was that on 20th November, 2019 a further execution application was filed by Respondents No. 3 to 23 before the Executing Court with a fresh calculation sheet, determining compensation for acquisition of the land located in rectangle No. 9 as Rs. 16,54,09,000/- and after accounting for the amount already paid, the further

amount payable to them by the NHAI was calculated as Rs. 10,07,60,775/-. On the same date i.e. 20th November, 2019, the Executing Court directed the NHAI to disclose details of the properties and fixed the next date of hearing of the execution petition as 18th December, 2019.

14. At that stage, NHAI filed the aforementioned CWP-34579-2019 (O&M) in this Court. The main ground raised in the above writ petition was that the Award could not have been rectified by the learned Arbitrator/Respondent No. 2 by entertaining the application under Section 33 of the Act, more than 5 years after the Award was passed and particularly when the learned Arbitrator/Respondent No. 2 had by then been rendered *functus officio*.

15. The learned Single Judge noted that a mistake had crept in at the stage of filing of the application for enhancement by land owners, where instead of rectangle No. 9, rectangle No. 5 was mentioned. The learned Single Judge dismissed the writ petition for the following reasons:

“Once the factual error as such has been committed by the counsel in giving the details and which is confirmed by the fact that the land stood acquired, as per the award itself, which has now been placed on record as Annexure P-14, the landowners are entitled for the due compensation. The rules of procedure are handmaid's of justice and, therefore, the petitioner authority, who is a Statutory Authority cannot agitate to deny compensation to the landowners on technicalities which is in violation of Article 300-A of the Constitution of India that no landowner can be deprived of his property save by authority of law.

In such circumstances, this Court does not feel that it is a fit case to exercise its extra-ordinary jurisdiction under Articles 226/227, once the Arbitrator has only corrected the error made by the counsel in the description of the land. It is settled principle that no party can be prejudiced on account of the fault of the counsel.

Resultantly, there is no merit in the present writ petition and the same is hereby dismissed in limine.”

16. In other words, what appears to have weighed with the learned Single Judge was that merely because a mistake had been committed by counsel for the Respondent Nos. 3 to 23 in incorrectly mentioning the details of the location of the land in the enhancement application, Respondent Nos. 3 to 23 should not be allowed to suffer and further, that even if the procedure in accordance with law did not permit it, such “technicality” should not be

allowed to permit the NHAI to avoid paying the compensation that was due to Respondent Nos. 3 to 23.

17. Mr. Chetan Mittal, learned senior counsel appearing for the NHAI, pointed out that the rectification application mentioned only Section 152 CPC whereas it ought to be Section 33 of the A&C Act. In any event, an application for rectification of an error in an Award by invoking Section 33 of the Act had to be filed within 30 days of the receipt of the Award. Mr. Mittal submitted that the order passed by the learned Arbitrator (Respondent No.2) on 28th August 2019 was entirely without jurisdiction as by the time the application was filed on 4th May 2018, the Arbitrator was *functus officio* and even by consent the parties could not have conferred jurisdiction on him. He submitted that the learned Single Judge was in error in characterizing this as a mere technicality when it went to the root of the matter. While not disputing that the land acquired by NHAI was in fact in rectangle No.9, Mr. Mittal submitted that the procedure adopted by the land owners to purportedly correct the mistake committed by them, was one which was impermissible in law.

18. On the other hand, Mr. Deepak Verma as well as Mr. Paramjit Rajput, learned counsel appearing for Respondent Nos. 3 to 23, sought to defend the orders of the learned Arbitrator as well as the learned Single Judge. They submitted that the 30 day period within which the rectification application could be filed under Section 33 of the Act should be counted from 2nd May 2018, the date of the order passed by the Executing Court, which is when the land owners realized that a mistake had been made, and if so computed the application, filed on 4th May 2018, was within time and could be entertained by the learned Arbitrator. They further submitted it was a mistake committed by themselves as counsel, and that their clients, the land owners, should not be made to suffer on that count. It was submitted that the error was a minor one, confined to the rectangle number, whereas the Killa numbers had been correctly mentioned. It was submitted that the learned Single Judge had rightly dismissed NHAI's writ petition on the grounds of equity and that the impugned order should not be interfered with.

19. The Court has considered the above submissions. It is not disputed that the land acquired by the NHAI is in fact located in rectangle No. 9 and not in rectangle No. 5. It is also not in dispute that the error in mentioning the number of the rectangle in which the land in question was located, was committed not by the Arbitrator but by the land owners first in their application for enhancement of compensation and later even in the execution petition. The Award passed by Respondent No.2 enhancing the compensation, correspondingly referred to the location of the land as rectangle No.5 instead of rectangle No. 9. It is also not in dispute that the same error was committed by the land owners in their execution application. Their counsel also accepted the cheques deposited in the Executing Court on the basis of the calculations of Respondent No.1 which in turn was based on the location of the land being in rectangle No.5. As a result the execution proceedings stood closed by the order dated 2nd May 2018.

20. In the background of the above undisputed facts, the question that arises is whether it was permissible in law for the land owners to resort to the device of an application before the Arbitrator, after the order of the Executing Court, to have the aforementioned error corrected? Even granting that the provision of law under which the application for rectification was filed was wrongly mentioned as Section 152 CPC instead of Section 33 A&C Act, for the reasons mentioned hereafter, the Court is of the considered view that the answer to the question has to be in the negative.

21. Sections 32 and 33 of the A&C Act read as under:

“32. Termination of proceedings.—

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.”

“33. Correction and interpretation of award; additional award.—

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.”

22. It is clear from a plain reading of Sections 32 and 33 of the A&C Act that with the pronouncement of the final Award, the proceedings before the Arbitrator stand terminated. This is only subject to Section 33 of the A&C Act or Section 34 (4) thereof. Under Section 33 of the Act, an application for rectification of a computation error, a clerical, typographical or such

similar error has to be made by the party seeking such rectification, within 30 days of the receipt of the Award. Once that period is crossed, a party cannot be permitted to file an application for rectification of any error. There is good reason for such time limit to be placed. In terms of Section 32 of the A&C Act, after the pronouncement of the final Award, the proceedings before the Arbitrator stand terminated and he is *functus officio*. The exceptions are proceedings under Section 33 of the A&C Act which are time-bound or Section 34 (4) of the Act which would be under the orders of the Court dealing with the objections to the Award. Proceedings under Section 34 of the A&C Act are also time-bound. The very object of the A&C Act, which is the expeditious conclusion of disputes by the alternative mode, would be defeated if the strict time lines spelt out in Sections 33 and 34 are not adhered to. Thereafter, there is no question of the parties to an Award conferring jurisdiction upon an Arbitrator, permitting him to exercise powers under the A&C Act beyond the time period stipulated thereunder.

23. In the present case, admittedly, the application seeking rectification by invoking, erroneously, Section 152 of the CPC was filed on 4th May, 2018, whereas the Award, of which rectification was sought, was passed on 19th June, 2013. The explanation offered by learned counsel for the Respondent Nos. 3 to 23 that it was only after the Executing Court disposed of their execution petition by the order dated 2nd May, 2018 that the Respondent Nos. 2 to 23 became aware of an error having been committed, is unacceptable for the simple reason that this error was made by Respondent Nos. 3 to 23 themselves, not at the stage of the filing of the execution petition, but much earlier, on 29th April, 2011, when they filed an application for enhancement of compensation under Section 3G (5) of the NHAI Act. After that date, i.e. 29th April, 2011, there were numerous opportunities for the Respondent Nos. 3 to 23 to have noticed the error. Far from doing anything about it, they, in fact, repeated the error even at the stage of filing of execution petition. Even the orders of the Executing Court do not reflect that Respondent Nos. 3 to 23, through their counsel, expressed there being an error in the Award dated 19th June, 2012 as well as in the execution petition. On the contrary the orders of the Executing Court record that the counsel for the land owners accepted the cheques deposited

without demur. He also agreed to the proceedings being closed on that basis. The Court is therefore unable to find any merit in the contention of Respondent Nos. 3 to 23 that somehow after the order dated 2nd May, 2018 of the Executing Court was passed, they suddenly realized for the first time that a mistake had been made in mentioning the correct rectangle number.

24. In any event, the limitation of 30 days for moving the Arbitrator for rectification cannot be said to have commenced only on 2nd May, 2018. That limitation began to run on 19th June, 2013 or soon thereafter on the date when a copy of the Award was first received. Therefore, even if it were to be accepted that Respondent Nos. 3 to 23 became aware of the error after 2nd May, 2018 such argument will not aid their case, inasmuch as it concerns the invocation Section 33 of the A&C Act, which clearly stipulates a period of 30 days after the receipt of the Award, within which any rectification in an Award must be sought. In other words, the period of limitation of 30 days for filing a rectification application under Section 33 of the A&C Act begins to run from the date of receipt of the Award and not the date of knowledge of the error in the Award.

25. Further, the error which is sought to be rectified has consequences for the present Appellant. In other words, it is not a mere technical error. It involves the NHAI having to pay a further sum of over Rs. 10 crores to Respondents No. 3 to 23. In such circumstances, to overlook the procedural requirements under the A&C Act as only a “technicality” may not be right approach, notwithstanding the fact the NHAI had acquired land located in rectangle No. 9 and not rectangle No. 5. The Arbitrator exercising jurisdiction under Section 3G (5) of the NHAI Act is bound by the statute and of course by the provisions of the A&C Act, which have been made applicable to the proceedings by virtue of Section 3 G (6) of the NHAI Act. The time limit for maintaining an application under Section 33 of the A&C Act is mandatory and not merely directory.

26. Considering the fact that after the passing of the final Award, the proceedings before the Arbitrator exercising powers under Section 3 G (5) of the NHAI Act read with Section 32 of the A&C Act stand terminated, the Arbitrator is *functus officio* thereafter. The only exceptions are the

proceedings under Section 33 of Section 34 (4) of the A&C Act. Relevant to the case on hand, the time period of 30 days within which the rectification application was filed was mandatory in terms of Section 33 of the A&C Act. The said time period could be exceeded only where “another period of time has been agreed upon by the parties”. Here, that was admittedly not the case. With the Award having been received by the land owners on the date of its pronouncement i.e. 19th June 2013 or soon thereafter, there was no question of Respondent No.2 entertaining a rectification application filed by them on 4th May 2018.

27. The upshot of the above discussion is that the procedure resorted to by Respondent Nos. 3 to 23, for remedying the error committed in mentioning the wrong rectangle number in the enhancement application, is impermissible in law. However, the Court would like to clarify that it will be open to Respondent Nos. 3 to 23 to avail any other procedure that may be available to them in accordance with law to remedy the said error.

28. For all the aforementioned reasons, the impugned order dated 2nd December 2019 of the learned Single Judge, as well as the order dated 28th August, 2019 of Respondent No. 2, are hereby set aside. Consequently the proceedings in the Executing Court, initiated on the basis of the impugned order dated 28th August 2019, shall stand closed. The appeal is accordingly allowed, but in the circumstances with no orders as to costs.

[S. MURALIDHAR]
JUDGE

[AVNEESH JHINGAN]
JUDGE

9th December, 2020
pankaj baweja

Whether speaking / reasoned:	Yes
Whether reportable :	Yes