

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 27/08/2021

Order Passed on : 07/10/2021

W.P.(227) No.405 of 2021

- Fhaguwan Singh S/o Panch Ram Aged About 48 Years R/o Village Seoni Tehsil Champa District Janjgir Champa Chhattisgarh

---- Petitioners

Versus

1. Union Of India Through Secretary Ministry Of Road Transport And Highway Transport Bhawan, 1, Parliament Street New Delhi 110001
2. Project Director National Highway Authority Of India (NHAI) Project Implementation Unit D - 61, HIG - 1 Abhilasha Parisar Behind New Bus Stand Tifra Bilaspur Chhattisgarh
3. State Of Chhattisgarh Through Secretary, Department Of Revenue Mahanadi Bhawan Raipur, District Raipur Chhattisgarh
4. Collector Champa District Janjgir Champa Chhattisgarh
5. Sub Divisional Officer Cum Competent Authority Land Acquisition Champa District Janjgir Champa Chhattisgarh
6. Inspector General Registration And Superintendent Of Stamp GST Bhawan Raipur, District Raipur Chhattisgarh
7. Arbitrator Cum Commissioner Bilaspur Division Bilaspur District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Tarendra Kumar Jha, Advocate.
For respondent No.1/U.O.I	:	Mr. Nikhil Parakh, Advocate on behalf of Mr. Ramakant Mishra, Asst.S.G.
For respondent No.2	:	Mr. Dhiraj Kumar Wankhede, Advocate.
For Respondents No.3 to 7	:	Mr. Sameer Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

07/10/2021

1. This petition has been brought being aggrieved by the order dated 27.07.2021, passed by the Arbitrator-cum-Commissioner, Bilaspur, Division- Bilaspur, C.G. in Arbitration Case No.363/A-82/2020-21.
2. The facts in brief are these, that the petitioner was the owner of the land bearing Khasra No.2718/2 and 2715 ad-measuring area 0.0250 and 0.0510 hectare situated in village Seoni, Tehsil- Champa, District- Janjgir- Champa, C.G. The land was acquisitioned for widening of the National Highway. The Land Acquisition Officer passed the award dated 24.01.2020 (Annexure-P/4) granting compensation. The petitioners and others preferred a W.P.(C.) No.804/2021 before this Court, which has been disposed off by this Court on 17.02.2021 and the petitioners were directed to raise the dispute before the Additional Commissioner under the provision of Section 3G(5) of the National Highways Act, 1956 (hereinafter referred to as "the Act, 1956") individually. The dispute raised by the petitioner has been decided by the Arbitrator/Commissioner Bilaspur Division by the impugned order.
3. It is submitted by learned counsel for the petitioner that the impugned order is unsustainable. The Division Bench of this Court has passed judgment dated 06.12.2019 in W.A. No.07/2019 and the batch of other similar petitions, in which it was held that the fixation of minimum value does not and cannot deny the land owner from getting actual market value, if the same dispute as of which above the minimum value and the question framed on this point was answered that the person affected by land acquisition has entitlement for compensation according to the actual market value.
4. The learned Arbitrator has discussed the judgment and W.A.

No.07/2019, however, it has been held that a Review Petition No.94 of 2020 is pending, therefore, the direction in W.A. No.07/2019 has not been followed. It is also submitted that the judgment in W.A. No.07/2019 holds ground, unless and until, it is set aside or modified in the review petition, therefore, this could not have been made a ground for dismissing the claim made by the petitioner in the impugned order. It is prayed that the impugned order may be set aside and the case be remanded back to the arbitrator with direction to decide the dispute afresh.

5. Reliance has been placed on the judgment of Supreme Court in the case of M/s. Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited & Anr. reported in (2020) 15 SCC 706, according to which, the jurisdiction under Article 227 of Constitution of India is available in such a case.
6. Reliance has been placed on the judgment of Supreme Court in the case of M/s Radha Krishan Industries Vs. State of Himachal Pradesh & Ors. in Civil Appeal No.1155/2021 decided on 20.04.2021 on the same point.
7. It is further submitted that the compensation as awarded by the Land Acquisition Officer has also been withheld due to the pendency of the Review Petition No.94/2020. Hence, it is prayed that relief may be granted to the petitioner.
8. Learned counsel for the respondent No.2 opposes the submissions made by the learned counsel for the petitioner and raises the objection on the maintainability of the present petition under Article 227 Constitution of India. It is submitted that Section 3 (G) (6) of the Act, 1956 specifically provides that determination of compensation made by

the arbitrator under Section 3 (G) (5) of the Act, 1956 is subject to challenge under Section 34 of the Arbitration and Conciliation Act, 1996, by which the petitioner has remedy available to challenge the award. Hence, this petition is not maintainable.

9. Relying on the judgment of Supreme Court in the case of Union of India & Anr. Vs. Tarsem Singh & Ors. reported in (2019) 9 SCC 304, in which it is clearly held that award of the arbitrator granted under Section 3(G)(5) of the Act, 1956 is subject to challenge under the Arbitration and Conciliation Act, 1996 and subject to limitation as provided under the Act, 1996.
10. Reliance has also been placed on the judgment of Supreme Court in the case of Union of India Vs. Varindera Constructions Limited reported in (2020) 2 SCC 111. The reliance has also been placed on the judgment of N.V. International Vs. State of Assam & Ors. reported in (2020) 2 SCC 109, Project Director, National Highways No.45E and 220 National Highways Authority of India Vs. M. Hakeem and Anr. reported in 2021 SCC OnLine SC 473, Bhaven Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer Sardar Sarovar Narmada Ltd and Anr. reported in 2021 SCC OnLine SC 8, Union of India Vs. Maharashtra Steel Fabricators & Erectors in W.P.(L) No.4049 of 2020 dated 27.10.2020 and GTPL Highway Ltd. Vs. Strategic Markering Pvt. Ltd. reported in AIR 2021 (NOC) 376 (Guj.).
11. It is submitted that the petitioner has already remedy available under the statute that is under Section 34 of Arbitration and Conciliation Act, 1996. Therefore, the present petition is not maintainable.
12. Learned counsel for the petitioner submits in rebuttal that the judgment of Supreme Court in the case of M/s. Deep Industries Limited (Supra)

permits the filing of such petition under Article 227 Constitution of India. Therefore, the petition is maintainable and the petitioner is entitled for grant of relief.

13. Heard learned counsel for both the parties and perused the documents present.

14. Considered on the submissions. The present case has a special feature.

On perusal of the impugned order dated 27.07.2021, it would be seen that the learned Arbitrator made a reference to the order in Writ Appeal No.07/2019 dated 06.12.2019 and mentioned about the pendency of Review Petition No.94/2020. On this basis, the arbitrator has held that it would be proper to proceed after the review petition is disposed off, otherwise, it would lead to a new kind of litigation between the parties. Subsequent to that, it has been observed that the petitioner was granted opportunity of hearing before passing of award by the Acquisition Officer thus, the impugned award is not fit to be interfered with.

15. The learned Arbitrator has simply not given any consideration on the dispute raised by the petitioner that the compensation awarded by him was inadequate. This Court had in order dated 17.02.2021 passed in W.P.(C.) No.804 of 2021, it is held in paragraph No.5 as follows:-

“5. Subject to the petitioners approaching the Additional Commissioner, the Additional Commissioner shall decide the same objectively by passing a speaking order. The petitioners are directed to raise their dispute individually before the Additional Commissioner in accordance with law at the earliest, preferably within a period of 2 weeks from today and the Additional Commissioner is expected to take a decision at the earliest preferably within 60 days from the date of receipt of the application of the petitioners.”

16. It is clear from perusal of the impugned award that the learned Arbitrator has not complied with the direction in order dated 17.02.2021 of this Court given as mentioned hereinabove and has not passed a speaking

order. In paragraph 17 of the judgment in the case of M/s. Deep Industries Limited (Supra), the Supreme Court has held as follows:-

“17.This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under [Section 37](#), the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that [Article 227](#) is a constitutional provision which remains untouched by the non-obstante clause of [Section 5](#) of the Act. In these circumstances, what is important to note is that though petitions can be filed under [Article 227](#) against judgments allowing or dismissing first appeals under [Section 37](#) of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

17. In the case of Union of India (Supra), it is held in paragraph 10:-

“10.Keeping in view the object of reducing delay and speedy implementation of highway projects, the amended [National Highways Act](#) does away with any “award” by way of an offer to the landowner. Post the notification under [Section 3A](#), objections are to be heard by the competent authority, whose order is then made final. The moment the authority disallows the objections, a report is submitted to the Central Government, and on receipt of such report, the Central Government, by a declaration, states that the land should be acquired for the purpose mentioned in [Section 3A](#). The important innovation made by the [Amendment Act](#) is that vesting is not postponed to after an award is made by the Competent Authority. Vesting takes place as soon as the [Section 3D](#) declaration is made. One other important difference between the [Amendment Act](#) and the [Land Acquisition Act](#) is that determination of compensation is to be made by the competent authority under the [Amendment Act](#) which, if not accepted by either party, is then to be determined by an Arbitrator to be appointed by the Central Government. Such arbitrator’s Award is then subject to challenge under the Arbitration and [Conciliation Act](#), 1996. Thus, delays in references made to District Judges and appeals therefrom to the High Court and Supreme Court have been obviated. [Section 3G\(7\)](#) does not provide for grant of solatium, and [Section 3H\(5\)](#) awards interest at the rate of 9% on the excess amount determined by the arbitrator over what is determined by the competent authority without the period of one year contained in the proviso to [Section 28](#) of the

Land Acquisition Act, after which interest is only awardable at the rate of 15% per annum, if such payment is made beyond one year.”

18. No doubt, the award if passed answering to the dispute raised before the Arbitrator shall be subject to challenge under the provisions of Arbitration and Conciliation Act, 1996 but in the present case, the learned Arbitrator has not passed a speaking order as directed by this Court in order dated 17.02.2021 in W.P.(C) No. 804/2021. Therefore, it appears to be a case of non-exercise of the jurisdiction vested with the arbitrator and also non-compliance of the order of this Court. The arbitral award is not specifically defined under the Arbitration and Conciliation Act, 1996. In general, arbitration award is a determination on merits by an Arbitration Tribunal for settling the dispute. Arbitration is particularly a means of dispute resolution.

19. In the case of Shalini Shayam Shetty & Anr. Vs. Rajendra Shankar Patil reported in 2010 (8) SCC 329, it is held in paragraph 62-G as follows:-

“**62-G.** Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.”

20. Therefore, it is a case, in which on the basis of the discussions made hereinabove, it can be held that the impugned order is perverse which has not been decided in accordance with the law and the dispute raised by the petitioner has not been answered correctly by a speaking order. Therefore, I am of this view that the present petition under Article 227 Constitution of India is maintainable as well as, this Court can invoke the jurisdiction under Article 227 Constitution of India to interfere with the impugned order passed by the learned Arbitrator.

21. On the basis of these observations and the conclusions drawn, the present petition is allowed, the impugned order is set aside and the matter is remanded back to the Arbitrator that is the Commissioner, Bilaspur with a direction to consider on the dispute raised by the petitioner on the point of inadequacy of the compensation granted to him by the Land Acquisition Officer and pass a reasoned and speaking order on the same.

22. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika