

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

ARBITRATION APPEAL NO. 06 OF 2015

Rishabhkumar s/o Babulal Jejani,
Occ. Business, r/o 548, Plot No.3,
New Cotton Market Road, Ghat Road,
Nagpur, Tq. And Distt. Nagpur.

APPELLANT

-VERSUS-

1. Secretary to the Government of India,
Ministry of Road Transport and Highways,
Transport Bhawan, 1, Parliament Street,
New Delhi - 110001.
2. National Highways Authority of India,
Through its Project Director, Project
Implementation Unit, Pandhurna (Madhya Pradesh)
having its registered office at Bunglow No.2,
Shubhankar Apartment, Plot No.159,
Ambazari Hill Road, Ram Nagar,
Nagpur (M.S.) 440033.
3. The Additional Commissioner, Nagpur Division,
Nagpur and the Arbitrator under the National Highways
Act, 1956, having his office at Old Secretariate
Building, Civil Lines, Nagpur (M.S.) 440001.
4. The Deputy Collector,
Land Acquisition (General),
Nagpur and the Competent authority for acquisition
of Land for National Highways, Collectorate Building,
Civil Lines, Nagpur (M.S.) 440001.

RESPONDENTS

WITH

ARBITRATION APPEAL NO. 08 OF 2015

Bhupinder Singh,
S/o Sardar Ratan Singh Arneja, R/o "Gurukrupa",
Gurunanakpura Nagar, Nagpur.

APPELLANT

-VERSUS-

1. The Secretary to the Government of India,
Ministry of Road Transport and Highways,
New Delhi.
2. National Highways Authority of India,
Through its Project Director, Project
Implementation Unit, Pandhurna (M.P.)
having its registered office at Bunglow No.2,
Shubhankar Apartment, Plot No.159,
Ambazari Hill Top, Ram Nagar,
Nagpur 440033.

3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO. 09 OF 2015

1. M/s Omanand Industries, Nagpur
A Registered Partnership Firm, Through its Partner Jivraj S/o Ramjibhai Patel, R/o Ashirwad Palace, Near Sule High School, Abhyankar Road, Dhantoli, Nagpur, Tah. & Dist. Nagpur.
2. M/s Om Enterprises, (M/s Omanand Enterprises), A Registered Partnership Firm, Through its Partner Jivraj S/o Ramjibhai Patel, R/o Nagpur Tah. & Dist. Nagpur.

APPELLANTS

-VERSUS-

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P) having its Registered Office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur - 440033.
3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO. 10 OF 2015

Baliram Girdharilal Sahajramani,
R/o 14, Sindhu Nagar, Jaripatka,
Nagpur, Tah. & Dist. Nagpur.

APPELLANT

-VERSUS-

1. The Secretary to the Government of India,
Ministry of Road Transport and Highways,
New Delhi.
2. National Highways Authority of India,
Through its Project Director, Project
Implementation Unit, Pandhurna (M.P) having its
registered office at Bunglow No.2, Shubhankar
Apartment, Plot No.159, Ambazari Hill Top,
Ram Nagar, Nagpur 440033.
3. The Additional Commissioner, Nagpur
and Arbitrator under the National Highways
Act, 1956, having office at Old Secretariate
Building, Civil Lines, Nagpur 440001.
4. The Deputy Collector,
(Land Acquisition-General), Nagpur (Maharashtra)
and Competent Authority for Acquisition of Land
for National Highways, Collectorate, Nagpur.

RESPONDENTS**WITH****ARBITRATION APPEAL NO. 11 OF 2015**

1. Anurag Gajanan Khemuka,
Aged Major, Occu.- Private, R/o 134/B, Near
Hanuman Mandir, Gandhi Nagar, Nagpur.
2. M/s Tringle Estate Consultancy,
Through its Proprietor Tarun Jeevraj Patel,
R/o C - Shib Shree Apartments, Tikekar Road,
Dhantoli, Nagpur.
3. Nagpur Modern Hospitality Private Limited,
704-706, 7th Floor, Embassy Centre, Nariman Point,
Mumbai - 400 021, through its Directors,
James Jayant Jain S/o R.K. Jain.
4. N. H. Construction Private Ltd.
Nagpur, G-68, Connaught Circle,
New Delhi - 110001, through its
Directors James Masih S/o Yunus Masih.

APPELLANTS**-VERSUS-**

1. The Secretary to the Government of India,
Ministry of Road Transport and Highways,
Dwarka, New Delhi - 110075.
2. National Highways Authority of India,
Through its Project Director, Project
Implementation Unit, Pandhurna (M.P)
having its registered office at Bunglow No.2,
Shubhankar Apartment, Plot No.159,
Ambazari Hill Top, Ram Nagar,
Nagpur - 440033.

3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.12 OF 2015

Yash Travels and Tours Private Limited,
Nagpur, through its Chief Manager (Accountant),
Prashant Kailash Sharma.

APPELLANT

-VERSUS-

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P) having its registered office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur 440033.
3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 01.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.13 OF 2015

Nikhil Prabhakar Mundle,
R/o 164, Shivaji Nagar,
Nagpur, Tah. & Dist. Nagpur.

APPELLANT

-VERSUS-

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P) having its registered office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur - 440033.

3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.14 OF 2015

1. Karnal Singh Gurudas Singh Saini,
R/o 446, Hanuman Nagar, Nagpur
Tah. & Dist. Nagpur.
2. Baliram Girdharilal Sahajramani
R/o Sindhu Nagar, Jaripatka, Nagpur
Tah. & Dist. Nagpur.

APPELLANTS**-VERSUS-**

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P) having its Registered office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur - 440033.
3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.15 OF 2015

Chandrashekhar Kashinath Shiralkar,
R/o Q-14, Laxmi Nagar,
Tah. And Dist. Nagpur.

APPELLANT**-VERSUS-**

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi 110001.
2. National Highways Authority of India, Through its Project Director, Project

Implementation Unit, Pandhurna (M.P.) having its registered office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur - 440033.

3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having his office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.16 OF 2015

Durgadevi Baliram Sahajramani,
R/o 14, Sindhu Nagar, Jaripatka,
Nagpur, Tah. & Dist. Nagpur.

APPELLANT

-VERSUS-

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P.) having its registered office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur-440033.
3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.17 OF 2015

Dayanand @ Jaiprakash S/o Baliram Sahajramani,
Aged about - years, R/o 14, Sindhu Nagar,
Jaripatka, Nagpur, Tah. & Dist. Nagpur.

APPELLANT

-VERSUS-

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.

2. National Highways Authority of India,
Through its Project Director, Project
Implementation Unit, Pandhurna (M.P) having
its registered office at Bunglow No.2, Shubhankar
Apartment, Plot No.159, Ambazari Hill Top,
Ram Nagar, Nagpur - 440033.
3. The Additional Commissioner, Nagpur
and Arbitrator under the National Highways
Act, 1956, having office at Old Secretariate
Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector,
(Land Acquisition-General), Nagpur (Maharashtra)
and Competent Authority for Acquisition of Land for
National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH
ARBITRATION APPEAL NO.05 OF 2016

1. Cheruvu Mahalaxmi wd/o Cheruvu Vittal,
Aged 48 years, Occ. Housewife, R/o 101,
Vasant sudha Apartment, Kalanagar, Vijaywada,
District Krishna, Andhra Pradesh.
2. M/s Vidarbha Infrastructure Private Limited,
A Private Limited Company registered under
the Indian Companies Act, 1956 having its
registered corporate office at R-001, Universal
Meadows, New Sneh Nagar, Wardha Road,
Nagpur through its Director K. Venkateswara Rao
S/o Srimannarayana.

APPELLANTS

-VERSUS-

1. The Secretary to the Government of India,
Ministry of Road Transport and Highways,
Dwarka, New Delhi - 110075.
2. National Highways Authority of India,
Through its Project Director, Project
Implementation Unit, Pandhurna (M.P) having
its Registered office at Bunglow No.2, Shubhankar
Apartment, Plot No.159, Ambazari Hill Top,
Ram Nagar, Nagpur - 440033.
3. The Additional Commissioner, Nagpur
and Arbitrator under the National Highways
Act, 1956, having office at Old Secretariate
Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector,
(Land Acquisition-General), Nagpur (Maharashtra)
and Competent Authority for Acquisition of Land for
National Highways, Collectorate, Nagpur.

RESPONDENTS

WITH

ARBITRATION APPEAL NO.04 OF 2016

M/s Vidarbha Homes Private Limited, A Private limited company registered under the Indian Companies Act, 1956 having its registered corporate office at R-001, Universal Meadows, New Sneh Nagar, Wardha Road, Nagpur through its Director K. Venkateswara Rao S/o Srimannarayan.

APPELLANT**-VERSUS-**

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi - 110075.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P.) having its Registered office at Bunglow No.2, Shubhankar Apartment, Plot No.159, Ambazari Hill Top, Ram Nagar, Nagpur - 440033.
3. The Additional Commissioner, Nagpur and Arbitrator under the National Highways Act, 1956, having office at Old Secretariate Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector, (Land Acquisition-General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.

RESPONDENTS**WITH****ARBITRATION APPEAL NO.06 OF 2016**

M/s Vidarbha Homes Private Limited, A Private Limited Company registered under the Indian Companies Act, 1956 having its registered corporate office at R-001, Universal Meadows, New Sneh Nagar, Wardha Road, Nagpur through its Director K. Venkateswara Rao S/o Srimannarayana.

APPELLANTS**-VERSUS-**

1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi - 110075.
2. National Highways Authority of India, Through its Project Director, Project Implementation Unit, Pandhurna (M.P.) having its registered office at Bunglow No.2, Shubhankar

Apartment, Plot No.159, Ambazari Hill Top,
Ram Nagar, Nagpur - 440033.

3. The Additional Commissioner, Nagpur
and Arbitrator under the National Highways
Act, 1956, having office at Old Secretariate
Building, Civil Lines, Nagpur - 440001.
4. The Deputy Collector,
(Land Acquisition-General), Nagpur (Maharashtra)
and Competent Authority for Acquisition of Land for
National Highways, Collectorate, Nagpur.

RESPONDENTS

Shri A.S. Jaiswal, Senior Advocate with Shri S.B. Walekar, Advocate
for appellants in A.A. Nos.4 to 6/2016.

Shri R.P. Joshi, Advocate for appellant in A.A. No.6/2015.

Shri S.P. Bhandarkar, Advocate for appellants in A.A. Nos.8/2015 to 17/2015.

Shri A.M. Ghare, Advocate with Shri A.A. Kathane, Advocate for respondent-
NHAI.

Smt. S.S. Jachak, Assistant Government Pleader for respondent-State.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 29TH OCTOBER, 2021.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 26TH NOVEMBER, 2021.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

These arbitration appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') can be conveniently decided together since they relate to acquisition of lands by the National Highways Authority of India under the provisions of the National Highways Act, 1956 (for short, 'the Act of 1956'). The appellants herein would be referred to as the 'land owners' while the acquiring body would be referred to as 'the National Highways Authority'.

2. Various pieces of land situated at Mouza Gawsi Manapur, Mouza Parsodi and Mouza Jamtha were the subject matter of acquisition under the provisions of the Act of 1956. The notification under Section 3-A of the Act of 1956 came to be issued on 21.06.2010. These lands were sought to be acquired for the purposes of widening, maintenance and operation of a portion of National Highway No.7. The Special Land Acquisition Officer (General), Nagpur was appointed as the 'Competent Authority' and he passed an award on 23.12.2011 awarding compensation for the acquired lands. The land owners not being satisfied with the quantum of compensation as awarded initiated proceedings under Section 3-G(5) of the Act of 1956. The Additional Commissioner, Nagpur Division, Nagpur was appointed as Arbitrator for conducting arbitration proceedings in terms of Section 3-G(5) of the Act of 1956. Pursuant thereto each land owner filed statement of claim alongwith various documents in support of the prayer for enhancement in the amount of compensation. The National Highways Authority opposed each claim application and filed replies to the same. The Arbitrator thereafter passed his award in the case of each land owner and partly enhanced the amount of compensation principally by relying upon sale instance dated 09.07.2009 pertaining to a piece of land at Mouza Jamtha and report of the Government Approved Valuer dated 31.03.2010. The National Highways Authority being aggrieved by the enhancement granted by the Arbitrator approached the District Court, Nagpur by filing proceedings under Section 34 of the Act of 1996. These proceedings were contested

by the land owners and the learned Principal District Judge-‘hereinafter referred to as the learned Judge’, by passing separate judgment in the case of each land owner set aside the award passed by the Arbitrator by holding that the Arbitrator had taken into consideration photo-copies of the sale-deed dated 09.07.2009 and the report of the Government Approved Valuer without he being examined. He found that there were errors on the face of the record and as the mandatory procedure prescribed under the Act of 1996 had not been followed, conduct of the Arbitrator amounted to misconduct within the purview of Section 34 of the Act of 1996. On these counts, the applications preferred by the National Highways Authority under Section 34 of the Act of 1996 came to be allowed. The said adjudication has given rise to these appeals under Section 37 of the Act of 1996.

3. Shri A.S. Jaiswal, learned Senior Advocate for the land owners in Arbitration Appeal Nos.4, 5 and 6 of 2016 submitted that the learned Judge committed an error in setting aside the award passed by the Arbitrator. The learned Judge exercised jurisdiction under Section 34 of the Act of 1996 by treating the proceedings as an appeal. The grounds that weighed with the learned Judge for setting aside the award could not amount either to an error apparent on the face of the record or misconduct on the part of the Arbitrator while passing the award. Referring to the order passed by the learned Judge it was submitted that the grounds that weighed with the learned Judge were that no certified

copies of the sale instances were placed on record, the Government Approved Valuer whose report was taken into consideration had not been examined, the Arbitrator passed the award by applying his personal knowledge in the absence of any material pleadings in the statement of claim and further the manner in which the market value was determined was contrary to law. The aforesaid grounds it was urged were grounds that could be considered in exercise of appellate jurisdiction by the Court and not while considering a challenge to an award under Section 34 of the Act of 1996. Inviting attention to the provisions of Section 34 of the Act of 1996 it was submitted that the only ground that could be gathered in the applications preferred by the National Highways Authority of India was relatable to sub-Section 2(b)(ii) of Section 34 of the Act of 1996. There was no material on record to indicate that the arbitral award was in conflict with the public policy of India and to substantiate this contention the learned Senior Advocate placed reliance on the decision in *Associate Builders Versus Delhi Development Authority* [(2015) 3 SCC 49] to contend that examination of the merits of the award was not permissible in proceedings under Section 34 of the Act of 1996. It was then submitted that in view of the provisions of Section 19(1) of the Act of 1996, the Arbitrator was not bound by the strict rules of procedure and under Section 19(4) the Arbitrator was empowered to determine the admissibility, relevance, materiality and weight of the evidence on record. It was submitted that after the land owners placed on record various sale instances, genuineness of those transactions was never doubted by the

National Highways Authority. No objection was also raised to the filing of the photo-copies on record by the land owners. The National Highways Authority did not make any request for cross-examining any land owner or the Government Approved Valuer for that matter. In absence of any such plea being raised in the reply filed by the National Highways Authority, the Arbitrator could not be blamed for taking into consideration the photo-copies placed on record. It was also pertinent to note that the National Highways Authority did not bring on record any other sale instance to substantiate its plea that the Competent Authority had awarded excess compensation. The only material brought on record was that by the land owners and not a single document was placed on record by the National Highways Authority. It was also submitted that provisions of Section 23 of the Act of 1996 had been complied with by granting due opportunity to all the parties. It was not the grievance of the National Highways Authority that equal treatment was not given to it as contemplated by Section 18 of the Act of 1996.

It was then submitted that the provisions of Section 24 of the Act of 1996 were also duly complied. Written notes of arguments were filed by the parties including the National Highways Authority and it never demanded an oral hearing. All statements and documents relied upon by the land owners were duly supplied to the National Highways Authority as required by Section 24(3) of the Act of 1996. It was not the case that material that was not on record had been considered by the Arbitrator nor was it the case that there was no evidence whatsoever on

record to sustain the enhancement in the amount of compensation. This indicated absence of any perversity in the award passed by the Arbitrator. In the light of the fact that the principles for determining the market value as envisaged under the Land Acquisition Act, 1894 were not applicable in these proceedings, the Arbitrator was justified in relying upon the sale-deed dated 09.07.2009. A reasoned award having been passed the material considered could not be minutely scrutinized to find out the defects therein as that was beyond the scope of Section 34 of the Act of 1996. It was urged that though the learned Judge observed that there was breach of procedural law by the Arbitrator, which procedural law was not followed was not indicated in the impugned award. Similarly, no established norm was brought on record to indicate that the same had not been followed. The learned Judge was not justified in observing that the Arbitrator sought to rely upon his personal knowledge while passing the award. No personal knowledge touching to the facts of the case was referred to and mere reference was made to the location of various lands in the vicinity for the purposes of gauging the potentiality of the acquired lands which information was in the public domain. Even otherwise, it was not shown that what was referred to as regards location of various complexes/institutions was either incorrect or totally wrong. Similarly, there was no material on record to shock the conscience of the Court though the learned Judge referred to the same in the impugned award. No breach of any substantive law was pointed out and it was thus submitted that the learned Judge exceeded the jurisdiction conferred

under Section 34 of the Act of 1996. The award passed by the Arbitrator was liable to be restored.

4. Shri R.P. Joshi, learned counsel for the land owner in Arbitration Appeal No.6 of 2015 besides adopting the aforesaid submissions urged that the Special Land Acquisition Officer had passed a common award and the entire material was before the Arbitrator for consideration as he was required to determine the market value of the acquired lands that were located in the vicinity of each other. Though various photo-copies of sale instances and other documents were on record it was open for the National Highways Authority to have sought verification of the same by calling upon the land owners to furnish the original documents. This was however not done. There was no illegality in relying upon the photo-copies of various sale instances and in that regard the learned counsel placed reliance on the decision in *Land Acquisition Officer & Mandal Revenue Officer Versus V. Narasaiah* [(2001) 3 SCC 530]. Inviting attention to the reply filed by the National Highways Authority before the Arbitrator, he submitted that in the absence of any specific objection being raised on the reliance placed on various photo-copies, the objection in that regard was deemed to have been waived by the National Highways Authority. Inviting attention to the decision in *M/s Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. Versus Union of India & Others* [AIR 1973 SC 1338], it was submitted that having failed to raise any objection whatsoever to the admissibility of

the photo-copies of the documents it was not now permissible for the National Highways Authority to raise such grievance. The learned Judge erred in upholding that contention raised by the National Highways Authority. On the aspect of the award being set aside by the learned Judge as the Arbitrator had allegedly applied his personal knowledge it was submitted that a general reference to the location of various other lands in the vicinity and the facilities available there would not amount to personal knowledge of the facts of the dispute. It was open for the Arbitrator to use his expertise or general knowledge about a particular trade while deciding the proceedings as held in *PR. Shah, Shares & Stock Brokers (P) Ltd. Versus B.H.H. Securities (P) Ltd.* [(2012) 1 SCC 594]. He then submitted that the land owners had relied upon certain agreements of sale of lands in the vicinity. These agreements were duly registered by paying appropriate stamp duty. The lands under the agreements had also been acquired and therefore the agreements were the best pieces of evidence that could have been taken into consideration for determining the market value. In absence of any counter evidence by the National Highways Authority the adjudication by the Arbitrator could not be faulted. Reference was made to the decision in *Special Land Acquisition Officer Versus Sidappa Omanna Tumari & Others* [1995 Supp.(2) SCC 168]. A grievance was raised that the Arbitrator while determining the amount of compensation had proceeded to deduct 2/3rd of the value of the land when it was a settled position that such deduction ought to be only 1/3rd of the market value determined. The learned

counsel submitted that as the provisions of Section 3-J of the Act of 1956 had been struck down as being violative of Article 14 of the Constitution of India in *Union of India Versus Tarsem Singh & Others* [(2019) 9 SCC 304] the land owners were entitled for payment of solatium and interest in these facts for which purpose Civil Application No.(CAM) 22 of 2021 was filed. Reference was also made to the judgment of the learned Single Judge in **Arbitration Appeal No.28 of 2019** [*Sarjuprasad Sangmlal Gupta Versus National Highways Authority of India & Others*] alongwith connected appeals decided on 26.08.2021 wherein the aforesaid aspect was considered. He also referred to the decisions in *Project Director, National Highways No.4SE and 220 National Highways Authority of India Versus M. Hakeem & Another* [AIR 2021 SC 3471] and *PSA SICAL Terminals Pvt. Ltd. Versus The Board of Trustees of V.O. Chidambranar, Port Trust Tuticorin & Others* [2021 (8) SCALE 579] in that regard. It was thus submitted that the judgment of the learned Judge rendered under Section 34 of the Act of 1996 was liable to be set aside and appropriate relief ought to be granted to the land owner.

5. Shri S.P. Bhandarkar, learned counsel for the land owners in Arbitration Appeal Nos.8 to 17 of 2015 adopted the aforesaid submissions and in addition urged that the learned Judge by evaluating the material on record exceeded the jurisdiction conferred under Section 34 of the Act of 1996. He submitted that the Arbitrator being the Head of the Revenue Division was bound to have knowledge as to the location of the lands in

question and the projects or institutions that were in the vicinity of those lands. While conducting proceedings under Section 3-G(5) of the Act of 1956, the usual practice and procedure prevalent was followed by the Arbitrator. It was open for the National Highways Authority to have exercised the rights conferred by Section 19(2), 23(1), (2) and 24(1) of the Act of 1996. At no point of time did the National Highways Authority make any grievance with regard to the procedure followed by the Arbitrator or about the authenticity or genuineness of the documents relied upon by the land owners. He then submitted that though the learned Judge set aside the award passed by the Arbitrator on the ground that the Arbitrator was guilty of legal misconduct, such ground was available only under Section 30(a) of the Arbitration Act, 1940 (for short, 'the Act of 1940'). The present proceedings having been decided in the light of the provisions of the Act of 1996 it was not permissible for the learned Judge to have set aside the award on the ground of misconduct. Even otherwise, no ground under Section 34(2) of the Act of 1996 was made out. He sought to highlight the fact that though the proceedings were required to be adjudicated by having resort to the Act of 1996 there was no written arbitration agreement between the parties. Much therefore depended on the statement of claim and reply filed thereto as well as the conduct of the parties. In absence of breach of any principles of natural justice and there being no perversity in the determination of material findings by the Arbitrator it was not permissible for the learned Judge to have set aside the award under Section 34 of the Act of 1996. It

was thus submitted that on all the aforesaid counts, the judgment of the learned Judge was liable to be set aside. The learned counsel placed reliance on the decisions in *PSA Sical Terminals Pvt. Ltd. Versus Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Others* [AIR 2021 SC 4661], *Delhi Airport Metro Express Pvt. Ltd. Versus Delhi Metro Rail Corporation Ltd.* [2021 SCC Online SC 695], *Sahyadri Earth Movers Versus L and T Finance Ltd. & Another* [2011(4) Mh.L.J. 200], *Project Director, National Highways No.45E and 220 National Highways Authority of India Versus M. Hakeem & Another* [AIR 2021 SC 3471], *Ssangyong Engineering and Construction Company Limited Versus National Highways Authority of India (NHAI)* [(2019) 15 SCC 131], *Dyna Technologies Pvt. Ltd. Versus Crompton Greaves Limited* [(2019) 20 SCC 1] *Associate Builders Versus Delhi Development Authority* [(2015) 3 SCC 49], *Sutlej Construction Limited Versus Union Territory of Chandigarh* [(2018) 1 SCC 718], *K.Sugumar & Another Versus Hindustan Petroleum Corporation Limited & Another* [(2020) 12 SCC 539], *Municipal Corporation of Delhi Versus M/s Jagannath Ashok Kumar & Another* [(1987) 4 SCC 497], *Inder Sain Mittal Versus Housing Board, Haryana & Others* [(2002) 3 SCC 175] and *Jagjeet Singh Lyallpuri (Dead) Through Legal Representatives & Others Versus Unitop Apartments & Builders Limited* [(2020) 2 SCC 279] to substantiate his contentions.

6. Shri A.M. Ghare alongwith Shri A.A. Kathane, learned counsel for the National Highways Authority opposed the aforesaid submissions and supported the judgment of the learned Judge in the proceedings under Section 34 of the Act of 1996. It was submitted that the Arbitrator conducted the proceedings under Section 3-G(7) of the Act of 1956 in a most casual manner which resulted in a perverse determination of the market value of the acquired lands. The learned Judge was justified in concluding that there was an error apparent on the face of the award passed by the Arbitrator especially as he relied upon various photo-copies of sale instances and the report of the Government Approved Valuer. No opportunity was granted to the National Highways Authority to cross-examine the Valuer whose report was accepted as a gospel truth. Inviting attention to the Scheme of Chapter-V of the Act of 1996 it was submitted that the provisions therein and the procedure prescribed had been violated at each stage thus resulting in the learned Judge concluding that the Arbitrator had misconducted himself while passing the award. It was submitted that in absence of any agreement between the parties as to the procedure to be followed by the Arbitrator, the Arbitrator was required to conduct the proceedings in an appropriate manner. Firstly, the Arbitrator failed to call upon the parties to agree on a common procedure. Having failed to do so, the Arbitrator proceeded in his own manner which resulted in causing prejudice to the National Highways Authority. This was clear from the perusal of the roznama of the proceedings. Though under Section 19(4) the Arbitrator had the

power to determine the admissibility and relevance of any evidence, the same would not mean that the basic principles in that regard could be given a go-bye. The claim as made by the land owners had been specifically objected to by the National Highways Authority by raising appropriate defence under Section 23. The Arbitrator also failed to decide whether to hold oral hearing for presentation of evidence or for oral arguments as required by Section 24(1) of the Act of 1996. As regards the provisions of Section 24(3) it was submitted that if the Arbitrator intended to rely upon the report of the Government Approved Valuer, the same ought to have been indicated by the Arbitrator as contemplated by the latter part of Section 24(3) of the Act of 1996. Having failed to indicate that the report of the Government Approved Valuer would be relied upon, the National Highways Authority had no opportunity to counter that piece of material. This also resulted in violation of the principles of natural justice.

The learned counsel then submitted that the Arbitrator by applying wrong principles proceeded to award exorbitant compensation for the acquired lands. Reference was made to the decisions in *U.P. Awas Eevam Vikash Parishad Versus Asha Ram* [AIR 2021 SC 2832], *Shankarrao Bhagwantrao Patil Versus State of Maharashtra* [2021 SCC OnLine 763], *State of Haryana Versus Ram Singh* [(2001) 6 SCC 254] and *MIDC Versus Kailashchandra Ratanlal Chaudhary* [2018 SCC OnLine Bom 811] in that regard. The reliance placed on the sale-deed dated 09.07.2009 was without any justifiable basis since the land therein was

located at Mouza Jamtha which was at a distance from the acquired lands. The said sale instance could hardly be said to be a comparable sale instance. Even the report of the Government Approved Valuer could not have been relied upon for determining the market value of the acquired lands. Since non-acceptable evidence had been considered by the Arbitrator it was a case of no evidence and hence the findings recorded were perverse. The learned Judge was justified in concluding that the Arbitrator had passed his award by applying his personal knowledge. It was not permissible for the Arbitrator to have relied upon such personal knowledge since there was no opportunity granted to the National Highways Authority to counter that aspect. The entire burden for seeking enhanced compensation was on the land owners and by failing to place on record any justifiable material in that regard, the learned Arbitrator committed an error which was apparent on record while enhancing the amount of compensation. The learned Judge was justified in concluding that the award as passed shocked the conscience of the Court. The learned counsel placed reliance on the decisions in *Ssangyong Engineering and Construction Company Limited Versus National Highways Authority of India (NHAI)* [(2019) 15 SCC 131], *National Highways Authority of India Versus Sayedabad Tea Company Limited & Others* [(2020) 15 SCC 161], *Bi-Water Penstocks Ltd. Versus Municipal Corporation of Gr. Bombay & Another* [2011(3) Mh.L.J. 706], *Prakash Kumar Sinha Versus Konkan Mercantile Co-operative Bank Ltd. & Others* [2012(6) Mh.L.J. 274] and the judgment of the Delhi High Court in

Degremont Limited Versus Yamuna Gases & Chemicals Limited & Others

[2012 (186) DLT 343]. As regards the prayer made for grant of solatium in view of the provisions of Section 3-J of the Act of 1956 being struck down, it was urged that granting such relief would amount to modifying the award which was impermissible in law. On these counts, it was submitted that the award passed by the Arbitrator was rightly set aside by the learned Judge and there being no merit in the challenges as raised by the land owners, all the appeals were liable to be dismissed.

7. We have heard the learned counsel for the parties at length. The learned counsel have also taken us through the records of the proceedings before the Arbitrator that were called for perusal. We have given our thoughtful consideration to the rival submissions. Our findings are recorded under the following heads:-

- a) Scope of proceedings under the Act of 1956.
- b) Yardsticks for interference under Section 34 of the Act of 1996.
- c) Procedural infirmities, if any.
- d) Perversity in the award, if any.
- e) Grant of statutory amounts under Section 37 consequent upon Section 3-J of the Act of 1956 being struck down as unconstitutional.

(a) Scope of proceedings under the Act of 1956:

8. The Act of 1956 has been enacted to provide for the declaration of certain highways to be national highways and for matters

connected therewith. The Act of 1956 under which the lands in question have been acquired and especially Section 3-A to Section 3-J is in the nature of a comprehensive code in itself for the purposes of acquisition of lands which includes determination of compensation, its disbursement, settlement of disputes and payment of compensation as held in *Sayedabad Tea Company Limited & Others* (supra). The determination of the amount of compensation by the Competent Authority has been made subject to enhancement/reduction by having recourse to arbitration under Section 3-G(5) of the Act of 1956.

In *M. Hakeem & Another* (supra) it was noticed that the process of arbitration under the Act of 1956 could not be said to be a consensual process with both parties having a hand in appointing an Arbitrator. The Competent Authority who is required to arbitrate is a person or Authority authorized by the Central Government by notification to determine the amount of compensation. In *Sayedabad Tea Company Limited & Others* (supra) while considering the question as to whether an application for appointment of an Arbitrator filed under Section 11(6) of the Act of 1996 would be maintainable under the scheme of the Act of 1956, it was held that the power to appoint an Arbitrator under the Act of 1956 exclusively vested with the Central Government in view of provisions of Section 3-G(5) of the Act of 1956 and hence an application under Section 11 of the Act of 1996 for said purpose was not tenable.

It is thus clear that the process of arbitration as envisaged by Section 3-G(5) of the Act of 1956 is in the nature of statutory

arbitration in which the Arbitrator is appointed by the Central Government and subject to the provisions of the Act of 1956, the provisions of the Act of 1996 are made applicable to arbitration under Section 3-G(5) of the Act of 1956. Though the amount of compensation is determined by the Competent Authority authorized by the Central Government and such determination is made subject to arbitration before the Arbitrator also appointed by the Central Government, the same is not found sufficient to permit a challenge to the award as passed on merits under Section 34 of the Act of 1996 as held in *M. Hakeem* (supra).

(b) Yardsticks for interference under Section 34 of the Act of 1996:

9. Since Section 3-G(6) of the Act of 1956 makes the provisions of the Act of 1996 applicable, remedy under Section 34 of the Act of 1996 is available to the party aggrieved by the award passed by the Arbitrator. It may be noted that Chapter VII of the Act of 1996 in which Section 34 finds place refers to recourse against an arbitral award. The Hon'ble Supreme Court in *M. Hakeem* (supra) in that context has observed that Section 34 far from being an appellate provision only provides for setting aside awards on very limited grounds.

In these appeals the challenge to the arbitral award is principally based on the provisions of Section 34(2)(b)(ii) of the Act of 1996 namely that the arbitral award as passed is in conflict with the public policy of India. At the outset, it may be noted that all the applications under Section 34 of the Act of 1996 have been filed prior to 23.10.2015

on which date Act No.3 of 2016 amending the provisions of Section 34 came into force. In *Ssangyong Engineering* (supra) it has been held that the provisions of Section 34 as amended by Act No.3 of 2016 would apply only to Section 34 applications that have been made to the Court on or after 23.10.2015 even if the arbitration proceedings may have commenced prior to that date. It is thus clear that the provisions of Section 34 prior to being amended by Act No.3 of 2016 would have to be considered while adjudicating the challenge to the awards passed by the Arbitrator.

10. The Hon'ble Supreme Court in *Associate Builders* (supra) has dealt with the aspect of public policy of India in detail. While considering the provisions of Section 34(2)(b)(ii) of the Act of 1996 before its amendment by Act No.3 of 2016 reference was made to the decision in *Renusagar Power Co. Ltd. Versus General Electric Company* [1995 Supp.(1) SCC 644] wherein while construing the expression 'public policy' in the context of a foreign award, three heads namely (i) the fundamental policy of Indian Law, (ii) the interest of India and (iii) justice or morality were enumerated. Thereafter in *ONGC Ltd. Versus Saw Pipes Ltd.* [(2003) 5 SCC 705] the aspect of patent illegality was added as a fourth head. Under the head of the fundamental policy of Indian law, it was clarified in *Associate Builders* (supra) that disregarding the binding effect of the judgment of a superior Court would also be violative of the

fundamental policy of Indian law. Certain relevant observations that are required to be kept in mind are reproduced as under:-

“29. It is clear that the juristic principle of a “judicial approach” demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.”

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.”

“33. It must clearly be understood that when a Court is applying the “public policy” test to an arbitration award, it does not act as a Court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the

arbitrators approach is not arbitrary or capricious, then he is the last word on facts.”

“34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian Law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.”

Patent Illegality

“40. We now come to the fourth head of public policy namely, patent illegality. It must be remembered that under the explanation to section 34 (2)(b), an award is said to be in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption. This ground is perhaps the earliest ground on which courts in England set aside awards under English law. Added to this ground (in 1802) is the ground that an arbitral award would be set aside if there were an error of law by the arbitrator. This is explained by Denning, L.J. in [R v. Northumberland Compensation Appeal Tribunal, ex p Shaw, (All ER p. 130 D-E : KB p.351)]

“Leaving now the statutory tribunals, I turn to the awards of the arbitrators. The Court of King's Bench never interfered by certiorari with the award of an arbitrator, because it was a private tribunal and not subject to the prerogative writs. If the award was not made a rule of Court, the only course available to an aggrieved party was to resist an action on the award or to file a bill in equity. If the award was made a rule of Court, a motion could be made to the court to set it aside for misconduct of the arbitrator on the ground that it was procured by corruption or other undue means (see

Statute 9 and 10 Will. III, C. 15). At one time an award could not be upset on the ground of error of law by the arbitrator because that could not be said to be misconduct or undue means, but ultimately it was held in Kent v. Elstob, that an award could be set aside for error of law on the face of it. This was regretted by Williams, J., in Hodgkinson v. Fernie, but is now well established.”

41. This, in turn, led to the famous principle laid down in *Champsey Bhara Company v. Jivraj Balloo Spg. and Wvg. Co. Ltd.*, where the Privy Council referred to *Hodgkinson* and then laid down: (IA pp 330-32)

“The law on the subject has never been more clearly stated than by Williams, J. in the case of Hodgkinson v. Fernie [CB(NS) p.202 : ER p.717]

“The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact. The only exceptions to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think firmly established viz. where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.”

“Now the regret expressed by Williams, J. in Hodgkinson v. Fernie has been repeated by more than one learned Judge, and it is certainly not to be desired

that the exception should be in any way extended. An error in law on the face of the award means, in Their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound. Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made. The only way that the learned judges have arrived at finding what the mistake was is by saying: "Inasmuch as the Arbitrators awarded so and so, and inasmuch as the letter shows that then buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting Rule 52." But they were entitled to give their own interpretation to Rule 52 or any other article, and the award will stand unless, on the face of it they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound. Upon this point, therefore, Their Lordships think that the judgment of Pratt, J. was right and the conclusion of the learned Judges of the Court of Appeal erroneous."

This judgment has been consistently followed in India to test awards under Section 30 of the Arbitration Act, 1940.

42. In the 1996 Act, this principle is substituted by the ‘patent illegality’ principle which, in turn, contains three sub heads :

42.1 (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is a really a contravention of Section 28(1)(a) of the Act, which reads as under:

“28. Rules applicable to substance of dispute.—(1)

Where the place of arbitration is situated in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

42.2 (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality- for example if an arbitrator gives no reasons for an award in contravention of section 31(3) of the Act, such award will be liable to be set aside.

42.3 (c) Equally, the third sub-head of patent illegality is really a contravention of Section 28 (3) of the Arbitration Act, which reads as under:

“28. Rules applicable to substance of dispute.—

*(1)-(2) ******

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

This last contravention must be understood with a caveat. An arbitral tribunal must decide in accordance

with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.”

11. To summarize what has been laid down in *Associate Builders* (supra), an award passed (a) disregarding the binding effect of the judgment of a superior Court (b) in absence of a ‘judicial approach’ resulting in something arbitrary or whimsical (c) in breach of the ‘*audi alteram partem*’ principle (d) that is so perverse or irrational that no reasonable person would have arrived at such conclusion is liable to be set aside. Perversity would include a finding based on no evidence, taking into account something irrelevant or ignoring vital evidence could also result in the award being set aside being contrary to the fundamental policy of Indian Law. On the aspect of patent illegality, an award that is so unfair or unreasonable that it shocks the conscience of the Court is also susceptible to interference under Section 34(2) of the Act of 1996 as held in *Centrotrade Minerals and Metals Inc. Versus Hindustan Copper Limited* [(2006) 11 SCC 245] and *DDA Versus R.S. Sharma & Company* [(2008) 13 SCC 80]. Patent illegality should go to the root of the matter and it should not be a trivial illegality as observed in *J.G. Engineers (P) Ltd. Versus Union of India* [(2011) 5 SCC 758].

On the other hand, the caution to be exercised under Section 34 of the Act of 1996 as laid down in *Associate Builders* (supra) is not to act as a Court of appeal and correct errors of fact. It has to be kept in mind that the arbitrator is the ultimate master of the quality and quantity of evidence to be relied upon in the proceedings. An award could be based upon little evidence or evidence which does not measure up in quality to a trained legal mind. Dissecting and re-assessing factual aspects of the case to come to a conclusion that the award needs intervention and thereafter dubbing the award to be vitiated by perversity or patent illegality has to be avoided as observed in *Delhi Airport Metro Express Pvt. Ltd.* (supra). It is not enough that the Court thinks that the award is unjust on facts and then seek to substitute its view for that of the arbitrator to do what it considers to be ‘justice’ as held in *Sutlej Construction Limited* (supra). The perversity in the award ought to be unpardonable as can be seen from the observations in *Dyna Technologies Pvt. Ltd.* (supra) wherein the Hon’ble Supreme Court held that ‘the Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

12. We may in the passing refer to the observations in *State of Rajasthan & Others Versus Basant Nahata* [(2005) 12 SCC 77] wherein in the context of the words “public policy’ referred to in Section 23 of the

Indian Contract Act, 1872 it was held that what was opposed to public policy would be a matter depending upon the nature of the transaction. The pleadings of the parties and material brought on record would be relevant to enable a decision to be taken as to what was in public good or in public interest. In other words, the importance of pleadings of the parties and the material brought on record in that context has material importance. This aspect has also been considered in *McDermott International Inc. Versus Burn Standard Company Limited* [(2006) 11 SCC 181] and *Centrotrade Minerals and Metals Inc. Versus Hindustan Copper Limited* [(2006) 11 SCC 245].

It is on the aforesaid legal premise that the challenge as raised would have to be considered.

(c) Procedural infirmities, if any:-

13. Under Section 23(1) of the Act of 1996 a claimant approaching the Arbitral Tribunal is required to state necessary facts for supporting his claim, the points at issue and the relief or remedy sought. The respondent is thereafter required to state his defence in respect of the particulars as given by the claimant and unless the parties have otherwise agreed, as to the required elements of those statements. Under Section 23(2) of the Act of 1996 the parties can submit with their statements, such documents that they consider to be relevant or they may make a reference to the documents or other evidence that they would submit.

The aforesaid provisions thus clearly indicate that after the claimant states the necessary facts for supporting his claim and also places documents found to be relevant in that regard, the respondent in the proceedings has to state his defence in respect of the facts stated and can also file documents disputing the claim as made. In other words, the facts put forward in support of the claim alongwith documents found relevant and the defence as raised would be the basis on which the arbitration proceedings would proceed. Thus at the initial stage of the proceedings itself the party opposing the claim as made is required to put forth its defence alongwith the documents if any found relevant. Even thereafter, an opportunity to amend or supplement the statement of claim or defence is available to the parties under Section 23(3), unless otherwise agreed by the parties.

14. In this context, reference is also required to be made to the provisions of Section 4 of the Act of 1996. Thereunder, a party on knowing that the other party is likely to derogate from any provision of Part I (which comprises of Sections 2 to 43) has an opportunity to object to such derogation. However, failure to state such objection as regards non-compliance in that regard is deemed to amount to waiver of the right to object. For the present purpose, provisions of Section 19(2) and 24(1) of the Act of 1996 dealing with procedural aspects can possibly be derogated by a party. If therefore there is no agreement between the parties to the arbitration as regards the procedure to be followed by the

arbitral tribunal or whether oral hearings for presentation of evidence should be held or for oral arguments and thereafter the arbitral tribunal has proceeded in terms of Section 19(3) to conduct the proceedings in the manner it considers appropriate, the same cannot be subsequently objected to when the opportunity to object to the same is not availed of before the Arbitrator. Such procedural objections would be deemed to be waived in the light of provisions of Section 4 of the Act of 1996 if not raised at an appropriate stage before the Arbitrator. That a mandatory provision which is in the interests of a party but not conceived in public interest can also be waived by such party is well settled in view of the dictum in *Dhirendra Nath Versus Sudhir Chandra* [AIR 1964 SC 1300].

For the aforesaid conclusion we seek to draw support from the decision in *Narayan Prasad Lohia Versus Nikunj Kumar Lohia* [(2002) 3 SCC 572] where the question as to whether a mandatory provision in the Act of 1996 could be waived by the parties was decided on reference. The facts therein indicate that arbitration was undertaken by two arbitrators. An objection based on Section 10(1) of the Act of 1996 was raised since there were even number of arbitrators. One of the contentions raised was that Section 10 was a provision from which a party cannot derogate while matters from which a party could derogate were those provided under Sections 11(2), 19(1) and (2), 20(1) and (2), 22(1), 24 to 26 and 31(3). It was held that on a conjoint reading of Sections 10 and 16 it was clear that an objection to the composition of an arbitral tribunal was a matter which was derogable as a party was free

not to object within the time prescribed in Section 16(2) of the Act of 1996. If a party chose not to so object there would be deemed waiver under Section 4 of the Act of 1996. It was held that as the respondents therein had not raised any objection to the composition of the arbitral tribunal they had deemed to have waived their right to object.

15. As regards the contention raised by the learned counsel for the National Highways Authority that the Arbitrator committed an error apparent on the face of record by taking into consideration the photocopies of the aforesaid sale-deed and report of the Government Approved Valuer, that contention does not merit acceptance. Under Section 19(1) of the Act of 1996 the arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. Admittedly, in the present case it has not been shown that the parties had agreed upon the procedure to be followed by the arbitral tribunal in conducting its proceedings and therefore as permissible under Section 19(3), the arbitral tribunal proceeded to conduct the proceedings in the manner it considered appropriate. Section 19(4) specifically provides that the power of the arbitral tribunal under Section 19(3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Thus when the arbitral tribunal proceeds to determine the admissibility, relevance, materiality and weight of any evidence it would naturally be guided by the respective pleadings of the parties. The

approach of the arbitral tribunal in this regard would undoubtedly be guided by the stand taken by the parties *vis-a-vis* a particular piece of evidence. In a given case, if the existence or genuineness or validity of any piece of evidence is not disputed by the other side, the said factor definitely would have a bearing on the aspect of determination of the admissibility, relevance, materiality and weight of such evidence. On the other hand, if any piece of evidence is disputed or doubted or any similar reason is put forth, the arbitral tribunal could require the party relying upon such piece of evidence to substantiate the same while determining the admissibility, relevance, materiality and weight of that piece of evidence. In *Dyna Technologies Pvt. Ltd.* (supra) it has been held that even if the Court finds gaps in the reasoning for the conclusions reached by the Arbitrator, the Court needs to have regard to the documents submitted by the parties and contentions raised before the Arbitrator. These observations emphasize the importance of documents submitted and contentions raised by parties. For these reasons, the judgment of learned Single Judge in *Prakash Kumar Sinha* (supra) is distinguishable on facts as the contesting party therein had joined issue on the evidentiary value of documents relied upon by the other side. The facts in *Bi-Water Penstocks Ltd.* (supra) also indicate a serious objection being raised to documents filed by the other side and the Arbitrator by ignoring the same committed legal misconduct. Such are not the facts in these cases.

16. It thus depends on the facts of each case before the arbitral tribunal as regards the manner in which it proceeds to weigh and consider any piece of evidence. Where a particular piece of evidence relied upon by the claimant is neither disputed nor opposed and a mere plea is raised as regards its relevancy, the discretion exercised by the arbitral tribunal in determining the admissibility, relevance, materiality and weight of that piece of evidence will have to be respected. For, the Court exercising jurisdiction under Section 34 of the Act of 1996 does not sit in appeal over the quality and quantity of evidence relied upon by the Arbitrator except as regards a challenge to the same on the ground of perversity. Appraisal of evidence by the arbitrator is ordinarily not a matter which the Court questions and considers was held in *Municipal Corporation of Delhi* (supra). As stated above in the present case except stating that the material relied upon by the land owner was not relevant for determining the market value no other defence has been raised on the basis of which the arbitral tribunal would have been justified in calling upon the land owner to substantiate the documentary material sought to be relied upon by him.

We may in this context refer to the observations of the Lahore High Court made almost a century ago, in *J. Kaikobad Versus F. Khambatta* [AIR 1930 Lahore 280(2)] wherein while considering a similar contention that the Arbitrator had relied upon the documents that were legally inadmissible was raised. It was observed that the documents relied upon by the concerned Authority were admissible under the

provisions of the Evidence Act, 1872. Even if they were not so admissible, the Arbitrator was clearly not bound to follow its technical provisions. Another test of perversity recognized in *Ssangyong Engineering & Construction Co. Ltd.* (supra) of a finding based on documents taken behind the back of a party by the Arbitrator also cannot be applied in these proceedings as there is no such grievance raised. We may also note that in *PSA SICAL Term Pvt. Ltd.* (supra) it has been held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

17. In the light of the aforesaid position and having perused the records of each arbitration case we do not find any procedural infirmity in the conduct of proceedings before the Arbitrator. Objections raised now were never raised before the Arbitrator for had they been raised at the appropriate stage, the Arbitrator could have taken cognizance of the same and if found meritorious the same could have been rectified by the landowners. The procedural objections are therefore deemed to have been waived by the National Highways Authority before the Arbitrator. The same cannot be permitted to be raised belatedly after the award was passed. Even otherwise, the procedural aspects now raised are not of such magnitude that would constitute a ground for setting aside the award under Section 34 of the Act of 1996.

d) Perversity in the award, if any.

18. The Arbitrator while dealing with the application preferred by the land owner under Section 3-G(5) of the Act of 1956 has taken into consideration two material pieces of evidence while determining the market value of the acquired land. A sale-deed dated 09.07.2009 pertaining to sale of land located at Mouza Jamtha admeasuring 1.01 Hectare (2.50 Acres) for a consideration of Rs.5,68,75,000/- (Rupees Five Crores Sixty Eight Lakhs Seventy Five Thousand) which is about Rs.5,63,11,881/- (Rupees Five Crores Sixty Three Lakhs Eleven Thousand Eight Hundred Eighty One) per Hectare or Rs.2,27,50,000/- (Rupees Two Crores Twenty Seven Lakhs Fifty Thousand) per Acre was relied upon. It has been noted by the Arbitrator that this sale-deed was executed shortly prior to the date of issuance of notification under Section 3-A(1) of the Act of 1956 and hence was a relevant sale instance for determining the market value of the land under acquisition. It was noted that the said land was situated at Mouza Jamtha which was at a much further distance from Nagpur City than the land under acquisition. That land was about 1 to 1½ kilometers away from the highway. The Arbitrator further noted that the land under acquisition was nearer to the City and hence had more commercial potential and greater market value. He then observed that the Competent Authority ought to have taken into consideration said sale-deed while determining the market value of the land in question.

19. The other piece of evidence relied upon was the report of the Government Approved Valuer M/s Kukde & Kukde Associates. The said report dated 31.03.2010 was prepared after inspecting the spot and the land admeasuring 1 Hectare 28 R situated at Parsodi belonging to the land owner in Arbitration Appeal No.15 of 2015 was valued at Rs.20,72,10,000/- (Rupees Twenty Crores Seventy Two Lakhs Ten Thousand). The price of the land in the year 2010 was stated to be Rs.16,18,82,810/- (Rupees Sixteen Crores Eighteen Lakhs Eighty Two Thousand Eight Hundred Ten) per Hectare which comes to Rs.6,55,39,599/- (Rupees Six Crores Fifty Five Lakhs Thirty Nine Thousand Five Hundred Ninety Nine) per Acre. The Arbitrator then found that as regards the ready-reckoner rates of the lands was concerned, the cost of lands at Parsodi was about 2½ times more than the lands at Mouza Gawsi Manapur. On that basis the Arbitrator concluded that the cost of lands at Mouza Parsodi was about 2½ times more than the cost of land at Mouza Gawsi Manapur. After noting that the Competent Authority had awarded compensation at the rate of Rs.6,93,00,000/- (Rupees Six Crores Ninety Three Lakhs) per Hectare for lands at Gawsi Manapur, he held that the applicant who owned land at Mouza Parsodi was entitled to the rate which would be 1 ½ times of the rate granted for the lands at Gawsi Manapur. It is on the aforesaid basis that he has determined the compensation at the rate of Rs.10,39,50,000/- (Rupees Ten Crores Thirty Nine Lakhs Fifty Thousand) per Hectare for the lands at Mouza Parsodi.

As regards land admeasuring 0.64 R situated at Mouza Gawasi Manapur belonging to the landowner in Arbitration Appeal No.06 of 2015, the landowner placed on record of the Arbitrator two valuation reports dated 14.04.2010 and 15.07.2011. The Arbitrator has discarded the subsequent valuation report on the ground that it was prepared after issuance of the notification under Section 3-A of the Act of 1956. The Arbitrator has however considered the first valuation report indicating the value of the land to be Rs.2,000/- per square foot. The Arbitrator has then referred to his earlier adjudication that is the subject matter of challenge in Arbitration Appeal No.09 of 2015 with regard to land at the northern boundary of the land in Arbitration Appeal No.06 of 2015. On the basis of the valuation report dated 31.03.2010 that was relied upon in the award passed in Arbitration Appeal No.09 of 2015 it was held that though the value of the said land was shown by the valuer to be Rs.2,000/- per square foot, the market value was being fixed at Rs.1,250/- per square foot. The Arbitrator while determining the market value has referred to deductions made on account of size of the acquired land.

With regard to the land acquired from Mouza Jamtha that is the subject matter of Arbitration Appeal No.06 of 2016, the Arbitrator has relied upon the sale-deed dated 09.07.2009 pertaining to sale of land from Mouza Jamtha itself.

20. It was thus urged on behalf of the National Highways Authority that the Arbitrator was not justified in placing reliance on the sale-deed dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010 principally on the ground that the land owners had placed on record mere photo-copies of the said two documents and the authenticity of the said documents had not been proved. The contents thereof were accepted as gospel truth and without any further verification, reliance on the same was placed by the Arbitrator for determining the market value. It was urged that the sale transaction pertained to land located at Mouza Jamtha which was at a distance from the acquired lands and the fact that the land under the sale instance was located at a longer distance from the City of Nagpur was hardly a relevant aspect for taking the said sale instance into consideration for determining the market value of the acquired lands.

21. We would examine this contention on the touchstone of perversity and patent illegality. It would therefore be necessary to first refer to the pleadings of the land owner in Arbitration Appeal No.15 of 2015. These proceedings pertain to acquisition of land from Mouza Parsodi. In the application that was filed under Section 3-G(5) of the Act of 1956 the pleadings with regard to the aforesaid sale-deed dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010 can be found in paragraphs 8 to 10. The averments in the said paragraphs read as under:-

“8. The applicant further submits that the Sahara Company has entered into a registered agreement with one Abdul Anees Shaikh Musa, resident of Plot No.202, Teachers Colony, Thakur Plots, near M. M. Taj High School, Nagpur; whereby the Sahara Company agreed to sell a residential unit in the project that is to be developed on the 106.75 acres of land situated at village Gawsi Manapur on Wardha Road, Tahsil and District Nagpur having area of 177.90 square meter, plot area of 171.32 square meter and terrace area of 86.18 square meters for a total consideration of Rs.94,75,200/- only. A copy of the aforesaid registered agreement of sale dated 8th of July 2010 entered into between the Sahara Company and said Shri Abdul Anees Shaikh Musa is annexed herewith and marked as Annexure-G to the application for the Hon’ble Authority’s ready reference and kind perusal. From the perusal of the aforesaid registered sale agreement, it is clear that the cost of the land situated in Gawsi Manapur in the year 2010 was Rs.2,514/- per square foot.

It is, thus, clear that the cost of the land at Gawsi Manapur is increasing day by day.

9. One Shri Zaminbhai Amin, resident of 10, Sial Layout, Takli Feeder Road, Nagpur, Tahsil and District Nagpur has, vide sale-deed dated 9th of July, 2009, sold his land bearing Khasra No.110/2-3 of Mouza Jamtha, Tahsil and District Nagpur admeasuring 1.01 Hectares (2.50 acres) to Maberest Hotels Private Limited, having its Registered Office at 18th June Road, Panaji (Goa) for a total consideration of Rs.5,68,75,000/-. A copy of the aforesaid sale-deed dated 9th July, 2009 is annexed herewith and marked as Annexure-H to the application

for the Hon'ble Authority's ready reference and kind perusal. As per the aforesaid sale-deed, the price of aforesaid land comes to Rs.5,63,11,881/- (Rs.Five Crores Sixty Three Lakhs Eleven Thousand Eight Hundred Eighty One) per hectare i.e. Rs.2,27,50,000/- (Rupees Two Crores Twenty Seven Lakhs Fifty Thousand) per acre. The aforesaid land has been purchased by Maberest Hotels Private Limited for the purpose of opening a Five State Hotel.

10. The applicant further most respectfully submits that as per the information received by the applicant one Shri Anurag Khemuka, resident of 134-B, Near Hanuman Mandir, Gandhinagar, Nagpur and M/s. Triangle Estate Consultancy, through its Proprietor Shri Tarun Jeevraj Patel, resident of C-7, Shib-Shree Apartments, Tikekar Road, Dhantoli, Nagpur have entered into a registered agreement in respect of the land bearing Khasra No.2/2 KH, Patwari Halka No.42, Mouza Gawsli Manapur, Tahsil Nagpur (Rural), District Nagpur, Occupancy Class I Right, admeasuring 1.93 hectares to Nagpur Modern Hospitality Private Limited, Embassy Centre, Nariman Point, Mumbai for an amount of Rs.10,45,41,680/- dated 24th of November, 2008 and the land bearing Khasra No.3/2, Patwari Halka No.42, Mouza Gawsli Manapur, Tahsil Nagpur (Rural), District Nagpur, Occupancy Class I Right, admeasuring 1.49 hectares to N. H. Construction Private Limited, G-68, Cannought Circus, New Delhi, for a total consideration of Rs.7,88,05,420/- vide a registered agreement of sale dated 24th of November, 2008. The aforesaid land was agreed to be purchased for construction of a Five Star Hotel and the Assistant Director, Town Planning has actually approved the map in

respect of the hotel building to be constructed on Khasra No.2/2 KH and for transfer godown on Khasra No.3/2, thereby granting 12042.592 square meters and 9377.496 square meters plotable area, respectively. It is relevant to mention here that village Gawasi Manapur is just adjacent to village Parsodi. On Southern side of village Parsodi is the village Gawasi Manapur and on the Northern side of village Parsodi, is the Nagpur City. Thus, village Gawasi Manapur is at a longer distance from Nagpur City than that of village Parsodi. As has been demonstrated hereinabove, the prices of the lands in village Gawasi Manapur are, day-by-day touching the sky. Since village Parsodi is nearer to Nagpur City and the Metro Region, the prices of the lands at village Parsodi are naturally higher than that of lands at village Gawasi Manapur. If the rates of lands at village Gawasi Manapur and at village Parsodi as given in the Ready Reckoner are compared, one can see that the rate of lands at village Parsodi are 5-6 times the rates of lands at Mouza Gawasi (Manapur)."

22. In the reply filed to the aforesaid application by the National Highways Authority, the following pleadings can be found in paragraphs 8, 9, 10 and 11:-

"As to para nos. 8 and 9:- As already stated in the forgoing para the Government has nothing to do with the agreement with Sahara or any Five Star Hotels. That the said land has been acquired for the public interest & the notification also issued for the same in the local news paper & on page two of the Award Dated 01/12/2011, 'PUBLICATION OF NOTIFICATION UNDER SECTION 3(A)

OF THE ACT & simultaneously “POWER TO ENTER FOR SURVEY ETC. UNDER THE PROVISION OF SECTION 3-B OF THE ACT”. The said paras reveal the entire fact of the said case. There is a Notification issued for the acquisition of the said land as well as lands adjacent to the same for the Express Highway No.7. The said notification has published by the Government of India, New Delhi in the two local news paper i.e. one Marathi daily “Lokmat” and Hindi daily “Dainik Bhaskar” Nagpur on 01/08/2010 stating specifically to submit the objections if any from the interested persons in the Lands to the proposed Acquisition Officer & user of the said lands, before the Competent Authority & Special Land Acquisition Officer (General) Nagpur, within the period of 21 days from the date of publication of the said Notification on the News Papers. The order has been passed as per the ready reckoner. Rests of the contents are denied.

As to para 10 & 11:- The contents of these paras are denied. It is submitted that the non-applicant has to do nothing with whom the Sahara Company is doing agreement or Maberest Hotels is entering into an agreement with someone. As already submitted that the said land is acquired for the public & for the interest of the Nation. It is already submitted in the foregoing paras, that the said land has been acquired after following the due procedure of law & giving the public notice in the respectable news paper at Nagpur, hence the intimation of the said order & passing the order of compensation Dated 01/12/2011 is perfect”.

Further perusal of the written notes of arguments filed on behalf of the National Highways Authority in paragraphs 5 and 6 state the following:-

“5. So far as sale deeds relied upon by the applicant in respect of the flats in ‘Sahara City’ are concerned, those are not applicable to the instant case in as much as ‘Sahara City’ is established far away from the lands under acquisition and moreover the said flats are purchased for the residential purpose and that cannot, by any stretch of imagination, be said to be comparable sales while calculating the market value of the land under acquisition.

6. In so far as the valuation of some of the lands by the Government Approved Valuer is concerned, the said valuation cannot carry any importance so far as the other lands are concerned. The Government Approved Valuer has not, in his certificate, stated the base for concluding the rate of the land to the extent as stated in the certificate. The certificate, therefore, cannot be believed as cogent evidence for the purpose of arriving at the market rate of the land under acquisition.”

23. Reference can also be made to the pleadings in the claim petition and reply by the National Highways Authority in Case No.62/ARB2011-12 leading to Arbitration Appeal No.9 of 2015 which pertains to acquisition of land from Mouza Gawasi Manapur. Paragraphs 5, 11, 12 and 22 of the claim petition and reply thereto are as under:-

“5. The applicants further submit that the applicant no.1-M/s. Omanand Industries had purchased the aforesaid property with an intention to use the same for non-agricultural purpose i.e. for the tiles manufacturing and the some processing unit. For the purpose of starting their business on the aforesaid land, the

applicants have developed the aforesaid land by erecting a two storied building and sheds having an area of more than 26000 square feet for factory and stock of raw material as well as finished goods. The above mentioned land is situated within the Gaothan limits and in the vicinity of Sahara City, VCA Stadium, Ashtavinayak, SEZ, M.A.D.C., Hotel Sun & Sand and has a great commercial value.

As to para no.5 :- The contents of this para are denied. It is denied that the said N.A.No.1 has purchased the said land in question. The said land has been 'Acquired' by the N.A.No.1. It may be a matter of record that the applicant is having a Sale Deed of the said land. It is true that there is 7/12 extract with the applicant. It is submitted that the Hon'ble Authority has acquired Kh.No.52/1 land from the applicant which is required for the development work in the public interest at large. The order passed by the Competent Authority is very reasonable & proper. Rest of the contents needs no specific reply from this N.A.

11. One Shri Zaminbhai Amin, resident of 10, Sial Layout, Takli Feeder Road, Nagpur, Tahsil and District Nagpur has, vide sale-deed dated 9th of July, 2009 sold his land bearing Khasra No.110/2-3 of Mouza Jamtha, Tahsil and District Nagpur admeasuring 1.01 Hectares (2.50 acres) to Maberest Hotels Private Limited, having its Registered Office at 19th June Road, Panaji (Goa) for a total consideration of Rs.5,68,75,000/-. A copy of the aforesaid sale-deed dated 9th of July, 2009 is annexed herewith and marked as Annexure-J to the application for the Hon'ble Authority's ready reference and kind perusal. As per the aforesaid sale-deed, the

price of aforesaid land comes to Rs.5,63,11,881/- (Rupees Five Crores Sixty Three Lakhs Eleven Thousand Eight Hundred Eighty One) per hectare i.e. Rs.2,27,50,000/- (Rupees Two Crores Twenty Seven Lakhs Fifty Thousand) per acre. The aforesaid land has been purchased by Maberest Hotels Private Limited for the purpose of opening a Five Star Hotel.

12. It is further most respectfully submitted that the aforesaid lands of Sahara City and Shri Zaminbhai Amin are not touching the highway and are residential and agricultural lands respectively. However, the lands of the applicants are touching the highway and having more proximity of urbanized area and, thus, carry high commercial value.

8. As to para 11 & 12 :- The contents of these paras are denied. It is submitted that the non-applicant has to do nothing with whom the Sahara Company is doing agreement or Maberest Hotels is entering into an agreement with someone. As already submitted that the said land is acquired for the public & for the interest of the nation. It is already submitted that in the foregoing paras, that the said land has been acquired after following the due procedure of law & giving the public notice in the respectable news paper at Nagpur, hence the intimation of the said order & passing the order of compensation dated 23/12/2011 is perfect.

22. The applicants further most respectfully submit that in the said belt of the land, which is closed to the National Highway, most of the lands are used for non-agricultural purpose, various trades and businesses like Hotels, Dhabas, Restaurants, Godowns, Commercial Shops, etc. Immediately after the publication of

notification under Section 3-D of the Act of 1956, the applicants have been deprived of the use of their land making the applicants entitled to claim rental compensation in respect of the lands in question.

21. *As to para nos. 23, 24 & 25 :- The contents of the said paras are denied. It is already submitted that when there is the question of the National Development & in the public interest, then the Government Authority can acquired the lands & the Concern Authority gives the value as per the ready reckoner. This is published in the news paper as well as by way of notification in Gazette of India. It is true that most of the land along highway used for N.A. purpose and for Hotels, Restaurants, Godown, Commercial Shops, etc., but in this case all these are immaterial when it comes on the interest of public as well as for the national development, hence needs no specific reply from this N.A.1 and 3.”*

24. In Case No. 60/ARB 2011-12 leading to Arbitration Appeal No.11 of 2015 which also pertains to land acquired from Mouza Gawasi Manapur, the averments in paragraph 15 and reply thereto are as under:-

“15. It needs to be mentioned here that one Shri A.K.Shiralkar, who is the owner of land Khasra No.134/2, Patwari Halka No.42 of Mouza Parsodi, Tahsil Nagpur (Rural), District Nagpur, admeasuring 1 Hectare 28 R, got his land evaluated through M/s. Kukde and Kukde Associates, Architect, Planner, Interior Designer, Government Approved Valuer and the said valuer has after inspecting the spot and taking into consideration all factual aspects valued the land admeasuring 1.28

hectares as on 31st of March, 2010 at Rs. 20,72,10,000/-.

A copy of the report of the aforesaid Government Approved Valuer is annexed herewith and marked as Annexure-P to the application for the Hon'ble Authority's ready reference and kind perusal. The applicants further most respectfully submit that the fact that the lands in the vicinity of the land of the applicants are evaluated at much more rate than what has been granted by the non-applicant no.2-Competent Authority. It is, thus, clear that the non-applicant no.2-Competent Authority has committed a grave error in granting the compensation at the rate which is too less than the market value of the lands in the vicinity of the lands of the applicants. The impugned award is, therefore, liable to be modified accordingly on this ground also.

12. As to para no.5 :- The contents of this para may being a matter of record needs no specific reply.

18. As to para no.14 & 15 :- The contents of these paras are denied. It is already stated in the foregoing para that for what the said land has been acquired. This is nothing, but the repetition of the earlier paras needs no specific reply. The said Award has been passed as per the ready reckoner."

Thus, from the aforesaid pleadings it is clear that it was pleaded that the acquired lands were located near the Highway and various prominent commercial establishments were in the nearby vicinity. Sale instance dated 09.07.2009 and valuation report dated 31.03.2010 were also referred to. The denial by the National Highways Authority is in general terms without any specific objection.

25. From the averments in the claim applications filed under Section 3-G(5) of the Act of 1956 and the defence raised by the National Highways Authority in its written reply as well as the written notes of arguments that were placed before the Arbitrator, it becomes crystal clear that the National Highways Authority did not dispute the genuineness of the sale-deed dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010. Except general statements disputing the relevance of the said documents there is no specific stand taken that the sale transaction dated 09.07.2009 was not a genuine transaction or that it indicated an inflated value of the property sold. Similarly there are no pleadings disputing the report of the Government Approved Valuer. It can thus be said that in absence of any specific defence being raised by the National Highways Authority in its statement of defence or any contrary material being placed on record by it, the Arbitrator did not err in relying upon the sale instance dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010. In other words, the documentary material placed on record by the land owners was neither countered nor specifically denied by the National Highways Authority. It is not the case of the National Highways Authority that the copy of the sale-deed dated 09.07.2009 or the report of the Government Approved Valuer dated 31.03.2010 were subsequently placed on record by the land owners. On the contrary, there were specific pleadings in the claim petitions of the land owners and copies of documents relied were also supplied to the other side. The National Highways Authority could have

called upon the landowners to produce the original documents or could have sought cross-examination of the Government Approved Valuer. This course was however not adopted.

Further, the National Highways Authority did not counter the aforesaid material by placing on record before the Arbitrator some other material which according to it could be the basis for determination of the market value of the acquired land. Under Section 3-G(7) of the Act of 1956 the Arbitrator is duty bound to take into consideration the market value of the land acquired as on the date of publication of the notification under Section 3-A of the Act of 1956. When therefore, a claimant places certain material on record before the Arbitrator which material according to the claimant ought to be taken into consideration for determining the market value of the acquired land and that material is neither countered nor specifically disputed by the other side, there would hardly be any scope for finding fault with the Arbitrator for relying upon the material before him. In this backdrop therefore it would be futile to urge that the Arbitrator misconducted himself while determining the market value of the acquired lands when he took into consideration the sale-deed dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010. It also must be noted that though the landowners sought to rely upon various registered agreements of sale to indicate the market rate of the lands in the vicinity, the Arbitrator did not rely upon any such agreement of sale while determining the market value of the acquired lands.

26. Equally untenable is the contention raised by the National Highways Authority based on the provisions of Section 24(3) of the Act of 1996 while urging that the Arbitrator ought to have indicated to the parties that he intended to rely upon the report of the Government Approved Valuer for determining the market value of the acquired lands. Sub-section (3) of Section 24 is in two parts. All statements, documents or other information relied upon by one party has to be supplied to the other party. In other words, a party should be aware of the statements, documents or other material relied upon by the other party. By the latter part of Section 24(3) if the arbitral tribunal intends to rely upon any expert report or evidentiary document the same has to be indicated by the arbitral tribunal. The latter part intends to cover that material of which the parties to the arbitration do not have notice. Thus if the arbitral tribunal seeks to base its decision on any expert report or evidentiary document which is not part of any document or other information relied upon by one party and supplied to the other party under the first part of Section 24(3), only then would such occasion arise of the arbitral tribunal on its own seeking to rely upon any expert report or evidentiary document for making its decision. The object behind the latter portion of Section 24(3) is to enable the arbitral tribunal to put the parties to arbitration to notice that it intends to rely upon material of which the parties did not have notice by virtue of the former portion of Section 24(3). The object behind the latter portion is to seek compliance of fair play and natural justice by the Arbitrator.

In the present case, since the sale-deed dated 09.07.2009 as well as the report of the Government Approved Valuer was referred to by the landowners in their pleadings and copies thereof were supplied to the National Highways Authority under Section 23(2) of the Act of 1996, there was no reason for the Arbitrator to indicate to the parties that he was basing his decision on the same. Moreover, the former part of Section 24(3) refers to all statements, documents or other information while the latter part of Section 24(3) refers to any expert report or evidentiary document. The reference to all statements, documents or other information on one hand and reference to any expert report or evidentiary document on the other appears to be deliberate to indicate the object and scope of the provision.

27. The National Highways Authority itself having failed to place on record any material that would have enabled the Arbitrator to determine the market value of the acquired land in the arbitration proceedings, no fault can be found with the Arbitrator when he relied upon the sale-deed dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010. It would not be open for the National Highways Authority now to contend in proceedings under Section 34 or for that matter in appeal under Section 37 of the Act of 1996 that the basis for determining the market value of the acquired land was flawed since the Arbitrator determined the same by relying upon a sale-deed that was not a comparable sale instance. The Arbitrator having considered the

aforesaid material in detail and having assigned reasons for accepting that material in absence of any contrary material was justified in determining the market value of the land as he was required to do the same under Section 3-G(7) of the Act of 1956. Shri R.P. Joshi, learned counsel for the appellant in Arbitration Appeal No.6 of 2015 is justified in placing reliance on the decision in *M/s Kapoor Nilokheri Co-op. Dairy Farm Society Ltd.* (supra) wherein in paragraph 11 it has been held as under:-

“11. In the circumstances the appellants should also be deemed to have waived any objections that they may have had on the question of privilege. In “Russell on Arbitration” (Seventeenth Edition) at Page 182 statement of law is given as follows:

‘Objections to a decision of the arbitrator as to whether or not to admit evidence, may be waived, like other objections to the manner in which the proceedings are conducted.

A party to an arbitration cannot be allowed to lie by and then, if the award is unfavourable, seek to set it aside on the ground that during the proceedings the arbitrator gave a ruling or decision contrary to the rules of evidence which the party during the proceedings took no steps to question.’

We are, therefore, of the opinion that the Arbitrator cannot be said to have misconducted himself in the matter of his order on the question of privilege, nor are the appellants entitled to any relief on the question of depreciation based on the word ‘provisional’ in the agreement.”

Shri S.P. Bhandarkar, learned counsel for some of the landowners has rightly relied upon the decision in *Inder Sain Mittal* (supra) wherein it was observed as under:-

“(iii) Where ground is based upon breach of mandatory provision of law, a party cannot be estopped from raising the same in his objection to the award even after he participated in the arbitration proceedings in view of the well-settled maxim that there is no estoppel against statute.

(iv) If, however, basis for ground of attack is violation of such a provision of law which is not mandatory but directory and raised at the initial stage, the illegality, in appropriate case, may be set right, but in such an eventuality if a party participated in the proceedings without any protest, he would be precluded from raising the point in the objection after making of the award.”

28. The learned Judge while setting aside the award passed by the Competent Authority has observed that the Arbitrator took into consideration various factual aspects based on his personal knowledge while determining the amount of compensation payable to the land owners. He has observed that in the absence of necessary pleadings in the claim petitions filed under Sections 3-G(5) of the Act of 1956, it was not permissible for the Arbitrator to have passed his award on the basis of his personal knowledge about the location of various prominent commercial establishments in the vicinity of the acquired lands. In this

regard it has to be kept in mind that the Arbitrator considered various claim petitions filed under Section 3-G(5) of the Act of 1956 pertaining to acquisition of various lands situated at Mouza Gawsi Manapur, Mouza Parsodi and Mouza Jamtha. All these claim petitions were conducted simultaneously and it is but obvious that since various acquired lands were adjoining each other or were in the near vicinity it was but natural that the material available on the record of a particular case was kept in mind while undertaking the exercise of determination of compensation for the acquired lands. The pleadings with regard to the location of various prominent commercial establishments can be found in the proceedings that gave rise to Arbitration Appeal No.9 of 2015. These specific averments as regards the existence of the said prominent commercial establishments and they being located in the vicinity of the acquired lands were not specifically disputed by the National Highways Authority in its replies as filed. If, therefore, for the purposes of determining the market value of a particular piece of land the relevance of the said prominent commercial establishments was taken into consideration there is no reason as to why the same yardstick could not have been applied by the Arbitrator while determining the market value for another piece of adjoining land.

29. It may be stated that location of any prominent commercial establishment cannot be said to be within the 'personal knowledge' of the Competent Authority appointed under the Act of 1956. It has to be kept

in mind that the Competent Authority as appointed under Section 3-G(5) of the Act of 1956 is by issuing notification in that regard and as is the practice in this region, the Divisional Commissioner who is the Head of the Revenue Division of the Region is usually appointed as the Arbitrator. Location of a prominent commercial establishment is a matter of public knowledge and having such knowledge cannot be attributed to having 'personal knowledge' of the facts of the case. While it is true that it would not be permissible for an Arbitrator to apply his 'personal knowledge' as regards the facts of the case, during the course of arbitration proceedings, an Arbitrator would be within his rights if he uses general information and knowledge as regards location of a prominent commercial establishment in the vicinity of a piece of land that is acquired.

In this regard, useful reference can be made to the decision in *Municipal Corporation of Delhi* (supra) wherein the aspect as to whether it was open for an Arbitrator to take into consideration knowledge of certain factual aspects was considered. In paragraph 5 therein it has been observed as under:-

“5. It is familiar learning but requires emphasis that Section 1 of the Evidence Act, 1872 in its rigour is not intended to apply to proceedings before an arbitrator. P. B. Mukharji, J. as the learned Chief Justice then was, expressed the above view in Ebrahim Kassam Chochinwall v. Northern Indian Oil Industries Ltd. AIR 1951 Cal 230 and we are of the opinion that this represents the correct statement of law on this aspect. Lord Goddard, C.J. in Mediterranean & Eastern Export

Co. Ltd. V. Fortress Fabrics Ltd. (1948) 2 All ER 186 observed at pp.188/189 of the report as follows :

“A man in the trade who is selected for his experience would be likely to know and indeed to be expected to know the fluctuations of the market and would have plenty of means of informing himself or refreshing his memory on any point on which he might find it necessary so to do. In this case according to the affidavit of sellers they did take the point before the Arbitrator that the Southern African market has slumped. Whether the buyers contested that statement does not appear but an experienced Arbitrator would know or have the means of knowing whether that was so or not and to what extent and I see no reason why in principle he should be required to have evidence on this point any more than on any other question relating to a particular trade. It must be taken I think that in fixing the amount that he has, he has acted on his own knowledge and experience. The day has long gone by when the Courts looked with jealousy on the jurisdiction of the Arbitrators. The modern tendency is in my opinion more especially in commercial arbitrations, to endeavour to uphold awards of the skilled persons that the parties themselves have selected to decide the questions at issue between them. If an arbitrator has acted within the terms of his submission and has not violated any rules of what is so often called natural justice the Courts should be slow indeed to set aside his award.”

This in our opinion is an appropriate attitude.”

30. Shri R.P. Joshi, learned counsel has rightly placed reliance on the decision in *P. R. Shah* (supra) wherein it has been reiterated by the Hon'ble Supreme Court that while an arbitral tribunal cannot make use of its personal knowledge of the facts of the dispute, an arbitral tribunal can certainly use its expert or technical knowledge or the general knowledge about a particular trade in deciding a matter. It was noted that in many arbitration proceedings persons with technical knowledge were appointed as they would be well versed with the practices and customs in the respective fields.

Thus from the aforesaid it is clear that the learned Judge misdirected himself in coming to the conclusion that the Arbitrator had relied upon 'personal knowledge' when the Arbitrator referred to the location of various prominent commercial establishments existing in the vicinity of the acquired lands. Such pleadings were available on the records of some of the claim petitions and in the absence of any specific opposition to the said averments, the Arbitrator could not be said to have committed any 'patent illegality' in referring to such material which in any event was in public domain and could pass off as general knowledge. No fault therefore could have been found with the aforesaid approach of the Arbitrator and the conclusion recorded otherwise in that regard by the learned Judge is found to be unsustainable.

31. One of the grounds that has found favour with the learned Judge for setting aside the award is misconduct on the part of the

Arbitrator. According to the learned Judge the Arbitrator proceeded to determine the matter-in-issue beyond the jurisdiction conferred upon him under law. The mandatory procedure prescribed under the Act of 1996 was not followed and the determination of market value was based on surmises and conjectures. The Arbitrator also utilized his personal knowledge and recorded erroneous findings discernible from the record. This conduct according to the learned Judge amounted to misconduct within the purview of Section 34 of the Act of 1996.

Undisputedly, misconduct by an arbitrator was a ground for setting aside an award under Section 30(a) of the Act of 1940. This ground does not find place in Section 34(2)(b) of the Act of 1996. Pertinently, this ground based on misconduct of the Arbitrator has not been specifically raised by the National Highways Authority in its applications filed under Section 34 of the Act of 1996. The grounds principally raised are the non-examination of the Government Approved Valuer by the landowners and reliance placed by the Arbitrator on various photo-copies of sale-instances and agreements of sale without the original documents being produced. The other ground raised is that the Arbitrator exceeded his jurisdiction while determining the quantum of compensation. It however appears that the learned Judge considered the challenge to the award on the touchstone of misconduct and has proceeded to conclude that the approach of the Arbitrator tantamounted to misconduct under Section 34 of the Act of 1996. The basis for this conclusion of the learned Judge is on account of failure to follow the

provisions of the Act of 1996 and travelling beyond the scope of jurisdiction as conferred.

32. In our view, a reading of the grounds of challenge to the award under Section 34 indicate that such challenge was based on the provisions of Section 34(2)(b)(ii) of the Act of 1996 in the context of perversity while determining the amount of market value of the acquired lands. The challenge to the award would have to be considered in that context. Assuming that challenge based on legal misconduct of the Arbitrator could be raised, the following observations in *State of Rajasthan Versus Puri Construction Co. Ltd. & Another* [(1994) 6 SCC 485] are sufficient to negate such challenge.

“32. The contentions about factual errors and omissions apparent on the face of record as raised in the written argument are essentially errors and omissions in not properly considering the materials on record, in misreading statements out of their contexts. The arbitrators have given the award by referring to various documents and statements available on record and indicating the reasons for basing the findings. Even if it is assumed that on the materials on record, a different view could have been taken and the arbitrators have failed to consider the documents and materials on record in their proper perspective, the award is not liable to be struck down in view of judicial decisions referred to hereinbefore. Error apparent on the face of the record does not mean that on closer scrutiny of the

import of documents and materials on record, the finding made by the arbitrator may be held to be erroneous. Judicial decisions over the decades have indicated that an error of law or fact committed by an arbitrator by itself does not constitute misconduct warranting interference with the award. It does not appear to us that the findings made by the arbitrators are without any basis whatsoever and are not referable to documents relied upon and such findings are so patently unjust or perverse that no reasonable man could have arrived at such findings. Hence, on the score of alleged misreading, misconstruction, misappreciation of the materials on record or failure to consider some of the materials in their proper perspective, the impugned award is not liable to be set aside.”

33. Thus, seen from any angle the award passed by the Arbitrator can hardly be said to suffer from perversity or patent illegality. The determination of market value towards compensation for the acquired lands is on the basis of the sale-deed dated 09.07.2009 and the report of the Government Approved Valuer dated 31.03.2010. These documents were placed on record by the landowners and no objection to their authenticity or genuineness was raised by the National Highways Authority. The National Highways Authority did not seek to cross-examine the Government Approved Valuer. It also did not place on record any counter material to indicate lesser market value of the acquired lands. If the Arbitrator took into consideration these two documents for determining the market value, it cannot be said that such determination is

based on non-existent or irrelevant material so as to attract the brand of perversity. The Arbitrator being the sole judge of the quality and quantity of evidence placed before him, his acceptance of the said sale-deed and report of the Valuer cannot be faulted especially when even the written statement by the National Highways Authority did not question that material. We have therefore referred to the pleadings of the parties in extenso but we have not been able to gather any specific objection to the aforesaid documentary material placed on record by the landowners. There is no other material placed on record by the National Highways Authority to enable the Arbitrator to accept the same in preference to the aforesaid sale-deed and report of the Valuer.

As regards the procedural aspects it is found that no objection or grievance was raised by the National Highways Authority during the arbitration proceedings as a result of which the Arbitrator proceeded to determine the market value using his experience and general information available. Having failed to raise any objection at the appropriate stage, the National Highways Authority is deemed to have waived the same and such objection cannot be raised at the post-award stage. Taking an overall view of the matter, the award cannot be said to be so unfair or unreasonable so as to shock the conscience of the Court nor is it contrary to the fundamental policy of Indian law.

The learned Judge, in our view, examined the award as an appellate Court. The power of the Arbitrator to determine the admissibility, relevance, materiality and weight of the evidence on record

has been questioned by the learned Judge for untenable reasons, namely, photo-copies being placed on record and non-examination of the Government Approved Valuer. The Arbitrator did not apply his personal knowledge about the facts of the cases but considered general information as regards location of prominent commercial establishments. Grievances that ought to have been raised before the Arbitrator but not so raised were accepted by the learned Judge without going into the aspect as to whether such grievances/objections were raised before the Arbitrator. It is thus clear that after applying the tests laid down in *Associate Builders* (supra) and other decisions to which reference has been made earlier, no ground for setting aside the award under Section 34(2)(b)(ii) of the Act of 1996 is found to have been made out. A reasonable view on the basis of material on record was taken by the Arbitrator while determining the market value under Section 3-G(5) of the Act of 1956. The award of the Arbitrator is thus liable to be restored by setting aside the judgment of the learned Judge passed in exercise of jurisdiction under Section 34 of the Act of 1996.

e) Grant of statutory amounts consequent upon Section 3-J of the Act of 1956 being struck down as unconstitutional.

34. The landowner in Arbitration Appeal No.6 of 2015 has filed an application for amendment and has prayed that the landowner be declared entitled to solatium at the rate of 30% alongwith additional solatium at the rate of 10% in view of the decision in *Tarsem Singh &*

others (supra). The basis for claiming these amounts is that the Hon'ble Supreme Court in the aforesaid decision was pleased to strike down the provisions of Section 3-J of the Act of 1956 as being violative of Article 14 of the Constitution of India. Since the said provision has been declared to be unconstitutional it is urged that the landowner be awarded the amounts as contemplated by Section 23(1-A) and 23(2) as well as Section 28 Proviso of the Act of 1894. Granting these amounts would not result in modifying the award as passed by the Arbitrator. This prayer is opposed by the National Highways Authority on the premise that granting such amount would result in modifying the award passed by the Arbitrator which has been held to be impermissible in *M. Hakeem & Another* (supra).

It is not in dispute that in view of the decision in *Tarsem Singh & Others* (supra) Section 3-J of the Act of 1956 has been held to be violative of Article 14 of the Constitution of India and it has been declared that the provisions of the Act of 1894 relating to grant of solatium and interest as per Sections 23(1-A) and 2 as well as 28 Proviso would be applicable to acquisition made under the Act of 1956. By a subsequent order in *National Highway Authority of India and another Versus Tehal Singh & others* [**Misc. Application Diary No.2572 of 2020 in Civil Appeal No.7086 of 2019**] reference to sub-Section (1-A) of Section 23 has been deleted. Consequent upon such declaration the entitlement of the landowner to the aforesaid amounts under the Act of 1894 cannot be disputed. The question however to be considered is whether these

statutory amounts which were not granted by the Arbitrator could be granted under Section 37 of the Act of 1996 and whether grant of such amounts would result in modifying the award passed by the Arbitrator?

35. To consider the aforesaid position reference needs to be made to the facts in *M.Hakeem & Another* (supra). Therein, various lands were acquired under the Act of 1956 and compensation was granted by the Competent Authority. The award passed by the District Collector maintained the same amount of compensation that was granted by the Competent Authority. The landowners then filed the petitions under Section 34 of the Act of 1996 and the District Court enhanced the amount of compensation to Rs.645/- per square meter. Thus modifying the award passed by the Collector under Section 34 of the Act of 1996, the Division Bench in appeal upheld the said modification in the award. The National Highways Authority challenged the aforesaid adjudication before the Hon'ble Supreme Court. The question considered by the Hon'ble Supreme Court was whether an award as passed could be modified in exercise of jurisdiction under Section 34 of the Act of 1996. It was held that the scope of Section 34 of the Act of 1996 would not include within it a power to modify an award. The Hon'ble Supreme Court referred to certain earlier decisions rendered by it and noticed that modifications in the award passed therein were in exercise of jurisdiction under Article 142 of the Constitution of India for doing complete justice between the parties. It then held that the judgment of the learned Single

Judge of the Madras High Court in *Gayatri Balaswamy Versus ISG Novasoft Technologies Limited* [2014 SCC Online Madras 6568] permitting such modification did not lay down the correct law and was thus overruled. It was observed in clear terms that “if one were to include the power to modify an award in Section 34, one would be crossing the *Laxmanrekha* and doing what according to the justice of a case ought to be done”. Parliament had very clearly intended that no power of modification of an award existed in Section 34 of the Act of 1996.

Having held so the Hon’ble Supreme Court considered the facts of the case before it and noticed that in other similar cases the National Highways Authority had disbursed compensation to similarly situated persons at a higher rate than that what was awarded. In that view of the matter the Hon’ble Supreme Court declined to exercise jurisdiction under Article 136 of the Constitution of India in the facts of said cases. It also observed that if the justice of the case did not require interference under Article 136 of the Constitution of India, the Supreme Court need not interfere with the judgment on facts.

It is thus clear from the aforesaid decision that (a) it has been held in clear terms that it is not permissible for the Court to modify an award while exercising jurisdiction under Section 34 of the Act of 1996. Doing so would result in crossing the *Laxmanrekha* even if that may be required to be done according to the justice of a case and (b) interference with the judgment of the High Court was declined in the facts of that case after noticing that National Highways Authority had

permitted other similarly situated persons to receive compensation at a much higher rate than what was awarded to them. In our view, therefore, the aforesaid decision clearly recognizes the absence of any power with the Court to modify an award in exercise of jurisdiction under Section 34 of the Act of 1996.

36. It is thus now settled that in exercise of jurisdiction under Section 34 of the Act of 1996 the Courts may either set aside the award or refuse to set it aside on the grounds contemplated therein. The other course that is permissible for the Court to follow is under Section 34(4) of the Act of 1996 wherein on the request made by a party the Court may adjourn the proceedings so as to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal would enable elimination of the grounds for setting aside the arbitral award. In any event therefore the power of modifying an award is not conferred under Section 34 of the Act of 1996. Pertinently in *M.Hakeem & Another* (supra), the Hon'ble Supreme Court has held that modifying an award under Section 34 for 'doing what, according to the justice of a case, ought to be done' (emphasis supplied) is also not permissible. The expression justice of the case may require' has been held to be equivalent to 'in the interest of justice' or 'ends of justice' in *Saga Department Stores Limited Versus Falak Home Developers Private Limited* [2008 (5) ALL MR 565] by the Division Bench of this Court. Thus doing something that is required to be done in the interest of

justice or to meet the ends of justice has also been held to be impermissible under Section 34 of the Act of 1996.

In the present context it is clear that with the provisions of Section 3-J of the Act of 1956 being struck down as unconstitutional the provisions of the Act of 1894 relating to grant of solatium and interest would become applicable to an acquisition made under the Act of 1956. The landowner would thus be entitled to seek compensation by virtue of the provisions of the Act of 1894 becoming applicable. Since the land of the landowner has been acquired under the Act of 1956 and the provisions of Section 3-J of the Act of 1956 not being in the statute, the interests of justice or the ends of justice require that such benefit as admissible under the Act of 1894 be given to the landowner. It can be said that the justice of the case requires such benefit being given to the landowner. Despite this, granting such relief according to the justice of the case in hand would result in modifying the award passed under Section 34 of the Act of 1996. This has in clear terms been held to be beyond the jurisdiction and scope of Section 34 or for that matter Section 37 of the Act of 1996. The landowner may be entitled for greater relief in the present case as a consequence of the provisions of Section 3-J of the Act of 1956 being struck down. However, in exercise of restricted statutory jurisdiction under Section 34 or Section 37 of the Act of 1996 it would not be permissible to grant such relief even if the justice of the case demands grant of the same for it would amount to modifying the award passed by the Arbitrator. Such relief cannot be granted without modifying the award.

The landowner therefore would have to take such steps as are permissible in law to seek additional relief beyond what has been granted in the award.

37. We may refer to the decision of the learned Single Judge in *Sarjuprasad Sangmal Gupta* (supra) on which reliance was placed by the learned counsel for the landowner to contend that grant of statutory amounts payable to the landowner under the Act of 1894 on determination of compensation would not amount to modification of the award. The facts therein indicate that consequent upon acquisition of various lands under the Act of 1956 the Competent Authority determined the amount of compensation payable to the landowners. In proceedings under Section 3-G(5) of the Act of 1956, the Arbitrator enhanced the amount of compensation to Rs.3,092/- per square meter and also directed payment of additional amount of 10% of the total compensation for loss of easementary rights under Section 3-G(2) of the Act of 1956. The National Highways Authority preferred applications under Section 34 of the Act of 1996 challenging the award as passed. The landowners preferred applications under the provisions of Order XLI Rule 22 read with Rule 33 of the Code claiming determination of compensation as per provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. The learned Judge in exercise of jurisdiction under Section 34 of the Act of 1996 did not set aside the award as sought by the National Highways Authority but modified the same by directing payment of 30% amount of the award as

solatium as per Section 23(2) of the Act of 1894 after deducting 10% amount that was granted for loss of easementary rights under Section 3-G(2) of the Act of 1956. Further amount of 12% under Section 23(1-A) of the Act of 1894 as well as 9% interest under Section 28 of the Act of 1894 came to be granted. The landowners as well as the National Highways Authority filed separate appeals under Section 37 of the Act of 1996. According to the National Highways Authority, the award as passed by the Arbitrator could not have been modified by the Court and reliance was placed on the decision in *M.Hakeem & Another* (supra). The landowners however submitted that grant of solatium and interest under the Act of 1894 would not result in modification of award as grant of such amounts followed determination of the market value of the acquired lands. The learned Single Judge held that it was not permissible for the learned Judge to have modified the award passed by the Arbitrator under Section 34 of the Act of 1996 in view of the law laid down in *M.Hakeem & Another* (supra). On that basis the direction to pay the amount as determined under Section 23(1-A) of the Act of 1894 as well as the deduction of 10% compensation for loss of easementary rights was set aside as it amounted to modification of the award as passed. Reliance was then placed upon the decision in *Narayan Das Jain Versus Agra Nagar Mahapalika* [(1991) 4 SCC 212] wherein it was held that the statutory amounts towards solatium and interest become payable on the determination of compensation. Hence, granting such amounts would not result in modification of the award as it was only a recognition of

statutory entitlement upon determination of compensation as per market value which flowed automatically upon determination of such compensation. Thus in effect the amount of solatium and interest which was not granted by the Arbitrator but was granted by the learned Judge while modifying the award passed by the Arbitrator was partly maintained by learned Single Judge by holding that grant of those statutory amounts did not result in modification of award.

38. In view of the law laid down in *Narayan Das Jain* (supra) it is clear that on determination of market value of the acquired land, the statutory payments contemplated by the Act of 1894 have to be mandatorily granted. The question however is when such statutory amounts do not form part of the award, can the same be granted in exercise of jurisdiction under Section 34 or Section 37 of the Act of 1996 on the premise that these amounts are statutorily payable to the landowner under the Act of 1894. We find that in the light of the clear dictum of the Hon'ble Supreme Court in *M.Hakeem & Another* (supra), an award cannot be modified under Section 34 of the Act of 1996 even if the Court intends to do something which according to the justice of the case is required to be done. The entitlement of the landowner to such statutory amounts consequent upon provisions of Section 3-J being struck down would be undisputable but when these statutory amounts do not form part of the award, in our view it would be impermissible to grant the same since that would result in modifying the award as passed. Recognition of the

entitlement to statutory amounts flowing consequent upon determination of market value would not permit modification of an award already passed so as to grant additional statutory relief in proceedings under Section 34 or Section 37 of the Act of 1996. That, in our view is the purport of the following observations of the Hon'ble Supreme Court in paragraph 46 of the decision in *M.Hakeem & Another* (supra):-

“46.quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Laxmanrekha and doing what, according to the justice of a case, ought to be done.”

39. Additionally, what is not permissible to be done under Section 34 of the Act of 1996 cannot be done under Section 37 of the Act of 1996. The Hon'ble Supreme Court in *M.M.T.C. Limited Versus Vedanta Limited* [(2019) 4 SCC 163] has in clear terms held that interference under Section 37 cannot travel beyond the restrictions laid down under Section 34 of the Act of 1996. The Court must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. The jurisdiction in appeal under Section 37 is limited to what has been conferred under Section 34 of the Act of 1996 has been clarified in *K.Sugumar & Another* (supra).

We therefore find that it would be impermissible for the Court in exercise of jurisdiction under Section 37 of the Act of 1996 to award any statutory amount to which the landowner would be entitled consequent upon striking down of Section 3-J of the Act of 1956 if such

amount has not been granted under the award. Granting such statutory amount flowing from the determination of compensation if requiring modification of the award would not be permissible in exercise of jurisdiction under Section 34 or Section 37 of the Act of 1996. Such amount would have to be claimed by invoking appropriate jurisdiction in that regard. Hence, for these reasons the prayer made in Civil Application (CAM) No.22 of 2021 cannot be granted.

40. Having considered the entire material on the record of the Arbitrator and as a sequel to the aforesaid discussion we are of the view that no ground under Section 34(2)(b)(ii) of the Act of 1996 was made out in the applications filed under Section 34 of the Act of 1996 by the National Highways Authority. The learned Judge erred in interfering with the award passed by the Arbitrator. The judgment of the learned Judge passed under Section 34 of the Act of 1996 deserves to be set aside and the award passed by the Arbitrator is thus liable to be restored. Consequently, the following order is passed:

- (a) The judgment of the learned Principal District Judge Nagpur in Civil Miscellaneous Application Nos.421 of 2014, 67 of 2014, 54 of 2014, 66 of 2014, 24 of 2014, 61 of 2014, 62 of 2014, 50 of 2014, 65 of 2014, 60 of 2014, 56 of 2014, 55 of 2014, 48 of 2014, 49 of 2014 decided on 29.08.2015 is set aside.
- (b) The award passed by the Arbitrator in Arbitration Case Nos.55/ARB/2011-12, 58/2012, 62/ARB/2011-12, 57/2012, 60/2012, 59/ARB/2011-12, 72/2012,

66/2012, 53/ARB/2011-12, 67/ARB/2011-12, 56/ARB/2011-12, 36/2011-12, 75/2012 is restored.

- (c) Civil Application (CAM) No.22 of 2021 in Arbitration Appeal No.6 of 2015 is rejected.
- (d) Arbitration Appeal Nos.6 of 2015, 8 of 2015, 9 of 2015, 10 of 2015, 11 of 2015, 12 of 2015, 13 of 2015, 14 of 2015, 15 of 2015, 16 of 2015, 17 of 2015, 4 of 2016, 6 of 2016 and 5 of 2016 are allowed.
- (e) The parties shall bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE

At this stage, learned counsel for the National Highways Authority prays that the operation of the judgment be stayed for a period of eight weeks. This request is opposed by the learned counsel for the landowners.

In the facts of the case, this judgment shall operate after a period of eight weeks.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE