

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

ARBITRATION APPEAL NO. 28 OF 2019

(Shri Sarjuprasad S/o Sangmlal Gupta vs. National Highways Authority of India & ors.)

ARBITRATION APPEAL NO. 35 OF 2019

(Secretary to the Govt. of India & anr. vs. The Additional Commissioner and others)

ARBITRATION APPEAL NO. 36 OF 2019

(Secretary to the Govt. of India & anr. vs. The Additional Commissioner and others)

ARBITRATION APPEAL NO. 11 OF 2020

(Murlidhar Suganchand Agrawal & anr. vs. National Highways Authority of India & ors.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Arbitration Appeal No.28 of 2019 :

Mr. S. V. Manohar, Senior Advocate a/b. Mr.Y.R.Kinkhede,
Advocate for appellant.

Mr. A. A. Kathane, Advocate for respondent No.1.

Mr. A. R. Chutke for respondent Nos.3 & 4.

Arbitration Appeal No.35 of 2019 :

Mr. A. A. Kathane, Advocate for appellants.

Mr. A. R. Chutke for respondent Nos.1 and 2.

Mr. S. V. Manohar, Senior Advocate a/b. Mr.Y.R.Kinkhede,
Advocate for respondent No.3.

Arbitration Appeal No.36 of 2019 :

Mr. A. A. Kathane, Advocate for appellants.

Mr. A. R. Chutke for respondent Nos.1 and 2.

Mr. S. V. Manohar, Senior Advocate a/b. Mr.H.R.Gadhia,
Advocate for respondent Nos.3 & 4.

Arbitration Appeal No.11 of 2020 :

Mr. S. V. Manohar, Senior Advocate a/b. Mr.H.R.Gadhia,
Advocate for appellants.

Mr. A. A. Kathane, Advocate for respondent No.1.

Mr. A. R. Chutke for respondent Nos.3 & 4.

CORAM : **MANISH PITALE J.**
DATE : **26/08/2021**

These are four appeals, two filed by the acquiring body i.e. National Highways Authority of India through Ministry of Shipping, Road Transport and Highways, while the other two are appeals filed by the land owners, in the context of acquisition of their lands under provisions of the National Highways Act, 1956 (**“Act of 1956”**). These appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (**“Arbitration Act”**) challenge judgments and orders passed by the Court of District Judge, Nagpur, in applications filed under Section 34 of the aforesaid Act.

(2) Brief facts leading to filing of the present appeals are that lands belonging to the land owners in the present appeals located in village Kapsi (Khurd), District Nagpur, were sought to be acquired by the National Highway Authority of India (**i.e. “acquiring body”**) under the provisions of the Act of 1956. Notification dated 21/09/2009 was issued under Section 3-A of the Act of 1956, expressing the intention of acquiring the lands of the land owners. On 13/10/2010, a Notification was issued under Section 3-D of the said Act of 1956, pertaining to declaration of acquisition. On

08/12/2010, public notices were issued under Section 3-G(3) and (4) of the said Act of 1956, to interested persons. Thereafter, on 31/10/2012, the Land Acquisition Officer and Competent Authority issued an Award, determining the compensation payable to the land owners.

(3) The Land owners filed applications under Section 3G-(5) of the Act of 1956, seeking enhancement of compensation and determination of the same by the Arbitrator. The Arbitrator granted enhancement of compensation @Rs.3092/- per square meter to the land owners for their respective lands and further directed payment of additional amount of 10% of total compensation for loss of easementary rights, as per Section 3-G(2) of the Act of 1956.

(4) The acquiring body preferred applications under Section 34 of the Arbitration Act before the District Court, Nagpur, in view of Section 3-G(6) of the Act of 1956, which states that the provisions of the Arbitration Act shall apply to every arbitration under the aforesaid Act of 1956. By judgments and orders dated 05/04/2019, the Court of Principal District and Sessions Judge, Nagpur, confirmed the quantum of compensation granted by the Arbitrator, holding that the Awards did

not deserve to be set aside. Instead the said Court modified the Award by directing payment of amount of solatium of 30%, while deducting the grant of 10% amount for loss of easementary rights under Section 3-G(2) of the Act of 1956. The Court further directed payment of interest @12% p.a. as per Section 23(1-A) of the Land Acquisition Act, 1894, and further granted interest @9% p.a. in terms of Section 28 of the Land Acquisition Act, 1894 (**“Land Acquisition Act”**)

(5) It is relevant to mention here that the land owners did not file applications under Section 34 of the Arbitration Act, but instead preferred applications under Order 41 Rule 22 r/w Order 41 Rule 33 of the Code of Civil Procedure, specifically claiming that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (**“Right to Fair Compensation Act”**) ought to be applied for determination of compensation payable to them.

(6) As noted above, the acquiring body, as well as the land owners have filed these appeals under Section 37 of the Arbitration Act, before this Court challenging the said judgments and orders passed by the District Court. This Court issued notices in these appeals. In the

interregnum, judgments were passed by the Hon'ble Supreme Court, having bearing on the contentions raised by the rival parties, notably judgment in the case of **Union of India and another vs. Tarsem Singh and others, (2019) 9 SCC 304**. Consequently, when these appeals are taken up for final hearing, the learned counsel appearing for the rival parties have made submissions in view of the specific position of law laid down by the Hon'ble Supreme Court in the said judgment.

(7) Mr.A.A.Kathane, learned counsel appearing for the acquiring body in Arbitration Appeal Nos.35 of 2019 and 36 of 2019, submitted that in the present case the District Court committed a grave error in passing the impugned judgments and orders. It was submitted that sufficient grounds were made out by the acquiring body before the District Court for setting aside of the Arbitration Award and yet the District Court failed to properly exercise jurisdiction under Section 34 of the Arbitration Act. By placing reliance on recent judgment dated 20/07/2021 passed by the Hon'ble Supreme Court in the case of **Civil Appeal arising out of SLP (Civil) No.13020 of 2020 and connected appeals (The Project Director, National Highways Authority of India vs. M. Hakeem and another)**, it was submitted that the Court

while exercising power under Section 34 of the Arbitration Act had no power to modify an Arbitration Award. By inviting attention of this Court to the operative portion of the impugned judgments and orders passed by the Court, it was submitted that the District Court in the present case had erroneously modified the Arbitration Award, thereby showing erroneous exercise of jurisdiction. On this basis, it was submitted that the impugned judgments and orders deserved to be set aside.

(8) On the question of applicability of the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Tarsem Singh** (supra), it was submitted that when the District Court passed the impugned judgments and orders, the said judgment of the Hon'ble Supreme Court was yet to be pronounced. It was further brought to the notice of this Court that the declaration of law made by the Hon'ble Supreme Court regarding applicability of the provisions of the Land Acquisition Act pertaining to solatium and interest to acquisitions under the Act of 1956, was clarified by a subsequent order dated 30/07/2021 passed by the Hon'ble Supreme Court on a specific application moved in that regard. It was brought to the notice of this Court that the Hon'ble Supreme Court deleted Section 23(1-A)

of the Land Acquisition Act from the declaration of law given in its Judgment in the case of **Union of India vs. Tarsem Singh** (supra). On this basis, it was submitted that the District Court in the impugned judgment and order was not justified in granting interest under the aforesaid provision i.e. Section 23(1-A) of the Land Acquisition Act. By placing reliance on the very same judgment of the Hon'ble Supreme Court, it was contended that the land owners were not justified in claiming that they were entitled to the benefit of the provisions of the Right to Fair Compensation Act. Reference was also made to judgments of the Hon'ble Supreme Court in the cases of **Sunita Mehra and another vs. Union of India and others**, (2019) 17 SCC 672, and **Union of India and another vs. T.Chakrapani and others**, 2016(8) SCALE 585.

(9) The learned counsel appearing for the acquiring body i.e. NHAI, further submitted that an additional affidavit was placed on record before this Court stating that compensation @Rs.3092/- per square meter was meant for non-agricultural land and inadvertently the same rate of compensation had been given for some agricultural lands. This factor, according to the learned counsel for the acquiring body, ought to

be taken into consideration by this Court while considering the present appeals.

(10) On the other hand, Mr. Sunil Manohar, learned Senior Counsel, appearing for the land owners in these appeals submitted that the contentions sought to be raised on behalf of the acquiring body by relying upon recent judgment of Hon'ble Supreme Court in the case of **The Project Director, NHAI vs. M. Hakeem** (supra), were misplaced. By inviting attention of this Court to the operative portion of the impugned judgments and orders of the District Court, it was submitted that grant of solatium and interest could not be said to be a modification of the Award, for the reason that such amounts automatically followed the market value of the acquired lands as determined for payment of compensation. Specific reliance was placed on judgment of the Hon'ble Supreme Court in the case of **Narain Das Jain vs. Agra Nagar Mahapalika, Agra (1991) 4 SCC 212**, to contend that the Court has to mandatorily grant such statutory payments, which follow the amount of compensation towards market value of the land acquired. It was further submitted that the deletion of the relief of 10% of amount of compensation granted to the land owners under Section 3-G(2) of the Act, 1956, was a modification of the

Arbitration Award, which the District Court could not have undertaken. It was submitted that the acquiring body was not justified in relying upon the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Tarsem Singh** (supra), to contend that there was a finding therein that land owners were not entitled to 10% compensation under Section 3-G(2) of the Act of 1956. Specific reliance was placed on paragraphs 44 and 45 of the aforesaid judgment to support the said contention.

(11) The learned senior counsel further placed reliance on order dated 27/02/2020 passed by this Court in **Arbitration Appeal (AA) No.06 of 2019**, in the case of two land owners before this Court in the present appeals i.e. **Murlidhar Suganchand Agrawal & anr. vs. Secretary, Government of India, Ministry of Shipping, Road Transport and National Highways, New Delhi and others.**

(12) The learned Senior Counsel on instructions stated specifically that the land owners were not pressing their contention about applicability of the Right to Fair Compensation Act, to their cases.

(13) Heard learned counsel for the rival parties and perused the material on record. Since the learned Senior Counsel appearing for the land owners on instructions has stated that the land owners are not pressing relief on the basis of the Right to Fair Compensation Act, this Court is not called upon to consider the said contention. As regards the other contentions raised on behalf of the rival parties in these appeals, it is necessary to peruse the impugned judgments and orders passed by the District Court. A perusal of the operative portion of the said judgments and orders shows that the District Court has categorically held that the Awards are not set aside, but they are modified by directing that the land owners would be paid 30% amount of the Award as solatium, 12% of the amount of compensation as per Section 23(1-A) of the Land Acquisition Act and interest @9% in terms of Section 28 of the Land Acquisition Act. It is also specifically directed that the amount of 10% granted to the land owners under Section 3-G(2) of the Act of 1956, towards loss of easementary rights would be deducted. The District Court has thus specifically modified the Awards, while exercising power under Section 34 of the Arbitration Act.

(14) In this context the law laid down by the Hon'ble Supreme Court in the recent judgment in the case of **The Project Director, NHAI vs. M.Hakeem** (supra), becomes relevant. The Hon'ble Supreme Court has held in paragraph 46 as follows :-

“46. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over.”

(15) Therefore, there is substance in the contention raised on behalf of the acquiring body that the District Court could not have modified the Award under Section 34 of the Arbitration Act. But, it needs to be examined as to whether the operative portion of the impugned Judgments and Orders passed by the District Court actually modifies the Award or not. This is in the backdrop of the contention raised on behalf of the land owners that when the District Court, while exercising power under Section 34 of the Arbitration Act, has only

recognized and granted statutory benefits under the provisions of the Land Acquisition Act, which flow from grant of compensation, it cannot be said that the Award has been modified by the District Court. In fact, it is contended that the only modification in the Award is deprivation of 10% of compensation under Section 3-G(2) of the Act of 1956, as granted under the Award and that therefore, only the said portion needs to be set aside as per the law laid down by the Hon'ble Supreme Court in the aforesaid recent judgment in the case of **The Project Director, NHAI vs. M.Hakeem** (supra).

(16) In order to examine the said rival contentions raised on behalf of the parties, it would appropriate to quote the operative portion of the impugned judgments and orders. Since the operative portions in the impugned judgments and orders passed by the District Court in the present cases are identical, the operative portion of one such order is quoted below :-

“ O R D E R

[1] *The application is rejected with no order as to costs.*

[2] *The award is thus not set aside as prayed for by the applicants, but it is modified as under:*

[i] The applicants are directed to pay the non-applicant Nos.3 & 4 the amount granted to them by the Arbitrator's award and in addition to it, 30% of the amount of the award as solatium as per the Section 23(2) of the Land Acquisition Act after deducting the 10% of the amount granted for the loss of easements right as per Section 3-G of the Highways Act.

[ii] The applicants shall pay amount calculated at the rate of 12% on the amount of compensation (market value) of the property acquired from the date of notification to the date of order of the competent authority for acquisition of land for National Highway as per Section 23(1-A) of the Land Acquisition Act.

[iii] The applicants shall pay interest at the rate of 9% on the amount payable under clauses 2[i] & 2[ii] from the date of notification under Section 3(d) of the Highways Act till the date of payment of enhanced compensation.

[iv] The amount already paid to the non-applicant Nos.3 & 4 shall be deducted from the said payable amount.

*Sd/-
[S. B. Salve]
Nagpur. Principal District Judge, Nagpur”
Date : 05/04/2019*

(17) In the case of **Narain Das Jain vs. Agra Nagar Mahapalika** (supra), the Hon'ble Supreme Court, while considering the question of grant of solatium, has held as follows :-

“7. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the Court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.”

(18) The aforesaid portion of the Judgment was specifically relied upon by this Court in the aforesaid recent order dated 27/02/2020, passed in Arbitration Appeal (AA) No. 06 of 2019, [**Murlidhar Suganchand Agrawal vs. Secretary, Government of India** (supra). It was also held in the said order that the law declared by the Hon’ble Supreme Court in the case of **Union of India vs. Tarsem Singh** (supra) was applicable to the land owners, although the judgment was passed after the impugned judgments and orders were rendered by the District Court. The relevant portion of the said judgment of the Hon’ble Supreme Court in the case of

the **Union of India vs. Tarsem Singh** (supra) reads as follows :-

“52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal arising out of SLP (C) No. 9599/2019 is dismissed.”

(19) It is significant that in a recent order dated 30/07/2021, passed by the Hon'ble Supreme Court in

the case of **National Highway Authority of India and another vs. Tehal Singh and others**, [Misc. Application Diary No. 2572 of 2020 in Civil Appeal No. 7086 of 2019], it has been clarified by the Hon'ble Supreme Court as follows :-

“O R D E R

Sh.Shyam Divan, learned senior counsel appearing on behalf of the applicant(s), seeks a clarification of our Judgment dated 19.09.2019 in two aspects. First, he points out that in Paragraph 41 of our Judgment, we have included Section 23(1A) as well, when Section 23(1A) was not present before any authority or the Court on the facts of these cases.

He has also shown us the Judgment and Order dated 28.03.2008 passed by the High Court of Punjab and Haryana in Civil Writ Petition No. 11461 of 2005 to buttress this submission.

Since this plea is correct, we delete the expression “(1A) and” occurring in Paragraph 41 (Page 76 of the paperbook) for the reason given above.

Second, Sh.Shyam Divan points to Paragraph 42 and the sentence reading, “The burden to prove that the land in question is within 50m of the National Highway, and that it does not have commercial potentiality, is on the NHAI but, on facts, has never been discharged.” According to him, the burden to prove that the land in question is within

50m of the National Highway, is correctly on the NHAI, but whether it does or does not have commercial potentiality, ought to be on the person whose land is acquired. We may indicate that it was only on the facts of those cases that it was held that the burden, in the facts of those cases, as to commercial potentiality, is placed on the NHAI. This is not a general statement of the law, as is clear from Paragraph 42.

With these two modifications, the misc. application is disposed of.”

(20) Thus, the declaration of law made in the above quoted paragraph of the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Tarsem Singh** (supra) has been clarified to specifically state that the provision of Section 23(1-A) of the Land Acquisition Act shall not be applicable to compensation paid when acquisition is undertaken under the Act of 1956. Consequently, the declaration of law contained in the above quoted paragraph of the said judgment of the Hon'ble Supreme Court would mean that the provisions of the Land Acquisition Act regarding solatium under Section 23(2) and payment of interest on excess compensation under Section 28 of the Land Acquisition Act, would be applicable to such acquisitions made under the Act of 1956.

(21) The position of law laid down by the Hon'ble Supreme Court in the above quoted paragraph in the case of **Narain Das Jain vs. Agra Nagar Mahapalika** (supra), would show that payment of solatium and interest under the aforesaid provisions i.e. Section 23(2) and 28 of the Land Acquisition Act, would spontaneously spring up and become payable to the land owners, once the compensation as per market value stands determined. Therefore, to that extent when the District Court in the impugned judgments and orders directed payment of solatium and interest under clauses (i) and (iii) of the operative portions of the orders, it cannot be said that there was modification of the Award, even though the District Court while recognizing grant of such amounts stated that the Award was being modified.

(22) Insofar as payment of 10% of amount of compensation under Section 3-G(2) of the Act of 1956 is concerned, the Arbitrator in the Award had clearly granted such amount, while the District Court in the impugned judgments and orders directed deduction of such amount. This clearly amounted to modification of the Award, which would be impermissible as per the law laid down by the Hon'ble Supreme Court in the said

recent Judgment in the case of **The Project Director, NHAI vs. M.Hakeem** (supra).

(23) In this context, the learned counsel appearing for the acquiring body contended that the Hon'ble Supreme Court in its Judgment in the case of **Union of India vs. Tarsem Singh** (supra) had held that payment of 10% of amount of compensation towards loss of easementary rights under Section 3-G(2) of the Act of 1956, was not permissible to the land owners. Reliance was placed on paragraph 44 and 45 of the said Judgment in order to support the said contention.

(24) On the other hand, the learned Senior Counsel has relied upon the very same paragraphs to contend that the Hon'ble Supreme Court had not specifically laid down that land owners would not be entitled to the benefit of 10% of compensation for loss of easementary rights under Section 3-G(2) of the Act of 1956. Therefore, it would be appropriate to quote the said paragraphs from the Judgment in the case of **Union of India vs. Tarsem Singh** (supra) which read as follows :-

“44. Section 3-G(2) makes it clear that rights of user and rights in the nature of easement being

valuable property rights, compensation must be payable therefor. It is obvious that there is no double payment to the owner on this score as the owner and/or any other person has to prove that a right in the nature of an easement has also been taken away. Obviously, the right of user being subsumed in acquisition of ownership, the owner cannot get a double benefit on this score. The right of user is, therefore, referable only to persons other than the owner, who may have tenancy rights, and other rights of license on land which is acquired under the National Highways Act.

45. Insofar as easementary rights under the Land Acquisition Act are concerned, three Sections are relevant and need to be quoted:

*“3. Definitions.— In this Act, unless there is something repugnant in the subject or context,—xxx
xxx*

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land; xxx xxx

9. Notice to persons interested.— (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Section 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).

xxx xxx

31. Payment of compensation or deposit of same in Court.— (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.”

A reading of these Sections shows that a person who is interested in an easement affecting land can claim compensation therefor under the aforesaid provisions of the Land Acquisition Act. Under both the Land Acquisition Act and the National Highways Act, such claims have to be proved in accordance with law, the difference being that under the Land Acquisition Act actuals are payable, whereas under the National Highways Act, a fixed amount of 10% of the amount determined by the competent authority is payable. It is, therefore, wholly incorrect to state that extra amounts are payable to the owner under the National Highways Act, which are not so payable under the Land Acquisition Act. Also, both Acts contemplate payment of compensation to persons whose easementary rights have been affected by the acquisition. In any event, this contention cannot possibly answer non-payment of solatium and interest under the National Highways Act, which has been dealt with in extenso in this judgment.”

(25) This Court has perused the above quoted paragraphs and it is found that the Hon'ble Supreme Court has not categorically laid down that the land owners would not be entitled to the relief under Section 3-G(2) of the Act of 1956. A perusal of the said provision would show that where the right of user or any right in the nature of easement of the owner or any other person has been affected in any manner whatsoever by the reason of acquisition, an amount calculated at 10% of the amount of compensation

determined would be paid to such owner or any other person. Thus, such statutory mandate is akin to the mandate of payment of solatium and interest payable under the provisions of the Land Acquisition Act as recognized by the Hon'ble Supreme Court, even where acquisitions are undertaken as per the Act of 1956. Such amount flows from the determination of compensation payable to the land owners. Thus, the District Court in the present cases erred in modifying the Award by deducting the amount of 10% of compensation payable to the land owners under Section 3-G(2) of the Act of 1956, when it was specifically directed to be paid under the Award passed by the Arbitrator.

(26) Equally, Clause (ii) of the above quoted operative portion of the impugned order would show that the acquiring body has been directed to pay amounts to the land owners under Section 23(1-A) of the Land Acquisition Act. The declaration of law contained in the paragraphs quoted above from the Judgment of the **Union of India vs. Tarsem Singh** (supra), and the clarificatory order passed by the Hon'ble Supreme Court in the case of **NHAI vs. Tehal Singh** (supra), also quoted above, would show that the same would amount to a modification of the Award, not

permissible in law. This is because the ratio of the Judgment in the case of **Narain Das Jain vs. Agra Nagar Mahapalika** (supra), would not be applicable insofar as Section 23(1-A) of the Land Acquisition Act is concerned, in view of the specific declaration of law and its clarification given by the Hon'ble Supreme Court in the context of the said provision and its applicability to acquisitions undertaken as per the provisions of the Act of 1956. Thus, the aforesaid two modifications i.e. firstly, deduction of 10% amount of compensation towards loss of easementary rights under Section 3-G(2) of the Act of 1956 and secondly, grant of amount under Section 23(1-A) of the Land Acquisition Act, are rendered impermissible in terms of the law laid down by the Hon'ble Supreme Court in the recent Judgment in the case of **The Project Director, NHAI vs. M.Hakeem** (supra). Insofar as the other portions of the operative orders are concerned, since they cannot be held to be modifications of the Award, they deserve to be sustained.

(27) The learned counsel appearing for the acquiring body fairly referred to paragraphs 57 and 58 of the aforesaid recent Judgment of the Hon'ble Supreme Court in the **The Project Director, NHAI vs. M.Hakeem** (supra), pointing out that even though the

Hon'ble Supreme Court laid down the said specific position of law that there was no power with the Court under Section 34 of the Arbitration Act to modify an Arbitration Award, the Hon'ble Supreme Court refused to exercise power under Article 136 of the Constitution of India to interfere with the impugned Judgments of the High Court in the said cases. But this Court is bound by the law specifically laid down in paragraph 46 of the aforesaid Judgment and hence, the impugned judgments and orders need interference to the limited extent indicated above. Insofar as the statement made in the additional affidavit filed on behalf of the acquiring body to the effect that the compensation @Rs.3092/- per square meter was inadvertently granted by the acquiring body even for agricultural lands, it is found that in an earlier affidavit filed before this Court in Arbitration Appeal No.36 of 2019, the acquiring body had clearly stated that compensation @Rs.3092/- for non-agricultural lands and agricultural lands was granted and the word 'inadvertently' was not used therein. Be that as it may, this Court finds that the Arbitrator while rendering the Award correctly took into consideration the entire material on record, while determining the rate at which compensation was payable. The District Court while exercising power under Section 34 of the Arbitration Act specifically

considered the material on record and upon analysis of the same, confirmed the rate determined under the Arbitration Award. This Court sees no reason to interfere with the same.

(28) In view of the above, all the four appeals are partly allowed and it is held as follows: -

(A) The Arbitration Award passed by the Arbitrator and confirmed by the District Court in the impugned order is upheld and the impugned judgments and orders are interfered with only to the extent that the direction of deducting 10% of compensation for loss of easementary rights under Section 3-G(2) of the Act of 1956, is set aside and further the direction to pay amount under Section 23(1-A) of the Land Acquisition Act in Clause (ii) of the impugned orders is set aside, as these directions amount to modification of the Arbitration Award.

(B) The direction in Clause (i) to pay solatium and direction in clause (iii) for payment of interest are upheld, since they are held not to be modifications of the Arbitration Award, but instead recognition of statutory amounts payable to the land owners upon determination of compensation

as per market value, which automatically flow to the land owners upon determination of such compensation.

(29) Arbitration appeals stand disposed of in above terms.

(30) Needless to say, since the District Court has not set aside the Award passed by the Arbitrator, except the findings rendered above, all other reliefs granted to the land owners under the Award, including interest under Section 3-H(5) of the Act of 1956 shall be payable to the land owners.

JUDGE