

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13046 of 2018

Jawahar Singh and Ors

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey
For the Respondent/s	:	Mr. Sajid Salim Khan -SC 25
	:	Md. Washi Ahmed Khan

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 16-11-2022 Heard the parties.

A short question has been raised by the learned counsel for the petitioner while assailing the arbitration award in writ jurisdiction.

At the very outset, learned counsel for the petitioner has submitted that, though, the Courts generally do not interfere in an arbitration award in writ jurisdiction but in exceptional circumstances this Court can interfere in arbitration award in writ jurisdiction and for this he has relied upon the judgment of the Judgment of the Apex Court in the case of Bhaven Construction Vs. Executive Engineer Sardar Sarovar Narmada Nigam Limited and Anothers in Civil Appeal No. 14665 of 2014 decided on 06.01.2021.

Learned counsel for the petitioner has submitted that the impugned award dated 25.05.2017 has been passed by the same Additional Collector who was a party to the Six Men Committee which has reported that the land of the petitioner is of residential nature.

After submitting the report he has acted as an arbitrator and has rejected the claim of the petitioner.

The Supreme Court in the case of Bhaven Construction Vs. Executive Engineer Sardar Sarovar Narmada Nigam Limited and Anothers has held as follows:-

“That, it is relevant to mention here that the authority concerned has relied upon the report of 3D which is not even in accordance with law and that is the reason petitioners along with others have filed their respective objection before the authority concerned and accordingly six man committee was constituted for consideration of the objection of petitioners. Six man Committee considered the objection of petitioners and found their objection true but even then the arbitrator has not considered the objection as per the report of the six man committee resulting failure of justice”.

The learned counsel for the NHAI has opposed the prayer of the petitioner and has submitted that a review application filed by the petitioner is pending before the arbitrator and the petitioner may be directed to pursue his remedy of review.

It has been contended by Mr. S.N. Pathak that the petitioner cannot challenge the arbitration award by filing a writ

application but has to approach the District and Sessions Judge under Section 34 of the Arbitration and Conciliation Act by filing a review.

Mr. S.N. Pathak has also contended that the now the Commissioner has been appointed as an arbitrator, therefore his review may be considered by him.

On this the learned counsel for the petitioner has submitted that there is no provision for review of the arbitration award in the NH Act and therefore he should not be directed to press his review application before the arbitrator which has been filed on wrong legal advice.

Considered the submission of the parties, in my opinion the award dated 25.05.2017 passed by the Additional Collector has to be interfered with for the reasons as mentioned above as the person who has passed an award was himself a member of the six men committee and he cannot act as an arbitrator in the present case in view of his being a member of the six men committee.

Moreover, as held by the Apex Court the legislative intention is to make arbitration fair and efficient and in the present case this arbitration award is unfair on the face of it and therefore, this application is allowed. The arbitration award

dated 25.05.2017 is quashed and the matter is remitted back to the present arbitrator for decision in accordance with law.

While considering the matter the present arbitrator will consider the report of the six men committee and other submissions of the petitioner.

The present arbitration proceeding must be concluded within three months of communication of the copy of the order of this Court.

(Sandeep Kumar, J)

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