

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Debangsu Basak
and
The Hon'ble Justice Bibhas Ranjan De**

F.M.A.T. No. 51 OF 2021

With

CAN 1 OF 2021

With

CAN 3 OF 2022

National Highways Authority of India

Vs.

**The Arbitrator and Divisional Commissioner, Jalpaiguri
Division & Ors.**

With

F.M.A.T No. 52 OF 2021

With

CAN 1 OF 2021

With

CAN 3 OF 2022

National highways Authority Of India

Vs.

Rabindra Nath Sarkar & Ors.

For the Appellant : Ms. Supriya Singh

For the State in F.M.A.T. : Mr. Bikramaditya Ghosh
No. 51 of 2021 : Mr. Hirak Barman

For the State in F.M.A.T. : Mr. Subir Kumar Saha
No. 52 of 2021 : Mr. Momenur Rahaman

For the Respondent No. 24 : Mr. Srijib Chakraborty
in F.M.A.T. No. 51 of 2021 & : Mr. Hillol Saha Podder
Respondent No. 1 in F.M.A.T. : Ms. Mousumi Das
No. 52 of 2021

For the Respondent No. 25 in	: Mr. Partha Pratim Roy
F.M.A.T. No. 51 of 2021 &	: Mr. Suman Sehanabis
Respondent No. 22 in	: Mr. Tathagata Biswas
F.M.A.T. No. 52 of 2021	

Heard On	: June 13, 2022
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Judgement On	: June 17, 2022
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Debangsu Basak, J.:

1. The issues involved in both the appeals are similar and, therefore the two appeals had been heard one after the other. We have, therefore, decided to dispose of both the appeals by this common judgement and order. For the sake of convenience, the factual situation obtaining in F.M.A.T. No. 51 of 2021 have been largely alluded to herein. Wherever necessary factual situation obtaining in F.M.A.T. No. 52 of 2021 has been alluded to also.

2. The appellant has filed the instant appeals under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the Orders of the learned District Judge Jalpaiguri dated September 13, 2021 passed in Misc. Case No. 6 of 2019 (Arbitration) and Misc. Case No. 13 of 2019 (Arbitration). The appeal against the order passed in Misc. Case No. 6 of 2019 (Arbitration) has been registered as F.M.A.T. No. 51 of 2021 while the appeal against the order passed

in Misc. Case No. 13 of 2019 (Arbitration) has been registered as F.M.A.T. No. 52 of 2021.

3. By the impugned orders passed under Section 34 of the Act of 1996, the learned District Judge has upheld the award. In addition to the reliefs granted by the Arbitrator, the learned District has directed the Competent Authority to grant solatium and interest to the land losers.

4. Learned Advocate appearing for the appellant has contended that, the challenge petition under Section 34 of the Act of 1996 in respect of Misc Case No. 13 of 2019 (Arbitration) was barred by the laws of limitation. The private respondents had filed an application seeking condonation of delay under Section 5 of the Limitation Act, 1963. She has submitted that, Section 5 of the Limitation Act, 1963 is not applicable to a challenge to an award governed by the Act of 1996. The learned District Judge had failed to appreciate that the petition under Section 34 was barred by limitation and erred in entertaining the same. In support of such submissions she has relied upon **2001 volume 8 Supreme Court Cases 470 (Union of India vs. Popular Construction Company)**.

5. In respect of both the appeals she has submitted that, the Arbitral Award was made in May 22, 2017. Such award had been

made applicable to all acquired land of Mouza Ulladabri, including those belonging to the private respondents herein. The appellant had deposited the enhanced compensation in terms of the arbitral award dated May 22, 2022, for the entire Mouza Ulladabri with the Competent Authority under the provisions of the National Highways Act, 1956. She has submitted that, although the first award dated May 22, 2017 was for the entirety of the Mouza concerned, by misrepresentation of an order of the High Court, the Arbitrator had passed a second arbitral award dated December 6, 2018 for the same Mouza in LA Case No. 09-2012/13. She has contended that no order of the High Court can be construed mean that the learned arbitrator can pass a second arbitral award.

6. Learned Advocate appearing for the appellant has submitted that, the learned Judge had erred in issuing the directions as contained in the impugned order. She has referred to the provisions of Section 34 of the Act of 1996. The directions contained in the impugned orders tantamount to modification of the award which the learned District Judge exercising powers under Section 34 of the Act of 1996 could not have issued. She has relied upon **2021 Volume 9 Supreme Court Cases 1 (National Highways**

Authority of India vs. M. Hakeem and Another) in support of such contentions.

7. Referring to the impugned orders, learned advocate appearing for the appellant has submitted that, the learned District Judge purporting to exercise powers under Section 34 of the Act of 1996 has modified the arbitral award by adding directions with regard to payment of solatium and interest. The Court exercising jurisdiction under Section 34 of the Act of 1996 does not have such powers. The impugned order, therefore, has to be set aside. At best, in the event, the Court is of the view that, the private respondents are entitled to the reliefs which the learned arbitrator did not grant then, the Court has to remand the disputes to the arbitrator for fresh adjudication after setting aside the award.

8. Without prejudice to the contentions that, the learned District Judge had exercised erroneous jurisdiction under Section 34 of the Act of 1996, learned Advocate appearing for the appellant has submitted that, on merits also, the learned District Judge had erred in granting solatium and additional interest. She has submitted that, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 have no manner of application in the facts and

circumstance of the instant case. Consequently, learned Advocate appearing for the appellant has submitted that the impugned order should be set aside.

9. The private respondents in the two appeals have filed written notes of arguments which are identical in nature.

10. The private respondents in their written notes of arguments have alluded to the background of the case. They have referred to the various provisions of the National Highways Act, 1956 as also to the provisions of the Land Acquisition Act, 1984, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Article 300(A) of the Constitution of India. According to them, the learned District Judge had correctly granted the reliefs as appearing in the impugned award. They have referred to various authorities of the Hon'ble Supreme Court and High Courts in support of their contention that, the private respondents are entitled to the reliefs as granted by the learned District Judge. They have contended that, an arbitrator can and should grant solatium and interest. The learned District Judge in an application under Section 34 of the Act of 1996 can grant solatium and interest if the same has not been granted by the learned Arbitrator.

11. Referring to ***M. Hakeem and Another (supra)***, it has been contended on behalf of the private respondents that, it had granted the relief of solatium and interest to the land losers therein. According to the private respondents, there is no impediment in the learned District Judge exercising jurisdiction under Section 34 of the Act of 1996 to award solatium and interest.

12. The issue that has fallen for consideration in the present appeals under Section 37 of the Act of 1996 is whether, a Court exercising jurisdiction under Section 34 of the Act of 1996 is empowered to add, alter and modify an award under challenge before it.

13. ***M. Hakeem and Another (supra)*** has considered the issue as to whether, the power of a Court under Section 34 of the Act of 1996 to set aside an award of an arbitrator would include the power to modify such an award in the conspectus of an arbitral award made under the National Highways Act, 1956. It has noticed the various provisions of the National Highways Act, 1956, Arbitration Act 1940, the Arbitration and Conciliation Act, 1996 as well as various authorities on the subject. It has noted the divergence of views of the different High Courts on such issue. It has also noticed the grant of reliefs by the Hon'ble Supreme Court which partakes

the character of adding, altering and modifying an award. It has held that, so far as the decisions of the Hon'ble Supreme Court which appears to add, alter or modify an award, the same was done by exercising powers under Article 142 of the Constitution of India.

14. ***M. Hakeem and Another (supra)*** has held as follows-

“42. It can therefore be said that this question has now been settled finally by at least 3 decisions^{7, 8, 38} of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

15. The appellant had undertaken building, maintenance and operation of National Highways 31-B. Being satisfied that land was required for public purpose and that the same was required for the building, maintenance, management and operation of NH 31-B, the appellant had declared its intention to acquire lands comprised in

Ulladabri Mouza. It had issued a notification in terms of Section 3A of the Act of 1956. It had authorized the Additional District Judge (Land Acquisition), Jalpaiguri by a notification to perform the functions of the Competent Authority under the Act of 1956. The Central Government had published a notification under section 3D of the Act of 1956 declaring that the land comprised in Mouza Ulladabri should be acquired for the purposed mentioned under Section 3A(1) of the Act of 1956. Initially the Competent Authority had exercised powers under Section 3D of the Act of 1956 and determined the rate of compensation by different classes of land in such mouza on lands which were subject matter of acquisition but did not belong to the private respondents. An order had been passed by the Competent Authority on May 22, 2017 making the value of the land acquired applicable for all lands in Mouza Ulladabri including that of the private respondents.

16. The private respondents had thereafter filed applications before the learned Arbitrator for consideration of their claim in terms of Section 23 of the Arbitration and Conciliation Act, 1996 which was rejected by the learned Arbitrator on November 16, 2017 on the ground that, the arbitral award dated May 22, 2017 had

already benefited the private respondents and that the private respondents need not be heard any further.

17. The private respondents had challenged the order dated November 16, 2017 passed by the learned Arbitrator before the Hon'ble High Court by way of a Writ Petition being WP 13630(W) of 2018. Such Writ Petition had been allowed by the order dated August 23, 2018. The High Court had held that the decision dated November 16, 2017 cannot partake the character of an award. The High Court had quashed the order dated November 16, 2017. By the order dated August 23, 2018, the High Court had directed the Arbitrator appointed under the National Highways Act, 1956 to proceed with the arbitral proceedings and publish an award within four months from the date of communication of the order after affording the interested parties an opportunity of hearing.

18. Nothing has been placed on record by any of the parties to establish that, the order dated August 23, 2018 passed in WP No. 13630(W) of 2018 had been assailed by way of an appeal or has been set aside by a superior forum.

19. The Arbitrator had issued notice to the interested parties in terms of the order dated August 23, 2018 of the Hon'ble High Court. The learned Arbitrator had thereafter passed an award dated

December 6, 2018. In such award dated December 6, 2018, the learned Arbitrator had enhanced the compensations payable in respect of the different classes of land and directed interest at the rate of 9 per cent to be paid on the enhanced amount from the date of the award to the date of deposit of the required fund by the appellant. The learned Arbitrator had thereafter passed a corrigendum dated December 12, 2018 with regard to the award dated December 6, 2018.

20. The Award dated December 6, 2018 as corrected on December 12, 2018 had been made subject matter of petitions under Section 34 of the Act of 1996 at the behest of both the appellant as well as the private respondents. The challenge to the award dated December 6, 2018 under Section 34 of the Act of 1996 at the behest of the appellant had been registered as a separate case. Apparently, the primary challenge in the application under Section 34 of the Act of 1956 filed at the behest of the appellant challenging the award dated December 6, 2018 is that, the learned Arbitrator was functus officio after passing of the award dated May 22, 2017 and that the learned Arbitrator could not have passed the second award dated December 6, 2018.

21. In the challenge to the award dated December 6, 2018 filed at the behest of the private respondents, being Misc. Case No. 6 of 2019 and Misc. Case No. 13 of 2019, the learned District Judge had passed the impugned orders dated September 13, 2021.

22. In the challenge petition under Section 34 of the Act of 1996 at the behest of the private respondent directed against the award dated December 6, 2018 being Misc. Case No. 13 of 2019 (Arbitration) the appellant had contended that the challenge petition was barred by the Laws of Limitation and that the learned Arbitrator could not have passed the second award enhancing the rate of compensation. In such proceedings, the private respondents had contended that the challenged petition was not barred of the Laws of Limitation as prescribed under the Act of 1996 in as much as the private respondents were not served with the signed copy of the award dated December 6, 2018 for the time period prescribed under the Act of 1996 to commence. They had contended that the enhancement was correctly done by the award. Moreover, the private respondents have had also contended that, they were entitled to solatium and interest in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013, Land Acquisition Act, 1962 and Article 300A of the Constitution of India.

23. By the impugned order dated September 13, 2021 passed in Misc. Case No. 13 of 2019 (Arbitration) the learned District Judge had negated the point of limitation raise on behalf of the appellant by holding that the signed copy of the award dated December 6, 2018 was not established to be made over to the private respondents and, therefore, the date of commencement of the time period of limitation cannot be said to have occurred. On the scope of the contention of the private respondents that they were entitled to solatium and interest, the learned District Judge had proceeded to pass an award with regard thereto. In the challenge petition being Misc. Case No. 6 of 2019 (Arbitration) the learned District Judge had granted the same reliefs with regard to soltium and interest.

24. It appears from the impugned orders dated September 13, 2021 passed by the learned District Judge that, ***M. Hakeem and Another (supra)*** had been cited before him. With regard to ***M. Hakeem and Another (supra)*** the learned District Judge had held that in such case, the Supreme Court was pleased to observe that direction of awarding solatium and interest are held not to be

modifications of the arbitral award, but instead such direction is 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. It has held that, ***M. Hakeem and Another (supra)*** was clearly distinguishable so far as the grant of solatium and interest is concerned.

25. With the deepest of respect we are unable to accept such view of the learned District Judge as appearing in the impugned orders dated September 13, 2021 with regard to ***M. Hakeem and Another (supra)***. ***M. Hakeem and Another (supra)*** is clear with regard to power of Court under Section 34 of the Act of 1996. It has expressed such views in paragraph 42 thereof. It has held that, the Court is vested with limited remedial power, of either setting aside the award or remanding the matter, while exercising jurisdiction under Section 34 of the Act of 1996. Such Court does not have the power to add to, modify or alter the award given the limited scope of judicial interference which reverberates in the entirety of the Act of 1996.

26. Such being the view of the Hon'ble Supreme Court as appearing from ***M. Hakeem and Another (supra)*** it has to be held

that the learned District Judge had erred in granting further reliefs to the award holders in a challenge petition under Section 34 of the Act of 1996. The reliefs added to the award have to be held to be modification of the award which is impermissible under Section 34 of the Act of 1996. By the impugned orders the learned District Judge has neither remanded the matter nor set aside the award which are the only two courses of action available to the learned District Judge on being satisfied that the challenge to the award was successful.

27. The issue as to whether the private respondents are entitled to solatium and interest in terms of the provisions of the National Highways Act, 1956, Land Acquisition Act, and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or not has to be decided by the learned Arbitrator. The parties have expressed conflicting views with regard to the issue of entitlement if at all and its extent. The same has to be adjudicated upon by the learned Arbitrator.

28. In such circumstances it would be appropriate to remand the issues of solatium and interest receivable by the private respondent, if any, to the learned Arbitrator for consideration.

29. In view of the limited scope of interference under Section 37 of the Act of 1996 as well as the remedy available under Section 34 of the Act of 1996 the rival contentions of the parties relating to solatium and interest have not been discussed herein.

30. F.M.A.T. No. 51 of 2021 and F.M.A.T. No. 52 of 2021 along with all connected applications therein stands disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

31. I agree

(Bibhas Ranjan De, J.)