

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.4 of 2018
(Through Hybrid Mode)

Ananta Charan Sahoo

....

Appellant

Mr. P. K. Satapathy, Advocate

-versus-

***Land Acquisition Officer-cum-
Competent Authority (NH), Khurda
and others***

....

Respondents

Mr. Ajit Patnaik, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
10.08.2023

I.A. no.27 of 2023

Order No.

11.

1. Mr. Satapathy, learned advocate appears on behalf of applicant, who was appellant in the appeal disposed of by order dated 13th July, 2022. He submits, there is clerical error in paragraph 10 of said order or said paragraph requires modification. This is because in directing restoration to the arbitrator for interest to be awarded on solatium, there was mention of the principal being the land value at Rs.76,26,000/-

taken by the arbitrator. In the challenge mounted by his client against the award, the District Judge had enhanced the land value to Rs.1.2 crores per acre, which would make the principal land value stand enhanced to Rs.1,11,60,000/-. In the circumstances, there be correction of the clerical error or modification, whichever is necessary.

2. He draws attention to order dated 4th May, 2023 of the Supreme Court in his client's petition for Special Leave to Appeal (C) no.4558 of 2023, disposing of it. He relies upon, inter alia, three paragraphs in the order, reproduced below.

"The learned counsel appearing for the petitioner invited our attention to paragraph 10 of the impugned judgment of the High Court. On a plain reading of the said paragraph, it appears to us that there is no finding recorded that the land value needs to be reduced to Rs.82,00,000/- (Rupees eighty two lakhs) per acre. In any case, such an exercise could not have been done in the appeal preferred by the petitioner himself.

We, therefore, grant liberty to the petitioner to move the High Court for seeking necessary clarification or modification of paragraph 10 of the impugned judgment. It will be also open for the petitioner to urge before the

high Court the grievance regarding denial of interest on solatium.

If such an application is made by the petitioner, we are sure that the High Court will consider it as expeditiously as possible. If the prayer of the petitioner is not accepted by the High Court, we grant liberty to the petitioner to challenge the impugned order as well as the subsequent order passed by the High Court by filing a fresh Special Leave Petition. ”

3. Mr. Patnaik, learned advocate appears for the Land Acquisition Officer-cum-Competent Authority (NH), Khurda. He submits, his client was not noticed by the Supreme Court in disposing of the Special Leave Petition. Applicant/appellant had appealed against order of the District Judge made under section 34 in Arbitration and Conciliation Act, 1996. As such, there was no question of reliance thereon by applicant at hearing and disposal of the appeal in this Court.

4. He draws attention to paragraphs 5 and 6 in said order dated 13th July, 2022. The paragraphs are reproduced below.

“5. In facts and circumstances above, Court made observations and queries of parties. Respondents were to issue instruction regarding whether they would forbear from taking steps to restore its appeal. This direction

because appellant had assured Court that on such consideration, appellant would not press his appeal. Adjournment was granted for parties to take their positions and submit.

6. *Respondents filed restoration application in their appeal, which was dismissed by order dated 28th March, 2022. In the circumstances, Mr. Mishra submits in fairness, his client abandons all other grounds of appeal except, claim for interest on solatium.”*

According to him, paragraph 10 in said order must be read in context of earlier paragraphs 5 and 6.

5. Mr. Patnaik submits further, his client filed objection dated 15th July, 2023 to the application. In it his client has relied on the well settled position in law that an arbitration award cannot be modified on challenge thereto under section 34. Applicant/appellant is now seeking modification of this Court's order in disposing of the appeal under section 37, on reliance of upward revision made by the District Judge in the challenge proceeding. It amounts to modification of the award, impermissible in law. The judgments of the Supreme Court declaring the law as aforesaid have been mentioned in the objection. He submits,

there is no scope for either modification or clarification of order dated 13th July, 2022, disposing of the appeal.

6. Mr. Satapathy in reply submits, scope of the appeal needs to be looked into. His client had not challenged the upward revision in land value made by the District Judge. His client had preferred the appeal being aggrieved on higher enhancement not allowed by the District Judge. He submits further, this upward revision cannot now be objected to by the authority simply because its appeal against the District Judge's order stood dismissed.

7. Court appreciates that applicant had preferred appeal against judgment dated 14th December, 2017 of the District Judge, in wanting further enhancement. Since all other points had been given up in the appeal, Court's attention was not drawn to this enhancement of land value made by the District Judge, in the challenge against the award. Question before this Court was omission of the arbitrator to have awarded interest on solatium. It was nobody's case on argument before this Court that for the calculation and further award to be made on restoration, the land value must be taken at the higher value determined in the challenge proceeding by the District Judge. In the hearing of this

application, Mr. Patnaik has relied on declaration by the Supreme Court saying, an award cannot be modified under section 34. The references have been mentioned in his client's objection. Accordingly, on query from Court he does not concede to accept the upward revision of the land value as made by the District Judge. The concession is necessary because the appeal stands disposed of and the application is for modification/clarification, not re-hearing of the appeal on remand.

8. This Court does not have the power to do complete justice. In the circumstances, the application is dismissed for applicant to invoke the liberty granted by the Supreme Court on its said order dated 4th May, 2023.

(Arindam Sinha)
Judge

Prasant

Signature Not Verified

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Reason: Authentication
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