

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

ARBITRATION APPEAL NO.32 OF 2019

1. Project Director,
National Highways Authority of India
Ministry of Road Transport & Highway
Project Implementation Unit Pandhurna
(MP), presently having its office at
Project Implementation Unit, Nagpur-I
Office at Bunglow No.2, Shubhankar
Apartment, Plot No. 159, Ambazari Hill Top,
Ram Nagar, Nagpur-440033.
2. Union of India, Ministry of Road Transport
and Highways Department of Road,
Transport and Highway, Bhawan No.1,
Parliament Street, New Delhi. **APPELLANTS**

...V E R S U S...

1. The Additional Commissioner, Nagpur
and Arbitrator under the National
Highways Act 1956 having office at
Old Secretariat Building, Civil Lines,
Nagpur-440 001.
2. The Land Acquisition Officer,
General Nagpur and Competent Authority
for acquisition of land for National Highway,
Dist: Nagpur.
3. Shri Gurvindersingh Kripalsingh Bhatia,
Aged about 60 years,
Occ: Business.
4. Shri Surendrasingh Kripalsingh Bhatia,
Aged about 52 years, Occ: Business.
5. Smt. Veena @ Biwi Gurvindersingh
Kripalsingh Bhatia, Aged about 56 years,
Occ: Business.

Respondent No. 3 to 5, R/o Indore (MP),
Through their Power of Attorney Holder
Shri Ravi Rajabhau Deshpande,
Aged about 41 years, Occ: Service,
R/o Near Vidharbha Patwari Sangh,
Sudarshan Chowk, Nikalas Mandir,
Itwari, Nagpur.

..... **RESPONDENTS**

Mr. Ankit A. Kathane, Advocate for Appellants.
Mr. N. R. Rode, AGP for Respondents 1 & 2/State.
Mr. S. S. Sitani, Advocate for Respondents 3 to 5.

CORAM: **ROHIT B. DEO, J.**
DATE: **12th APRIL, 2022.**

ORAL JUDGMENT:

This appeal is heard finally at the admission stage since it is common ground that the issue involved is covered by the decision of the Supreme Court in *Project Director, National Highways Authority of India v. M. Hakeem and another (2021) 9 SCC 1*.

2. The appellant 1 is the National Highways Authority of India (NHAI) which is assailing the order dated 15.04.2019 rendered by the Principal District Judge, Nagpur in Civil M.A. 175/2017, whereby the award made by the Arbitrator was set aside in exercise of jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 (Act of 1996).

3. Briefly stated, the factual matrix is that the Land Acquisition Officer made an award dated 31.10.2012 under Section 3-G of the National Highways Act, 1956 (Act) whereby respondents 3 to 5 herein were awarded compensation for the land acquired at the rate of Rs.1350/- (Rupees One Thousand Three Hundred Fifty) per square meter. Respondents 3 to 5 preferred an application under Section 3-G (5) of the Act seeking enhancement of compensation. The said application was rejected by respondent 1 which constrained the respondents 3 to 5 to move an application under Section 34 of the Act of 1996. The said application under Section 34 of the Act of 1996 is decided by the learned Principal District Judge and the compensation is enhanced to Rs.3889/- (Rupees Three Thousand Eight Hundred Eighty Nine) per square meter.

4. While the decision of the learned Principal District Judge under Section 34 of the Act of 1996 is assailed on several grounds *inter alia* that the very basis of the award is fallacious since the comparable instances or compensation granted pertain to a different village, considering that the appeal can be decided on the short ground of absence of jurisdiction, all contentions can be left open. The short submission of Mr. Kathane is that the

enhancement of the compensation is a modification of the award, which the learned Principal District Judge could not have done. Mr. Kathane submits that the law is well settled, *inter alia* by the decision of the Supreme Court in *Project Director, National Highways Authority of India v. M. Hakeem*. In all fairness to the learned counsel for the respondents 2 to 5, there is no serious debate qua the proposition and the submission is that while the decision of the learned Principal District Judge will have to be set aside in view of the observations in *Project Director, National Highways Authority of India v. M. Hakeem*, the respondents 2 to 5 shall be entitled to initiate the arbitration process afresh. Mr. Kathane does not have any issue with such course of action.

5. The observations in *Project Director, National Highways Authority of India v. M. Hakeem* are unambiguous. This appeal will have to be allowed on the short ground that power of modification is not available in exercise of jurisdiction under Section 34 of the Act of 1996 and the only options available were either to set aside the award in its entirety or then to take recourse to the provisions of sub-section (4) of Section 34 of the Act, 1996.

6. The judgment and order of the learned Principal District Judge is set aside to the extent the compensation is enhanced. Needless to observe, the award of the Arbitrator in case 94/ARB/2012-13 dated 07/01/2016 is also set aside.

7. This appeal is allowed leaving the parties with the liberty to pursue the remedy available in accordance with law.

JUDGE

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