129-9

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.5623 of 2022 (O&M)
Date of Decision: 01.12.2022**

UNION OF INDIA ......Petitioner
Vs
SUKCHAIN SINGH AND OTHERS .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sunil K. Sharma, Advocate
for the petitioner.
****

RAJ MOHAN SINGH, J.(Oral)

Vide order dated 30.09.2022, a bunch of cases with the lead case bearing CR No.259 of 2022 was decided. In paras No.29, 34, 35, 36, 38 and 39 following observations were made by this Court:-

> *"[29]. In view of* ***BGS SGS Soma JV case (supra)****, the petitioners cannot be allowed to contend that as per 2019 Rules, there is automatic stay in contrary to Section 36 of the Arbitration and Conciliation Act. Reliance can be placed upon* ***Pam Developments and Private Limited Vs. State of West Bengal, 2019(3) RCR (Civil) 603 and BCCI Vs. Kochi Cricket Pvt. Ltd., (2018) 6 SCC 287****, where the contentions with regard to automatic stay was deprecated by the Court and it was held that in view of Section 36 of the Act, mere filing of an application under Section 34 of the Act, shall not stay enforceability of the award unless the Court grant a stay of operation of*

*the arbitration award in accordance with the provision of sub Sections 2 and 3 of Section 36 of the Act. No stay has been granted by the Court at Bathinda in the objection petition under Section 34 of the Arbitration and Conciliation Act. Petitioners have deposited the awarded amount as per the award by the Arbitrator at Faridkot. It is only the enhanced amount for which this method has been adopted by the petitioners under the garb of Section 42 of the Act. The respondents are losing huge amount per day towards interest. The amount has been partly deposited by the petitioners in the executing Court. Petitioners are not going to lose anything if the amount is released to the claimants. Para No.1 of the award itself shows that Government of India had appointed the Commissioner, Faridkot, Division Faridkot as Arbitrator under Section 3G(5) and (6) of the National Highways Act, 1956 vide letter dated 16.07.2015 for Bathinda District, Punjab, thereby creating seat of the Arbitrator at Faridkot. In the proceedings arising out of the same award, the petitioners have already deposited the enhanced amount in the executing Court in **Ex.535 of 2019** titled **Harpreet Singh Vs. National Highway Authority of India**. Perusal of **Arbitration Case No.10 dated 04.01.2016** titled **Union of India and others Vs. Ujjagar Singh and others** decided on 29.01.2016 and **Case Code No.PBLD01-000559-2016** titled **Nirmal Singh and another Vs. Union of India and others** decided on 29.01.2020 would show that the petitioners have admitted the jurisdiction of the Court, where the award is passed. Even in those cases, the petitioners had admitted that the objection petition under Section 34 of the Arbitration and Conciliation Act is maintainable in the Court where the award is passed by the Arbitrator* *and the objection petition under Section 34 of the Act, challenging the award can only be filed before the Court, who is having jurisdiction over the place where the award is passed. The stand has been taken in view of the judgment of the Hon'ble Apex Court in **Civil Appeal No.2077 of 2015** arising out of **SLP(C) No.8675 of 2014** titled **M/s Bhandari Udyog Ltd. Vs. Industrial Faciliation Council and another.***

[34]. As regards CR No.831 of 2022, it can be appreciated that as regards Rule 3 of the National Highways (Manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019 is concerned, the same does not create any automatic stay as the Rule is only in respect of manner in which the disbursement has to be made and also the manner of making requisite funds available to the competent authority. Rule 3 of the National Highways Act deals with the manner of making requisite funds available to the competent authority which shall be as follows:-

> *"3. The manner of making requisite funds available to the competent authority shall be as follows:-*
>
> *(i) Subject to provisions of the Act, the executing agency authorised by the Central Government in this behalf, shall open and maintain an account with one or more Scheduled Commercial Banks for remittance of the amount for land acquisition across the country, with arrangements for access to such account by the competent authority for specific jurisdiction as per authorisation of limits by the executing agency. The Executing Agency shall, on the demand raised by*

the competent authority before announcement of the award, issue requisite authorisation limits in favour of the competent authority for withdrawal of amount from such account as per requirements from time to time for disbursement to the landowners or persons interested therein through an electronic banking mechanism as per extant Reserve Bank of India regulations and the said authorisation limits, revolving in nature, shall entitle the competent authority to withdraw money from such account as per requirements, without any further reference to the land acquiring agency, for disbursement to the landowners or persons interested therein, as follows:

(a) The amount determined under section 3-G of the Act within fifteen days of the raising of demand by the competent authority, and

(b) Where the amount determined by the Arbitrator under sub section (7) of section 3-G of the Act is in excess of the amount determined by the competent authority, the excess amount, together with interest, if any, awarded by the Arbitrator, within 30 days of the communication of Arbitrator's award, unless such Award has been further challenged by either of the aggrieved parties."

[35]. Bare perusal of the aforesaid Rule would show that the Rules only govern the internal functioning of the Government and has nothing to do with the enforcement of the arbitral award. The Rules cannot create a law, which has already been legislated and does not provide for automatic stay. These rules are formulated as per Clause (aa) of sub Section (2) of Section 9 of National

Highways Act, 1956, which is reproduced hereasunder:-

> ***"9. Power to make rules.-****(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*
>
> *(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely*
>
> > *(a) the manner in which, and the conditions subject to which, any function in relation to the development or maintenance of a national highway or any part thereof may be exercised by the State Government or any officer or authority subordinate to the Central Government or the State Government;*
> >
> > *[(aa) the manner in which the amount shall be deposited with the competent authority under subsections (1) and (6) of section 3H*
> >
> > *(b) the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway [and the use of sections of any national highway] may be levied, and the manner in which such fees shall be collected, under section 7;]*
> >
> > *(c) the periodical inspection of national highways and the submission of inspection reports to the Central Government;*
> >
> > *(d) the reports on works carried out on national highways;*
> >
> > *(e) any other matter for which provision should be made under this Act.*

> *[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made. the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]"*

[36]. The Statute clearly states that the Rules are to be formulated regarding the deposit of compensation amount and does not provide for any stay of the proceedings. It is also pertinent to mention here that Section 3G(6) of the National Highways Act clearly states that subject to the provision of this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under this Act. Once the matter has been settled by the Arbitrator and award has been passed, it becomes a decree to be enforced by the executing Court while following law as per Code of Civil Procedure. The provisions of the National Highways Act shall not govern the proceedings once the arbitration award has been passed.

[38]. Case titled ***Land Acquisition No.9689 of 2019 titled Ram Awadh Vs. Competent Authority/Spl. Land Acquisition Officer, Bbk. and another*** *decided on 16.04.2019 is not applicable to the*

present case for the simple reason that in the aforesaid case, the Court did not consider the fact that 2019 Rules are not applicable so far as payments to landowners are concerned. The Rules are framed under Section 9 of the National Highways Act, 1956 and the Statute clearly states that the Rules are to be formulated regarding deposit of compensation amount and does not provide for any automatic stay of disbursement. In the aforesaid judgment, unamended Section 36 of the Arbitration and Conciliation Act has been quoted without adhering to the bar created in view of proviso to Section 36(3) of the Act. Section 3G(6) of the National Highways Act clearly states that subject to the provisions of this Act, provisions of Arbitration and Conciliation Act shall apply to every arbitration under this Act. Once the matter has been decided by the Arbitrator and the award has been passed, it becomes a decree to be enforced by the executing Court after following procedure as mentioned under Code of Civil Procedure. The provisions of National Highways Act shall not govern the proceedings once the award has been passed. Rule itself makes it clear that the same is internal arrangement of the Central Government/Highway Authority and the competent authority only for making the funds available to the land owners. 2019 Rules talks about the national highway manner of depositing the amount by the Central Government making requisite funds available to the competent authority for acquisition of land.

*[39]. Since in **Ram Awadh's case (supra)**, unamended Section 36 of the Act has been relied, therefore, the same is distinguishable on the facts of present case and in view of interpretation of Rules of 2019."*

The aforesaid order has also been upheld by the Hon'ble Apex Court vide order dated 29.11.2022 passed in Special Leave to Appeal (C) No.20804-20809 of 2022.

In view of aforesaid factual position, no interference is called for in this case. The same is dismissed.

Pending application(s), if any, stand disposed of.

(RAJ MOHAN SINGH)
JUDGE

December 01, 2022
Atik

Whether speaking/reasoned Yes/No

Whether reportable Yes/No