

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO.22 OF 2022

Govind Eknath Shirole
Age- 60 years, Occ- Farmer,
R/o. Savitri Niwas, Mahanbhan Lane
Parola, Tq. Parola, Dist. Jalgaon. ...Appellant

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. Project Director,
National Highway Authority of India
Project Implementation Unit- Jalgaon
Plot No. 9, Professor Colony, In front of
Govt. Engineering College, Jalgaon. ...Respondents

AND
ARBITRATION APPEAL NO.23 OF 2022

Rajkumar Vishwambharnath Agrawal
Age- 58 years, Occ- Farmer,
R/o. 11B, Anand Nagar, Mohadi Road, Jalgaon. ...Appellant

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. National Highway Authority of India
Project Implementation Unit- Dhule
Survey No. 10/2, Plot No. 11, Mansaram
Nagar, Near Circuit House, Sakri Road,

Dhule.

...Respondents

AND
ARBITRATION APPEAL NO.24 OF 2022

Suresh Bansilal Chordiya
Age- 57 years, Occ- Farmer
R/o. 26, Vijay Nagar, Shirsoli Road,
Jalgaon.

...Appellant

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. National Highway Authority of India
Project Implementation Unit- Dhule
Survey No. 10/2, Plot No. 11, Mansaram
Nagar, Near Circuit House, Sakri Road,
Dhule. ...Respondents

AND
ARBITRATION APPEAL NO.25 OF 2022

Vikas Eknath Shirole
Age- 55 years, Occ- Farmer
R/o. Savitri Niwas, Mahanbhav Lane,
Parola, Tq. Parola, Dist. Jalgaon.

...Appellant

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. Project Director,
National Highway Authority of India

Project Implementation Unit- Jalgaon
Plot No. 9, Professor Colony, In front of
Govt. Engineering College, Jalgaon. ...Respondents

AND
ARBITRATION APPEAL NO.26 OF 2022

Suresh Bansilal Chordiya
Age- 57 years, Occ- Farmer,
R/o. 26, Vijay Nagar, Shirsoli Road, Jalgaon. ...Appellant

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. National Highway Authority of India
Project Implementation Unit- Dhule
Survey No. 10/2, Plot No. 11, Mansaram
Nagar, Near Circuit House, Sakri Road,
Dhule. ...Respondents

AND
ARBITRATION APPEAL NO.27 OF 2022

1. Vikas Eknath Shirole
(GPA holder for himself & Appli no. 2 & 3)
Age- 59 years, Occ- Farmer,
R/o. Savitri Niwas, Mahanbhav Lane,
Parola, Tq. Parola, Dist. Jalgaon.
2. Mina Rajendra Chaudhari
Age- 44 years, Occ- Farmer,
3. Rajendra Laxman Chaudhari
Age- 49 years, Occ- Farmer
Both R/o. Azad Chowk, Parola,
Tq. Parola, Dist. Jalgaon. ...Appellants

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. Project Director,
National Highway Authority of India
Project Implementation Unit- Jalgaon
Plot No. 9, Professor Colony, In front of
Govt. Engineering College, Jalgaon. ...Respondents

AND
ARBITRATION APPEAL NO.28 OF 2022

Pralhad Krushna Patil
Age- 68 years, Occ- Farmer
R/o. Yashwant Colony, Jalgaon ...Appellant

Versus

1. The Competent Authority
(Land Acquisition) National Highway
No. 6 and Special Land Acquisition
Officer, Jalgaon
Address:- Collector Office, Jalgaon.
2. National Highway Authority of India
Project Implementation Unit- Dhule
Survey No. 10/2, Plot No. 11, Mansaram
Nagar, Near Circuit House, Sakri Road,
Dhule. ...Respondents

Mr. Mohit R. Malpani a/w. Mr. Rahul Lathi, Advocate for
appellants in all appeals.
Mr. B.M. Dhanure, Advocate for respondent No. 1 in ARBA No.
22/2022, 25/2022 and 26/2022.
Mr. Deepak Manorkar, Advocate for respondent No. 2 in all
appeals.
Mr. Ravi Bangar, Advocate for respondent No. 1 in ARBA No.
24/2022.
Mr. D.B. Gaikwad, Advocate for respondent No. 1 in ARBA No.
28/2022.

Mr. S.N. Kendre, AGP for State in ARBA Nos. 23/2022, 24/2022, 26/2022 and 27/2022.

Mr. P.G. Borade, AGP for State in ARBA Nos. 22/2022, 25/2022 and 28/2022.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 28th AUGUST, 2023

PRONOUNCED ON: 27th SEPTEMBER, 2023

JUDGMENT:

1. Heard.
2. **Admit.** Taken up for final hearing by consent of parties.
3. Since, these appeals raise common question of law and fact, they were heard together and are being decided by this common order.
4. Facts leading to these appeals can be stated thus:

Lands of appellants were acquired under National Highways Act, 1956, by the first respondent. The first respondent fixed compensation and declared award. However, in view of Section 3-J of National Highways Act, 1956 and Land Acquisition Act, 1894, 30% solatium and 12% additional market value were not awarded to appellants.
5. Appellants filed applications under section 3-G(5) of

National Highways Act, before Arbitrator/Divisional Commissioner, Jalgaon, thereby praying for enhancement of compensation. Appellants also prayed for benefits under Land Acquisition Act, including additional market value under section 23(1)(a) and solatium under section 23(2) of Land Acquisition Act. Those applications were transferred to District Collector, Jalgaon, who passed arbitral award.

6. Claims filed by appellants were partly allowed by arbitral Tribunal by award dated 27.08.2018, thereby enhancing compensation amount. On the issue of grant of benefits under Land Acquisition Act, the arbitral Tribunal in clause (6) held;

"6. In respect of claim of statutory benefits under the Land Acquisition Act, 1894, decision of the Hon'ble Supreme Court in SLA (Civil) 15104/2014 will be binding on both parties."

7. Appellants challenged the award passed by arbitral Tribunal by filing applications under section 34 of the Arbitration and Conciliation Act, 1996, seeking enhancement of compensation, as well as prayed for solatium and statutory benefits as the Apex Court decided SLA (Civil) 15104/2014. District Court has rejected the applications filed by appellants. Hence, present appeals.

8. The only point pressed into service by appellants is that in terms of clause (6) of the award passed by arbitral Tribunal, District Court ought to have directed arbitral Tribunal to resume the arbitration proceeding for giving benefits payable under the Land Acquisition Act, in view of decision of Apex Court in *Union of India vs. Tarsemsingh* (2019) 9 SCC 304.

9. Heard the learned advocate for the appellants and learned advocate for the respondents.

10. Learned advocate for the appellants submits that since the learned arbitrator has ordered in the award that in respect of claim of statutory benefits under Land Acquisition Act, 1894, the decision of the Hon'ble Supreme Court in SLA (Civil) 15104/2014 will be binding on both the parties, and as Supreme Court has decided the said matter, which is reported in *Union of India vs. Tarsemsingh* (2019) 9 SCC 304, wherein it is held that Section 3-J of the National Highway Act, is violative of Article 14 of the Constitution of India, the direction given in clause (6) of the award would operate and the appellants should have been paid solatium and statutory benefits. By refusing the same, District Court has committed an error. In support of his submissions, he relied on *Som Datt Builders Limited vs. State of*

Kerala, (2009) 10 SCC 259, Etti Gounder vs. District Collector Namakkal District and others, 2021 SCC OnLine Mad 15492, Ananta Charan Sahoo vs. Land Acquisition Officer-cum-Competent Authority (NH) and others, 2022 SCC OnLine Ori 2243, I-Pay Clearing Services Private Limited vs. ICICI Bank Limited, (2022) 3 SCC 121, The Project Direction (LA), vs. T. Palanisamy, C.M.A. No. 3035 of 2019 and National Highway Authority of India vs Arbitrator and Divisional Commissioner, Jalpaiguri Division and Others, 2022 SCC OnLine Cal 1693.

11. Per contra, learned advocate for the respondent vehemently opposed the appeals contending that awarding of solatium and interest etc, would amount to modification of award, which is not permissible in law. He submits that the arbitrator was not justified in passing the contingent award in respect of solatium and interest. Further submission is in view of liberty granted by the District Court in paragraph 38 of the impugned judgment, appellants have failed to approach the arbitrator seeking additional award. He submits that, the solatium, interest and other statutory benefits shall not be payable in the disposed of matters. He therefore submits that there is no merit in the appeals and appeals are liable to be

dismissed. In support his submissions, he relied on *The Project Director National Highway No. 45 E And 220 National Highways Authority of India vs. M. Hakeem & Anr.*, 2021 (9) SCC Page 1, *Rishabhkumar Babula Jejani vs. Secretary of the Government of India Ministry of Road Transport and Highways and others*, 2021 SCC Online Bom 4561.

12. Perused the memo of appeals, annexures thereto, impugned orders and the citations relied upon by both the parties.

13. Indisputably, in clause (6) of the award, the arbitrator has ordered that the decision in respect of claim of statutory benefits under the Land Acquisition Act, 1894, the decision of Hon'ble Supreme Court in SLA (Civil) 15104/2014 will be binding on both the parties. The Apex Court in Tarsemsingh (supra) as held that, "*section 3-J of National Highways Act, is violative of Article 14 of the Constitution of India.*" Appellants therefore are entitled to claim statutory benefits payable under Land Acquisition Act, in view of clause (6) of the award passed by arbitral Tribunal.

14. Admittedly, respondents have not challenged clause

(6) of the award by filing any proceedings either under section 34 or under section 37.

15. District Court in para 38 of the impugned judgment and order has observed as follows;

"38) In the present case, learned Arbitrator has not decided the issue of statutory benefits and no reasons, in that regard, have been given. Let the said Authority to decide the said issue first. Applicant has liberty to bring the facts into the notice of learned Arbitrator that Hon'ble Apex Court has finally decided in SLA (Civil) 15104/2014. It is not the case of the applicant that learned Arbitrator has rejected the claim for solatium and statutory component."

16. District Court has failed to appreciate that appellants have made out a case for direction to arbitral Tribunal to resume arbitration proceeding in terms of clause (6) of the award passed by arbitral Tribunal, for calculating benefits payable under the Land Acquisition Act to appellants. District Court failed to adopt said course without justifiable reasons. The impugned order to that extent is therefore liable to be modified.

17. Adverting to the objection of respondents that direction to the arbitral Tribunal to resume arbitration proceeding would amount to modification of award and same is not permissible in law is required to be considered.

18. Admittedly, arbitral Tribunal has not recorded any reasons while holding that *"regarding applicability of benefits of Land Acquisition Act, 1894 to the applicant, as the issue is pending in Hon'ble Supreme Court bearing No. SLA (Civil) 15104/2014, it would be proper not to pass any order regarding the same."*

19. Considering clause (6) of the award, in the facts of present cases it cannot be said that by directing the arbitral Tribunal to resume arbitration proceeding for calculating statutory benefits payable to appellants under Land Acquisition Act, would amount to modification of award.

20. In the decision of Division Bench of Calcutta High Court in National Highway Authority of India (supra), District Court in orders passed under section 34 had upheld the award and in addition to the reliefs granted by arbitrator, directed the competent authority to grant solatium and interest to the land losers. In these facts, Division Bench has held;

"24. It appears from the impugned orders dated September 13, 2021 passed by the learned District Judge that M. Hakeem (supra) had been cited before him. With regard to M. Hakeem (supra) the learned District Judge had held that in such case, the Supreme Court was pleased to observe that the 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 (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 (supra). M. Hakeem (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 had 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 (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.”

21. I respectfully agree with the aforesaid observations and I am inclined to adopt same course, adopted by learned Division Bench of Calcutta High Court and in the facts of present cases, I find it appropriate to remand the matters to the arbitral Tribunal for working out calculation of benefits receivable to appellants under Land Acquisition Act. Hence, the following order:

ORDER

- (I) Arbitration Appeals are allowed in terms of prayer clause 'C'.
- (II) The matters are remanded back to the Arbitral Tribunal to work out calculation of statutory benefits under Land Acquisition Act, 1894, receivable by appellants, in terms of clause (6) of the award.
- (III) Arbitral Tribunal shall complete this exercise expeditiously and in any case within a period of six months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]