

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.1653 OF 2022
GUNWANT HANMANT DAREKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

**AND
WRIT PETITION NO.:3623 OF 2022
Ajay Babruwan Jagtap And Others
VERSUS
The State Of Maharashtra And Others**

**WITH
WRIT PETITION NO.:3612 OF 2022
Pandurang Narsing Jagtap And Others
VERSUS
The State Of Maharashtra And Others**

**WITH
WRIT PETITION NO.:3570 OF 2022
Mahadev Dagadu Walke And Others
VERSUS
The State Of Maharashtra And Others**

**WITH
WRIT PETITION NO.:1851 OF 2022
Anilkumar Sahebrao Patil Died Lrs Suhas Anilkumar Patil And
Others
VERSUS
The State Of Maharashtra And Others**

**WITH
WRIT PETITION NO.:3622 OF 2022
Krishnath Ambadas Kale And Others**

VERSUS

The State Of Maharashtra And Others

WITH

WRIT PETITION NO.:3494 OF 2022

Nitin Angad Mitkari And Others

VERSUS

The State Of Maharashtra And Others

WITH

WRIT PETITION NO.:5777 OF 2022

Akash Dhanrj Jagtap And Others

VERSUS

The State Of Maharashtra And Others

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Mr.Kale Ajeet B. a/w Ms.S.A. Kale, Advocates for the
Petitioners.

Mr.S.B. Yawalkar, AGP for the Respondent/State Authorities.

Ms.Sudha S. Kulthe, Shri B.M. Dhanure, Ms.Nikita Gore, Shri
R.B. Bhosale, Standing Counsel for the Respondents/UoI in the
concerned petitions.

Shri Deepak S. Manorkar, Advocate for Respondent No.4/NHAI.

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CORAM : RAVINDRA V. GHUGE

&

Y. G. KHOBRAGADE, JJ.

DATE :- 23rd June, 2023

Per Court :-

1. We have considered the strenuous submissions of

the learned Advocates for the respective sides in all these matters. With their assistance, we have perused the petition paper books and the documents placed on record.

2. Considering the order that we are passing today, we would not advert to the details of the pleadings of the parties for the fear of making certain observations, which might come in the way of either of the parties. Suffice it to say that the following three issues need to be dealt with:-

(a) Whether, the Petitioners have faltered in not disclosing in the memo of the petitions that they have resorted to the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996?

(b) Whether, these Writ Petitions could be entertained in the face of the pendency of the proceedings under Section 34 before the learned Principal District Judge?

(c) Whether, Section 34 and more particularly sub-section (2)(b) (i) and (ii) r/w Explanations 1 and 2, would enable the District Court to deal with the issue of the Competent Authority Land Acquisition (CALA) having suo moto issued the second award dated 15.09.2017 in the face of the first award dated 03.06.2017?

3. There is no dispute that the CALA had delivered the first award on 03.06.2017. It is also undisputed that the CALA has suo moto delivered the second award when neither of the parties had moved the Authority for seeking any clarification or correction or rectification etc., notwithstanding the fact that this Court has already held in ***Bhupendrasingh vs. Competent Authority and others, (2020) 1 AIR Bom R 645 : (2020) 2 Bom CR 296***, that the CALA does not have the power and jurisdiction even to carryout corrections in the award. Paragraphs 50 and 51 of ***Bhupendrasingh*** (supra), read as under:-

“50. The net result of the above is that it is held as under:

- (a) The 'Competent Authority' as appointed under Sec. 3(a) of the NH Act, 1956, has no power to review its award or correct any clerical or arithmetical mistake therein under the provisions of the NH Act, 1956.
- (b) The powers u/s. 33 of the Act of 2013, are not available to the 'Competent Authority' appointed under the NH Act, 1956 for making any corrections of clerical or arithmetical nature in the award as passed by it.
- (c) The 'Competent Authority' is not a 'Court', but is a quasi-judicial authority for the purpose of Sec. 3-C of the NH Act, 1956, in the matter of hearing and deciding the objections as received u/s. 3-C (1).

51. In light of above discussion and findings, we

hold that the Competent Authority was not empowered to pass the corrigendum/clarification dated 02/01/2018 and the same being without any authority, is hereby quashed and set aside. The Competent Authority, therefore, is liable to deposit/transfer the balance amount of compensation to the petitioner.”

4. On the above premises, the Petitioners approached the Arbitrator for challenging the second award in the light of the first award having not been reviewed or set aside, though this was legally impermissible. The entire scheme of the National Highways Act, 1956 was discussed in ***Bhupendrasingh*** (supra) and it was concluded that the second award was impermissible. This position was voiced by these Petitioners in their proceedings under Section 3G(5) of the National Highways Act, which prescribes that if the amount determined by the Competent Authority under sub-section (1) or sub-section (2) of Section 3G of the National Highways Act, 1956, is not acceptable to either of the parties, the aggrieved party can file an application to the Arbitrator, to be appointed by the Central Government, for determination of the justifiability of the award.

5. By the order dated 23.08.2019, the Arbitrator concluded that the second award was aimed at protecting the

State exchequer as excess amounts were granted to the Petitioners vide the first award. It is contended by the learned Advocate for the Petitioners that though the Arbitrator agreed in his order that the second award was impermissible, he has still proceeded to conclude that the State exchequer needs to be protected and hence, the second award would not call for any interference. These Petitioners then approached the competent Court under Section 34 of the Arbitration and Conciliation Act, 1996.

6. Section 34(2)(b) along with Explanations, read as under:-

“34. Application for setting aside arbitral award:

(1)

(2) An arbitral award may be set aside by the Court only if-

(a)

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in

*violation of section 75 or section 81; or
(ii) it is in contravention with the fundamental
policy of Indian law; or
(iii) it is in conflict with the most basic notions
of morality or justice.*

*Explanation 2.-For the avoidance of doubt, the test as
to whether there is a contravention with the
fundamental policy of Indian law shall not
entail a review on the merits of the dispute.”*

7. It is now settled that an arbitral award could be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996, only if the award fits into any of the clauses as are prescribed below sub-clause (b) under sub-section (2) of Section 34. It, therefore, appears that if an arbitral award is in conflict with the public policy of India, it could be interfered with. Explanation 1 would indicate that if the making of the award is in contravention of the fundamental policy of Indian law or is in conflict of the basic notions of morality or justice, it could be interfered with.

8. In view of the above, since the proceedings under Section 34 are pending before the competent Court, we are of the view that the said Court will have to consider whether, the award is in contravention with the fundamental policies of Indian laws and if no law supports the origin of the second award, the

competent Court will have to consider this aspect.

9. As regards the aspect of suppression of the pending proceedings under Section 34, the fact remains that the Petitioners have suppressed the pending proceedings in their Petition. However, since we are not entertaining these Petitions, we are giving a quietus to this lapse on their part.

10. In view of the above, **these Writ Petitions are disposed off.**

11. We expect the learned Court dealing with the proceedings under Section 34, to primarily consider as to the origin of the second award within the crystallized position of law in the light of *Bhupendrasingh* (supra), as well as the judgment delivered by the *Madhya Pradesh High Court in Indrakala Agrawal vs. State of M.P. and others, 2021 AIR CC 1582* and the view taken by this Court vide the judgment dated 08.11.2019 delivered at Aurangabad in Writ Petition No.1883/2018 (*Yasminbegum Bakshulla Khan and others vs. The State of Maharashtra and others*).

12. Since these proceedings are pending since 2019, the learned Advocate for the Petitioners prays for expeditious disposal of the said proceedings.

13. In the peculiar facts that the farmers have lost their lands, we would appreciate if the concerned Court decides these proceedings on or before 31.12.2023.

14. Needless to state, all contentions of the litigating parties are kept open.

15. If any issue of restoration of the proceedings under Section 34 before the competent forum is taken up, we would appreciate if the said proceedings are considered expeditiously and in the light of the settled principles of law.

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)