

FAO No. 413 of 2022 and connected matters [1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 21st April, 2023

(1) FAO No. 413 of 2022

Union of India and another

Versus Appellants

Atma Singh and others

Respondents

(2) FAO No. 414 of 2022

Union of India and another

Versus Appellants

Sukhjit Singh and others

Respondents

(3) FAO No. 415 of 2022 (O&M)

Union of India and another

Versus Appellants

Avtar Singh and others

Respondents

(4) FAO No. 416 of 2022

Union of India and another

Versus Appellants

Avtar Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. S. Madan, Advocate for the appellants.
Mr. Harsh Manocha, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of above mentioned four appeals as the facts are similar and issue involved is common.
2. For convenience the facts are being taken from FAO No. 413 of 2022.
3. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') is filed by Union of India/National Highways Authority of India (hereinafter referred to as 'NHAI') aggrieved of setting aside of arbitral award.
4. The brief facts are that land of the respondents was acquired for widening/four laning of National Highway No. 95. Notification under Section 3-A of the National Highways Act, 1956 (for short, 'the 1956 Act') was issued on 8.6.2018. Thereafter, notification under Section 3-D of the 1956 Act was notified on 14.8.2018. The Competent Authority for Land Acquisition (for short, 'CALA') determined the compensation vide award dated 5.10.2018. Aggrieved of the compensation, arbitration proceedings under Section 3-G(5) of the 1956 Act were initiated at the instance of NHAI as well as land owners. The arbitrator instead of deciding the claim on 3.3.2020 remanded the matter back to CALA. The land owners

FAO No. 413 of 2022 and connected matters**[3]**

aggrieved of the remand by the arbitrator filed objections under Section 34 of the 1996 Act. During pendency of objections, an application was filed by NHAI under Section 34(4) of the 1996 Act for giving an opportunity to the arbitrator to remove the illegality. The arbitral award was set aside, on 22.11.2021 and it was held that the arbitrator had no power to remand the matter to CALA.

5. Learned counsel for NHAI argues that by setting aside of the award in proceedings u/s 34 of the 1996 Act the appellant is not left with any remedy for raising grievance with regard to the compensation determined by the CALA.

6. Learned counsel for the respondents defends the impugned order.

7. The Supreme Court in ***Dr. A. Parthasarathy and others v. E. Springs Avenues Pvt. Ltd. and others***, 2022(2) RC (Civil) 329 held as under:

*“By the impugned judgment and order passed by the High Court in exercise of power under section 37 of the Arbitration and Conciliation Act, 1996, the High Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the Arbitrator for fresh decision. As per the law laid down by this Court in the case of **Kinnari Mullick and Anr. v. Ghanshyam Das Damani** (2018) 11 SCC 328 and **I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.** (2022) SCC OnLine SC 4, the same is wholly impermissible. Only two options are available to the Court considering the appeal under section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider*

the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator.”

8. There is no challenge to the setting aside of the arbitral award.

It would be apposite to note that Additional District Judge dismissed the application under Section 34(4) of the 1996 Act filed by NHAI considering that the arbitrator had decided the matter with a fixed mindset and without discussing the evidence adduced by the parties. It was also noted that during the pendency of objections a fresh award dated 19.8.2020 was passed by CALA. It was concluded that in the facts of the case adjourning the matter under Section 34(4) of the 1996 Act would be a futile exercise.

9. As per the law laid down in ***Dr. A. Parthasarathy and others case (supra)*** the remand to the arbitrator for fresh decision is not permissible unless parties consent to it. The two options with the court are either to consider the matter on merits on the basis of material available on record but within the limited scope of interference or to relegate the parties for fresh arbitration.

10. The award was set aside only on the ground that arbitrator had no jurisdiction to remand the matter back to CALA. The merits of the case were not considered. It was further concluded that adjourning the matter for providing an opportunity to arbitrator u/s 34(4) of 1996 Act would not

FAO No. 413 of 2022 and connected matters [5]

serve the purpose. The law is well settled that under Section 34 of of 1996 Act the award cannot be modified and the matter can be remanded only with consent of both the parties. The contention that the parties have no remedy after setting aside of award to raise grievances against the compensation determined is misconceived. The setting aside of award on the ground of jurisdiction shall not debar the parties from availing the remedies in accordance with law. In other words one of the option as per decision of Supreme Court in case of *Dr. A. Parthasarathy and others case (supra)* is initiation of fresh arbitration.

- 11. No interference is called for under Section 37 of the 1996 Act and the appeals are dismissed.
- 12. Photocopy of the order be placed on the file of each connected case.

**[AVNEESH JHINGAN]
JUDGE**

21st April, 2023
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |