

FAO No. 1645 of 2017

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 1645 of 2017 (O&M)

Date of decision: 13th March, 2023

Gurbachan Singh and others

Appellants

Versus

Union of India and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

AVNEESH JHINGAN, J (Oral):

The land owners are in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') aggrieved of order dated 18.7.2016 allowing the objections under Section 34 of the Act filed by Union of India/National Highway Authority of India (for short, 'NHAI').

The brief facts are that the land of the appellants in village Khudda, Tehsil Dasuya, District Hoshiarpur was acquired for widening and four-laning of National Highway No. 1/A. The competent authority determined the compensation. At the instance of the appellants, the matter was referred for arbitration which culminated in award dated 9.5.2011. Union of India/NHAI filed objections under Section 34 of the Act which were allowed on 18.7.2016 as award was passed at the back of Union of India/NHAI.

On 11.3.2019, this court passed the following order:

“This is an appeal that has been filed seeking to challenge the order dated 18.07.2016 of the Additional District Judge, Jalandhar by which the petition under Section

34 of the Arbitration and Conciliation Act, 1996 filed by the Union of India/NHAI to set aside the award of the Arbitrator cum-Commissioner, Jalandhar Division, Jalandhar dated 9.5.2011 was allowed.

In brief the facts are that the land of appellants/claimants was acquired for public purpose of widening and four laning of National Highway-1/A. For the said purpose, a notification under Section 3-A of the National Highway Act, 1956 was published in Gazette of India under S.O.No.1422 (E) dated 24.12.2004. The Competent Authority-cum-SDM, Dasua determined compensation to be paid as per market rate on the date of the notification. Thereafter, the arbitrator vide his impugned award classified the land acquired as Gair Mumkin Abadi Land and Gair Mumkin Shops Land and assessed value at Rs.33,400/- per marla and Rs.60,000/- per marla respectively i.e Rs.1,00,000/- per marla for Abadi and Rs.1,50,000/- per marla for commercial/ shops and Rs.80,000/- per marla for other type.

Aggrieved against the said determination of compensation, an objection petition was filed under Section 34 of the Arbitration and Conciliation Act 1996 before the Additional District Judge, Jalandhar. The basic contention raised before the said Court was that there was no proper service of the arbitral proceedings pending before the Arbitrator. It was also argued that one Sh. I.S. Bhatia, who appeared for the Union of India, did not have the necessary authority to do so. The Additional District Judge, Jalandhar, taking note of the contentions came to the conclusion that the petition under Section 34 of the Act of 1996 deserves to be allowed on the ground that Union of India/ NHAI, the objector, did not have any notice of the arbitral proceedings. Aggrieved against the dismissal of the award, the instant FAO has been filed.

Learned counsel appearing on behalf of the appellants

assails the order of the District Judge on the ground that Sh.I.S.Bhatia had put in appearance and sufficient opportunities have been given to the NHAI to file any replies or evidence by the Arbitrator and once they failed to do so, the Arbitrator had no option but to pass the award on the basis of the evidence available. It was also argued that Union of India/NHAI had challenged the compensation payable to similarly situated claimants, whose land was acquired by the same notification and pertaining to the same village, in FAO No.8220 of 2014 and the said FAO stands dismissed. It is argued that the compensation as assessed by the arbitrator has been upheld.

Per contra Mr. R.S. Madan Advocate for NHAI , vehemently argues but there is no infirmity in the order of the Additional District Judge, Jalandhar since a categorical finding has been arrived at that there is no service upon NHAI. It is argued that this Court should not interfere in the well reasoned order and an opportunity should be given to defend its case before the arbitrator.

I have heard both the counsel for the parties and have with their assistance perused the paper book and the orders passed in FAO No.8220 of 2014.

There is no dispute about the fact that the land of the appellants herein stood acquired vide notification dated 24.12.2004 i.e. issued for public purpose for widening and four laning of Jalandhar Pathankot Section of National Highway No.1. Compensation has been enhanced to Rs.1,50,000/- per marla for commercial land and Rs.1,00,000/- per marla for abadi land and Rs.80,000/- per marla for other categories of land.

In ordinary circumstances, the order of the Additional District Judge, Jalandhar holding that the award is liable to be set aside since there was no adequate notice upon NHAI would not have been interfered with, but in a situation where

the compensation to other land owners situated in the same village, whose land was acquired under the same acquisition, have already been allowed compensation as settled in FAO No.8220 of 2014, this Court deems it appropriate to allow compensation at the same rate. This a fit case which warrants interference by this court to avoid multiplicity of litigation.

Counsel for the appellants also urges that severance which was allowed @ Rs.1,00,000/- per marla would be payable along with compensation for the shops situated. However this claim is disputed by the counsel for NHAI stating that there is no evidence available on the record to this effect.

In the interim, to make sure that the claimant is adequately compensated for the land that has been acquired, (since the compensation has already been finalized qua other land owners) let the compensation be deposited in terms of FAO No 8220 of 2014 only for the land of the appellants, that has been acquired within a period of three months and the same be released thereafter.

In the meantime, both the parties are directed to place on record any evidence that has been adduced or is to be adduced regarding loss of structure and for loss of business.

Adjourned to 24.07.2019.

LCR be requisitioned for the date fixed.”

With the passing of the abovesaid order, the issue with regard to valuation of the land has attained finality, more-so when the said order has not been challenged by either of the parties.

Learned counsel for the appellants in view of the above restricts his prayer and submits that liberty be granted to the appellants to avail remedies in accordance with law including initiation of fresh arbitration and direction be issued for time-bound disposal.

Learned counsel for Union of India/NHAI submits that liberty be granted to raise all the legal issues at the appropriate stage in the subsequent proceedings.

In view of the above, the appeal is disposed of. As a matter of precaution, it is clarified that since the issue with regard to valuation of land has attained finality, the parties would be at liberty to avail remedies in accordance with law for the remaining surviving grievances.

In eventuality of fresh arbitration, there is no doubt, considering that the acquisition is of the year 2004, the arbitrator with the co-operation of the parties shall make an earnest effort to dispose of the arbitration proceedings in terms of the time frame stipulated under Section 29-A of the Act. The parties shall be at liberty to make a request before the arbitrator for expeditious disposal.

[AVNEESH JHINGAN]

JUDGE

13th March, 2023
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No