

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

FAO No. 8073 of 2017

Date of decision: 31st January, 2023

Lakha Singh through LRs and others

Appellants

Versus

Sub Divisional Magistrate & others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajinder Sharma, Advocate for the appellants.
Mr. Rajesh Mehta, Addl. AG, Punjab.
Mr. R. S. Madaan, Advocate for respondent No. 2.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of dismissal of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act'), the appellants are before this court.

2. The facts shorn off unnecessary details are that Government of India issued notification under Section 3A of the National Highways Act, 1956 (for short, 'the 1956 Act') in April, 2008 for acquiring land of fifteen villages of District Amritsar for four laning of NH No. 15. Notification under Section 3D(1) of the 1956 Act was notified on 31.3.2009. The Sub Divisional Magistrate-cum-Land Acquisition Collector, Amritsar-I by the award dated 28.12.2009 awarded compensation of Rs.45,00,000/- per acre. The petition under Section 3G(5) of the 1956 Act and objections filed under Section 34 of the 1996 Act were dismissed on 13.3.2012 and 3.12.2016, respectively.

3. Learned counsel for the appellants argues that severance of the land was not considered and no compensation under Section 3G(7)(b) of the 1956 Act was granted. He further submits that statutory benefits i.e. solatium and interest were not granted. He relies upon the decision of the Supreme Court in **Union of India and another v. Tarsem Singh and others**, 2019(9) SCC 304, whereby Section 3J of the 1956 Act was

declared unconstitutional.

4. Learned counsel for respondent No. 2 submits that no evidence was adduced by the appellants before the Land Acquisition Collector and the arbitrator that there was severance of land. He further submits that scope of interference under Section 37 of the 1996 Act is limited.

5. The scope of interference under Section 37 of the 1996 Act is very limited. Reliance in this regard is made to the decision of the Supreme Court in **Haryana Tourism Limited v. M/s Kandhari Beverages Limited**, 2022(3) SCC 237.

6. It has not been disputed before this court that no evidence was produced to the effect that land of the appellants was severed while being acquired by National Highway Authority of India. In such circumstances, the contention of learned counsel for appellant lacks merit and is rejected.

7. The contentions that solatium and interest is to be granted to land owner on acquiring the land under the 1956 Act is no longer *res integra*. Section 3J of the 1956 Act provided that nothing in Land Acquisition Act, 1894 shall apply to the land acquired under the 1956 Act. The vires of the Section were challenged and a Division Bench of this Court in **M/s Golden Iron and Steel Forging v. Union of India and others**, 2011(4) RCR (Civil) 375 held Section 3J of the 1956 Act *ultra vires* of Article 14 of the Constitution of India to the extent it denies solatium and interest to the land owners. Para No. 89 is reproduced below:

A faint submission, that Section 3J of the Act emphatically ousts the Land Acquisition Act or that the Land Acquisition Act is not applicable either by reference or by incorporation begs the question in hand. The question is not whether the Land Acquisition Act is applicable by reference or by incorporation but whether the impugned enactment discloses a public purpose so distinct as to disclose a valid classification and satisfy the tests prescribed in respect thereof in the judgments of the Hon'ble Supreme Court, referred to herein before. A statute or a statutory provision which perpetuates discrimination amongst equals cannot

*shroud its inequality under provisions akin to Section 3J of the Act. Consequently, we are satisfied that Sections 3J and 3G of the Act are ultra vires of Article 14 of the Constitution of India in so far as they deny solatium and interest to landowners. However, this would not necessitate the striking down of the entire provisions of Section 3J and Section 3G of the Act. In this regard, a reference needs to be made to paragraphs 22 and 23 of the judgment of the Hon'ble Supreme Court in **State of Kerala and others vs T.M.Peter and another etc etc (supra)**, wherein when faced with a similar situation, the Hon'ble Supreme Court held as follows :-*

“22. The core question now arises. What is the effect even if we read a discriminatory design in Sec. 34 ? Is plastic surgery permissible or demolition of the section inevitable ? Assuming that there is an untenable discrimination in the matter of compensation does the whole of Section 34 have to be liquidated or several portions voided ? In our opinion, scuttling the section, the course the High Court has chosen, should be the last step. The Court uses its writ power with a constructive design, an affirmative slant and a sustaining bent. Even when by compulsions of inseverability, a destructive stroke becomes necessary the court minimises the injury by an intelligent containment. Law keeps alive and operation pulldown is de mode. Viewed from this perspective, so far as we are able to see, the only discriminatory factor as between S. 34 of the Act and S. 25 of the Land Acquisition Act vis-a-vis quantification of compensation is the non-payment of solatium in the former case because of the provision in S. 34 (1) that S. 25 of the Land Acquisition Act shall have no application. Thus, to achieve the virtue of equality and to eliminate the vice of inequality what is needed is the obliteration of S. 25 of the Land Acquisition Act from S.

34 (1) of the Town Planning Act. The whole of S. 34 (1) does not need to be struck down. Once we excise the discriminatory and therefore void part in Sec. 34 (1) of the Act, equality is restored. The owner will then be entitled to the same compensation, including solatium, that he may be eligible for under the Land Acquisition Act. What is rendered void by Art. 13 is only 'to the extent of the contravention' of Article 14. The lancet of the Court may remove the offending words and restore to constitutional health the rest of the provision. 23. We hold that exclusion of S. 25 of the Land Acquisition Act from S. 34 of the Act is unconstitutional but it is severable and we sever it. The necessary consequence is that S. 34 (1) will be read omitting the words 'and S. 25'. What follows then? Section 32 obligates the State to act under the Land Acquisition Act but we have struck down that part which excludes Sec. 25 of the Land Acquisition Act and so, the 'modification' no longer covers S. 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34 (2) provides for compensation exactly like S. 25 (1) of the Land Acquisition Act and in the light of what we have just decided S. 25 (2) will also apply and "in addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition."

8. The judgment of this court in **M/s Golden Iron and Steel Forging's case (supra)** was upheld by the Supreme Court in **Tarsem Singh and others' case (supra)**. It was held:

"52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of

Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no [Section 34](#) petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under [Article 136](#) of the Constitution of India. We therefore declare that the provisions of the [Land Acquisition Act](#) relating to solatium and interest contained in [Section 23\(1A\)](#) and (2) and interest payable in terms of [section 28](#) proviso will apply to acquisitions made under the [National Highways Act](#). Consequently, the provision of [Section 3J](#) is, to this extent, violative of [Article 14](#) of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed. “

9. The Supreme Court noted that the view of the Government itself was that solatium and interest should be granted even in cases that arise between 1997 and 2015.

10. The Supreme Court in **National Highways Authority of India v. Sri P. Nagaraju @ Cheluvaish and another**, 2022(3) RCR (Civil) 604 held that solatium and interest on solatium should be made effective only to the proceedings pending on the date of decision by the High Court in **M/s Golden Iron and Steel Forging's case (supra)** i.e. 28.3.2008 and further that concluded cases should not be open. Para No. 7 is quoted:

*“7. We have considered the submissions advanced. In **Gurpreet Singh v. Union of India**, this Court, though in a different context, had restricted the operation of the judgment of this Court in **Sunder v. Union of India** and had granted the*

*benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in **Golden Iron and Steel Forging v. Union of India** i.e. 28-3-2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 1-1-2014), which Act has been made applicable to acquisitions under the [National Highways Act, 1956](#) by virtue of notification/order issued under the provisions of the 2013 Act.”*

11. In view of the judgments cited above, the land owners are entitled to solatium and interest for the land acquired under the 1956 Act.

12. There is no quarrel on the proposition that scope of interference under Sections 34 and 37 of the 1996 Act is limited only to the ground available under Section 34 of the 1996 Act. One of the ground available for interference is patent illegality. Contravention of a substantive law would result in violation of Section 28(1)(a) of the 1996 Act. Reference in this regard can be made to the decision of the Supreme Court in **State of Chhattisgarh v. Sale Udyog Private Ltd., (2022) 2 SCC 275**, wherein it was held:

“14. The law on interference in matters of Awards under the 1996 Act has been circumscribed with the object of minimising interference by courts in arbitration matters. One of the grounds on which an Award may be set aside is “patent illegality”. What would constitute “patent illegality” has been elaborated in [Associate Builders v. Delhi Development Authority](#)⁸, where “patent illegality” that broadly falls under the head of “Public Policy”, has been divided into three sub-

heads in the following words:-

“...42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn, contains three subheads:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an Arbitral Award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of [Section 28\(1\)\(a\)](#) of the Act, which reads as under:

“28. Rules applicable to substance of dispute. – (1) Where the place of arbitration is situated in India-

(a) In an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

42.2. (b) A contravention of the [Arbitration Act](#) itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of [Section 31\(3\)](#) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of [Section 28\(3\)](#) of the Arbitration Act, which reads as under:

“28. Rules applicable to substance of dispute. – (1) – (2)

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.” 8 [2015] 3 SCC 49

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the

contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.”

13. It is settled law that the award should contain reasons to support the conclusion reached therein to bring it in consonance with Section 31(3) of the 1996 Act. Non-recording of reasons to substantiate that the evidence available on record was adverted to, brings the case within the teeth of Section 34 of the 1996 Act and would amount to patent illegality. The Supreme Court in **Sri P. Nagaraju @ Cheluvaiah and another's case** (supra) held:

24. Leaving aside the facts in the instant case for a while, if in a matter as against the determination of the market value by the SLAO, the land loser had referred to the exemplar sale deeds and seeks higher compensation than prescribed in the guidance value, and in that circumstance, if no reasons are assigned by the learned Arbitrator for such determination and either approves the SLAO award or awards a lesser amount than the actual entitlement, in such circumstance the arbitration process which is thrust on the land loser should not be an impediment and limited interference should not be a reason to deny the just and fair compensation. In such cases while examining the award in the limited scope under [Section 34](#) of Act, 1996, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of [Section 31\(3\)](#) and amount to patent illegality. Therefore, while examining the award within the parameters permissible under [Section 34](#) of Act, 1996 and while examining the determination of compensation as provided under Sections 26

and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013.”

14. In the present case, from perusal of the award it is evident that the arbitrator had neither dealt with the issue of grant of solatium and interest not recorded reasons for not doing so.
15. In view of the above, the orders dated 13.3.2012 and 3.12.2016 are set aside with liberty to the parties to pursue the remedies in accordance with law.
16. The appeal is disposed of.

[AVNEESH JHINGAN]
JUDGE

31st January, 2023/mk

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |