

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10174 of 2023

Shiv Kumari Devi Wife of Vijay Prakash @ Vijay Prasad Resident of Village
and Post Office-Muradabad, Police Station-Sasaram (M), District-Rohtas.

... .. Petitioner/s

Versus

1. The Union of India through the Chief Project Manager, Dedicated Freight Corridor Corporation of India Limited, Mugalsarai, Varanasi (U.P.)
2. The Divisional Rail Manager (D.R.M.) East Central Railway, Mugalsarai, Varanasi (U.P.)
3. The Arbitrator-cum-Divisional Commissioner, Patna Division, Patna.
4. The District Magistrate, Rohtas at Sasaram.
5. The Competent Authority D.F.C.C.I.L.-cum-District Land Acquisition Officer, Rohtas at Sasaram.
6. The State of Bihar through the Chief Secretary, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajani Kant Singh, Advocate
For the State	:	Mr. Md. Khurshid Alam, A.A.G.-12
For the U.O.I.	:	Ms. Punam Kri. Singh, C.G.C.
For the Railway	:	Ms. Punam Kumari Singh, C.G.C.
For the Respondent/s	:	Mr. Tiwari Shwetketu, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 29-04-2024 Heard Mr. Rajani Kant Singh, learned Counsel for

the petitioner and learned A.C. to A.A.G.-12.

2. The present petition has been preferred for:

*issuance of an appropriate writ in
the nature of certiorari for quashing the
order dated 28.02.2023 passed by
respondent no. 3 Arbitrator-cum-Divisional
Commissioner, Patna Division, Patna in Rail
Arbitration Case No. 13 of 2022 as
continued in Annexure- 5 whereby and where
under learned Arbitrator-cum-Divisional
Commissioner, Patna Division, Patna has
been pleased to dismiss the Rail Arbitration
Case No. 13 of 2022 filed on behalf of the
petitioner and affirmed the order and Award*



dated 19.04.2021 passed by respondent no. 5 the Competent Authority-D.F.C.C.I.L. cum District Land Acquisition Officer, Rohtas at Sasaram in Land Acquisition Case No. 02 of 2021- 22/07/2020-21 as contained in Annexure- 3 and further be pleased to pass an order directing the respondents to prepare fresh Award in accordance with a law considering the land of the petitioner as residential bearing Khata No. 113, Plot No. 26/721, Area 2 decimals situated at Mauza Madaini, Thana No. 141, Halka No. 6, Police Station- Sasaram (M), District- Rohtas and to pay the compensation amount to the petitioner within period. a specified period.

3. The claim of the petitioner is that the lands adjoining to her have been sold showing it is as residential whereas putting his case in the category of agriculture land, compensation amount has been fixed by the competent Authority.

4. Aggrieved, she moved before the Arbitrator which also negated her case.

5. Learned State Counsel pointed out that section 34 of the Arbitration and Conciliation Act, 1996 envisages the



petitioner to approach the Civil Court for redressal of her grievance.

6. Section 34 of the Arbitration and Conciliation Act, 1996 read as follows:-

RECOURSE AGAINST ARBITRAL AWARD

“34. Application for setting aside arbitral award -

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

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

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that)-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the



submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(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 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.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other



action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

2[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]”

7. Learned Counsel for the petitioner seeks liberty to approach the concerned Court under Section 34 of 1996 Act.

8. Granting said liberty, the writ petition stands disposed of with the observation that if the petitioner appears before the concerned Court in next four weeks, the Court will consider her limitation petition taking into account the fact that she was pursuing the matter before the Writ Court.

(Rajiv Roy, J)

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