

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12920 of 2015

Shiv Shankar Pandey son of Late Ram Narayan Pandey Resident of Village-
Mubarakpur, P.s Mohaniya, District Kaimur Bhabua.

... .. Petitioner/s

Versus

1. The Union Of India
2. The Deputy Secretary, Ministry of Road Transport and Highways, Govt. of India New Delhi.
3. The National Highway Authority of India through its Chairman-cum-Secretary Ministry of Shipping Roa
4. The Project Director,National Highway Authority , D.I.G. colony Maqbul Alam Road, Varanasi , U.P.
5. The State of Bihar through District Magistrate,Kaimur at Bhabua
6. The District Land Acquisition Officer-cum-Competent, Authority , KaimurBhabua
7. The Additional collector-cum-Arbitrator, Bhabhua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	None.
For the Respondent/s	:	Mr. Anil Kumar Verma, AC to AAG-9
For the NHAI	:	Mr. S.N. Pathak, Advocate Mr. Saurav Nikunj, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 01-04-2024 No one appears on behalf of the petitioner though
the State as also the NHAI are represented.

2. The present petition has been filed for issuance of appropriate writ/order/direction/(s) to the respondent authorities for setting aside the Order dated 23.2.2015 passed by Arbitrator Bhabhua in Case No.255/2014-15, whereby and where under the petitioner has been arbitrarily deprived from the adequate compensation of land acquired by Central Govt. under National



Highway Authority Act 1950 contrary to their own finding and arbitrarily discretion in evaluating the land valuation which is prima-facie evident from their order, which renders the instant order liable to be vitiated.

3. A counter affidavit has been filed on behalf of the respondent no. 4, Manager Technical, NHAI and according to it, once the Arbitrator has passed an order on 23.02.2015 in Case No. 255/2014-15, if either of the parties are aggrieved, they will have to invoke Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth, for short, 'the 1996 Act').

4. Section 34 of 'the 1996 Act' read as follows:

“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 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.]

[(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.

[(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.]”

5. This Court is convinced that the petitioner has to move before the competent Civil Court for the redressal of his grievance.

6. Since no one has appeared, the petition stands dismissed for non-prosecution.

(Rajiv Roy, J)

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