

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14351 of 2023

Indravati Devi Wife of Late Suyradev Prasad @ Late Suryadev Singh,
resident of Village-Shankarpur, Post-Thakurai Parasia, P.S.-Nasariganj,
District-Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The Eastern Dedicated Freight Corridor Corporation of India Pvt. Ltd.
through Chief Project Manager, Mughalsarai, Varanasi.
2. The Deputy Project Manager, Eastern Dedicated Freight Corridor
Corporation of India Pvt. Ltd., Mughalsarai, Varanasi.
3. The State of Bihar through the Principal Secretary, Revenue Department
Govt. of Bihar, Patna.
4. The Arbitrator cum Commissioner Patna Division, Patna.
5. The District Magistrate, Rohtas at Sasaram.
6. The Competent Authority cum District Land Acquisition Officer, District-
Rohtas.
7. The Circle Officer, Sasaram, District-Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan (SC-25)
For the DFCCIL	:	Mr. Tiwari Shwetketu, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 28-03-2024 Heard learned counsel for the petitioner as also the

learned counsels for the State and the Dedicated Freight
Corridor Corporation of India Pvt. Ltd (for short, the DFCCIL).

2. The present petition has been preferred for issuance
of writ in the nature of mandamus or any other writ or writs,
direction or directions to the respondents authorities to consider
the case of the petitioner for grant and to pay the award amount
of the land of the petitioner considering the land of the



petitioner as Branch Road (Residential) along with interest in accordance with law.

3. Learned counsel appearing on behalf of 'the DFCCIL' submits that an order has been passed by the Court of Arbitrator-cum-Commissioner, Patna Division, Patna (Annexure-3 to the petition) and against that remedy lies under section 34 of the Arbitration and Conciliation Act, 1966 (for short, 'the Act') and the petitioner has to approach the competent Court in line with the said section.

4. Chapter 7 of the Act deals with the "Recourse Against Arbitral Award" and section 34 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. Learned counsel for the petitioner submits that he shall be approaching the concerned Court in this regard but there has been delay as he was agitating the matter before the Writ Court.

6. Accordingly, the writ petition stands disposed of with the observation that if the petitioner prefers a petition within eight weeks from today before the competent Court, the limitation petition shall be considered by the Court concerned taking into account the fact that the lady was agitating the matter before the Patna High Court.

(Rajiv Roy, J)

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