

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1067 of 2023**

**In
Civil Writ Jurisdiction Case No.15069 of 2023**

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National Highway Authority through Project Director, PIU Darbhanga.

... .. Petitioner/s

Versus

1. Md. Ghufran, S/o Late Salimuddin, R/o Village- Belwa, Tapu Tola, P.S- Town Thana Araria, District- Araria.
2. The State of Bihar, through the Collector, Araria at Araria Collectorate, P.S and District- Araria.
3. The Collector, Araria at Araria Collectorate, P.S and District- Araria.
4. The District Land Acquisition Officer, Araria, P.S. and District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Maurya Vijay Chandra, Advocate Mr. Gaurav Govinda, Advocate
For the Respondent/s	:	Mr. Amar Nath Singh, Advocate Mr. Kamal Kishore Singh, Advocate Mr. Anil Kumar, Advocate Mr. Kumar Aman, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 26-10-2024

The instant petition has been filed by the applicant/appellant/petitioner under Article 227 of the Constitution of India for setting aside the warrant of attachment dated 05.10.2023 issued by the learned Sub Judge-I, Purnea under Order XXI, Rule 30 of the Code of Civil Procedure (hereinafter referred to as 'the Code') in Execution Case No. 1 of 2016 and also for setting aside the order dated 05.08.2023 passed by the learned Sub-Judge-I, Purnea rejecting the stay petition filed by the petitioner and order dated 22.09.2023 passed by learned Sub-Judge-I, Purnea rejecting the objection of



the petitioner on maintainability of the execution case.

2. The conspectus of the case, as it emerges from the record, is that petitioner National Highway Authority of India (in short 'the NHAI') is a statutory body of the Government of India and a nodal agency of the Ministry of Road Transport and Highways. The land of the land owner/respondent no.1 Md. Ghufra bearing Khata No. 2438, Khesra No. 1531, area 98.25 decimal at Mauza Basantpur in District-Araria was acquired for the purposes of broadening of NH-57. Acquisition was made under Section 3-A and Section 3-D of National Highways Act, 1956 (hereinafter 'the NH Act'). Subsequent to the acquisition, Competent Authority of Land Acquisition (in short 'CALA') prepared an award under Section 3-G of the NH Act in the year 2008 for compensation to the respondent no.1 treating the acquired land to be residential. Respondent no.1, seeking enhancement of compensation, approached the High Court by filing CWJC No. 3219 of 2010. The High Court directed the competent authority to pay the amount determined under award dated 25.09.2009 and directed the respondent to file undertaking to refund the amount in case any contrary judgment/order is passed by the competent civil court. Thereafter, the land owner/respondent no.1 filed Arbitration Case No. 08 of 2010-11



before the Arbitrator-cum-Additional Collector, Purnea seeking compensation for commercial land. The learned Arbitrator, vide order dated 18.01.2011, while determining the nature of land to be of commercial, held that the land owner would be entitled for compensation of market value of commercial land in addition to 10% amount. Pursuant to the award of Arbitrator in Arbitration Case No. 08 of 2010-11, CALA determined the compensation amount to be Rs. 85,42,854/- for commercial land and sent the award to the competent authority/Project Director (PD), Purnea. The aforesaid amount was arrived at after deducting the compensation amount already paid to the land owner. Against the order of the learned Arbitrator, NHAI filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') before the learned Sub-Judge-I, Purnea bearing CIS/Registration No. 307 of 2013. The respondent no.1 objected to the filing of the case submitting that the court at Araria was the appropriate court for filing the application under Section 34 of the Act and thus sought dismissal of the case. The learned Sub-Judge-I, Purnea, vide order dated 08.08.2014 dismissed the petition filed under Section 34 of the Act. The petitioner NHAI filed Miscellaneous Appeal No. 3 of 2015 before the learned District Judge, Purnea against the order of



learned Sub-Judge-I, Purnea passed in CIS/Registration No. 307 of 2013 under Section 34 of the Act. The said miscellaneous appeal was dismissed in default on 06.06.2018. In the meantime, a gazette notification by the Government of Bihar was published on 28.08.2014 wherein Judgeship of Araria was established and all the matters within the territorial jurisdiction of Araria stood transferred to the newly established Araria Judgeship. The respondent no.1 filed Execution Case No. 4 of 2016 before the learned Sub-Judge, Purnea against the petitioner NHAI, Project Implementation Unit (PIU) Darbhanga for enforcement of arbitral award dated 18.01.2011 passed in Arbitration Case No. 8 of 2010-11. The learned Sub-Judge-I passed an order under Order XXI Rule 30 of the Code returnable on 18.05.2023 directing to attach the movable property of NHAI in Araria and Purnea. Subsequent thereto NHAI filed its objection under Order XXI Rule 58 of the Code on 08.05.2023 praying for release of properties attached by the order of the learned Sub-Judge-I on 28.04.2023. The objection petition was dismissed by the learned Sub-Judge-I. The petitioner also filed a petition for stay of execution proceedings submitting that the learned Sub-Judge, Purnea has no jurisdiction in the matter as it is the District Judge, Araria which



is the appropriate court as per the provision of Section 38 of the Code. This petition was also dismissed by the learned Sub-Judge-I vide order dated 05.08.2023. The petitioner also filed a petition under Section 34 of the Act being Miscellaneous Case No. 18 of 2023 before the learned District Judge, Araria against the arbitral award of learned Arbitrator-cum-Additional Collector, Purnea passed in Arbitration Case No. 8 of 2010-11 along with application for condonation of delay. The said case is still pending before the learned District Judge, Araria. It further transpires that the learned Sub-Judge-I, Purnea issued an order for warrant of attachment dated 05.10.2023 returnable by 18.10.2023 directing to attach the movable properties of NHAI in Araria and Purnea District. Consequent thereto, a notice of Nazir, Civil Court, Purnea notifying decree of possession was issued wherein attachment of Toll Plaza was to be executed at 10.30 AM on 16.10.2023. Being aggrieved and dissatisfied with the warrant of attachment dated 05.10.2023 issued by the learned Sub-Judge-I, Purnea in Execution Case No. 1 of 2016 and consequent notices of Nazir, Civil Court, Purnea dated 13.10.2023, the petitioner has approached this Court in the present miscellaneous petition.

3. Learned counsel for the petitioner submitted that



issuance of warrant of attachment dated 05.10.2023 by learned Sub-Judge-I, Purnea in Execution Case No. 1 of 2016 and consequent notices of Nazir Civil Court, Purnea are bad in the eyes of law. Arbitral award passed by learned Arbitrator-cum-Additional Collector, Purnea in Arbitration Case No. 08 of 2010-11 is a non-executable decree. Learned counsel further submitted that the learned Sub-Judge-I, Purnea is not the competent court for execution of decree. Under the provisions of Section 3-G(5), Section 3-G(6) of the NH Act read with Section 2(i)(e) of the Act, only the Principal Civil Court will have the jurisdiction to enforce the award and for this reason only the Principal Civil Court of the district concerned has the jurisdiction to pass the orders in connection with the execution of an arbitral award unless the same has been transferred to any other court as per the provisions of Section 39 of the Code. Therefore, only the Principal Civil Court of original jurisdiction, i.e., the District Judge, Araria would be the appropriate executing court. Since the aforesaid court of learned District Judge is the competent court after establishment of Judgeship of Araria w.e.f. 06.09.2014 as the execution case was filed in the year 2016, the learned Sub-Judge-I, Purnea does not have jurisdiction to pass any orders in execution of the decree.



Moreover, the land under acquisition was also within the territorial jurisdiction of Araria and, therefore, for this also, the District Judge, Araria will have the jurisdiction to entertain the execution petition. Learned counsel further submitted that the properties put under attachment are not the properties of petitioner NHAI, PIU, Purnea but the same belongs to private individuals who are strangers to the execution proceedings. The attachment of Toll Plaza will cause prejudice to third parties who have no interest involved in these proceedings. Moreover, any attachment is bad in law without hearing the parties, whose properties are being attached. Learned counsel further submitted that in earlier warrant of attachment dated 28.04.2023, toll plaza was not mentioned in the schedule of the properties for attachment and as such the judgment debtor has no opportunity to file any objection to the attachment of these assets. Moreover, the Toll Plaza infrastructure belongs to a concessionaire of the NHAI and is a special purpose vehicle which is a separate entity. These assets cannot be attached to satisfy the debt of NHAI. Learned counsel further submitted that the matter relates to NHAI, PIU, Darbhanga Office, however, warrant of attachment has been issued for PIU, Purnea Office which is illegal and is liable to be quashed. Learned counsel further



submitted that the orders of learned Sub-Judge-I, Purnea dated 05.10.2023 and 22.09.2023 are non-speaking orders and are liable to be set aside.

4. Learned counsel further submitted that the award is not executable even on the point that it is a non-speaking order. No final compensation amount has been determined in the award and the determination of final value has been left to the competent authority. As no amount is determined in the award, the same is not executable. Further the learned Arbitrator did not grant interest but granted 10% of extra compensation which is beyond the statutory limit.

5. Learned counsel relied on a number of decisions of the different courts in support of his contentions. Learned counsel submitted that in a *catena* of cases including a judgment of this Court passed in ***Shivam Housing Pvt. Ltd. & Ors vs Thakur Mithilesh Kumar Singh***, reported in ***2015 SCC OnLine Pat 6005*** wherein it has been held that Principal Civil Court of original jurisdiction means District Court within the meaning of Section 34 of the Act. Therefore, the court which can exercise power under Section 34 of the Act is competent to enforce the award under Section 36 of the Act. Learned counsel thus submitted that the court of learned Sub-Judge-I, Purnea is not



the Principal Civil Court and for this reason it has no power to execute the award. Further, on this aspect, the learned counsel relied on the decision of the Kerala High Court in the case of ***Metro Silks & Sarees Vs. Darpan Traders.***, reported in **2009 SCC OnLine Ker 6359**. Learned counsel thereafter referred to the decision of the Hon'ble Supreme Court in the case of ***Project Director, National Highways Authority of India vs. M. Hakeem & Anr.***, reported in **(2021) 9 SCC 1**, wherein it has been held that if the compensation has been awarded by taking into account 'guideline value' and not taking into account sale deeds which would have reflected the proper market value of the land, such awards are perverse. But even then such awards could not be modified in an appeal under Section 34 of the Act.

6. Learned counsel further placed reliance on the decision of the Allahabad High Court in the case of ***Bhartiya Rashtriya Rajmarg Pradhikaran vs. Rajesh Kaushik & Ors.***, reported in **2021 SCC OnLine All 24** on the proposition that the learned Arbitrator cannot refer the matter back to CALA for determination of compensation in terms of directions of the learned Arbitrator. Learned Arbitrator did not have power to declare nature of land. Under the provisions of Section 3-G(5) of the NH Act, the learned Arbitrator has to himself determine



the just amount of compensation and direction issued by the learned Arbitrator becomes a nullity in law. Learned counsel further submitted that perusal of the order passed by the learned Arbitrator clearly shows that the Arbitrator has not determined the amount of compensation to be paid and he has not quantified the total compensation amount. Remitting the matter to the competent authority for the said purpose runs against Section 3-G(5) of the NH Act. Thus, the learned counsel submitted that the award is nullity as it is a declaratory award and cannot be enforced. Referred paragraph nos. 11, 12 and 13 of ***Bhartiya Rashtriya Rajmarg Pradhikaran*** (supra) read as under:-

“11. Irrespective of the fate of the arbitration proceedings, the order of the competent authority would not merge in the award rather it would continue to exist, though its enforceability (as to quantum of compensation payable), may, in given facts be eclipsed by the arbitral award. It is so because, the terms of reference arise from the plain language of Section 3-G (5) of the Highways Act. That provision of law would ever limit the scope of arbitration proceedings and command the arbitrator to himself determine the just amount of compensation.

12. Thus, in no event, the arbitrator may set aside the order passed by the competent authority and he may never remit the matter to the original/competent authority to pass a fresh order. Typically, that power is a power of a Court or Tribunal sitting in appeal or revision that too, if specifically granted by statute, and not implied. In absence of any such power given



to the arbitrator either under the Highways Act or the Act, the direction issued by the arbitrator is a nullity in law.

13. Perusal of the order passed by the arbitrator again does not leave any manner of doubt that he has not determined the amount of compensation to be paid, since, he has neither mentioned the rate at which compensation may be awarded for 2400 sq. mtrs of land nor he has quantified the total compensation amount. In fact, he has specifically remitted the matter to the competent authority for that purpose. That direction clearly falls foul with Section 3-G (5) of the Highways Act.”

7. On the lack of competence of the learned Arbitrator passing the award, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Official Trustee, West Bengal & Ors. vs. Sachindra Nath Chatterjee & Anr.***, reported in ***AIR 1969 SC 823*** on the point that the learned Arbitrator has not only passed a wrong order but it was an order which he has no competence to make and, therefore, the order is a void order and consequently the award becomes non-executable. Learned counsel further submitted that where a power is given to do a certain thing in certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. But the learned Arbitrator has not considered this aspect and passed the order in a manner not prescribed by the law and, hence, the award is not



sustainable. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Union of India & Ors. vs. Mahendra Singh***, reported in ***2022 SCC OnLine SC 909 (Judgment dated 25.07.2022 passed in Civil Appeal No. 4807 of 2022)*** in support of his contention. On the same proposition, learned counsel further relied on another decision of the Hon'ble Supreme Court in the case of ***Tata Chemicals Limited vs. Commissioner of Customs (Preventive), Jamnagar***, reported in ***(2015) 11 SCC 628***. Learned counsel further submitted that if the decree is nullity, law does not take any notice of the same and the same could be challenged in any proceeding at any stage, even in a collateral proceeding and the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Dhurandhar Prasad Singh vs. Jai Prakash University & Ors.***, reported in ***(2001) 6 SCC 534*** in support of his contention.

8. Learned counsel further submitted that though the nature of the land has been held to be commercial yet there is nothing on record to show its conversion from agriculture to commercial. Permission of State Government is required for such conversion under the provisions of Section 3 of Bihar Agriculture Land (Conversion for Non-Agriculture Purposes)



Act, 2010. There is nothing on record to suggest that such permission was sought or the Collector gave such permission. Learned Arbitrator did not take note of this fact and passed the award casually and the courts should not perpetuate the illegality. Learned counsel further submitted that said provision is to be read alongside Section 23(4) of the Bihar Tenancy Act, which reads as under:-

“23. Right of raiyat in respect of use of land :-

(1)

(2)

(3).....

(4) A raiyat may, with the previous permission of the Collector, use his land for the purposes not enumerated in sub-section (2):

Provided that before giving such permission the Collector shall redetermine the rent of such land in the prescribed manner to the extent of five per cent of the market value of the land:

Provided further that if a raiyat has not taken prior permission of the Collector, the Collector may give post facto permission on payment of double amount of the rent which he would have paid for obtaining prior permission, for the period between the date of commencement of use for purposes other than those enumerated in sub-section (2) and the date of application or detection, as the case may be:

Provided also that if a raiyat has been using his land for purpose other than those enumerated in sub-section (2), from before the commencement of this Act, he shall apply within 90 days of the date of commencement of this Act for permission to the Collector who on receipt of such application shall proceed in such manner as if the above use had started on the date of commencement of this Act. If the raiyat fails to



do so, he shall be liable for payment of double amount of the rent which he would have been liable to pay, had he applied in time for the period between the date of commencement of this Act and the date of application or detection as the case may be:

Provided further also that the Collector shall have the power to revise the rent so determined after every ten years.

(5).....”

9. Learned counsel further submitted that conversion of the land is an exception and is subject to the conditions enumerated therein. In this regard, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Goa Housing Board vs. Rameshchandra Govind Pawaskar & Anr.***, reported in ***(2011) 10 SCC 371***, paragraph nos. 19, 20 and 34 of which read as under:-

“19. Where an acquired land is subject to a statutory covenant that it can be used only for agriculture and cannot be used for any other purpose necessarily it will have to be sold as agricultural land as the land owner cannot sell it for any purpose other than agriculture and the purchaser cannot sell it for any purpose other than agriculture. As a consequence, the price fetched for such land will be low even if it is situated near any urban area. But if the same land is not subject to any prohibition or restrictive covenant regarding use and has the potential of being developed either as a residential layout or put to commercial or industrial use, the land will fetch a much higher price; and the market value of such other land with development potential can be determined with reference to the sale price of nearby



residential plots by making appropriate deduction for development. On the other hand if the land is to be used only for agricultural purposes, it may not be possible to arrive at the market value thereof with reference to the market value of nearby residential plots.

20. Therefore, we are of the considered view that in regard to the land in question, in view of the permanent restriction regarding user, that is it should only be used for agricultural purposes, and the bar in regard to any non-agricultural use, it will have to be valued only as an agricultural land and cannot be valued with reference to sales statistics of other nearby lands which have the potential of being used for urban development.

34. Further, under section 30 of the Land Revenue Code, no land used for agriculture shall be used for any non- agricultural purpose except with the permission of the Collector under section 32 of the Code. Section 32 provides for the procedure for conversion of use of land from agricultural to non-agricultural use. It requires an application to be made by the land holder to the Collector and a permission being granted by Collector for conversion, subject to payment of the fees prescribed therein. It is not the case of the respondent that the land has been converted to non-agricultural use under sections 30 and 32 of the Land Revenue Code. In fact, before the issue of a purchase certificate on 6.5.1993, it may not be possible for a tenant-purchaser to apply for conversion to non- agricultural use. It is, thus, clear that the land in question was agricultural land as on the date when the Land Use Act came into force and when the land was acquired under the Land Acquisition Act. Therefore, the contention that it was not agricultural land, is rejected.”

10. Thus, the learned counsel submitted that market



value cannot be determined *de hors* its actual use. Lastly, learned counsel relied on the decision of a Co-ordinate Bench of this Court in the case of ***National Highway Authority of India vs. Sri Vijay Kumar Singh & Ors., (Judgment dated 05.04.2023 passed in Misc. Appeal No. 651 of 2021)***, wherein the learned Single Judge held that simply recording the finding that the land is in the nature of commercial land is not in consonance with the scheme of the Act and under Section 3-G of the NH Act. Such order cannot be conferred with the statutory trappings of an award and thus, the award was set aside.

11. Learned counsel further submitted that even if in some of the cases, such type of awards may have been entertained and compensation disbursed by the authority, the same would not act as a precedence. The same does not confer any right to any person and referred to the decision of the Hon'ble Supreme Court in the case of State of ***U.P. & Ors. vs. Rajkumar Sharma & Ors.***, reported in ***(2009) 3 SCC 330***, wherein the Hon'ble Supreme Court held that Article 14 of the Constitution of India does not envisage negative equality, and if the State committed the mistake, it cannot be forced to perpetuate the same mistake.



12. Learned counsel appearing on behalf of private respondent vehemently contended that there is no merit in the present petition and the same is liable to be dismissed. Learned counsel submitted that after acquisition of land of the respondent no.1, under Section 3 of the NH Act, the award was prepared treating the nature of the land as agricultural in the year 2009. Against the arbitrary fixation of compensation amount, the respondent moved before this Court by filing CWJC No. 3219 of 2010 and the same was disposed of vide order dated 25.02.2010. Thereafter, for enhancement of compensation amount, the respondent no.1 filed an application under the provisions of NH Act before the learned Arbitrator which was registered as Arbitration Case No. 8 of 2010-11 for compensation treating the acquired land to be commercial in nature. After hearing the parties and on the basis of record, the learned Arbitrator, vide his award dated 18.01.2011, held that the nature of acquired land was commercial and land owner was entitled to compensation for market value of commercial land in addition to 10% amount. In compliance of the dated 18.01.2011, the compensation amount was redetermined by the competent authority and vide letter dated 26.02.2011, the competent authority requested the Project Director NH-1 to approve the



same and release the necessary amount for payment but the payment was not made to the respondent no.1 till date. Finding no alternative, the respondent no.1 filed CWJC No. 7179 of 2011 and the same was disposed of vide order dated 20.05.2011 with a direction to NH Authority to act strictly in accordance with provisions under Section 3-G and 3-H of the NH Act. An LPA was filed by the NHAI against the said order which was disposed of vide order dated 16.08.2013 with liberty to respondent to avail statutory remedy for execution of award under Section 36 of the Act. Learned counsel further submitted that the petitioner preferred Misc. Case No. 8 of 2010-11 in the court of learned Sub-Judge, Purnea under Section 34 of the Act read with Section 3-G(5) of the NH Act and the same was dismissed on 06.08.2014. Thereafter, the respondent filed Money Execution Case No. 1 of 2016 in the court of learned Sub-Judge, Purnea under Section 36 of the Act for execution of decretal amount dated 08.08.2014 for a sum of Rs. 1,51,56,692/-. Learned counsel further submitted that but the petitioner kept on delaying the payment of the compensation amount and has filed the present civil miscellaneous petition on frivolous grounds.

13. Learned counsel further submitted that it is the



admitted fact that the award dated 22.01.2011 was not challenged within statutory period of three months as prescribed under Section 34 of the Act. Now the petitioner has been claiming that it has filed Misc. Case No. 18 of 2023 against the award dated 22.01.2011 after more than 12 years and this is being done only to delay the matter with an oblique motive. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Mahindra And Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod & Ors.***, reported in ***(2022) 4 SCC 162***, wherein the Hon'ble Supreme Court held that there could be no application of Section 5 of the Limitation Act in the matter of challenge to the award under the Act. Hence, the award has become final. Learned counsel further submitted that the order of the learned Arbitrator is not a non-speaking order. Since the Award has not been challenged within the limitation period, at this stage, this Court cannot look into it, more so when the matter is before the executing court. The learned executing court cannot go behind the decree and it has to execute the same as it is and in this regard the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman & Ors.*** reported in ***(1970) 1 SCC 670***.



Learned counsel further submitted that the petitioner cannot take the plea that the award is not in consonance with the provisions of NH Act since the petitioner failed to challenge the same within the stipulated period of limitation and the award may be erroneous but it is not nullity. The learned counsel submitted that the award would become nullity if it has been passed against a dead person or the authority passing it was not having jurisdiction. The same is not the case here. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Markfed Vanaspati & Allied Industries vs. Union of India***, reported in ***(2007) 7 SCC 679*** to stress the point that award has become final. Paragraph nos. 9, 15 and 17 of ***Markfed Vanaspati & Allied Industries*** (supra) read as under:-

“9. The consistent and settled legal position is that the scope of interference is extremely limited in a non-speaking award. The legal position has been consistently followed in number of judicial decisions. The findings of some of those judgments are recapitulated as under.

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11.....

12.....

13.....

14.....

15. The decided cases of this Court demonstrate



that this Court has consistently taken the view that scope of interference in a non-speaking award is extremely limited. The Court cannot probe into the mental process of the arbitrator. The court should endeavour to support a non-speaking arbitration award provided it adhered to the parties agreement and was not invalidated due to arbitrators misconduct.

16.....

17. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to honour and support the award as far as possible.”

14. Learned counsel further submitted that the jurisdiction of the executing court cannot be challenged and referred to the decision of the Hon’ble Supreme Court in the ***Sundram Finance Limited vs. Abdul Samad & Anr.***, reported in ***AIR 2018 SC 965***, paragraph nos. 17, 18, 19 and 22 of which read as under:-

“17. The line of reasoning supporting the award to be filed in a so-called court of competent jurisdiction and then to obtain a transfer of the decree is primarily based on the jurisdiction clause found in Section 42, which reads as under:

“42. Jurisdiction. – Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in



force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

18. *The aforesaid provision, however, applies with respect to an application being filed in Court under Part I. The jurisdiction is over the arbitral proceedings. The subsequent application arising from that agreement and the arbitral proceedings are to be made in that court alone. However, what has been lost sight of is Section 32 of the said Act, which reads as under:*

“32. Termination of proceedings.— (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2). (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.”

19. *The aforesaid provision provides for arbitral*



proceedings to be terminated by the final arbitral award. Thus, when an award is already made, of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award. Thus, it is not appreciated how Section 42 of the said Act, which deals with the jurisdiction issue in respect of arbitral proceedings, would have any relevance. It does appear that the provisions of the said Code and the said Act have been mixed up.

22. We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.”

15. Learned counsel further submitted that the present miscellaneous case is not maintainable as there is no error of jurisdiction in the order of the learned executing court. Contents of award has not been challenged and only on technical ground, the petitioner seeks intervention of this Court though the same is subject matter of appeal and challenge to the award before the court of competent jurisdiction under Section 34 of the Act and for this reason, the same cannot be taken up before this Court under Article 227 of the Constitution of India

16. I have considered the submissions made on behalf of the parties and also the facts of the case. The challenge to the execution proceeding is mainly on the grounds that the award is not executable since it has been passed against the provisions of



Section 3-G(5) of the NH Act and secondly on the ground of lack of jurisdiction of executing court. Further, challenge to the execution proceeding is on the ground of passing of cryptic and non-speaking orders by the learned executing court.

17. I find certain merits in the contention of the petitioner. Section 3-G(5) of the NH Act reads as under:-

“3G(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government-”

18. This provision makes it clear that if determination of amount by competent authority in Sub-section (1) or Sub-section (2) of Section 3-G is not acceptable to the parties, on proper application being moved, the same shall be determined by the Arbitrator. The provision starts with amount determined and, therefore, the legislative intent is clear that the amount so determined if unacceptable to the parties, would be determined by the arbitrator. Therefore, challenge to the execution proceeding on this aspect was required to be considered by the learned executing court, a duty in which the learned executing court failed as the impugned orders do not show consideration of this aspect.



19. Similarly, on the point of jurisdiction, the learned executing court was supposed to record an unequivocal finding after consideration of the factual situation in view of the law applicable. Now the court under Section 2(1)(e) of the Act means the Principal Civil Court of original jurisdiction in a district. Further, Section 38 of the Code reads as under:-

*“38. Court by which decree may be executed-
A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.”*

This provision is to be read conjointly with Section 36 of the Act, Sub-section (1) of Section 36 of the Act reads as under:-

“36. Enforcement.- (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.”

Therefore, the court where execution of the award can be sought must be the Principal Civil Court and no court inferior to it.

20. Then the issue of jurisdiction, which should have been decided first, has been relegated to the back burner and the learned executing court did not consider this issue at all while



passing the impugned orders. As already discussed and there being no ambiguity on the point that the court which has been enjoined to execute the award in terms of Section 2(i)(e) of the Act, would be the Principal Civil court. Now in ***Shivam Housing Pvt. Ltd.*** (supra) it has been held that Principal Civil Court of original jurisdiction means the District Court within the meaning of Section 34 of the Act. Now taking a cue from the said decision and a natural corollary, the court as mentioned in Section 36 of the Act would again be the court of District Judge as it is the Principal Civil Court. The decision of Kerala High Court in the case of ***Metro Silks & Sarees*** (supra) is quite apposite for consideration of the meaning of court for enforcement of awards under Section 36 of the Act. The learned Single Judge observed that Section 36 of the Act dealing with enforceability of an award falls under part I of the Act and when that be so, the word 'court' in that section necessarily has to be interpreted and understood in tune with the definition of court under Section 2(i)(e) of the Act. It has further been held that court which can exercise the power under Section 34 of the Act alone is competent to enforce an award under Section 36 of the Act and no court inferior to the District Court is competent to enforce an arbitral award. Therefore, in my opinion, filing of the



application for enforcement of the award before the court of learned Sub-Judge-I, Purnea and the said court proceeding in the matter of execution is not proper as the said court is not having jurisdiction since it is not the Principal Civil Court and it is a civil court inferior to the Principal Civil Court. Therefore, it is the court of District Judge where the application for execution should have been filed. The reliance placed by the learned counsel for respondent on the decision of ***Sundaram Finance*** (supra) appears to be misplaced as the said decision is authority on the Act transcending the territorial barriers in the matter of execution of arbitral award. But it nowhere says such execution proceeding could be filed in a court which is not the Principal Civil Court.

21. The issue of jurisdiction has also been raised by the learned counsel for the petitioner in the sense that it is the court in Araria which is having jurisdiction and not the court at Purnea but after the decision of the Hon'ble Supreme Court in the case of ***Sundram Finance Limited*** (supra), the issue is no more *res integra* since the Hon'ble Supreme Court held that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree



from the court which would have jurisdiction over the arbitral proceedings.

Admittedly, the petitioner is having offices and properties in the districts of Purnea as well as in Araria and Darbhanga. So there could be no objection on this point that the application for enforcement of the award was filed in a court situated within the district of Purnea. But, as already observed, the said court of learned Sub Judge-I, Purnea is not having jurisdiction to proceed in the matter for execution of the award.

22. Applying the law to the facts of the case, a shadow is cast over the competence of the learned Sub-Judge, Purnea to proceed with the execution matter. The learned executing court was required to examine the issue as to whether it was competent to proceed with the execution case filed by respondent no.1. The objection has also been taken to the territorial jurisdiction of the learned Sub-Judge, Purnea on the ground that after establishment of Araria Judgeship on 06.09.2014 filing of execution proceeding before the learned Sub-Judge at Purnea is wrong. Further objections were taken that there are different divisions of National Highway Authority working in different areas and the matters of Araria District would come under Darbhanga Division of the National



Highways Authority. The payment of compensation amount is to be made by Darbhanga Division. So property of the award debtor/petitioner is not situated within the jurisdiction of learned Sub-Judge, Purnea as is claimed by the petitioner. Further objection has been taken that the attachment of property situated beyond the jurisdiction of the learned executing court of Sub-Judge-I, Purnea has been sought and ordered and warrant for attachment was issued for such properties. Thus, the competence and jurisdiction of the learned Sub-Judge, Purnea has been challenged by taking various objections on behalf of the petitioner. Further objection has been taken about properties of third parties/private parties being ordered to be attached and the impugned orders are also silent on this point. It is apparent from perusal of orders dated 05.08.2023 and 22.09.2023 that the learned Sub-Judge-I, Purnea has not recorded any finding and brushed aside all objections in one line by saying that 'this court is a right forum and accordingly the award holder has rightly filed this case in the court'. The Hon'ble Supreme Court in the case ***Raj Kishore Jha vs. State of Bihar And Ors.***, reported in ***AIR 2003 SC 4664 : 2003 (11) SCC 519*** has held that the reason is the heartbeat of every conclusion. Without the same, it becomes lifeless and for this reason the approach of the learned



Sub-Judge-I, Purnea could not be appreciated. Further, the Hon'ble Supreme Court in the case of ***Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors.***, reported in ***(2010) 9 SCC 496*** has held that reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process. The aforesaid decisions of the Hon'ble Supreme Court stress upon the importance of reasoned judicial orders and have discussed elaborately while reasoning is the soul and heart of the justice. Therefore, I have no hesitation in holding that the orders disposing of the applications of the petitioner without recording reasons in support of conclusion arrived at in the order and failure to record the reasons would make the orders unsustainable. Not recording the reasons in fact amounts to denial of justice whether it is by an administrative authority, quasi judicial body or a judicial body. The aforesaid authorities could not pass orders without assigning reasons in support of their conclusion, more so, a judicial authority. Thus, non-speaking orders have been passed by an incompetent court and the impugned orders suffer from inherent lack of jurisdiction. Therefore, there is no point in dealing with the merits of the case.



23. The chronology of the events shows that the 3-G, NH Act award was passed by CALA in the year 2008 as well as award prepared by CALA, Araria in the year 2011, objection was raised in the year 2013, execution case was filed in the year 2016 and the impugned orders were passed on 05.08.2023 and 22.09.2023. So at this stage making the award holder to take up all steps afresh and relegating him to initiate a fresh proceeding for execution of award would be unjustified and unduly harsh. Equity demands that the proceeding which has been initiated by the award holder should continue but in the court of competent jurisdiction. Therefore, I think the matter should be remanded to the court of competent jurisdiction i.e., learned District Judge for consideration and passing orders on the petitions filed by the petitioner after due consideration of contention of the parties.

24. Though there is no doubt about jurisdiction of the learned District Judge, Purnea for enforcement of the award, but as the award holder is a resident of Araria, I think, for the sake of convenience, it would be just and proper to transfer the case record to the court of learned District Judge, Araria instead of learned District Judge, Purnea since it has also come on record that the appeal of the petitioner filed under Section 34 of the Act bearing Misc. Case No. 18 of 2023 is pending before the learned District Judge, Araria.



25. Therefore, in the light of discussion made hereinbefore, the orders dated 05.08.2023 and 22.09.2023, passed by the learned Sub-Judge-I, Purnea are set aside and the case record is ordered to be transmitted to the court the learned District Judge, Araria and the learned District Judge, Araria is directed to pass orders afresh in accordance with law on the issue raised by the petitioner within two months from the date of receipt/production of a copy of this order considering the intervening holidays.

26. Since the matter is being disposed of on this short point, the authorities cited by the learned counsel for the parties touching upon the merits of the case are not relevant.

27. Accordingly, the instant civil miscellaneous petition stands disposed of in terms of aforesaid direction.

28. It is made clear that this Court has not made any comments on the merits of respective case of the parties and the learned District Judge, Araria will proceed to dispose of the petitions of the petitioner entirely on its merits and without being influenced by anything said or observed in the present order.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	21.09.2024
Uploading Date	28.10.2024
Transmission Date	NA

