

CULCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI
(Civil Revisional Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.O. 147 of 2023

Terai Tea Company Limited

Vs.

The Project Director Asian Highways & Anr.

For the Petitioner	:Mr. Bikramaditya Ghosh, Adv. Mr. Sitesh Kumar Gupta, Adv. Mr. Rajan Raj, Adv.
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For the respondent no. 1	:Ms. Supriya Singh, Adv.
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For the State	Mr. Momenur Rahaman, Adv. Mr. Bikash Singha
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Heard on	:13.02.2024,19.02.2024, 20.02.2024
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Judgment on	: 12th March, 2024
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Bibhas Ranjan De, J.

1. The instant civil revisional application is directed against an order dated 19.04.2023 passed by Ld. Additional District Judge, 3rd Court, Darjeeling (for short ADJ) in connection with Miscellaneous Arbitration Case no. 25 of 2022, wherein and whereby the Ld. Court rejected the application preferred by the petitioner herein under Section 34(4) of the Arbitration and Conciliation Act, 1996 (for short Act of 1996).

Brief facts:-

2. The petitioner namely Tarai Tea Company Limited was granted a long term Tea Grant Lease within the meaning of Section 6 (3) of the West Bengal Estate Acquisition Act, 1953 in respect of a Tea Garden functioning under the name and style of Bagdogra Tea Estate, which is comprised of an area more or less admeasuring 696.10 acres. The original deed of lease executed by the State Government under the said act was made effective on and from 25th August, 1972 for a period of 30 years. The said lease was renewed in respect of 687.17 acres for another term of 30 years by a registered lease deed dated 30.05.2021. Subsequently, the Asian Highway Authorities decided to acquire certain portion of land of the

petitioner Tea Garden for the purpose of widening /four lining the AH-02 in Darjeeling District and for that made several notifications under Section 3A (1) of the National Highways Act (for short NH Act) proposing acquisition of 3.08 acres of land, comprised in the Tea Garden of the petitioner/company and acquired the same by making a declaration to that effect.

3. Thereafter, the Special Land Acquisition Officer (appointed as competent Authority under the NH Act, 1956) Teesta Barrage Project, Silliguri being the competent authority determined the quantum of compensation payable for such acquisition at an estimate of only 10% of the land value. Being dissatisfied with the said determination of compensation by the competent authority the petitioner herein made application to refer the matter to the Arbitrator appointed by the Central Government as per Provision of the Section 3G (5) of the NH Act for determination of the fare amount of compensation. The Ld. Arbitrator, after hearing, concluded that the petitioner is only entitled to a sum of Rs. 2,95,80,320/-. The petitioner being aggrieved and dissatisfied with the said arbitral award dated 17.05.2022 preferred an application under Section 34(1) along with a petition under Section 34 (4) of the Act of 1996 before

the Ld. District Judge who in turn referred the same to the Ld. ADJ, 3rd Court, Darjeeling for disposal.

4. Ld. Judge, took up the application under Section 34 (4) and after hearing the parties rejected the same on the ground that the plea taken in the application under Section 34(4) of the Act of 1996 is not curable if the matter is remitted back to the Ld. Arbitrator as the Ld. Arbitrator after considering the relevant documents as well as the pronouncement of the Hon'ble Apex Court passed the impugned order.

Argument advanced:-

5. To begin with, Ld. Counsel, Mr. Bikramaditya Ghosh, appearing on behalf of the petitioner submitted that Ld. Arbitrator had omitted to give adequate reasons in support of his award i.e. 40% of the land value.
6. In addition, Mr. Ghosh has submitted that the calculation made by the Ld. Arbitrator with regard to his award was in gross derogation of the settled principles of law enunciated by the Hon'ble Apex Court.
7. Furthermore, Mr. Ghosh argued that the intention behind Section 34 (4) of the Act of 1996 is to make award enforceable, after giving opportunity to the arbitrator to undo curable defects and this provision can be utilized in cases where the

arbitral award does not provide any reasoning or in cases where the award has some gaps in the reasoning.

8. In support of his Contention, Mr. Ghosh relied on the following cases:-

9. ***Dyna Technologies Private Limited Vs. Crompton Greaves Limited*** reported in **(2019) 20 Supreme Court Cases 1**

10. ***National Highways Authority of India Vs. Trichy Thanjavur Expressway Ltd.*** reported in **2003 SCC on Live Delhi 5183**

11. ***Kinnari Mullick and another Vs. Ghanshyam Das Damani*** reported in **Vs. (2018) 11 Supreme Court Cases 328**

12. ***I-Pay Clearing Services private Limited Vs. ICICI Bank Limited*** reported in **(2023) 3 Supreme Court Cases 121**

13. Per contra, Ld. Counsel Ms. Supriya Singh appearing on behalf of the respondent no. 1 has submitted that the Ld. Arbitrator has returned his finding with adequate reasoning after considering all the relevant documents. It is further submitted that the plea of supplying additional reasons in terms of any judgment of the Hon'ble Apex Court cannot be a

ground for remission under Section 34(4) of the Act of 1996. It is contended that Ld. Arbitrator cannot take a contrary view against the award, under the guise of adding reasons. In support of that contention, Ld. Counsel relied on the case of I-Pay Clearing Services private Limited (supra).

Analysis:-

14. After going through the judgments relied on behalf of the parties it comes to my view that Section 34 (4) of the Act of 1996 can be resorted to, to record reasons on the findings already given in the award so as to fill gaps in the reasoning of the award and not where there is no finding at all. It was held by the Hon'ble Apex Court that reasons are links between the materials on record on which certain conclusions are based and the actual conclusions. In absence of any finding by the Ld. Arbitrator, it can not be said that it is a fit case where additional reasons are required to be given or that there are gaps in the reasoning.

15. It is also settled that the discretionary power conferred under Section 34 (4) of the Act of 1996 is to be exercised only where there is inadequate reasoning, so as to fill the gaps in the reasoning, in support of findings that are already recorded in the award.

- 16.** In the case at hand Ld. Arbitrator returned his finding by giving an additional award amounting to a sum of Rs. 2,95,80,320/- including 40% of the total valuation of 3.08 acres of the land the petitioner's share. Ld. Arbitrator also assigned the reason before finalizing his award.
- 17.** Mr. Ghosh has submitted that Ld. Arbitrator did not assign any reason for not relying the judgments of the Hon'ble Apex Court cited by the petitioner before the Ld. Arbitrator. Mr. Ghosh has further submitted that percentage of award enunciated by the Hon'ble Apex Court has been ignored without distinguishing the same with reasons.
- 18.** I am not agreeable with Mr. Ghosh. Section 31, 34 (1), 34(2)(A) & 34 (4) of the Act of 1996 makes it clear that in appropriate case, on request made by a party, the court can give an opportunity to the Arbitrator to resume the arbitral proceeding for giving reasons ought to fill gaps in the reasoning in support of his finding, which is already rendered in the award. Provision of Section 34 (4) of the Act of 1996 cannot be resorted to while award is passed ignoring the judgment of the Hon'ble Apex Court being judgment law under Article 141 of the Constitution of India. Ld. Arbitrator is not allowed to increase quantum of award in terms of any

judgement law after award is promulgated. If the findings, in my opinion, are recorded ignoring the judgement law, the same are acceptable grounds for setting aside the award itself by the Court but not for remission for supplying additional reasoning by the Ld. Arbitrator within the meaning of Section 34 (4) of the Act of 1996. Such patent illegality cannot be cured with the help of Provision of Section 34 (4) of the Act of 1996.

- 19.** With the aforesaid observation, civil revision application being no. C.O. 147 of 2023 stands dismissed.
- 20.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]