

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction
Appellate Side
[From the Principal Bench]
[Via Video Conference]**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Prasenjit Biswas**

**FMAT 32 of 2023
IA NO: CAN 1 of 2024
National Highways Authority of India
Vs
Manta Kumar Saha and Others**

With

**FMAT 1 of 2024
IA NO: CAN 1 of 2024
National Highways Authority of India
Vs
Sh. Rafijuddin Md. and Others**

With

**FMAT 2 of 2024
IA NO: CAN 1 of 2024
National Highways Authority of India
Vs
Sh. Hemanta Roy and Others**

With

**FMAT 33 of 2023
IA NO: CAN 1 of 2023
National Highways Authority of India
Vs
Alpana Ohja and Others**

For the appellants	:	Ms. Aishwarya Bhati, Ld. ASG, Mr. Suransh Chaudhury, Ms. Supriya Singh, Ms. Manisha Chava, Mr. Vikram Sharma
For the State	:	Mr. Jayjit Choudhury, Ld. AAG, Mr. Hirak Barman, Mr. Nabankur Paul

For the respondent no.1
in FMAT 1 of 2024 : Mr. Arun Kumar Kunda,
Mr. Binod Kumar Chakravorty,
Mr. Rahul Misra

For the respondent
nos. 1,2,3,4,5,7,8,9,10,
13,14,15,16,17,18,19,20,
21,22,23,24 & 25
in FMAT 2 of 2024 and
for respondent
nos. 1,2,4,6,8 & 9
in FMAT 33 of 2023 : Mr. Arun Kumar Kunda,
Mr. Binod Kumar Chakravorty,
Mr. Rahul Misra

For the land losers 1 to 21 in
FMAT 33 of 2023 : Mrs. Suman Sehanabis,
Mr. Tathagata Biswas,
Ms. A. Deb,
Mr. Shalok Sah

Hearing concluded on : 02.08.2024

Judgment on : 16.08.2024

Sabyasachi Bhattacharyya, J:-

1. Before taking up the adjudication on merits, the Court expresses its dissatisfaction at the lack of proper assistance insofar as the written notes of arguments are concerned. Such notes are supposed to outline in a concise manner the salient features of the oral arguments and citations relied on by the parties. However, in the present case, the appellant has filed written notes of arguments of 53 pages (without any annexure), reminding one of Mark Twain when he famously commented that he was writing a long letter since he did not have the time to write a short one. The respondents are wiser by half, having filed written notes of arguments which extend to 25 pages (without

annexures). Thus, culling the crux of the arguments was an unnecessary challenge posed to the court.

2. Be that as it may, the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”) is against a judgment passed in a challenge under Section 34 of the 1996 Act, confirming the rates of compensation granted by the Commissioner, Jalpaiguri Division, acting as Arbitrator under the National Highways Act, 1956. The Arbitrator had passed awards in a bunch of parallel proceedings, some filed by the present appellant, the National Highways Authority on India (NHAI), which award was dated November 14, 2019 and is the subject-matter of the present challenge and the other award dated November 13, 2019, passed on challenges under Section 34 of the 1996 Act, preferred by the land losers.
3. The learned Additional Solicitor General of India (ASGI), appearing on behalf of the NHAI, argues that the award dated November 14, 2019, as well as the judgment under Section 34 passed by the learned District Judge and affirming the same, overlooked Clauses 6 and 9 of a Government Order issued by the Land and Land Reforms Department, Land Acquisition Branch of the Government of West Bengal, bearing G.O. No. 17O5-LA-3M-07/06 dated June 6, 2006, formulating the guidelines to be followed in the matter of assessment of market value of land.
4. Clause 6 provides for discarding of too high and too low sale prices. As per the said clause, for the purpose of fixation of fair and reasonable average market value of any type-class of land, abnormally high value

or abnormally low value sales should be carefully discarded. The said clause further stipulates that normally more than 200 per cent higher or lower value on and over the average value reflected in majority of sale deed shall be considered to be abnormally high, that is “Fancy Sale” or low value that is “Distress Sale” and such sales may be discarded and thereafter, taking the average value of the remaining sales for the concern type-class of land, the fair and reasonable average market value shall be fixed.

5. It is argued that in the present case, the Competent Authority of Land Acquisition (CALA) assessed the compensation on the basis of the average from sale deeds collected from the DSR, that is, District Sub-Registrar, Jalpaiguri. However, the arbitrator took into account deeds which were registered with the ADSR (Additional District Sub-Registrar), Rajganj, which reflected higher rates, thereby increasing the compensation manifold. Moreover, it is contended that fancy sales within Clause 6 have also been taken as bases for such calculation.
6. Next addressing Clause 9, the learned ASGI argues that the same provides that big chunks of land considered for a single sale should get discount over average land value of ordinary plots. As per the said clause, small plots are sold generally at a high cost and hence big chunks of land in a single plot or a contiguous plot sold by one sale deed deserves discount in price vide *Smt. Tribeni Devi and others v. Collector of Ranchi and vice versa*, reported at (1972) 1 SCC 480, *Bhagabathul Samanno Vs. Special Tahsildar & Land Acquisition Officer*, reported at (1991) 4 SCC 506. Even such discount, as per the

said clause, may be up to 33.33 per cent as was decided by the Hon'ble Supreme Court in the matter of *Kausalya Devi Bogra (Smt) and others Vs. Land Acquisition Officer, Aurangabad and Another* reported at *AIR 1984 SC 892*.

7. In the present case, it is argued by the NHAI that a large chunk of land were acquired without the Arbitrator considering the discount aspect of the matter.
8. The learned ASGI next argues that the impugned award is contrary to the public policy of India and is patently illegal, having not applied the correct legal yardsticks. The petitioner cites *SSangyong Engineering & Construction Co. Ltd v. National Highways Authority of India (NHAI)* reported at *(2019) 5 SCC 131* to argue that a finding based on no evidence or in case of the Arbitral Tribunal taking into account something irrelevant to the decision and/or ignoring vital evidence would render the decision necessarily perverse.
9. The learned ASGI also cites *Industrial Development Corporation of Orissa Ltd. v. Jaiodia Overeas (P) Ltd.*, reported at *AIR 1980 ORI 66* and *Ramsahai Sheduram v. Harishchandra Dullchandji*, reported at *AIR 1963 MP 143* for the proposition that if the Arbitrator arrives at inconsistent conclusions even on his own findings or arrives at a decision ignoring the material documents and evidences, then it can be set aside under Section 34 of the 1996 Act, and/or in a subsequent proceeding under Section 37 of the said Act.
10. In support of the proposition that where there is an error apparent on the face of record, the award is likely to be set aside under Section 34,

the learned ASGI cites *Union of India v. Banwari Lal and Sons (P) Ltd.*, reported at (2004) 5 SCC 304.

11. Both parties rely on *Associate Builders v. Delhi Development Authority*, reported at (2015) 3 SCC 49.
12. *ONGC Ltd. v. Saw Pipes Ltd* reported at (2003) 5 SCC 705 is also cited in the context of perversity of an award and interference under Section 34 where the award is patently illegal.
13. The learned ASGI categorically submits during arguments, on specific query of court, that there is no issue of applicability of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 since the compensation estimate of CALA itself has taken into account the applicable solatium and other benefits of the 2013 Act, in terms of which NHAI has already deposited/paid the total amount into the compensation fund.
14. The learned ASGI controverts the arguments of the respondents/land losers based on *Union of India v. Tarsem Singh* reported at (2019) 9 SCC 304. It is argued that the said ratio is not applicable to the present case as it was rendered under the general Land Acquisition Act, whereas the present cases relate to land acquisitions for the construction of a National Highway, which are governed by special statute, that is, the National Highways Act, 1956. Section 3J of the National Highways Act, 1956 clearly provides that nothing in the general Land Acquisition Act shall apply to acquisitions under the 1956 Act.

15. It is next argued by the National Highways Authority that if the respondent's contention on impleadment of dead persons is correct, the NHAI is open to taking appropriate steps in that regard while disbursing the compensation upon due steps being taken in accordance with law.
16. Learned counsel for the State takes a neutral stand, leaving it to the court to decide on all issues involved.
17. Learned counsel for the land losers argues that no ground under Section 34 of the 1996 Act has been made out by the NHAI.
18. It is argued that the arbitrator correctly took into account the deeds registered before the ADSR, Rajganj, since deeds pertaining to Binnaguri, the district concerned in the present case, are also registered before the said Authority. It is argued, by placing reliance on *Tarsem Singh's* case, that manifold enhancement may also take place in arbitration against compensation granted on acquisition of land.
19. Learned counsel next argues that Clause 6 of the June 6, 2006 G.O. has not been violated, since none of the deeds exceed or touch 200 per cent of the average.
20. With regard to Clause 9, it is contended by the land losers that the said alleged violation pertains to the question as to whether big chunks were acquired or small plots of lands were acquired. The said issue requires the evidence to be reopened and reassessed, which is not permissible under Section 34 of the 1996 Act.

21. With regard to the applicability of the 2013 Act, learned counsel for the land losers places reliance on a Notification bearing no. NH-11011/30/2015-LA dated December 28, 2017 issued by the Government of India, Ministry of Road Transport and Highways. In Clause 4.6(iii)(b) thereof, it is provided that in cases where the land acquisition process was initiated and award of compensation under Section 3G of the 1956 Act had also been announced before January 1, 2015 but the full amount of award had not been deposited by the acquiring agency with the CALA, the compensation amount would be liable to be determined in accordance with the First Schedule of the 2013 Act with effect from January 1, 2015.
22. More importantly, it is argued that the NHAI has suppressed material facts, for which the present appeal ought to be dismissed. Simultaneously with the impugned award dated November 14, 2019, another set of challenges under Section 34 of the 1996 Act at the behest of the land losers was also heard and decided on the preceding day, that is on November 13, 2019. In the said proceeding, the self-same adjudication of the first authority was set aside and the matter was remanded by the Arbitrator, allowing compensation in respect of *Bastu* classification of land at the rate of Rs. 2,60,68,500/- per acre in place of Rs. 1,20,62,489/- per acre which was approved by the Collector, Jalpaiguri. Substantially, the rest of the said adjudication was exactly the same as the present impugned award.
23. The award dated November 13, 2019, whereby the land losers' challenge was accepted by the Arbitrator and the rate of compensation

was enhanced at the same rates as in the award dated November 14, 2019, was challenged by the land losers as well before the learned District Judge. The said challenge under Section 34 was allowed and the matter sent back on remand. After remand, arbitration was recommenced, where the appellant – NHAI participated and claimed that solatium and interest are not payable and that the same had already been paid. The adjudication of the Arbitrator in determining the base rates/market value, however, was not challenged. The Arbitrator ultimately granted solatium and interest, against which a Section 34 challenge is pending at the behest of the NHAI before the learned District Judge. Having waived the issue regarding base rates/market value after remand in the previous proceeding, it does not now lie in the mouth of the NHAI to agitate the point before this Court. Thus, the NHAI is guilty of suppression of material facts, it is argued.

- 24.** Upon a consideration of the arguments of the parties, the Court comes to the following conclusions:
- 25.** The first cardinal issue on which the judgment under Section 34 of the District Judge has been assailed is that the learned District Judge as well as the Arbitrator overlooked the relevant Clauses of the G.O. dated June 6, 2006.
- 26.** Clause 4 of the same provides that at least 10 current sale data are to be collected for the purpose of assessing the base/average rate, which has precisely been done in the present case by the Arbitrator.
- 27.** Clause 6 stipulates that if certain sales are effected at abnormally high or low value, those should be discarded. A comprehensive chart of the

sale deeds considered by the Arbitrator is reflected in the award dated November 13, 2019, passed in connection with a challenge to the self-same adjudication of the Collector by the land losers. Unfortunately, not a single line of argument has been addressed by the appellant/NHAI regarding the same, which amounts to suppression of the same by the NHAI.

- 28.** The Arbitrator, in parallel challenges by the land losers and the NHAI, proceeded to hear the parties and decide the respective challenge on consecutive days, disposing of the challenge of the land losers on November 13, 2019 and passing the present award turning down the challenge of the NHAI on November 14, 2019. It is evident on the face of the present impugned award of the Arbitrator dated November 14, 2019 that it is entirely based on the award dated November 13, 2019 on the self-same facts and issues, although, apparently in order to avoid unnecessary repetition, the present impugned award does not repeat the same details all over again. The NHAI has sought to take advantage of the said dearth of reiteration of the reasons in the present impugned award by suppressing the award dated November 13, 2019, which substantially carried the reasons and discussions which formed the premise of the present impugned award dated November 14, 2019 as well. In the said award dated November 13, 2019, the Arbitrator elaborately discussed all aspects of the matter which are, by necessary implication, borrowed in the present impugned award.

- 29.** It is relevant to mention here that the subject properties in the present dispute pertain to Binnaguri, the sales in respect of which area are registered both with the DSR, Jalpaiguri, as well as the ADSR, Rajganj. Whereas the Collector, by turning a blind eye to the ADSR's record, focused entirely on the DSR's record, thus, presenting a lop-sided view of the matter, such patent error was correctly rectified by the Arbitrator in the awards dated November 13, 2019 and November 14, 2019 by taking into consideration the average sale price of 10 sale deeds in terms of Clause 4 of the G.O. dated June 6, 2006, taking into consideration deeds registered both with the ADSR, Rajganj and the DSR, Jalpaiguri. Thus, selection of the average from such common pool was an absolutely justified and plausible mode to adopt in order to reflect the true picture of the average sale price of the subject properties in Binnaguri.
- 30.** Hence, there was no scope of alleging any violation of the G.O. dated June 06, 2006 either with regard to Clause 4 or with regard to Clause 6 thereof, since none of the sale deeds considered carried a value more than 200 per cent higher than the average.
- 31.** Inasmuch as the alleged violation of Clause 9 is concerned, the land losers/respondents are perfectly justified in arguing that the factual adjudication as to whether the plots were "big chunks" or single or small or contiguous plots is a matter of factual adjudication, for which a detailed appreciation of evidence is required. The proviso to Section 34(2-A) of the 1996 Act specifically precludes the Section 34 Court from entertaining such reappreciation of evidence in the garb of patent

illegality. Hence, the learned District Judge was justified in refusing to entertain such plea under Section 34 of the 1996 Act.

- 32.** In fact, the award of the Arbitrator was elaborate, taking into consideration all relevant facets of the matter. In the award, for example, the Arbitrator considered that at the time of preparation of rate report and estimate in the connected LA cases, the relevant guidelines and orders regarding applicability of Section 26 of the 2013 Act and Schedule I of the same were not communicated to the CALA, Jalpaiguri; as such, the rate report was determined on the basis of the sale data collected from DSR, Jalpaiguri, applying the provisions of a previous G.O. bearing No. 16/SS(S)-LA/3M-43/2000 (Pt-III) dated July 21, 2005. Hence, the Arbitrator correctly took into account the fact that the previous G.O., which was the basis of the calculation by the CALA, was no longer in force.
- 33.** The Arbitrator also observed that CALA, Jalpaiguri had not considered the sale data of the ADSR, Rajganj during preparation of rate report and 3G estimate. On examination of sale data of ADSR, Rajganj, it was found by the Arbitrator that some higher prices before the 3A Notification, were available.
- 34.** The serial numbers, sheet numbers, deed numbers and dates, plot numbers, class of land, area and rate per acre of each of the 10 sale deeds considered by the Arbitrator, taking a collection from both the ADSR, Rajganj and DSR Jalpaiguri office, were clearly enumerated in the form of a chart in the award itself.

- 35.** Thus, the November 13, 2019 award was well-reasoned and formed the very premise of the impugned award dated November 14, 2019, which has been challenged in the present proceeding.
- 36.** Since the applicability of the 2013 Act is not challenged by the NHAI and, in any event, the said challenge would be fruitless in view of Clause 4.6(iii)(b) of the Notification dated December 28, 2017 of the Government of India, Ministry of Road Transport and Highways, the said issue need not be entered into at all.
- 37.** The suppression of the award dated November 13, 2019, which was challenged before the District Judge under Section 34 and disposed of by remanding the matter, in which post-remand proceeding the NHAI participated without specifically raising the issue of base rates/average rates, also vitiates the present challenge under Section 34 and hits at the *bona fides* of the NHAI, raising the question of whether the NHAI has come before this Court with clean hands.
- 38.** Hence, on a comprehensive assessment of the impugned judgment and award, this Court is of the opinion that the learned District Judge was perfectly justified in refusing to interfere under Section 34 of the 1996 Act, since there was no patent perversity at all in the impugned judgment.
- 39.** Insofar as the ground of the award being opposed to public policy is concerned, it is stipulated in Section 34(2)(b)(iii) that the arbitral award, being in conflict with the public policy of India, is assailable under the said provision. However, Explanation 1 of the clause clearly provides that the said ground is applicable only if there is a

contravention of fundamental policy of Indian Law or conflict with the most basic notions of the morality or justice. Merely because the NHAI holds public money, it cannot be said that the just claim of compensation of the land losers, if granted, contravenes the fundamental policy of Indian Law. Rather, the fundamental policy of Indian Law, as enshrined in Article 14 of the Constitution of India, is equality before the law. The NHAI is not a favoured litigant and grant of compensation, if legally done, cannot in any manner be said to violate the fundamental policy of Indian law at all.

- 40.** In view of the above discussions, there is also no scope of reading patent illegality appearing on the face of the record into the impugned award, which was confirmed by the judgment of the learned District Judge under Section 34 of the 1996 Act.
- 41.** Since Section 37 of the said Act, in a challenge against an order passed under Section 34, imbibes the texture and parameters of Section 34, by the same yardsticks, there is no scope of interference under Section 37 with the order of the learned District Judge under Section 34, confirming the impugned award dated November 14, 2019.
- 42.** Hence, none of the components of the present challenge meet the standards of Section 37, in a matter assailing an order under Section 34 of the 1996 Act.

- 43.** In such view of the matter, FMAT 32 of 2023 (IA NO: CAN 1 of 2024) with FMAT 1 of 2024 (IA NO: CAN 1 of 2024) with FMAT 2 of 2024 (IA NO: CAN 1 of 2024) with FMAT 33 of 2023 (IA NO: CAN 1 of 2023) are dismissed on contest without, however, any order as to costs.
- 44.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Prasenjit Biswas, J.)