



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.
WRIT PETITION NO. 2291/2023

Nitin s/o Gyanchand Jain,
Aged about 52 yrs., Occ. Business,
R/o. Kundan Villa, Tilak Nagar,
Nagpur.

... **PETITIONER**

VERSUS

1. The Secretary,
Union of India, Department of Road
& Water Transport, Parliament
Parliament Street, New Delhi-
110001.
2. Deputy Collector, Land Acquisition
(General), & Competent Authority
for Land Acquisition of National
Highway, Nagpur.
3. Project Director,
National Highway No.7,
Bungalow No.2, Shubhankar
Apartment, Plot No.159,
Ambazari Hill Top, Ram Nagar,
Nagpur – 440033.

... **RESPONDENTS**

Mr. Ashish Mehadia, Advocate for petitioner.
Mr. Pankaj Navlani, Advocate for respondent No.1
Mr. S. Kathan, h/f Mr. A.A. Kathane, Advocate for respondent No.3.

CORAM : G.A. SANAP, J.
DATE : 05.12.2024.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally at the stage of admission by consent of the Advocates appearing for the parties.

2. In this petition, the petitioner has questioned the correctness of the judgment and order passed by the learned District Judge-9, Nagpur in arbitration case No. 46/2021 and the arbitration case No. 344/2022. Arbitration case No. 46/2021 was filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996") against an award dated 20.06.2019. Arbitration case No. 344/2022 was filed by respondent No.3 against the same award. The petitioner contended in the arbitration case that the learned Arbitrator has awarded compensation for construction, however, ordered the deduction of the price of the open land from the amount of compensation. Respondent No.3 principally challenged

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the award on the ground that the enhancement was excessive and exorbitant.

3. Both applications were pending before the learned District Judge-9, Nagpur. In both these applications, the petitioner made an application under Section 34(4) of the Act of 1996. The learned Judge finally heard the applications filed by both parties and also the applications made by the petitioner under Section 34(4) of the Act of 1996. The learned Judge vide judgment and order dated 13.01.2023 allowed the arbitration case No. 344/2022 filed by respondent No.3. Similarly, the learned Judge allowed the applications made by the petitioner under Section 34(4) of the Act of 1996. The learned Judge, however, rejected the application made by the petitioner i.e., Arbitration Case No. 46/2021. The petitioner, being aggrieved by the order of rejection of his main application and grant of the main application of respondent No.3, has challenged these two orders.

4. The principal submission of learned Advocate for the petitioner is that the learned Judge has committed the patent illegality

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in disposing of the main applications under Section 34 of the Act of 1996 filed by the petitioner as well as by respondent No.3. The learned Advocate pointed out that while disposing of the main applications filed by both the parties, the learned Judge allowed the application under Section 34(4) of the Act of 1996 made by the petitioner. Learned Advocate submitted that the learned Judge was not right in adopting such a course when he was inclined to allow the application made under Section 34(4) of the Act of 1996. Learned Advocate drew my attention toward the provisions of Section 34(4) of the Act of 1996 and submitted that the learned Judge, was required to keep the main application pending when he was inclined to allow the application made by the petitioner under Section 34(4) of the Act of 1996. In my view, there is substance in this submission.

5. In order to understand the controversy in a proper perspective, it would be appropriate to extract Sub-section (4) of Section 34 of the Act of 1996. It is extracted thus:

“Section 34(1).....

(2).....

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(3)....

(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.”

6. The application under Section 34(4) of the Act of 1996 is made in application under Section 34(1) of the Act of 1996. One of the parties to the said application, as per Sub-section (4) of Section 34 of the Act of 1996, may request the Court to direct the Arbitral Tribunal to resume the arbitration proceedings or to take such other action as in the opinion of the Arbitral Tribunal will be necessary to eliminate the grounds for setting aside the arbitral award. As per Section 34(4) of the Act of 1996, as and when such application is made and allowed by the Court, the Court seized with an application under Section 34 of the Act of 1996 has to adjourn the said proceedings for a period of time determined by the Court in the order.

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Such adjournment is necessary to grant an opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to take such other actions, as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award.

7. In this case, the learned District Judge-9 Nagpur has failed to appreciate the provisions of Section 34(4) of the Act of 1996 in proper perspective. The learned Judge finally decided both applications, and while finally deciding both applications, allowed both applications made by the petitioner under Section 34(4) of the Act of 1996. In my view, this course adopted by the learned Judge was contrary to the object and intent of Section 34(4) of the Act of 1996. Sub-section (4) of Section 34 is a provision which can assist not only the parties to the proceedings but also grants an opportunity to the learned Arbitrator to eliminate the grounds pleaded for setting aside the arbitral award. The object is to rectify the mistake, if any, noticed by the Court hearing the application under Section 34(1) of the Act of 1996. In my view, therefore, the learned Judge was not right in finally disposing of both proceedings. The learned Judge was

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required to keep both the proceedings in abeyance till the order under Section 34(4) of the Act of 1996 was complied with by the learned Arbitrator. In view of this, the orders passed by the learned Judge in both the proceedings, impugned in this writ petition, cannot be sustained.

8. Accordingly, the orders passed by the learned District Judge-9, Nagpur in the main Arbitration Case Nos. 46/2021 and 344/2022 are set aside. The proceedings are restored to file. The learned Judge has already allowed the applications made by the petitioner under Section 34(4) of the Act of 1996. The learned Judge shall see that the order passed under Section 34(4) on these applications is taken to its logical conclusion. It is made clear that if some clarification is required on the part of the learned Judge while setting out a mechanism to comply with the order under Section 34(4) of the Act of 1996, the learned Judge may do so.

9. Petition stands disposed of. Rule is made absolute in above terms.

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10. The learned Judge shall direct the learned Arbitrator to conduct further proceedings in a time bound manner. Similarly, on receipt of the report of the learned Arbitrator, the learned Judge shall also dispose of applications under Section 34 of the Act of 1996 expeditiously.

11. The parties are at liberty to raise all the contentions before the learned Arbitrator.

(G.A. SANAP, J)

Gohane