

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5890 of 2025

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Gajendra Dwivedi S/o Late Abadh Dwivedi R/o Village Pirokhar, P.S
Madhawapur, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Director the Land Development Department,
Govt. of Bihar, Patna.
2. The Project Director the National Highway Authority of India Professor
Colony Gighi West Darbhanga.
3. The Arbitrator Cum Commissioner Darbhanga.
4. The District Magistrate, Madhubani.
5. The Land Acquisition Officer, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Murari, Advocate
For the Respondent/s : Mr. Standing Counsel (7)

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 22-04-2025 Heard the parties.

2. The present writ petition has been preferred for the
following relief(s):

*“(i) For issuance of a writ in the nature
at certiorari for quashing of the order dated
16.11.2024 passed by the Arbitrator Cum
Commissioner, Darbhanga issued vide Arbitration
Case No. 1/2020 whereby the petitioner filed by the
petitioner dismissed by the said respondent no.3
without considering the merit of the case in a
mechanical manner.*



ii. For payment of compensation of the residential rate, place of Agricultural Land Acquired widening for NH-527(c) bearing Mauza Pirokhar, Plot No. 1549, Area 7.91 dec. Boundary North-Yogendra Dubey, South- Madan Lal, East Chandeshwar Dubey, West- Road.”

3. Learned State counsel, Ms. Rashmi Ranjan submits that **Section 34 of the Arbitration and Conciliation Act, 1996** is very clear: against the order of the Arbitrator, the petitioner has to approach the competent Civil Court.

4. **Section 34 of the Arbitration and Conciliation Act, 1996** read as follows:

34. Application for setting aside the 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 ¹[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.

¹*[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.]

²[(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.

³[(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. After some arguments, learned counsel for the petitioner submits that he shall be challenging the order of the Arbitrator-cum-Commissioner, Madhubani before a competent Civil Court.

6. Granting liberty and if the petitioner prefers an



appropriate application before the competent Civil Court, the limitation petition be considered in the light of the fact that the petitioner has approached the High Court under writ jurisdiction.

7. The present writ petition stands disposed of.

(Rajiv Roy, J)

Adnan/-

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