

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.388 of 2023

National Highways Authority of India Project Implementation Unit Sasaram (Rohtas), through its Project Director Office at in front of South Power Corporation Fazalganj Sasaram.

... .. Appellant/s

Versus

- 1.1. Most. Sarswati Devi, Wife of late Gupteshwar Narayan Singh, Residing at House no. 73, Village Jasoiya, P.S. Aurangabad (Town), District-Aurangabad.
- 1.2. Rajiv Kumar Singh, Son of late Gupteshwar Narayan Singh, Residing at House no. 73, Village Jasoiya, P.S. Aurangabad (Town), District-Aurangabad.
2. Competent Authority cum LRDC, Aurangabad (Bihar).
3. The Arbitrator Cum-Additional Collector, Dist.- Aurangabad (Bihar).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.K.N.Singh, Senior Advocate Mr. Maurya Vijay Chandra, Advocate Mr. Gaurav Govinda Advocate Ms. Preety Ranjan ,Advoate
For the Respondent/s	:	Mr. Ajay Kumar Singh, Advocate Mr. Pramod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

26 31-10-2025 Heard Mr. K. N. Singh, learned senior counsel, assisted by Sri Maurya Vidya Chandra, learned counsel for the appellant and Mr. Ajay Kumar Singh, learned counsel appearing on behalf of the substituted heirs of respondent no.1.

2. This Miscellaneous Appeal has been preferred under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '*Arbitration Act*'), against the judgment and order dated 17.03.2023 passed by the learned Additional District Judge-X, Aurangabad, in Civil



Miscellaneous Case No. 23 of 2018 / 10 of 2022, whereby the learned Court below has rejected the application filed by the National Highways Authority of India (hereinafter referred to as the 'NHAI'), under Section 34 of the *Arbitration Act*, challenging the arbitral award dated 10.08.2017 rendered by the learned Arbitrator-cum-Additional Collector, Aurangabad, in Land Acquisition Case No. 8 of 2016–17.

3. The brief facts of the case are that the land in question, along with other adjacent lands, was acquired for the purpose of widening the then existing four-lane stretch of National Highway No. 2 (NH-2) into six lanes. For this purpose, a Gazette Notification under Section 3-A of the National Highways Act, 1956 (for brevity, "*the NH Act*") was published on 05.04.2010, inviting objections from interested persons. After considering the objections so filed, a final Gazette Notification under Section 3-D of the NH Act was subsequently published on 08.12.2010, thus declaring the acquisition of the said lands. In pursuance of the aforesaid notifications, an area measuring 2030 square meters, situated in Khata No. 83, Plot No. 481, at village Jasoiya, Thana No. 264, Anchal-Aurangabad, District -Aurangabad, which was owned and possessed by the original respondent no. 1, was acquired. In



total, 35,875 square metres of land were acquired in village Jasoiya for the project. The Competent Authority-cum-Deputy Collector Land Reforms (DCLR), Aurangabad, for the purpose of determining compensation, collected 151 sale deeds executed within the preceding three years from the date of notification under Section 3A of the NH Act and prepared a valuation schedule accordingly. After considering the objections raised by the landowners, the competent authority determined the market value of the acquired lands in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, and passed an award amounting to Rs. 2,51,74,806/- (Rupees Two Crores Fifty-One Lakhs Seventy-Four Thousand Eight Hundred and Six only), treating the land as residential in nature.

4. Being dissatisfied with the said Award, the original respondent, referred the dispute to the Arbitrator, submitting that the acquired land was situated adjacent to NH-2 and surrounded by commercial shops, including a JCB showroom and other shops and, therefore, ought to have been classified as commercial land. The learned Arbitrator-cum-Additional Collector, Aurangabad, after hearing both parties and examining



the materials available on record, came to the conclusion that the land, in- question, was indeed commercial in nature and, accordingly, passed an award dated 10.08.2017. The said award was thereafter communicated to the Competent Authority -cum -DCLR, Aurangabad, as well as the Project Director, NHAI, through Memo No. 421 dated 05.09.2017.

5. Being aggrieved by the Award passed by the learned Arbitrator, the National Highways Authority of India (NHAI) assailed the award dated 10.08.2017, passed in Land Acquisition Case No. 8 of 2016-2017, before the learned District Judge, Aurangabad, by filing Miscellaneous Application Case No. 23 of 2018 / 10 of 2022 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') along with a petition for condonation of delay on 23.05.2018. The said application was heard on merits as well as on the question of limitation and after considering the submissions advanced on behalf of both parties, the learned Additional District Judge, Aurangabad, dismissed the application on both counts.

6. So far as the question of limitation is concerned, the learned Additional District Judge observed that from perusal of the award, it transpires that a copy of the award was sent to the Competent Authority and Project Director, NHAI, Sasaram as



well as to NH-2, Varanasi Zone for information and necessary action, vide Memo No. 421 dated 05.09.2017. Upon examination of the records and the Limitation Petition, it was observed that the applicant, i.e., NHAI, applied for a certified copy of the award on 05.04.2018, which was received on 11.04.2018 and the aforementioned Miscellaneous Application was filed on 23.05.2018. The learned Additional District Judge observed that there was a delay of 192 days, excluding the statutory period of 90 days from the date the Award was pronounced i.e. 10.08.2017. The applicant did not give any plausible explanation for this inordinate delay in filing the application. The applicant only said that after getting the certified copy of the award, it was sent to their empanelled lawyer for a legal opinion and then to the Regional Office (RO) of NHAI for approval to file the application. However, this explanation only accounted for the period after obtaining the certified copy and nothing was explained regarding the delay in filing the application for obtaining the certified copy itself. It is further observed that the award was passed on 10.08.2017 and the requisition for a certified copy was filed on 05.04.2018, i.e., nearly seven months and 25 days after the award. Section 34 of the Arbitration Act prescribes a limitation of three months, with



a grace period of 30 days on assigning sufficient cause to challenge an award. In the present case, the Miscellaneous Application was filed much beyond the permissible period, i.e., much after 120 days from receipt of the award. Hence, the application filed under Section 34 of the Arbitration Act is barred by the law of limitation.

7. So far as the merit of the case is concerned, the learned Additional District Judge also considered the merits to avoid any legal lacunae and to ensure that the act of the Court does not prejudice any party on the point of limitation. Therefore, the learned Appellate Court examined the impugned Award as well as the records of the case. The learned Additional District Judge held that from perusal of the impugned award, it is reflected that the award was passed by the learned Arbitrator-cum-Additional Collector, who is the competent authority to pass the award, and there is no dispute regarding this fact in the case. Before passing the impugned award, the learned Arbitrator conducted a local inspection of the land, in-question, and it was found that the land is situated on the north side of G.T. Road (NH-2). There are many business premises and commercial activities going on near the acquired land, including an agency and showroom of JCB, a transport office, line hotels, etc. There is a BIADA



Industrial Area situated behind the land in question. Omkarmal Baijnath Petrol Pump is situated on the southern side in front of the acquired land. Besides these, there are numerous other business premises and commercial activities commencing in the vicinity. The land, in-question, is situated within the municipal area under the Nagar Parishad, Aurangabad. After considering the materials on record, the evidence led by the parties and the spot verification report, the learned Additional District Judge held that the nature of the land is commercial. Therefore, the compensation for the acquisition of the same has been ordered to be granted at the commercial rate and these findings of the impugned award were passed by the learned Arbitrator. The proceedings conducted by the learned Arbitrator clearly establish that he followed the due procedure of law in passing the impugned award. Therefore, the Additional District Judge held that there is no procedural or legal lapse in passing the impugned award and the learned Arbitrator has followed the due process of law in arriving at the conclusion in the award. It appears from the award that the learned Arbitrator found many commercial activities running on the same plot of land in question. The question of conversion from residential to commercial regarding the land in question is hyper-technical. It



is obvious that when so many commercial activities continue on the same plot of land, the Government authorities must have granted permission. By allowing these commercial activities on the land, the government authorities have by their very act granted recognition and acknowledgment of the land in question as commercial in nature, in the light of the facts and circumstances. Therefore, the learned Appellate Court also affirmed the nature of the land as decided by the Arbitrator and dismissed the Civil Misc. Application on both the points i.e., on the point of limitation as well as merit of the case.

8. Being aggrieved by the aforesaid judgment and order of the learned Additional District Judge, Aurangabad, appellant-NHAI preferred the present Misc. Appeal.

9. The learned senior counsel for the appellant submits that the arbitral Award of the Arbitrator-cum- Additional Collector, Aurangabad is without any legal basis as the nature of land has been changed from residential land to commercial land without any valid finding while the competent authority of Land Acquisition declared the land to be of residential in nature on the basis of materials available on record. The compensation of land was fixed on the market value of the land on the date of publication of notification under Section 3-A of the NH Act as



determined. Learned senior counsel further vehemently submitted that Arbitrator has wrongly changed the nature of land fixed by the competent authority. Moreover, the learned Additional District Judge failed to consider the provision contained in Section 3 of the Bihar Agriculture Land (Conversion for Non- Agriculture Purposes) Act, 2010. The learned Court below failed to consider the nature and jurisdiction of the Arbitrator under the Arbitration Act read with Section 3-G (5), (6) and (7) of the NH Act. The learned Additional District Judge also failed to consider that the Arbitrator himself visited the land in-question being a witness and violated Sections 18, 26 and 27 of the Arbitration Act. The learned senior counsel further submits that the learned Court below and Arbitrator failed to appreciate the provision of sub-Section 5 read with Sub-section (7) of the Section 3G of the NH Act that Arbitrator shall take into consideration the market value of the land as on the date of publication of the notification under Section 3-A of the NH Act. The Department of Revenue and Land Reforms (Govt. of Bihar) has issued a Circular No. 450 dated 12.4.2017 to resolve the dispute of land acquisition under which Circular No. 1211 dated 01.08.2008 has been reiterated that Six Member Committee will be constituted



including Acquisitioning Authority as a Member of the said Committee, if the dispute arises in the matters of National Highways with respect to classification of land and despite said letter communicated to all officers of Revenue Department, no Expert Committee was constituted by the Arbitrator. Moreover, there is no structure over the land in- question even though the Arbitrator changed the classification of the land. The learned senior counsel further contended that in the present case the land cannot be treated as commercial land and it was never converted and land usage was never changed in accordance with the provision of the Bihar Agriculture Land(Conversion for Non-Agriculture Purpose) Act, 2010. There was no conversion of the land usage prior to the notification under Section 3-A of the NH Act. It is next submitted that the Arbitrator ought to have resorted to Section 26 of the Arbitration Act by appointing an expert to examine and submit its opinion with respect to the status of the land as on the date of notification under Section 3-A of the NH Act. This principle has not been followed by the Arbitrator. The arbitral Award is perverse and non observance of the procedure established by the law would render the Award bad in law as against the fundamental legal principle.

10. So far as the question of limitation with regard to



application filed under Section 34 of the Arbitration Act as time barred is concerned, the learned senior counsel submitted that the period of limitation arises after delivery of signed copy of the Award to the parties or from the date of obtaining the certified copy of the Award. The appellant obtained certified copy of the Award on 11.4.2018 soon thereafter, on 22.5.2018 the Civil Misc. application under Section 34 of the Arbitration Act was filed within two months from obtaining of the Award. Therefore, the learned Additional District Judge wrongly held that the application under Section 34 of the Act is time barred.

11. The respondent appeared and filed a counter-affidavit to I.A. No. 02 of 2024 supporting the case of the appellant. It has been submitted that no signed copy of the Award, as stated in L.A. Case No. 08/2016-2017, was ever served upon the NHAI till date. The appellant -NHAH came to know about the Award passed by the Arbitrator only upon receipt of Letter No. 175 dated 27.01.2018 in its office on 05.02.2018. It is contended that the period of limitation prescribed under Section 34(3) of the Arbitration Act commences only from the date when the signed copy of the Award is delivered to or received by the party concerned. Reliance has been placed in the case of *State of Maharashtra & Others v. A.R.K. Builders Pvt. Ltd.*, reported in



2011 AIR (SCW) 1617. Learned counsel for respondent no.2 further submitted that the finding of the learned court below on the point of limitation suffers from misconception, inasmuch as the court erroneously proceeded on the basis that the certified copy of the Award was obtained by the appellant- NHAI on 11.04.2018. Since there was no delivery of a signed copy of the Award as contemplated under Section 31(5) of the Arbitration Act, the limitation period would commence only from the date of obtaining the certified copy of the order dated 10.08.2017.

12. On the other hand, learned counsel for respondent no.1 has appeared and filed a counter-affidavit stating therein that, pursuant to the Gazette Notifications issued under Sections 3-A and 3-D of the NH Act, the land of respondent no.1 admeasuring 2030 sq. meters in Khata No. 83, Plot No. 481, was acquired. The Competent Authority- cum-DCLR had initially prepared the Award treating the nature of the land as residential. Being aggrieved, respondent no.1 (landowner) got the matter referred before the Arbitrator, who after hearing both the parties and considering the materials available on record, arrived at a definite conclusion that the nature of the land was commercial and, accordingly, passed the Award on 10.08.2017. The said Award was thereafter communicated by the Arbitrator



to the Competent Authority as well as to the Project Director, NHAI, Project Implementation Unit, Toll Plaza, Sasaram, vide Memo No. 421 dated 05.09.2017, which is apparent from the copy of the Award forming part of the memorandum of appeal. Learned counsel for respondent no.1 has further submitted that the Award was sent to the appellant in September 2017 and was received in the office of the Competent Authority (DCLR) in November 2017 itself. The appellant, however, filed the petition under Section 34 of the Arbitration Act only on 22.05.2018 along with a petition for condonation of delay.

13. It is further submitted that in the limitation petition a clear averment has been made that the Misc. case ought to have been filed within three months from the date of the order, but it could not be filed within time because it consumed time in obtaining legal opinion from the empanelled Advocate and thereafter permission of the Regional Office (RO), NHAI, Patna, Bihar was obtained. Thus, much time elapsed in obtaining such permission, which caused the delay. It is apparent from the limitation petition that the appellant- NHAI has deliberately avoided disclosing the date of receipt of the Award and other details as to when it was sent for the opinion of the empanelled Advocate as well as how much time was



consumed in obtaining permission from the Regional Office. It is also apparent from the Misc. application that the appellant has admitted that the Misc. application filed under Section 34 of the Arbitration Act is barred by law of limitation and, accordingly, a prayer was made to condone the delay in filing that petition. It is further submitted that the learned Court below, while deciding the Misc. case, has dealt with the issue of limitation, in detail, and taking into consideration the report of the *Seristedar* regarding the delay of 187 days and further observed that the appellant had filed a limitation petition admitting the delay in filing the Misc. case, has rightly arrived at the conclusion that the petition challenging the arbitral Award filed by the NHAI is barred by the law of limitation. Thus, in view of the mandate of Section 34 of the Arbitration Act and in response to the contention that Section 5 of the Limitation Act is not applicable, the learned Court has rightly dismissed the Misc. case on the ground of limitation.

14. The learned counsel for the private respondent submitted that in the present appeal the appellant has assailed the judgment and order dated 17-03-2023 passed by the learned Court below in Civil Misc. application filed under Section 34 of the Arbitration Act, but the finding with regard to the Misc. case



being barred by law of limitation has not been challenged. It is further contended that there is no whisper in the memorandum of appeal or any petition supported with an affidavit that the Award dated 10-08-2017 was not received by the appellant-NHAI. It is apparent from the record as well as from the impugned Award dated 10-08-2017 passed by the learned Arbitrator, which has been enclosed in the memo of appeal, bear two endorsements (signatures) dated 06.11.2017 and 07.11.2017. The copy of the Award which has been annexed is not the certified copy of the Award dated 10-08-2017, rather it is a copy which has been dispatched to the competent authority as well as NHAI through Memo No. 421 dated 05.09.2017. It is submitted that unless and until the appellant establishes the fact that the copy of the Award was not received in his office and no limitation petition admitting delay was filed by the NHAI, it is not open for it to take a new plea at the appellate stage which is contrary to his own admission. Since the Miscellaneous case itself was barred by the law of limitation, the appellant cannot be permitted to argue the appeal on its merit unless and until he rebuts the bar of limitation. Therefore, the present appeal is fit to be dismissed on this ground alone.

15. For dealing with the limitation matter, it is necessary



to deal with Sub-sections (1) and (3) of Section 34 of the Arbitration Act which read as follows:-

“34. Application for setting aside 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).

(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.”

16. The arbitral Award drawn up in the manner prescribed by Section 31 of the Arbitration Act has to be signed and dated, and sub-section (5) of Section 31 then mandates that a signed copy of the Award would be delivered to each party. It is clear from the aforesaid Sections itself that for the application filed under Section 34 of the Arbitration Act, the period of limitation starts from delivery of signed copy of the Award.



17. Admittedly, the Misc. Application under Section 34 of the Arbitration Act was filed on 22.05.2018, much beyond the prescribed period of limitation. It is apparent from the record that the Award in L.A. Case No. 8 of 2016-2017 was passed by the Arbitrator-cum-Additional Collector on 10.08.2017 and a copy of the said Award was sent to the parties, namely, Competent Authority-cum- the Land Reforms Deputy Collector, Aurangabad as well as the Project Director, NHAI, Project Implementation Unit, Toll Plaza, Sasaram, vide Memo No. 421 dated 05.09.2017. This fact is evident from the impugned Award dated 10.08.2017 filed by the appellant alongwith memorandum of appeal, which bear two endorsements (signatures) dated 06.11.2017 and 07.11.2017 on the left margin of the last page of the Award dated 10.08.2017. It is also apparent from the limitation petition filed along with the Misc. Application under Section 34 of the Arbitration Act that, in paragraph 3 of the limitation petition, it has been clearly stated that :-

“the sufficient cause for not filing this arbitral application within time is that when the copy of the arbitral award which is passed by the arbitrator /Appar Samharta (Additional Collector), is received, it is sent for taking legal opinion upon it by NHAI Advocate and after that a copy of arbitral judgment is sent to R.O. NHAI, Patna,



Bihar alongwith a copy of the legal opinion of the NHAI Advocate and after the R.O., NHAI, Patna, Bihar grants permission for filing the application and much time has been passed to clear it due to this sufficient departmental reason, delay is caused in filing the arbitral application”.

18. It is also apparent from the limitation petition filed by the NHAI- appellant that there is no plea with regard to not receiving the said arbitral Award, rather the said Award was only received after obtaining the certified copy from the office of the Arbitrator-cum-Additional Collector, Aurangabad, on 13.04.2018. But, this plea has been falsified by the copy of the Award passed in L.A. Case No. 8 of 2016-2017 annexed with the memo of appeal filed by the appellant itself. It is apparent from the certified copy of the Award passed in L.A. Case No. 8 of 2016-2017 and the copy of the Award passed in L.A. Case No. 8 of 2016-2017 annexed in the Misc. Appeal that the annexed copy shows that the copy of the Award was issued to the appellant, who himself produced the same with the memo of appeal. The signed copy of the Award is produced from the custody of the appellant. Moreover, the appellant has not denied that the said annexed copy of the Award has not been received by the appellant. It is an undisputed position in law that the burden to rebut presumption lies on the party challenging the



factum of service. The service of the signed copy of the Award is clear and cogent, without any doubt, as the signed copy of the Award sent through Memo No. 421 dated 05.09.2017 was received by the appellant. The signatures/endorsements on the margin dated 06.11.2017 and 07.11.2017 have not been denied by the appellant. It is apparent from the record and the documents filed by the appellant itself that the appellant had received the signed copy of the Award passed in L.A. Case No. 8 of 2016-2017 at best on 07.11.2017. The last date of filing the application under Section 34 of the Arbitration Act was 7th February 2018, i.e., three months from the date of receiving the said Award dated 10.08.2017 on 07.11.2017 and the extension of time of 30 days expired on 9th March 2018. The Civil Misc. Application under Section 34 of the Arbitration Act was filed on 22.05.2018, much beyond the prescribed period of limitation and is apparently barred by law of limitation. The proviso to sub-section (3) of Section 34 of the Arbitration Act merely provides for a period within which the Court could exercise its discretion; that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act. However, the expression, proviso to Section 34(3) of the Arbitration Act “further period of 30 days but not thereafter” would amount to express



exclusion within the meaning of Section 29(2) of the Limitation Act, 1963. In such view of the matter, the learned Additional District Judge has rightly held that the application filed under Section 34 of the Arbitration Act is barred by law of limitation. Further, the learned Additional Collector examined the merit of the case on the basis of the evidence available on record and held that the land in question is commercial in nature.

19. So far, merit of the case is concerned, it is necessary to deal with the provision with regard to market value defined under Section 3G of the NH Act. In the present case, the question of nature of land could be considered in determining the market value under Section 3-G of the NH Act. Section 3-G of the NH Act deals with the determination of the amount payable as compensation for the land acquired under the Act. The factors to be considered while determining the compensation, must consider the market value of the land, any damage sustained by the person interested, and reasonable expenses for changing residence for business, if applicable. The nature of land refers to its characteristics including its existing use, type of land (agricultural, residential, commercial etc.) location and any other relevant factors that affect its value. If the amount determined by the competent authority is not acceptable



to either party, it can be referred for arbitration, where Arbitrator will also consider the factors mentioned above including the nature of the land. The Arbitral Award if not accepted either by the NHAI or land owners, they have to file application before the court, namely District Judge under Section 34 of the Arbitration Act, to redress the grievance, either party has a right to file appeal under Section 37 of the Arbitration Act 1996 before the High court. Therefore, the competent authority has to determine the fair market value of the land and compensation with more responsibility and "Arbitrator" has to determine with judicial approach as "reference court".

20. The competent authority shall determine the compensation following the guiding factors mentioned in Sub-section 3-G(7) of the NH Act, which reads as follows:-

“(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under Section 3-A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the



land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

21. As per Section 3(I) of the NH Act, the competent authority to determine the market value can act as a Civil Court with all powers of Civil Court. To determine the market value, no guideline is available either in the form of Rules or notification. Hence, the principle laid down by the Hon'ble Supreme Court under the various acquisition Act, is the guiding factor to determine the market value of the acquired land. The competent authority shall determine the market value and compensation by applying judicial mind. He can also examine the witnesses, called for documents from the Revenue authority and make enquiry with revenue officials to



determine fair market value and fair compensation.

22. Against the aforesaid determination, either the land owner or the NHAI may file an application before the Arbitrator to be appointed by the Central Government to determine the compensation. The Arbitrator so appointed shall determine the compensation as per the above stated guiding factor mentioned in Section 3-G(7) of the NH Act. In the process of determination, the Arbitrator shall also follow the provision of the Arbitration Act. As per the provision of Section of 3-G(5) of the NH Act as also held by the Hon'ble Supreme Court in the case of ***General Manager (Project) National Highways and Infrastructure Development Corporation Limited vs. Prakash Chand Pradhan and others*** reported in (2020)15 SCC 533, the land owners have no right to seek appointment of Arbitrator. The appointment of Arbitrator is an independent act of the Central Government. In the said process, there is no agreement between the NHAI and land owner. Therefore, the duty is cast upon the Arbitrator to determine the compensation, is different from the ordinary arbitration dispute arising in the commercial contract matters. This type of statutory Arbitration can not be equated with the functions of the Arbitrator discharging under the agreement entered between the parties to the arbitration.



23. The law requires determination of the amount payable as compensation. The said duty cast upon both the competent authority and the Arbitrator, is to arrive at a fair and just compensation, in order to compensate the land owner for the reason that they have lost their livelihood. The value of the land rises manifold and the deprivation amounts to violation of the human right to hold property. The constitutional obligation rests upon both the competent authority and Arbitrator to determine the fair and just compensation to restore the life of the land losers as per the theory of restitution.

24. It is apparent from the Award passed by the Arbitrator that he has determined the market value as commercial land of the land holder on the basis of evidence/document. The Arbitrator has found that the land is situated on the north side of G.T. Road (NH-2). There are many business premises and commercial activities going on near the acquired land, including an agency and showroom of JCB, a transport office, line hotels, etc. There is a BIADA Industrial Area situated behind the land in question. Omkarmal Baijnath Petrol Pump is situated on the southern side, in front of the acquired land. Besides these, there are numerous other business premises and commercial activities running in the vicinity. The land in- question is situated within



the municipal area under the Nagar Parishad, Aurangabad and on that basis the nature of the land was held as commercial land.

25. The power of the Court under Section 34 of the Act to make interference with the award is always a factual subject. The same has been observed by the Hon'ble Supreme Court in the latest decision in the case of ***Batliboi Enviornmental Engineers Limited Vs. Hindustan Petroleum Corporation Limited and Anr.*** reported in (2024) 2 SCC 375. After persuasive discussion of all the earlier decision the Hon'ble Supreme Court in paragraph 33 has held as follows:

“ 33. To entangle and balance the competing principle, the decree and scope of intervention courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise.”

26. In view of the above discussion and on the basis of the materials available on record, as well as the precedents laid down by the Hon'ble Supreme Court in the case of ***Batliboi Environmental Engineers Limited*** (supra), this Court finds no ground to interfere with the said Award passed by the Arbitrator and no interference in the impugned order is required.

27. Accordingly, the Misc. Appeal is dismissed.

28. The stay granted by this Court vide order dated



02-12-2023 is hereby vacated, and the learned Additional District Judge-X is directed to release the deposited compensation amount in favour of the heirs of respondent no.1, after due verification of the heirs of respondent no.1.

(Khatim Reza, J)

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