

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**ARBITRATION APPEAL NO. 76 OF 2024
WITH
INTERIM APPLICATION NO. 15272 OF 2024**

Dedicated Freight Corridor	}	
Corporation of India Limited	}	Appellant
versus		
Virendra Shamji Patel & Ors.	}	Respondents

Ms. Dikshita Gupte with Ms. Prasanna Gupte for appellant.

Mr. Nitin Gangal with Ms. Prapti Karkera i/b. Ms. Namits Mestry for respondents 3 to 5.

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATE: JUNE 13, 2025

ORDER: (Per Chief Justice)

- 1.** Heard learned counsel for the parties.
- 2.** Rule. Rule is made returnable forthwith. With consent of learned counsel for the parties, Heard finally.
- 3.** This appeal under section 37 of the Arbitration and Conciliation Act, 1996 has been directed against the judgement dated 2nd March 2024, by which, the objection preferred by the appellant under section 34 of the Arbitration and Conciliation Act, 1996 has been rejected.
- 4.** Facts giving rise to filing of this appeal, in nutshell, are that the appellant, a Dedicated Freight Corridor Corporation of India Ltd. is a Corporation established by the Union of India, Ministry of Railways to undertake planning and development, mobilization of financial resources and construction,

maintenance and operation of dedicated freight corridors (special railway projects). The appellant is constructing a dedicated freight corridor with route length of 1483 kms. From JNPT (Maharashtra) to Dadri (Haryana) for which the appellant has acquired land bearing Survey No. 9(P) admeasuring 0.37.17 hectares in village Saphale, Taluka and District Palghar belonging to respondents 1 to 5 (hereinafter referred to as "the subject land"). Thereupon, proceedings under section 20-A of the Railways Act, as amended in the year 2008 were initiated and preliminary notification was issued on 26th May 2015 qua the subject land and final award dated 19th May 2017 was passed, by which, compensation was fixed at the rate of Rs.2,362/- per square meter.

5. Being dissatisfied with the quantum of compensation, the respondents 1 to 5 invoked the provisions of section 20-F(6) of the Railways Amendment Act, 2008. The Arbitral Tribunal, thereupon, passed an award on 18th January 2021 in Arbitration Petition No. 135 of 2018, by which, amount of compensation was enhanced to Rs.6,300/- per square meter.

6. The appellant, thereupon, challenged the aforesaid award by way of a petition under section 34 of the Arbitration and Conciliation Act, 1996. The learned Judge of the Commercial Court, by the impugned judgement dated 2nd March 2024, dismissed the petition preferred by the appellant. In the aforesaid facts and background, this appeal has been filed.

7. Learned counsel for the appellant submits that the Arbitral Tribunal as well as the learned Judge of the Commercial Court grossly erred in fixing the market value at the rate of Rs.6,300/- per square meter. It is submitted that while doing so, the

Arbitral Tribunal has taken into account the rates of land in neighbouring villages. Therefore, the impugned award as well as the judgement dated 2nd March 2024 passed by the learned Judge of the Commercial Court are liable to be set aside.

8. We have considered the submissions made by learned counsel for the appellant.

9. The scope and ambit of Section 34 is well delineated by decisions of Supreme Court. In **SSANGYONG ENGINEERING & CONSTRUCTION CO. LTD. VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI) (SUPRA)**, while dealing with powers of the Court deciding the application under Section 34 of the 1996 Act, the Supreme Court took note of the amendments brought about to Section 34 of the Act by Amendment Act 2015 and explained the ratio of the decision of the Supreme Court in **ONGC VS. WESTERN GECO INTERNATIONAL LTD.**¹, and laid down the following principles which are mentioned in para 34 to 41 of the judgment which are extracted for the facility of reference:

"(i) The interference by the court with an award on the ground that arbitrator has not adopted a judicial approach would tantamount to interference with merits of the award which cannot be permitted, post amendment of Section 34 of the Act.

(ii) The ground for interference insofar as it concerns 'interests of India' has been deleted, therefore, it is no longer permissible to interfere with the award on the said ground.

(iii) Similarly, the ground for interference in the award on the basis that the same is in conflict with justice and morality, has to be understood as conflict with 'most basic notions of morality or justice.

¹ (2014) 9 SCC 263

(iv) *The expression 'public policy of India' is now restricted to mean that a domestic award is contrary to fundamental policy of Indian law and the ground for interference that such an award is against basic notions of justice or morality is done away with.*

(v) *The exercise of re-appreciation of evidence, which the appellate court can undertake is not permitted on the ground of patent illegality in the award.*

(vi) *Mere contravention of substantive law of India by itself is no longer a ground available to set aside an arbitral award.*

(vii) *The change made in Section 28(3) by the Amendment Act follows that construction of terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in a manner that no fair minded or reasonable person would, in short that arbitrators' view is not even a possible view to take. If the arbitrator wanders outside the contract and deals with the matter not allotted to him he commits an error of jurisdiction and this ground of challenge is covered under Section 34(2-A) of the Act.*

(viii) *A decision of the arbitral tribunal, which is perverse is though no longer a ground of challenge under public policy of India', would certainly amount to a patent illegality appearing on the face of the award.*

(ix) *Thus a finding recorded by an arbitrator which is based on no evidence at all or an award which invokes vital evidence in arriving at its decision would be perverse and is liable to be set aside on the ground of patent illegality."*

10. An appeal is a continuation of an original proceeding. It is equally well settled in law that in absence of any statutory provision to the contrary, the power of appellate Court is co-terminus with the power of a subordinate court. [See : **JUTE CORPN. OF INDIA LTD. VS. CIT²**]. Thus, an appellate Court

2 1991 Supp 2 SCC 744

exercising the power under Section 37 of the 1996 Act would interfere only if a ground under Section 34 of the Act is made out. [See : **STATE OF CHHATISGARH AND ANOTHER VS. SAL UDYOG PRIVATE LIMITED³**].

11. In **ONGC LTD. VS. SAW PIPES⁴**, the Supreme Court dealt with the scope and ambit of expression 'public policy of India'. It was held that if award is contrary to 'fundamental policy of Indian law', or interest of justice or morality or patently illegal, the same would be contrary to 'public policy of India'. A three Judge Bench of Supreme Court in **ONGC VS. WESTERN GECO INTERNATIONAL LTD. (SUPRA)** however, noted that the expression 'fundamental policy of Indian law' was not elaborated upon in **ONGC LTD. VS. SAW PIPES (SUPRA)**. It was held that the expression 'fundamental policy of Indian law' would include three distinct and fundamental juristic principles which must be understood as part and parcel of Indian law, which are as under:

(i) In every determination, a Court or other authority that affects rights of a citizen or leads to any civil consequences the Court or authority is bound to adopt a judicial approach. The duty to adopt such an approach arises from the very nature of power exercised by the court and authority.

(ii) The Court or a quasi-judicial authority, while determining the rights and obligation of the parties must follow principles of natural justice.

(iii) A decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law.

It was further held that the expression 'fundamental policy of law' cannot be put in the straight jacket of a definition.

³ (2020) 21 SCC OnLine 1027

⁴ (2003) 5 SCC 705

12. The Parliament, after the aforesaid decision of the Supreme Court, amended Section 34 of the Arbitration and Conciliation Act, 1996 by Amendment Act of 2015 w.e.f. 23rd October 2015 and incorporated the clarification to ensure that the phrase 'fundamental policy of Indian law' is narrowly construed so as not to entail a review on merits of a dispute.

13. In view of the aforesaid well settled legal position, we may examine the controversy involved in the instant appeal.

14. It is not the case of the appellant that the award is affected by fraud or corruption or is in contravention of the fundamental policy of Indian law. The only contention which has been urged is that the Arbitral Tribunal erred in taking into account the rate of land in neighbouring villages for ascertaining the market value of the subject land. It is pertinent to note that this Court cannot sit in appeal over the decision taken by the Arbitrator. It is not the case of the appellant that the findings recorded by the Arbitral Tribunal are perverse or have been reached by ignoring the materials on record.

15. For the aforementioned reasons, in our considered opinion, no ground for interference in this appeal, which has been preferred under section 37 of the Arbitration and Conciliation Act, 1996, is made out. In the result, the appeal fails. It is hereby dismissed.

16. The interim application also stands disposed of accordingly.

JAYANT
VISHWANATH
SALUNKE

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(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)