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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 238 OF 2025

M/s Rural Infrastructure Development
Private Limited ...Petitioner

Versus

The Land Acquisition Officer And
Sub-Divisional Officer, Thane & Ors. ...Respondents

ALONGWITH
ARBITRATION PETITION NO. 239 OF 2025

M/s Rural Infrastructure Development
Private Limited ...Petitioner

Versus

The Land Acquisition Officer And
Sub-Divisional Officer, Thane & Ors. ...Respondents

ALONGWITH
ARBITRATION PETITION NO. 240 OF 2025

Shahapur Bhagar Food LLP Through Its
Partner Nikhil Radheshyam Agarwal ...Petitioner

Versus

The Land Acquisition Officer And
Sub-Divisional Officer, Thane & Ors. ...Respondents

**Mr. Mayur Khandeparkar a/w Mr. Vivek M. Punjabi and
Mr. Priyansh R. Jain, for Petitioner.**

Mr. Dinesh J. Haldankar, AGP for Respondent Nos.1, 2 & 6.

**Ms. Irra Dube Patil a/w Mr. Ramesh Dube Patil and Mr. Ankit
Patil i/b Ankit Patil & Co., for Respondent Nos.3 to 5.**

CORAM: SOMASEKHAR SUNDARESAN, J.
RESERVED ON: NOVEMBER 28, 2025
PRONOUNCED ON: DECEMBER 9, 2025

JUDGEMENT:

1. All the captioned proceedings relate to the invocation of Section 29A of the Arbitration and Conciliation Act, 1996 (“***Arbitration Act***”) on the premise that the mandate of the Arbitral Tribunal has expired with no sign of the arbitration being conducted and thereby seeking substitution of the Arbitral Tribunal, invoking Section 29A(6) read with Section 11 of the Arbitration Act. By consent of the parties the Arbitration Petition No. 238 of 2025 is taken up as the lead Petition. Learned Advocates for the parties agree that disposal of this Petition would be instructive for disposal of all the captioned Petitions.

2. How parties to a deemed arbitration agreement created under statute, could ensure that the arbitration actually takes place when the statutory authority fails to appoint a functional arbitrator, is the issue that has arisen for consideration in the captioned Petition. Evidently, no Arbitral Award has been passed within the statutory timeframe contemplated under Section 29A of the Arbitration Act.

3. The Petitioner is the owner of land bearing Gat No. 222/A, 222A/2 and 222A/3 admeasuring 14,608 square metres in Village Dalkhan, Taluka Shahapur, District Thane. The land was acquired pursuant to land acquisition proceedings under the Maharashtra Highways Act, 1955 (***“State Highways Act”***). The Divisional Commissioner, Konkan had been designated as an arbitrator under Section 19-B(8) of the State Highways Act in relation to disputes relating to the compensation amount awarded not being acceptable to land-losers.

4. The Competent Authority passed an award granting compensation @ Rs.510/- per square metre with the total amount of compensation granted being Rs.2.91 Crores. Since the Divisional Commissioner, Konkan has been designated as an arbitrator for such disputes, in April 2021, the Petitioner filed an Arbitration Application No. 14580 of 2021 seeking enhanced compensation at the rate of Rs.13,170/- per square metre citing prevailing market price and solatium of 100% of the compensation amount (***“Application 14580”***). On April 28, 2021, the Competent Authority filed a statement of defence and written statement before the Arbitral Tribunal in Application 14580. On May 5, 2021, the Petitioner filed a rejoinder in the matter.

Therefore, pleadings can be said to have been completed by May 5, 2021.

5. No Arbitral Award was passed in Application 14580 within the statutory deadline applicable under the Arbitration Act. On December 12, 2023, the Government of Maharashtra, without any notice, consent, and without approval of extension of mandate of the arbitrator or change of arbitrator, changed the arbitrator from the Divisional Commissioner, Konkan to the Divisional Commissioner, Nashik by issuing a notification.

6. As of August 3, 2024, the arbitration proceedings pending before the Divisional Commissioner, Nashik were ripe for final arguments. However, the proceedings have remained pending. On April 25, 2025, the State Government issued a yet another notification, once again changing the arbitrator from the Divisional Commissioner, Nashik to the Divisional Commissioner, Konkan.

7. On May 29, 2025, the Divisional Commissioner, Konkan has written to the State Government stating that he would be simply unable to conduct the arbitral proceedings in view of the various responsibilities assigned to him. He has listed all the work that falls in

his portfolio and has indicated that he would simply be unable to conduct the arbitration proceedings.

8. It is against this backdrop that these Petitions have been filed, invoking Section 29A of the Arbitration Act read with Section 11 of the Arbitration Act.

Contentions of the Parties:

9. Mr. Mayur Khandeparkar and Mr. Vivek Punjabi, Learned Advocates for the Petitioners submitted that what is evident from the record is that there is no prospect of arbitration being carried out despite the statutory mandate of arbitration in the State Highways Act, read with the Arbitration Act. They pointed to various documents on the record that would bear out the factual matrix set out above. Mr. Khandeparkar would submit that the mandate of the Learned Arbitral Tribunal has expired and indeed this Court has the power to substitute the arbitrator under Section 29A of the Arbitration Act. Since it is apparent that the matter has been shuttled between different Divisional Commissioners, with no sign of hearings being conducted, he would submit that this is a fit case for replacement of the arbitrator.

10. Ms. Irra Dube-Patil, Learned Advocate, who led submissions on behalf of the Respondents, indicated that the Petition is filed under Section 11 read with Section 29A of the Arbitration Act. The powers of the High Court under Section 11 of the Arbitration Act cannot be used, she would submit, to appoint an arbitrator since the appointing authority is the State Government under Section 16-B(8) of the State Highways Act, and not the High Court. The State Highways Act is a self-contained code in the matter of arbitration agreement, and the provisions of the Arbitration Act cannot be imported, and even if it were, in view of Section 19-B(9), the Arbitration Act's application was "subject to" and therefore subservient to the State Highways Act.

11. Ms. Dube-Patil would further submit that the power to substitute the arbitrator under Section 29A of the Arbitration Act cannot be invoked by this Court on account of lack of territorial jurisdiction since it would be the "Court" as defined in Section 2(1)(e) of the Arbitration Act that has jurisdiction under Section 29A of the Arbitration Act.

Analysis and Findings:

12. I have heard the Learned Advocates at length and considered the material on record and the case law relied upon by them.

13. What is evident is that there is no sign of progress in the arbitration proceedings. Pleadings were completed in May 2021. It is now December 2025. Four and half years have gone by without the arbitration being in sight.

14. Landowners losing their land to enable public infrastructure to be built have a statutory right to have their disputes heard and adjudicated in arbitration. The legislative policy choice of arbitration for such disputes is evidently meant to avail of faster closure as compared with litigation through multiple rounds of litigation in ordinary civil courts. This is of benefit to the State as well since the delay would equally increase the burden on the exchequer by the State having to pay larger amounts to discharge the interest burden that would necessarily follow a delayed receipt of the adjudicated amount. Yet, the facts on hand show that the statutory promise to the stakeholders – both the land losers as well as the State stands evidently frustrated on the ground.

15. Against this backdrop, this Petition has to be appreciated, indeed within the contours of the applicable legislative framework.

16. The Petition invokes Section 11 and Section 29A of the Arbitration Act. Each of these is analysed in the context of the factual

matrix. Mr. Khandeparkar submits that the Petitioners have consciously not invoked Section 15 of the Arbitration Act, which permits substitution if the Arbitral Tribunal is unable to function without undue delay. This is because Section 15 makes the rules governing the appointment of the arbitrator applicable for the substitution, which would in turn lead to the appointment having to be at the hands of the State.

Section 19-B of the State Highways Act:

17. At the threshold, Section 19-B(8) and 19-B(9) of the State Highways Act are instructive to notice the terms of appointment of the Arbitral Tribunal, and are therefore extracted below:

Section 19-B

(8) **If the amount determined** by the Land Acquisition Officer under sub-section (3) or sub-section (5) **is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the State Government.**

(9) **Subject to the provisions of this Act,** the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

[Emphasis Supplied]

18. A plain reading of the foregoing would indicate that where the compensation amount determined by the Land Acquisition Officer is not acceptable to any party, the amount is required to be determined by an arbitrator, who is to be appointed by the State Government. Therefore, on the face of it, the State Government is the appointing authority for constituting the Arbitral Tribunal. The Arbitration Act would indeed apply to every such arbitration under the State Highways Act, but that is made subject to the provisions of the State Highways Act.

19. It would also be important to notice Section 2(4) of the Arbitration Act, which is extracted below:

Section 2(4)

This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

[Emphasis Supplied]

20. Therefore, under Section 19-B(9) of the State Highways Act, the Arbitration Act shall apply subject to the provisions of the State

Highways Act. Therefore, both legislations will apply to such arbitration and where there is a conflict between the two, the term “subject to” would lead to the State Highways Act overriding the conflicting position, if any, under the Arbitration Act.

21. It is contended by Ms. Dube-Patil that the provisions of Section 11 and Section 29A of the Arbitration Act would have no application to arbitrations under the State Highways Act since the Arbitration Act applies subject to the provisions of the State Highways Act. This is the core issue that needs to be considered. Each of these (and related provisions) is analysed below.

Section 11 of the Arbitration Act:

22. The relevant extracts of Section 11 of the Arbitration Act must be noticed and are set out below:

Section 11. Appointment of arbitrators.—

- 4) *If the appointment procedure in sub-section (3) applies and—*
- (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or*
- (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,*

the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration as the case may be.

(5) *Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).*

(6) *Where, under an appointment procedure agreed upon by the parties,—*

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request *the Supreme Court or, as the case may be, **the High Court** or any person or institution designated by such Court **to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.***

[Emphasis Supplied]

23. The aforesaid provisions would show that the High Court may make an appointment where any person including an institution fails to perform the function entrusted under that procedure. One could consider if the State Government (which is the person who has to perform the process of appointing the arbitrator) fails to perform its role, then the Court could play the role of appointment under Section 11 of the Arbitration Act.

24. In the facts of the case, the person who has to undertake the procedure of appointing the arbitrator is the State. It has purported to discharge the function by appointing an arbitrator but has evidently changed the arbitrator twice with no sign of the arbitration proceedings being capable of being conducted. The latest appointee has explicitly set out in writing his inability to function as such. Therefore, one must consider if Section 11 of the Arbitration Act can be invoked on the premise that the mandate of the Arbitral Tribunal has expired under Section 29A (analysed below) and therefore, a new arbitrator may be appointed under the subsisting arbitration agreement.

25. However, that Section 11 of the Arbitration Act cannot be invoked in the case of arbitration relating to National Highways has

been explicitly declared by the Supreme Court in the case of ***Sayedabad Tea Company***¹ in the following terms:

19. It is settled principles of law that when the special law sets out a self-contained code, the application of general law would impliedly be excluded. In the instant case, the scheme of the 1956 Act being a special law enacted for the purpose and for appointment of an arbitrator by the Central Government under Section 3-G(5) of the 1956 Act and sub-section (6) of Section 3-G itself clarifies that subject to the provisions of the 1956 Act, the provisions of the 1996 Act shall apply to every arbitration obviously to the extent where the 1956 Act is silent, the arbitrator may take recourse in adjudicating the dispute invoking the provisions of the 1996 Act for the limited purpose. But so far as the appointment of an Arbitrator is concerned, the power being exclusively vested with the Central Government as envisaged under sub-section (5) of Section 3-G of the 1956 Act, Section 11 of the 1996 Act has no application.

20. The plea of the respondents that they have rightly taken recourse in the facts and circumstances of Section 11 of the 1996 Act cannot be accepted for the reason that Section 3-G(6) of the 1956 Act clearly stipulates that the provisions of the 1996 Act will apply subject to the provisions of the 1956 Act. The usage of the expression “subject to” clearly indicates that the legislature intended to give overriding effect to the provisions of the 1956 Act where it relates to the disputes pertaining to determination of the amount of compensation under the Act. The irresistible conclusion is that the legislature in its wisdom intended to abrogate the power for appointment of an Arbitrator under

¹ *National Highways Authority of India vs. Sayedabad Tea Company Limited and Others – (2020) 15 SCC 161*

the provisions of the 1996 Act.

[Emphasis Supplied]

26. The provisions of Section 3-G(5) National Highways Act, 1956 (“**NH Act**”) in relation to appointment of arbitrator and applicability of the Arbitration Act, are *pari materia* to the provisions of Section 19B(8) of the State Highways Act. In ***Sayedabad Tea Company***, the interplay between Section 3-G(5) of the NH Act and Section 11 of the Arbitration Act was considered to lead to a finding that Section 11 of the Arbitration Act would have no application in connection with the appointment of an arbitrator for the arbitration to be conducted under Section 3-G(5) of the NH Act.

27. The law declared by the Supreme Court on this issue is binding, and therefore, to the extent this Petition invokes Section 11 of the Arbitration Act, the same principles as declared by the Supreme Court, of course in the context of the NH Act, would need to be followed. Therefore, even if mandate of the Arbitral Tribunal has expired under Section 29A of the Arbitration Act, it would follow that one cannot invoke Section 11 of the Arbitration Act to appoint an arbitrator under the subsisting arbitration agreement. Therefore, it would follow that the

reliance on Section 11 of the Arbitration Act in these Petitions would be of no use to the Petitioners.

Sections 14 and 15 of the Arbitration Act:

28. There are two other provisions that govern dealing with substitution of an arbitrator which must be touched upon for completeness of the analysis – Section 14 and Section 15 of the Arbitration Act. The jurisdiction of Section 14 is attracted, among others, when the arbitrator is unable to act without undue delay. In addition, the jurisdiction of Section 15 is attracted when the Arbitral Tribunal's mandate terminates upon the arbitrator withdrawing from office. Under Section 15, a substitute arbitrator, upon termination of the mandate, *“shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced”*.

29. For this reason, Mr. Khandeparkar does not wish to invoke Section 15 of the Arbitration Act. This approach is understandable, although it would be arguable that when the arbitration has been proven to be simply incapable of being conducted, with the identity of the arbitrator being linked to the office of the Divisional Commissioner and that too taking three different forms – first, Konkan, then Nashik, and then again to Konkan, with the arbitrator explicitly expressing his

inability to act as such – there is an obvious failure of the original process too.

30. However, whether to read down the provisions, on a conjoint reading, in order to prevent an absurdity emerging from the legislative policy choice of adopting arbitration under Section 19B of the State Highways Act itself being defeated, is not an issue that needs to be considered in the instant case, since Section 15 of the Arbitration Act is not even being invoked.

31. For completeness, I must also mention that in ***Zeal Infraproject***², I had substituted the Arbitral Tribunal in a somewhat similar and less provocative factual context, invoking Section 15 of the Arbitration Act in the context of the *pari materia* provisions of the NH Act. I had not noticed the ruling in ***Sayedabad Tea Company*** then, and it had not been cited. ***Zeal Infraproject*** was challenged by way of a special leave petition. The Supreme Court did not interfere³ in the facts of the case, and left the following questions of law open for consideration in a more appropriate case:

² *Zeal Infraproject Private Ltd. vs. NHAI – Order dated April 22, 2025 in Arbitration Petition No. 162 of 2024*

³ *Special Leave Petition (C) No. 17737/2025 – Order dated July 29, 2025*

1. *The National Highways Act, 1956 in general and Section 3G i particular being a self-contained Code, is it not necessary that th Arbitration is conducted by an arbitrator appointed by the Centra Government under Section 3G(5) of the National Highways Act 1956?*
2. *In view of the fact that Section 3G(6) which starts with the expression "subject to the provisions of the Act", will the National Highways Act, 1956 not override the provisions of Arbitration and Conciliation Act, 1996?*
3. *Even if, in arguendo, it is accepted that Section 11 read with Section 15 of the Arbitration and Conciliation Act, 1996 applies to an arbitration under National Highways Act, 1956, would either the appointment of arbitrator under section 11 of the Act substitution / replacement under Section 15(2) **be strictly in accordance with Seciton 3G(6) of the National Highways Act, 1956 i.e. by an officer appointed by the Central Government and not any other arbitrator chosen by the Court exercising powers either under Section 11 or 15** of the Code particularly **in view of Section 15(2) of the Act of 1996?***

[Emphasis Supplied]

Section 29A of the Arbitration Act :

32. This takes us to Section 29A of the Arbitration Act, which is also invoked in the Petitions. The question to consider is how the interplay between Section 29A(6) of the Arbitratin Act and Section 19-B(9) of the State Highways Act would work out.

33. The relevant extracts of Section 29A of the Arbitration Act must be noticed and are extracted below:

Section 29A. Time limit for arbitral award.—

(1) ***The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:***

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) *If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*

(3) ***The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.***

(4) ***If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:***

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

*(8) ******

(9) *****

[Emphasis Supplied]

34. It can be seen that substitution of the arbitrator is envisaged, upon expiry of the mandate for failure to complete the arbitration within the statutory timeframe. Under Section 29A of the Arbitration Act, the mandate is meant to run for twelve months from the completion of pleadings, with the parties having autonomy to extend the mandate by another six months by mutual consent. Thereafter, for the mandate to continue, approval of the Court is necessary.

35. Under Section 29A(6) of the Arbitration Act, while granting an extension under Section 29A(4) of the Arbitration Act, it shall be open to the Court to substitute one or all of the arbitrators and the arbitral proceedings are meant to continue from the stage already reached and on the basis of material and evidence already on record and the substitute arbitrator so appointed shall be deemed to be the arbitrator who had received the said evidence and material in the first place. Under Section 29A(7) of the Arbitration Act the Arbitral Tribunal so reconstituted shall be deemed to be in continuation of the previously appointed Arbitral Tribunal.

36. Section 19-B(9) of the State Highways Act makes the Arbitration Act applicable to arbitrations conducted under the State Highways Act, “*subject to*” the provisions of the State Highways Act. There is no provision in the State Highways Act that is in conflict with this requirement of having to complete the arbitration within a statutory timeframe under Section 29A of the Arbitration Act. If anything, the legislative policy intent behind Section 29A of the Arbitration Act is aligned with the legislative policy intent behind Section 19-B of the State Highways Act, namely, time and speedy disposal of disputes over compensation.

37. Therefore, when there is no conflict between the two legislation on this subject, there is no basis to efface and override the implications of Section 29A of the Arbitration Act for arbitrations conducted pursuant to the statutory arbitration agreements under the State Highways Act. Once the arbitration commences under the State Highways Act, the provisions of the Arbitration Act would govern the conduct of the arbitration, which would necessarily need to adhere to the timelines stipulated in the Arbitration Act. If they are not completed within the timeline statutorily stipulated, it would naturally follow that the mandate of the Arbitral Tribunal would stand terminated, with the

power of substitution as stipulated in Section 29A(6) of the Arbitration Act being attracted.

38. It is noteworthy that unlike Section 15 of the Arbitration Act and unlike the law declared on Section 11 of the Arbitration Act in ***Seyadabad Tea Company***, Section 29A of the Arbitration Act makes no reference to the original terms of the appointment. Moreover, as stated above, the State Highways Act has no provision that could potentially conflict with Section 29A of the Arbitration Act. Therefore, there is no case for any overriding legislative policy objective in one legislation coming up in conflict with the other. On the contrary, the policy objectives under both legislation are aligned in this regard.

Application to Facts:

39. The facts of the instant case are indeed gross. The award of compensation passed by the Competent Authority under Section 19-B of the Maharashtra Highways Act is dated more than seven years ago – February 14, 2019. The pleadings before the arbitrator concluded more than four years ago, on May 5, 2021. Evidently, the arbitration was not conducted at all within the statutory mandate applicable to arbitration under Section 29A of the Arbitration Act. Therefore, there can be no doubt that the mandate of the Arbitral Tribunal appointed by the State

Government expired within the parameters stipulated in Section 29A of the Arbitration Act. When the mandate of the Arbitral Tribunal so expires, such termination attracts the power under Section 29A(6) of the Arbitration Act.

40. In the facts of the case, Section 29A of the Arbitration Act would be adequate to deal with the fact that the mandate of the Arbitral Tribunal expired by sheer efflux of time, and as a result, substitution in terms of Section 29A(6) of the Arbitration Act would be in order.

41. The question of law that emerged in *Zeal Infraproject*, and which was carried to the Supreme Court, would not even need to arise in such circumstances. The nature of the timelines involved in the process speaks for itself. If the contention made on behalf of the Respondents were to be accepted as an absolute proposition, the State Government would keep replacing the arbitrator every twelve months without any progress being seen in the matter for eternity. This would lead to a complete absurdity whereby the Arbitral Tribunal can keep getting replaced over and over again, with no recourse to the Arbitration Act, making a mockery of the timeliness of arbitration, which is one of the foundational facets of arbitration law.

42. Timely and speedy resolution outside the Courts is precisely why the Arbitration Act, a central legislation, has been adopted by incorporation in Section 19-B of the State Highways Act. When the state legislation seeks to incorporate the benefits of the statutory framework flowing from the Arbitration Act, the central legislation, the objective cannot be wished away by stating that the State may keep replacing arbitrators, who too may express inability to act as such, and the Court's role under Section 29A of the Arbitration Act would sit like a dead letter. Therefore, even from the perspective of a purposive interpretation, furthering the remedy and suppressing the mischief of the provision, it would follow that the mandate would expire if adhered to in compliance with the Arbitration Act.

43. The State Highways Act is a special law governing acquisition for the purposes of the highways administered by the State, while the Arbitration Act is a special law governing conduct of arbitration. As stated earlier in this judgement, the very resort to arbitration as a means of dispute resolution is logically informed by the resolution mechanism being considered and expeditious and economical process, which itself stands undermined.

44. For an acquisition proceedings that concluded in an award by the Competent Authority in February 2019, even as of November 2025 there is no sign of final hearings commenced in the matter. Merely by rotating the arbitrator from one Divisional Commissioner to another, the process of arbitration cannot be kept *ever-greened*, thereby eroding the legislative policy objectives.

Jurisdictional Court for Section 29A of the Arbitration Act

45. This now takes us to the issue of territorial jurisdiction. The Arbitral Tribunal is the Divisional Commissioner, Konkan. The Divisional Commissioner, Konkan has its office in Konkan Bhavan in Navi Mumbai. It also has an office in Mumbai. Mr. Khandeparkar would contend that since an office is located in Mumbai and some of the meetings have taken place in Mumbai, there can be multiple seats discernible, and therefore Mumbai, Nashik as well as Navi Mumbai may be regarded as the seats. Therefore, multiple courts would conform to the definition of “Court” under Section 2(1)(e), he would contend, and therefore the seniormost court i.e. this Court would be the court with jurisdiction.

46. Towards this end, Mr. Khandeparkar would rely upon the judgment of the Supreme Court in the case of *Atlanta*⁴, where the relevant Court for purposes of Section 34 came up for consideration. In particular, the following extracts are invoked:

24. We shall first endeavour to address the submissions advanced at the hands of the learned counsel for the appellants, with reference to Section 15 of the Code of Civil Procedure. **In terms of the mandate of Section 15 of the Code of Civil Procedure, the initiation of action within the jurisdiction of Greater Mumbai had to be “in the Court of lowest grade competent to try it”.** We are, however, satisfied, that within the area of jurisdiction of Principal District Judge, Greater Mumbai, only the High Court of Bombay was exclusively the competent Court (under its “ordinary original civil jurisdiction”) to adjudicate upon the matter. The above conclusion is imperative from the definition of the term “court” in Section 2(1)(e) of the Arbitration Act.

24.1 **Firstly, the very inclusion of the High Court “in exercise of its ordinary original civil jurisdiction”, within the definition of the term “court”, will be rendered nugatory, if the above conclusion was not to be accepted.** Because, the **“Principal Civil Court of original jurisdiction in a district”** namely the District Judge concerned, **being a court lower in grade than the High Court, the District Judge concerned would always exclude the High Court from adjudicating upon the matter.** The submission advanced by the learned counsel for the appellant cannot therefore be accepted, **also to ensure the inclusion of “the High Court in exercise of its ordinary original civil jurisdiction” is given its due meaning.** Accordingly, the **principle enshrined in Section 15 of the**

⁴ *State of Maharashtra vs. Atlanta Ltd. – (2014) 11 SCC 619*

Code of Civil Procedure cannot be invoked whilst interpreting Section 2(1)(e) of the Arbitration Act.

24.2 **Secondly, the provisions of the Arbitration Act, leave no room for any doubt, that it is the superior-most court exercising original civil jurisdiction, which had been chosen to adjudicate disputes arising out of arbitration agreements, arbitral proceedings and arbitral awards.** Undoubtedly, a “Principal Civil Court of original jurisdiction in a district”, is the superior-most court exercising original civil jurisdiction in the district over which its jurisdiction extends. **It is clear that Section 2(1)(e) of the Arbitration Act having vested jurisdiction in the “Principal Civil Court of original jurisdiction in a district”, did not rest the choice of jurisdiction on courts subordinate to that of the District Judge. Likewise, “the High Court in exercise of its ordinary original jurisdiction”, is the superior-most court exercising original civil jurisdiction, within the ambit of its original civil jurisdiction. On the same analogy and for the same reasons, the choice of jurisdiction, will clearly fall in the realm of the High Court, wherever a High Court exercises “ordinary original civil jurisdiction”.**

24.3 **Under the Arbitration Act, therefore, the legislature has clearly expressed a legislative intent, different from the one expressed in Section 15 of the Code of Civil Procedure. The respondent had chosen to initiate proceedings within the area of Greater Mumbai, it could have done so only before the High Court of Bombay. There was no other court within the jurisdiction of Greater Mumbai, where the respondents could have raised their challenge.** Consequently, we have no hesitation in concluding that the respondent by initiating proceedings under Section 34 of the Arbitration Act, before the original side of the High Court of Bombay, had not violated the mandate of Section 2(1)(e) of the Arbitration Act. Thus viewed, we find the submission advanced at the

hands of the learned counsel for the appellants, by placing reliance on Section 15 of the Code of Civil Procedure, wholly irrelevant.

25. Reliance placed on Section 16 of the Code of Civil Procedure, by the learned counsel for the appellants, for the ouster the jurisdiction of the High Court of Bombay is equally misplaced. All that needs to be stated while dealing with the aforesaid contention is that the controversy between the parties does not pertain to recovery of immovable property, partition of immovable property, foreclosure sale or redemption of immovable property, determination of any other right to immovable property, for determination of compensation for wrong to immovable property and/or for the recovery of movable property under distraint or attachment. It is only in the aforesaid exigencies that Section 16 of the Code of Civil Procedure could have been invoked. The construction of the Mumbra Bypass, would only entitle Atlanta Ltd. to payments contemplated under the contract dated 12.7.2007, and no more. A brief description of the reliefs sought by the rival parties, in the separate proceedings initiated by them, does not indicate that either of the parties were claiming any right to or interest in any immovable property. Since none of the above exigencies contemplated in Section 16 prevail in the dispute between the rival parties, reliance on Section 16 of the Code of Civil Procedure is clearly misplaced.

26. Insofar as the jurisdiction within the District Thane is concerned, the “Principal Civil Court of original jurisdiction” is the Court of the District Judge, Thane. Consequently, within the territorial jurisdiction of District Thane, in terms of Section 2(1)(e) of the Arbitration Act, the challenge could have only been raised before the “Principal Civil Court of Original Jurisdiction” of the district, namely, before the District Judge, Thane. There was no other court within the

jurisdiction of District Thane, wherein the instant matters could have been agitated. Therefore, the appellants having chosen to initiate the proceedings before the District Judge, Thane i.e. in respect of a cause of action falling in the territorial jurisdiction of the District Thane, they too must be deemed to have chosen the rightful court i.e. the District Judge, Thane.

27. Shorn of the aforesaid determination, our only understanding of the submission advanced at the hands of the learned counsel for the appellants would be, that as a matter of “natural choice”, as a matter of “suitable choice”, as also, as a matter of “more appropriate choice”, the controversies raised by the rival parties ought to be collectively determined by the District Court, Thane, and not by the High Court of Bombay (in exercise of its “ordinary original civil jurisdiction”). In order to supplement the aforesaid contention, the learned counsel for the appellant had depicted the quantum of filing of similar petitions before the High Court, as also, before the District Court, Thane, and the time likely to be taken for the disposal of such matters by the Courts under reference. There is no statutory provision to our knowledge, wherein the determination of jurisdiction, is based on such considerations. No such provision was brought to our notice by learned counsel.

[Emphasis Supplied]

47. In my opinion, the case above is materially different from the matter in hand, on facts. The Supreme Court in fact noticed that in that case construction of a bypass was the subject matter of the controversy and not acquisition or division of immovable property. Section 16 of the Code of Civil Procedure, 1908 (“**CPC**”) which deals with where suits

relating to immovable property must be instituted, provides that such suits should be instituted in Courts within whose territorial jurisdiction, the property is situated. When the Arbitration Act interplays with this position, Section 2(1)(e) must be noticed and is extracted below:

(e) “Court” means –

(i) *in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, **having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit**, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

(ii) *****

48. Section 20 of the Arbitration Act must also be noticed:

20. Place of arbitration - (1) *The **parties are free to agree** on the place of arbitration.*

(2) ***Failing any agreement** referred to in Sub-section (1), **the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case**, including the convenience of the parties.*

(3) ***Notwithstanding Sub-section (1) or Sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members,***

for hearing witnesses, experts or the parties, or for inspection of documents, good or other property.

[Emphasis Supplied]

49. One has to see where a suit would lie on the subject matter of the dispute had it been a suit. One has to also see where the subject matter of arbitration is located. The land is not situated in Mumbai. The arbitration agreement is not one arrived at by contract, but by statute. Section 19-B(8) of the State Highways Act is the deemed arbitration agreement. That does not have a seat spelt out either. It entitles the State to appoint the arbitrator. The facet of unilateral appointment vitiating such statutorily deemed arbitration agreements, because of one of the parties to the dispute being the person appointing the arbitrator, is yet to be considered by constitutional Courts.

50. For now, the State has appointed the Divisional Commissioner, Konkan, whose headquarters is in Navi Mumbai. Indeed, the Arbitral Tribunal has conducted some meetings in the matter in its Mumbai Office which is evident from the hearings scheduled by the Arbitral Tribunal on a few occasions. Learned Counsel for the parties have no difference of opinion on the fact that the venue of the arbitration in multiple instances has variously been Navi Mumbai, Mumbai and Nashik.

51. I have given my anxious consideration to the aforesaid issue. I am not able to accept the position that the courts at each of Mumbai, Nashik and Navi Mumbai would have jurisdiction since one has to look to the juridical seat, as explained in *BGS Soma*⁵. The arbitration agreement in the instant case is the deemed statutory agreement contained in Section 19-B(8) of the State Highways Act and therefore the parties are deemed to have agreed that the State Government would appoint the arbitrator. The State Government had initially appointed the Divisional Commissioner, Konkan as the arbitrator and despite the shift to the Divisional Commissioner, Nashik, the Arbitral Tribunal was once again designated as the Divisional Commissioner, Konkan.

52. While some meetings may have been held in the Mumbai office of the Divisional Commissioner, Konkan, the headquarters of the Divisional Commissioner, Konkan is in Navi Mumbai. All pleadings have been filed at Navi Mumbai. Therefore, what becomes clear is that the seat of the Arbitral Tribunal could certainly be regarded as Navi Mumbai and not Mumbai. The hearings conducted in Mumbai would be regarded as a convenient venue, used once in a while, but that would not disturb the juridical seat of the Arbitral Tribunal being in Navi

⁵ *BGS SGS Soma JV vs. NHPC Limited – (2020) 4 SCC 234*

Mumbai. The following extracts of the decision of the Supreme Court in ***BGS Soma*** are noteworthy in this regard:

32. *It can thus be seen that given the new concept of “juridical seat” of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this “seat”, the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20.* However, the definition of “court” contained in Section 2(1)(c) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only principal civil court and the High Court in exercise of their original ordinary civil jurisdiction. *Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings - including challenges to arbitral awards - was unclear, and had to be developed in accordance with international practice on a case by case basis by this Court.*

76. *It must be pointed out that the law of the seat or place where the arbitration is held, is normally the law to govern that arbitration. The territorial link between the place of arbitration and the law governing that arbitration is well established in the international instruments*, namely, the New York Convention of 1958 and the UNCITRAL Model Law of 1985. *It is true that the terms “seat” and “place” are often used interchangeably.* In Redfern and Hunter on International Arbitration [Blackaby, Partasides, Redfern and Hunter (Eds.), Redfern and Hunter on International Arbitration (5th Edn., Oxford University Press, Oxford/New York 2009).] (Para 3.51), the seat theory is defined thus: “The concept that an arbitration is governed by the law of the place in which it is held, which is the ‘seat’ (or ‘forum’ or

locus arbitri) of the arbitration, is well established in both the theory and practice of international arbitration.....

95. **Learned Counsel for the Appellants have submitted that Section 2(1)(e), Section 20 and Section 28 read with Section 45 and Section 48(1)(e) make it clear that Part I is not limited only to arbitrations which take place in India.** These provisions indicate that Arbitration Act, 1996 is subject matter centric and not exclusively seat centric. Therefore, "seat" is not the "centre of gravity" so far as the Arbitration Act, 1996 is concerned. **We are of the considered opinion that the aforesaid provisions have to be interpreted by keeping the principle of territoriality at the forefront.**

We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1) (e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the Learned Counsel for the Appellants would, in fact, render Section 20 nugatory. **In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties.** Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. **For example, if the**

arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order Under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

[Emphasis Supplied]

53. In my opinion, having examined the provisions of Section 20 of the Arbitration Act and the analysis set out in **BGS Soma**, the subject matter of the suit would have been in the territorial jurisdiction of Thane. The subject matter of arbitration is in the seat where the Arbitral Tribunal is headquartered, which is Navi Mumbai. For convenience, hearings and meetings may have been held in Mumbai but without disturbing the seated headquarters at Konkan Bhavan, Navi Mumbai, where the Divisional Commissioner is headquartered.

54. Under Section 19-B(8) of the State Highways Act, the office of the Divisional Commissioner, Konkan was the designated Arbitral

Tribunal. The pleadings and the primary conduct of proceedings has taken place in the seat and therefore where the headquarters of the Divisional Commissioner office is located and the juridical seat of the arbitral proceedings is therefore, in my opinion, in Navi Mumbai, District - Thane.

55. Therefore, in my opinion, the principal court of original jurisdiction over the district of Navi Mumbai would have territorial jurisdiction over Navi Mumbai i.e. where the seat is located, and thereby be the court that would have jurisdiction under Section 29A of the Arbitration Act. The Petitioner is granted liberty to approach the jurisdictional court to seek extension and substitution of the arbitrator in line with the law declared in this judgement.

56. Lest there be any doubt about the District Court having the power to substitute the arbitrator rather than the High Court, when it is the High Court that has the power to appoint under Section 11 and the power to substitute under Section 15 of the Arbitration Act, that issue has been put to rest by the Supreme Court. It would be necessary to extract from a judgement of the Supreme Court in the case of ***Chief Engineer PWD***⁶, which makes it clear that the District Court can indeed

⁶ *Chief Engineer (NH) PWD (Roads) vs. BSC & C and C JV – (2024) SCC OnLine SC 1801*

substitute the arbitrator under Section 29A of the Arbitration Act, since it is a consequential power. The following extracts are noteworthy:

2. The power under sub-Section (4) of Section 29A of the Arbitration Act vests in the Court as defined in Section 2(1)(e) of the Arbitration Act. It is the principal Civil Court of original jurisdiction in a district which includes a High Court provided the High Court has ordinary original civil jurisdiction.

3. In this case, the High Court does not have the ordinary original civil jurisdiction. The power under sub-Section (6) of Section 29A is only a consequential power vesting in the Court which is empowered to extend the time. If the Court finds that the cause of delay is one or all of the arbitrators, while extending the time, the Court has power to replace and substitute the Arbitrator(s). The said power has to be exercised by the Court which is empowered to extend the time as provided in sub-Section (4) of Section 29A of the Arbitration Act.

[Emphasis Supplied]

57. For completeness, it must be stated that the power under Section 29A of the Arbitration Act, for arbitration proceedings where the seat is outside Mumbai, would be exercisable by this Court only in cases where this Court has appointed the arbitrator under Section 11 of the Arbitration Act. This has been a clear emphatic finding by a Learned Division Bench of this Court (Goa Bench) in *Sheela Chowgule*⁷ that where the appointment has been made by this Court under Section 11 of

⁷ *Sheela Chowgule v. Vijay V. Chowgule* – 2024 SCC OnLine Bom 1069

the Arbitration Act, this Court would be the Court that has to exercise the power under Section 29A(6) but where this Court has not so played a role in appointment, the substitution can be by the jurisdictional principal district court that corresponds to Section 2(1)(e).

58. Elaborating further on ***Chief Engineer PWD***, and basing its judgement on hierarchy of Courts, the Learned Division Bench in ***Sheela Chowgule*** summarised its decision based on a reference made due to two conflicting views of Learned Single Judges, in the following words:-

(i) *In the event an Arbitral Tribunal constituted by the High Court under Section 11(6) fails to complete the proceedings within the stipulated period/extended period, then an application under Section 29-A(4) would lie to the High Court in case of a domestic arbitration.*

(ii) *In answer to the second question, we opine that in the event an Arbitral Tribunal consisting of three Arbitrators is constituted as per Section 11(2) i.e. with agreement and consent of the parties, fails to complete the proceedings within the stipulated period/extended period, the application under Section 29-A(4) would lie to the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original jurisdiction.*

59. In the instant case, the Arbitral Tribunal that has failed to complete the arbitration within the statutory timeframe was not appointed by this Court. Therefore, clearly, the principal civil court

having jurisdiction over the juridical seat of the arbitration i.e. over Navi Mumbai would have the jurisdiction to consider a Petition under Section 29A(4) and to substitute the arbitrator under Section 29A(6) of the Arbitration Act.

Summary of Conclusions:

60. To summarize:

(a) The appointment of an arbitrator under the State Highways Act has to be made by the State Government in exercise of the powers under Section 19-B(8) of the State Highways Act;

(b) The aforesaid provisions constitute the Arbitration Agreement between the parties in terms of Section 2(4) of the Arbitration Act;

(c) Once the Arbitral Tribunal is so appointed, the provisions of the Arbitration Act would apply to the conduct of the arbitration;

(d) There is no conflict between the State Highways Act and the Arbitration Act in the matter of the period of

mandate of the Arbitral Tribunal, and therefore the “*subject to*” provision in Section 19B(9) does not result in ouster of Section 29A of the Arbitration Act;

(e) The mandate of the Arbitral Tribunal would therefore expire in line with the timelines stipulated in Section 29A of the Arbitration Act;

(f) Unlike Section 15 of the Arbitration Act, the substitution under Section 29A of the Arbitration Act is not linked to the process of the original appointment, which is a reference consciously made by Parliament under Section 11 as well as Section 15(2) of the Arbitration Act, but has refrained from providing so under Section 29A of the Arbitration Act. Therefore, when the mandate of the Arbitral Tribunal expires, the arbitrator may indeed be substituted by the Court having jurisdiction under Section 29A of the Arbitration Act;

(g) The substitution under Section 29A of the Arbitration Act is well aligned with and subserves the conscious legislative policy choice made by amending the State Highways Act to introduce Section 19B(8) and Section

19B(9) to bring compensation-related disputes within the scope of expeditious resolution by way of arbitration;

(h) In the result, the power to substitute the Arbitral Tribunal by invoking the provisions of Section 29A(6) of the Arbitration Act remains intact in the “Court” with jurisdiction under Section 29A read with Section 2(1)(e) of the Arbitration Act;

(i) In the facts of this case, the bundle of facts, the proving or disproving of which would be essential for adjudication, lies entirely outside Mumbai. The Divisional Commissioner, Konkan and the Divisional Commissioner, Nashik as the Arbitral Tribunal have their seat outside Mumbai. Any meetings of the Arbitral Tribunal held in Mumbai is purely a matter of convenience, which made Mumbai the venue for those hearings, and not the seat of the arbitration; and

(j) Therefore, the Petitioners shall be entitled to file these Petitions before the jurisdictional court that is responsive to the definition of “Court” under Section 2(1)(e) of the Arbitration Act, and such Court may grant substitution

in exercise of its powers under Section 29A of the Arbitration Act in accordance with the law declared above.

61. All the Petitions are ***finally disposed of*** in the aforesaid terms.
62. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]