

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.95 OF 2024

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Shri. Ravi Raghunath Khanjode
& Ors.

.....*Petitioners*

: *Versus* :

Harasiddh Corporation

....*Respondent*

Mr. Sanjay Jain with Mr. Yogesh Naidu, Ms. Eden Ribeiro & Mr. Talha Siddiqui i/b Mr. Sanil Gada, for Petitioner

Mr. D.D. Madon, Senior Advocate with Mr. Gaurav Mehta, Ms. Shamima Taly, Ms. Sehry Taly & Mr. Aziz Mohd. i/b S. Mahomedbhai & Co., for Respondent

CORAM : SANDEEP V. MARNE, J.
Reserved on: 12 NOVEMBER 2025.
Pronounced On: 19 November 2025.

JUDGMENT:

1) This Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) setting up a challenge to the Award dated 29 March 2022 passed by the learned sole Arbitrator. By the impugned Award, the learned Arbitrator has issued a declaration that the Agreement dated 10 July 1981 and the Tripartite Memorandum of Understanding dated 30 July 1997 are valid subsisting and binding on the Petitioner. The learned Arbitrator has further declared that the Agreement dated 11 August 2010 is valid, subsisting and binding on the Petitioners. The learned Arbitrator also ordered specific performance for doing all acts, deeds, matters, things and to sign and execute and register all documents and writings as may be necessary for development/redevelopment of suit property as slum rehabilitation scheme and to vest the same in favour of body of society/societies to be

formed in respect of rehab and free sale of buildings/flats in the suit properties. The learned Arbitrator has also declared that the Agreement dated 25 November 2014 entered into by Petitioners No.1 to 23 in favour of Petitioner No.24, Power of Attorney dated 25 November 2014, Memorandum of Understanding dated 25 November 2014 and all other acts and deeds done and rights/agreements executed in favour of Petitioner No.24 are illegal, *non-est*, null and void and not binding on the Respondent. The learned Arbitrator has also passed an order of injunction to restrain the Petitioners from filing or prosecuting any proposal for declaration of suit properties as slum rehabilitation area or for acquisition thereof.

FACTS

2) The dispute amongst the parties concern following three properties, situated at Malad (East), Mumbai.

(i) Survey No. 255/2/2, C.T.S. No. 677A admeasuring 7201.92 square meters as per the document and 6510.50 square meters as per the Property Card;

(ii) Survey No.255/3, C.T.S. No.676 admeasuring 787.71 square meters as per the document and 714.10 square meters as per the Property Card; and

(iii) Survey No.267/1/1, C.T.S. No.610A/1/C admeasuring 1125.35 square meters as per the document and 786 square meters as per the Property Card;

The above three properties have been collectively referred to as '**the suit properties**' in the Arbitration proceedings. According to Petitioners, the suit properties are *Adivasi* (Tribal) lands.

3) According to the Petitioners, Mr. Janglya Shanwar Khanjode became deemed purchaser of the suit properties in addition to other lands which are together described in the Petition as the larger land under the provisions of Section 32G of the then Bombay Tenancy and Agricultural Lands Act, 1948 (*now renamed as Maharashtra Tenancy and Agricultural Lands Act, 1948*) (**BTAL Act**). A Certificate under Section 32M of the BTAL Act dated 8 May 1981 was issued and Mutation Entry No.1509 was certified. After the death of Mr. Janglya Shanwar Khanjode the names of nine legal heirs were mutated to the revenue records. Petitioners Nos. 1 to 23 claim to be the legal heirs and successors in title of Mr. Janglya Shanwar Khanjode, who was the original owner in respect of the suit properties.

4) An Agreement for Sale and Development dated 10 July 1981 was executed by four adult legal heirs of deceased Janglya Shanwar Khanjode in favour of M/s. Makewell Corporation in respect of six lands forming part of larger lands which were registered with the Sub-Registrar of Assurances. An irrevocable Power of Attorney dated 10 July 1981 was also executed and registered in favour of partners of M/s. Makewell Corporation. According to the Petitioners, the Agreement dated 10 July 1981 is null and void on account of violation of provisions of BTAL Act and Maharashtra Land Revenue Code, 1966 (**MLRC**).

5) In the year 1995, M/s. Makewell Corporation agreed to sell their rights in respect of the suit properties in favour of the Respondent. Accordingly, MOU dated 30 July 1997 was executed between nine original owners, M/s. Makewell Corporation and the Respondent confirming the original Agreement dated 10 July 1981, receipt of consideration and right of M/s. Makewell Corporation to assign the rights, additional consideration of Rs.4,95,000/- was agreed to be paid by the Respondents to the original

owners. Further consideration of Rs.22,00,000/- was agreed to be paid by the Respondent to M/s. Makewell Corporation. According to the Petitioner, MOU dated 30 July 1997 is an unregistered document on which stamp duty is not paid under the provisions of Bombay Stamp Act, 1958 and that therefore the same is void on account of failure to secure permissions under provisions of the BTAL Act and MLRC.

6) Petitioner Nos.1 to 17 entered into Agreement dated 12 August 2008 for development of larger land in favour of Vinod Devji Bhurkud and Mahesh Sonu Valvi and also executed POA dated 11 August 2008. According to the Petitioners, the Agreement dated 12 August 2008 being unregistered, not properly stamped and executed without seeking permissions under provisions of BTAL Act and MLRC is void.

7) It appears that several deeds/writings were executed by the Respondent on 11 August 2010, which included Deed of Assignment dated 11 August 2010 and Declaration-cum-Indemnity dated 11 August 2010, with Vinod Devji Bhurkud and Mahesh S. Valvi, Deed of Confirmation dated 11 August 2010 with Petitioner Nos.1 to 17 confirming validity of MOU dated 30 July 1997, Agreement dated 11 August 2010 with Petitioner Nos.1 to 17 for grant of Development Rights afresh in respect of the suit property. According to the Petitioners, even those writings executed on 11 August 2010 are void.

8) The partners of M/s. Makewell Corporation executed Assignment Deeds dated 1 September 2010 and 14 October 2010 and Declaration-cum-Indemnity dated 14 October 2010 in favour of the Respondent.

9) It appears that the slum dwellers on part of the suit properties had formed Jai Ganesh SRA CHSL. Respondent entered into Development Agreement dated 26 October 2010 with Jai Ganesh SRA CHSL which also executed Power of Attorney in favour of the Respondent. In May 2014, Respondent acquired right of way/12 meters width of road by way of Deed of Right of Way dated 19 May 2014. It appears that though some part of the suit property was declared as slum, Slum Redevelopment Authority (**SRA**) was not giving required approvals for implementation of the slum scheme. Accordingly, Jai Ganesh SRA CHSL filed Writ Petition No.2270 of 2014. The Petition was allowed on 28 July 2016 directing SRA to consider the application of Jai Ganesh SRA CHSL for finalization of draft Annexure-II for implementation of Slum Scheme. The Annexure-II for Jai Ganesh SRA CHSL was finalised and obtained in May 2017. Letter of Intent dated 21 May 2018 was issued for implementation of slum scheme in respect of Jai Ganesh SRA CHSL. Respondent made application dated 29 June 2019 for declaring remaining suit properties (besides Jai Ganesh SRA CHSL) as slum properties/slum rehabilitation area under Section 3C of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**Slum Act**). Respondent received revised Letter of Intent dated 30 September 2019 from SRA consequent to increase in minimum size of rehab tenements of 300 sq.ft. Respondent also obtained IOD for construction of free-sale component buildings on 6 December 2019.

10) In July 2016, Petitioner Nos.1 to 23 made an application before the CEO, SRA for declaring the suit properties as slum and at that time, Petitioner realised that some other developer was representing Petitioner Nos.1 to 23. The said developer happened to be Petitioner No.24. In April 2017 Respondent filed Arbitration Petition No. 425/2017 in this Court under Section 9 of the Arbitration Act praying for interim measures. In that Peti-

tion, it was disclosed that Agreement dated 25 November 2014, POA dated 25 November 2014 and MOU dated 25 November 2014 were executed in favour of Petitioner No.24-Developer.

11) In the above background, disputes between the parties were referred to Arbitral Tribunal comprising of the learned sole Arbitrator by Order dated 7 November 2019 passed by this Court in Arbitration Application No. 143 of 2017. Respondent filed its Statement of Claim seeking a declaration that various agreements executed in its favour are valid, subsisting and binding and requiring specific performance of various acts and deeds by Petitioner Nos.1 to 23. Respondent also challenged the Agreement, POA and MOU dated 25 November 2014 executed in favour of Petitioner No.24. Respondent also sought injunction against Petitioner No.24 from seeking a declaration in respect of the suit properties under Section 3C of the Slum Act. Respondent also sought a decree in the sum of Rs.40 crores. The Statement of Claim was resisted by the Petitioners by filing their Written Statement. Petitioners also filed counterclaim seeking compensation and damages for various other reliefs. Parties led evidence in support of their respective claims.

12) The learned Sole Arbitrator delivered Award dated 29 March 2022 declaring that various Agreements executed in favour of the Respondent are valid, subsisting and binding. The learned Arbitrator declared that the Agreement, POA and MOU dated 25 November 2014 executed in favour of Petitioner No.24 is illegal, null and void. The learned Arbitrator also granted injunction in favour of the Respondent. The claim in terms of monetary compensation is however rejected. The monetary claims in the counterclaim, as well as other reliefs prayed therein are also rejected. The learned Arbitrator

has also directed Petitioners to pay to the Respondent costs in the sum of Rs.20,00,000/-.

13) Aggrieved by the Award dated 29 March 2022 passed by the learned Sole Arbitrator, Petitioners have filed the present Petition under Section 34 of the Arbitration Act.

SUBMISSIONS

14) Mr. Jain, the learned counsel appearing for the Petitioners would submit that the Award of the learned Arbitrator is liable to be set aside for failure to record reasons. That in a private arbitration between the parties, reasons become heart and soul in the dispute resolution process. That parties have reposed faith in the learned Arbitrator to act fairly. That the Arbitration Act mandates recording of reasons and in absence of reasons, it is impossible to gauge as to why a particular claim is granted in favour of the Respondent or is denied to the Petitioners. He would submit that the learned Arbitrator has merely recorded submissions raised by the parties and has proceeded to accept the submissions made on behalf of the Respondent, without himself undertaking exercise of dealing with those submissions. He would rely upon judgment of this Court in Board of Control of Cricket in India Versus. Deccan Chronicle Holdings Ltd.¹ in support of his contention that mere acceptance of submissions advanced by one of the parties does not fall within the accepted definition of 'reasons'.

15) Mr. Jain would further submit that the learned Arbitrator has erred in awarding claim of Petitioners for declaration and injunction ignoring the position that the Respondent was required to take

¹ 2021 4 BCR 481

permission/sanction under Section 43 of the BTAL Act and Section 36A of the MLRC. That any transaction in contravention of the provisions of Section 36A of MLRC is *ab-initio-void*. That use of the words 'or otherwise' in Section 36A of MLRC would take in its stride all modes by which land can be transferred and has relied upon judgment of this Court in Atul Projects India Ltd. Versus. Babu Dewoo Farle And Others², Gautamsheth Kisan Wadve And Another Versus. Kisan Gangaram Kale And Others³ and of the Apex Court in Murlidhar Dayandeo Kesekar Versus. Vishwanath Pandu Barde And Another⁴. That therefore Development Agreement and other documents executed in favour of the Respondents, which are still borne, could not have been declared as valid, subsisting or binding by the learned Arbitrator. That the learned Arbitrator has not recorded any independent findings as to how and why the documents executed in favour of the Respondents which are in the teeth of provisions of Section 36A could still be treated as valid or binding. That the learned Arbitrator has only reproduced paragraphs of various judgments in Jai Ganesh SRA CHS and another Versus. State of Maharashtra and others⁵ without recording any reason as to how the said judgment renders the provisions of Section 36A of MLRC redundant in relation to the agreements and documents in question. He would submit that the Division Bench in Jai Ganesh SRA CHS (supra) has not laid down any law that the provisions of Section 36A of MLRC do not apply to Slum Scheme or that the provisions of Slum Act have primacy over the provisions of MLRC. That this Court merely permitted implementation of slum scheme by applying the principle of estoppel since Slum Authorities had permitted taking of various steps in the matter and had thereafter objected to implementation of the Slum

² (2011) 6 MhLj 351

³ (2020) SCC Online Bom 828

⁴ (1995) Supp 2 SCC 549

⁵ WP-2270-2014 decided on 28 July 2016.

scheme. That the judgment has been rendered in the facts of that case and cannot be treated as laying down any abstract proposition as erroneously assumed by the learned Arbitrator. Mr. Jain would further submit that no specific view is expressed by the learned Arbitrator in respect of the requirement of permission under Section 36A of the MLRC. He would rely upon judgment of the Apex Court in *Batliboy Environmental Engineers Ltd. Versus. Hindustan Petroleum Corporation Ltd and Another*⁶.

16) Mr. Jain would further submit that the learned Arbitrator has erroneously considered and relied upon unregistered and improperly stamped documents in respect of impounding the same. That there is no discussion in the Award with regard to the aspect of impounding of documents or payment of deficit stamp duty. That since the Award takes into consideration admissible material, the same is liable to be set aside under Section 34 of the Arbitration Act.

17) Mr. Jain would further submit that the learned Arbitrator has not even bothered to discuss the vital parameter of readiness and willingness on the part of the Respondent to perform his part of contract while granting order for specific performance. That the Award is silent on the aspect of readiness and willingness. That since the order for specific performance is directed without applying the necessary parameters, the Arbitral Award is in conflict with the public policy of India and in conflict with the most basic notions of justice. Lastly, Mr. Jain would submit that the learned Arbitrator has granted the relief which is otherwise impermissible of being granted. He would submit that since the Award suffers from patent illegality, the same is liable to be set aside.

⁶ (2024) 2 SCC 375

18) The Petition is opposed by Mr. Madon the learned Senior Advocate appearing for the Respondent. He would submit that the view taken by the learned Arbitrator is a plausible view after considering the material produced before him. That the correctness of Award cannot be gone into by this Court under Section 34 of the Arbitration Act and even if Award is wrong, so long as the ultimate view expressed therein is plausible, this Court cannot interfere in the Award merely because some other view is also possible. He would rely upon judgment of Apex Court in Reliance Infrastructure Limited Versus. State of Goa⁷.

19) Mr. Madon would submit that most of the grounds orally urged on behalf of the Petitioners are not pleaded in the Arbitration Petition. That therefore this Court cannot take into consideration the grounds which are not raised in the Petition. He would rely on judgment of Division Bench of this Court in Patel Engineering Company Ltd. Vs. Konkan Railway Corporation Ltd.⁸ and of Single Judge in Ashesh Busa Vs. Atul Gandhi⁹

20) In so far as the objection of violation of provisions of Section 36A of the MLRC is concerned, Mr. Madon would submit that the issue stands concluded by judgment of Division Bench in Jai Ganesh SRA CHS. He would submit that the Division Bench has noted execution of the impugned development agreements as well as documents of purchase while passing the order. That therefore the Petitioners are estopped from now contending that the said documents are in contravention of Section 36A of the MLRC or Section 43 of the BTAL Act. He would submit that

⁷ (2024) 1 SCC 479

⁸ 2009 SCC Online Bom 657

⁹ 2019 SCC Online Bom 1102

the entire suit property has been declared as slum. That in respect of another slum Society (Sahayog Society), Respondent filed Writ Petition No.2430 of 2024 for removal of obstacles sought to be created by SRA and by judgment and order dated the 3 July 2024, the Petition has been allowed. He would submit that insofar as land in respect of which Jai Ganesh SRA CHSL was formed, the development therein is complete, flats are sold and possessions are delivered.

21) Mr Madon would further submit that the entire litigation is being driven by Petitioner No.24 by raising baseless technical objections of land being tribal land. He would submit that the entire stamp duty and penalty has been paid by the Respondents on the documents concerned. That this aspect was highlighted in minutes of meeting of learned Arbitrator held on 14 October 2021 and payment of deficit stamp duty and penalty were produced before the learned Arbitrator which is the reason why no ground with regard to nonpayment of stamp duty is raised in the Arbitration Petition. That the main defence of the Petitioners before the learned Arbitrator was with regard to the validity of oral termination and that raising of that defence itself contains implied admission of execution of a valid agreement, which was allegedly orally terminated. In so far as the aspect of readiness and willingness is concerned, no dispute in that regard was raised before the learned Arbitrator which is the reason why no issue was framed. Nonetheless, the learned Arbitrator recorded a finding of Respondent fulfilling all its obligations under the contract so far as Section 43 of the BTAL Act is concerned. Mr. Madon would rely upon judgment of this Court in Balu Baburao Zarole And Others. Versus Shaikh Akbar Shaikh Bhikan And Others¹⁰ in support of his contention that permission

¹⁰ 2001 (3) Bom. CR 255

under section 43 of the BTAL Act is required at the time of conveyance and not at the time of agreement for sale. Mr. Madon would accordingly pray for dismissal of the Petition.

22) In rejoinder, Mr. Jain would meet the objection of absence of pleaded grounds in the Petition by submitting that under the public policy doctrine, it is the duty of the court to examine correctness of the Award and even if any particular ground is found to be not pleaded, but the Award is found to be bad, it is the duty of the Court to set aside the same rather than upholding a bad Award due to technicality of failure to plead any particular ground. He would rely on judgment of the Apex Court in *State of Chhattisgarh And Another Versus. Sal Udyog Private Limited*¹¹. He would therefore submit that even if any objection is found to be not pleaded, this Court may invalidate the Award since the same is vitiated by patent illegality.

REASONS AND ANALYSIS

23) Having gone through the findings recorded in the impugned Award, after going through records of the case and having considered the rival contentions canvassed by the learned counsel on behalf of the parties, I proceed to decide whether any case is made out for interference in the Award in exercise of jurisdiction under Section 34 of the Arbitration Act.

24) It must be observed at the very outset that various objections raised on behalf of Petitioners in challenge to the Award during the course of oral submissions canvassed by Mr. Jain are not pleaded in the

¹¹ (2022) 2 SCC 275

Arbitration Petition. Mr. Madon has accordingly raised an objection that the unleaded grounds cannot be permitted to be orally canvassed.

25) The grounds pleaded in the Arbitration Petition are reproduced below:-

A. The Petitioners no. 1-17 were under a major incapacity as they are illiterate and hence unable to understand the complexity of the transactions and multifarious litigations which have ensued till date. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(a)(i) of the Arbitration Act.

B. The Petitioners no. 1-17 were under a major incapacity as their witness being illiterate was prevented from rendering oral deposition. The Ld. Sole Arbitrator in para 8(c) of the impugned award has observed and concluded against the Petitioner which is reproduced verbatim hereinbelow for ready reference of this Hon'ble Court:

Para 8(c) of the impugned award:

"The Respondents had originally proposed to lead evidence of only one witness, viz., Ms. Yamuna Janglya Khanjode, [RW-1]. While she was under cross examination, the same was aborted midway, in the peculiar facts and circumstances....

On this ground, the Impugned Arbitral Award ought to be quashed and set aside as provided under Section 34(2)(a)(i) of the Arbitration Act 1996.

C. The Petitioners no. 1-17 were under a major incapacity as they are illiterate and hence unable to understand the complexity of the arbitral proceedings and more specifically the consequence of the Ld. Arbitrator precluding the deposition of their witness Mrs. Yamuna Khanjode. This decision of the Ld. Arbitrator (though supported by the advocates then present) is in contravention of the most basic notions of social morality and justice. It is also in contravention with the fundamental policy of Indian law that an illiterate person from a socially deprived background ought to be given full chance to present his/her version in a dispute with the aid and assistance of interpreters, etc. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(b)(ii) read with 34(2)(a)(i) of the Arbitration Ad 1996.

D. The Arbitration Agreement is not valid under the law to which the parties have subjected and the law for the time being in force as it deals with right, title and interest in immovable properties protected under/governed by the Bombay Tenancy and Agricultural Lands Act, 1948 and the Maharashtra Land Revenue Code, 1966. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(a)(ii) of the Arbitration Act.

E. The subject matter of the dispute is not capable of settlement by Arbitration under the law for the time being in force as it deals with right, title and interest in immovable properties protected under/ governed by the Bombay Tenancy and Agricultural Lands Act, 1948 and the Maharashtra Land Revenue Code, 1966. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(b)(i) of the Arbitration Act 1996.

F. The Ld. Sole Arbitrator was totally swayed by the Judgement and Order dated 28/07/2016 of the Hon'ble Bombay High Court in WP No. 2270 of 2014 when there was material evidence before him which unequivocally indicated that the said WP was nothing but a proxy litigation at the instance of the Respondent. That the Ld. Sole Arbitrator has acted arbitrarily, irrationally and the impugned award shows non-application of mind by the Ld. Sole Arbitrator. The Ld. Sole Arbitrator in para 23 of the impugned award has observed and concluded against the Petitioner which is reproduced verbatim hereinbelow for ready reference of this Hon'ble Court:

Para 23 of the impugned award:

"The aspect of independent permission under Section 36A of the ML Code, is directly covered by a Division Bench Judgement dated 28th July, 2016, of the Hon'ble Bombay High Court in Writ Petition No.2270 of 2014 in the matter of Jai Ganesh SRA CHS V/s. State of Maharashtra & Ors [supra]. In this Writ Petition, a notification issued by the SRA was under consideration, and in particular, the condition about the requirement of permission in the context of restoration of land to the Scheduled Tribes was in issue pertaining to the land bearing C.T.S.No.677A situated at Malad (East), Taluka Borivali, Mumbai Suburban District."

It was unequivocally clear from the records of the Ld. Sole Arbitrator that the aforesaid Judgement and Order was secured by the Respondent through its proxy (Society) and thereby the Respondent has engaged in misrepresentation to the Hon'ble court and misled it to pass the aforesaid Judgement and Order. Shorn of the aforesaid Judgement and Order, the Ld. Sole Arbitrator would not have held against the Petitioners. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(b)(ii) of the Arbitration Act 1996 as being against public policy.

G. The Impugned Arbitral Award contains decisions on matters beyond the scope of the submission to arbitration as it deals with right, title and interest in the immovable properties protected under/ governed by the Bombay Tenancy and Agricultural Lands Act, 1948 and the Maharashtra Land Revenue Code, 1966. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(a)(iv) of the Arbitration Act 1996.

H. That the Ld. Sole Arbitrator has acted arbitrarily, irrationally and the impugned award shows non-application of mind by the Ld. Sole Arbitrator. The Ld. Sole Arbitrator in para 3(i) of the impugned award has observed and concluded against the Petitioner which is reproduced verbatim hereinbelow for ready reference of this Hon'ble Court:

Para 3(i) of the impugned award:

"the permission under Section 43 of the BT&AL Act was subsequently obtained by Order dated 05/05/1998"

This asserts that there was a requirement to obtain permission under the Bombay Tenancy and Agricultural Lands Act 1948 and comply with all conditions under said permission. However, the Ld. Sole Arbitrator has hereafter proceeded to hold to the contrary. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(b)(i) & (ii) of the Arbitration Act 1996.

I. A bare perusal of the Impugned Award clearly reflects that the Ld. Sole Arbitrator has not applied the mandatory principles while imposing costs in the sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) on the Petitioners herein. This is contrary to the mandate of Section 34 and the Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34 of the Arbitration Act 1996. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(b)(ii) of the Arbitration Act 1996 as being against public policy.

J. The Arbitral Award is based on erroneous application of Law.

K. The Petitioner submits that the Ld. Sole Arbitrator have made a manifest error by not appreciating the legal permissions required prior to sale of Tribal Land. The Petitioner submits that the Ld. Sole Arbitrator has miserably failed to consider the core and material facts and documents on record and therefore the impugned Award is liable to be quashed and set aside on this ground alone.

L. The Ld. Sole Arbitrator in para 15 of the impugned award has observed and concluded against the Petitioner which is reproduced verbatim hereinbelow for ready reference of this Hon'ble Court:

Para 15 of the impugned award:

"15. It is further contended by the Respondents that the Agreement dated 12th August, 2008, between the Respondent Nos.I to 17 on one hand; and Vinod Devji Burkud and Mahesh Sonu Valvi on the other hand, was also terminated orally by the Respondent Nos.1 to 17 during the period 2009 and the same was orally communicated to Vinod Devi Burkud and Mahesh Sonu Valvi. This case is equally vague in terms of the date of termination, place of termination and by whom communicated, to whom communicated. Equally there is no evidence in this regard."

The above-mentioned finding is contrary to material on record which clearly reflects that Mr. Vinod Devji Burkud and Mr. Mahesh Sonu Valvi have admitted that the said agreement dated 12th August 2008 was cancelled orally by Petitioner nos. 1-17 herein. The Impugned Arbitral Award hence ought to be quashed and set aside as provided under Section 34(2)(b)(ii) of the Arbitration Act 1996 as being against public policy.

M. The Ld. Sole Arbitrator in para 20(2.3) read with para 21(b) of the impugned award has observed and concluded against the Petitioner which is reproduced verbatim hereinbelow for ready reference of this Hon'ble Court:

Para 20(2.3) of the impugned Award:

"While considering provisions of section 43 of the BT&AL Act it has been held in judgments of learned Single Judges of this Court that a mere

agreement to sell would not attract section 43 and it is only at the stage of the execution of the Conveyance that the provision would be attracted.

Balu Baburao Zarole and Ors. Vs. Shaikh Akbar Shaikh Bhikan and Ors., 2001 (3) Bom C.R. 255."

Para 21(b) of the Impugned Award:

"Moreover, I am also in agreement with the submissions of the Claimants [referred to in paras 2.3, 2.4 and 2.5] quoted in para 20 above."

The above-mentioned finding is contrary to material on record.

N. The Ld. Sole Arbitrator in para 20(2.4) read with para 21(b) of the impugned award has observed and concluded against the Petitioner which is reproduced verbatim hereinbelow for ready reference of this Hon'ble Court:

Para 20(2.4) of the impugned Award:

"It is submitted that permission under Section (if otherwise applicable) can be obtained at any time prior to the execution of the Deed of Conveyance. None of the Agreements under which the Claimants claim are void for reason of absence of extension of the permission under

Section 43 of the BT&AL Act."

Para 21(b) of the Impugned Award:

"Moreover, I am also in agreement with the submissions of the Claimants [referred to in paras 2.3, 2.4 and 2.5] quoted in para 20 above."

The above-mentioned finding is contrary to material on record

26) Thus the Award of the Arbitral Tribunal is sought to be challenged on following broad pleaded grounds:

- (i) major incapacity of Petitioner Nos. 1 to 17 (grounds A to C),
- (ii) invalidity of arbitration agreement (ground D),
- (iii) non-arbitrability of dispute (ground E),
- (iv) erroneous reliance on judgment in Jai Ganesh SRA CHS rendered in Petition initiated by proxy of Respondent (ground F),
- (v) impermissibility for arbitrator to decide dispute relating to tribal lands (ground G),

- (vi) 'subsequent' securing of permission under BTAL Act (grounds H, M & N),
- (vii) wrongful imposition of costs (ground I),
- (viii) requirement to obtain permission prior to sale of tribal land (ground K) and
- (ix) finding relating to oral termination of agreement with Bhurkud and Valvi contrary to admission given by them (ground L).

27) However, during the course of his oral submissions Mr. Jain has sought to attack the arbitral award by raising following six objections:

- (i) failure to record independent reasons by the learned Arbitrator on various issues.
- (ii) transactions being *ab initio* void on account of provisions of Section 36A of the MLRC
- (iii) non-securing of prior permission to the transactions under Section 43 of the BTAL Act.
- (iv) consideration of insufficiently stamped and unregistered documents, which was not admissible in evidence.
- (v) non-recording of any finding about readiness and willingness of Respondent to perform his part of contract while granting the relief of specific performance.
- (vi) grant of reliefs which are impermissible to be granted in law.

28) It is seen that objection Nos. (i) and (iv) to (vi) raised during the course of oral submissions, are not pleaded at all in the Petition. Objection No. (iii) relating to requirement of prior permission under Section 43 of BTAL Act has been pleaded in the Petition. The objection No. (ii) relating to requirement of securing permission under Section 36A of MLRC is again not clearly pleaded and ground clause (K) vaguely states that '*The Petitioner submits that the Ld. Sole Arbitrator have made a*

manifest error by not appreciating the legal permissions required prior to sale of Tribal Land’.

29) Faced with the difficulty where most of the objections orally canvassed by him are not raised in the Petition, Mr. Jain has submitted that under the public policy doctrine, it is the duty of the court to examine correctness of the Award and even if any particular ground is found to be not pleaded, but the Award is found to be bad, it is the duty of the Court to set aside the same rather than upholding a bad Award due to technicality of failure to plead any particular ground. In ordinary circumstances, it is necessary for a party to plead the grounds of challenge in the Petition. The remedy of challenging an Award is a statutory remedy provided in Section 34 of the Arbitration Act. It is not a common law remedy or a remedy in equity. Therefore, the remedy of challenging the Award must be exercised by strictly complying with provisions of Section 34 of the Act. An Award can be challenged only on the grounds enumerated in Section 34 and therefore pleading the grounds assumes importance. If contention of Petitioner is accepted, a loosing party would file a single page application under Section 34 without pleading any grounds and would orally argue the grounds by taking the other side by surprise. The necessity of pleading grounds is based on fundamental principle of procedural fairness, ensuring that all parties are aware of the case they have to meet. This prevents the other side from being caught by surprise by new arguments raised only at the oral arguments stage.

30) Mr. Madon has relied on judgment of Division Bench of this Court in *Patel Engineering Company Ltd* (supra). The issue before the Division Bench of this Court was about permissibility to introduce a new ground of challenge to the award by amending the petition after expiry of

period of limitation. The Division Bench ruled against permitting raising of new ground of challenge after expiry of period of limitation. The Division Bench also rejected that the Court could *suo moto* invalidate the award in absence of a pleaded ground. This Court held in Para 16 to 18 as under:

16. Perusal of the above quoted rule shows that it is a requirement of this Rule that the petitioner makes a concise statement of the material facts relied on by the petitioner in support of his challenge to the award. Section 34(3) prescribes the time limit within which the petition challenging the arbitral award can be filed. So far as this Court is concerned, it is now a settled law, that the time limit prescribed under section 34 is absolute and unextendable and that a ground of challenge to arbitral award could not be introduced by way of amendment into the petition filed under section 34, after expiry of the statutory period. If a general ground that the arbitrators had acted contrary to the contract without specifying which claim awarded was contrary to which term of the contract is considered to be adequate pleading for setting aside the award under section 34, the question of unextendable time limit or of ground not being permitted to be introduced by way of amendment would never arise. A petitioner would only have to file one page petition alleging that the Arbitrator had acted contrary to the contract and then, thereafter at the hearing of the petition the petitioner would be able to refer to a specific claims awarded which according to him were contrary to specific clauses of the contract. If grounds and material facts regarding each challenge to the award are not stated, the opposite party would not know which part of the award is being challenged and the ground of challenge and would not be in a position to respond to or deal with the challenge. It is claimed that if the material facts in relation to challenge are stated in the petition, details can be provided subsequently. The question as to what constituted material facts in relation to challenge to an award has been considered by the Supreme Court in its judgment in the case of (Bijendra Nath v. Mayank Srivastava)³, 1994 DGLS (soft) 698 : (1994) 6 SCC 117. The Supreme Court in paragraph 13 of its judgment observed thus:—

“13.....The High Court appears to have lost sight of the well recognised distinction between statement of material facts which is required under Order 6, Rule 2 C.P.C. and particulars which are required to be stated under Order 6, Rule 4 C.P.C. In the context of section 83(1)(a) and (b) of the Representation of the People Act, 1951, which contains provisions similar to Order 6, Rules 2 and 4 C.P.C, this Court, after posing the question, what is the difference between material facts and particulars, has observed: (S.C.C. pp. 250–51, para 29)

“The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct.

The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because

then the efficiency of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all.

If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice.

One cannot under the cover of particulars of a corrupt practice give particulars of a new corrupt practice. They constitute different causes of action."

This is in consonance with the rule that a charge of fraud must be substantially proved as laid and that when one kind of fraud is charged, another kind of fraud cannot, upon the failure of proof, be substituted for it. See: (Abdool Hoosein Zenail Abadin v. Charles Agnew Turner)⁴, 1887 (14) Ind. App. 111. The same is true for the charge of misconduct. This means under Order 6, Rule 4 C.P.C. particulars have to be furnished of the plea of fraud or misconduct raised in accordance with Order 6, Rule 2 C.P.C. and it is not permissible to introduce by way of particulars a plea of fraud or misconduct other than that raised in the pleadings."

17. In our opinion, therefore, it cannot be said that only on the basis of what is contained in ground (q), challenge to the arbitral award in relation to the Claim No. 7 could be raised. It was contended on behalf of the respondent that the Court can under section 34(2)(b) of the 1996 Act *suo motu* consider setting aside the award regarding Claim No. 7 and reliance has been placed in the decision in the case of (Hastimal Dalichand v. Hiralal Motichand), 1954 B.C.I. (soft) 108 : AIR 1954 Bom. 243. Reference was also made to difference in the language used in section 34(2)(a) and section 34(2)(b) of the Act. Section 34(1) expressly stipulated that the award can be challenged only by an application for setting aside that award in accordance with sub-section (2) and sub-section (3) and therefore, this excludes any *suo motu* action by the Court to invalidate an award. The decision of this Court in Hastimal's case was considered by the Supreme Court in its judgment in the case of (Madan Lal v. Sunder Lal)⁶, 1967 DGLS (soft) 68 : A.I.R. 1967 S.C. 1233. The observations of the Supreme Court in paragraphs 8 and 10 of its judgment in the case of Madan Lal, in our opinion, are relevant. They read as under:—

8. It is clear therefore from the scheme of the Act that if a party wants an award to be set aside on any of the grounds mentioned in section 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Article 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in section 30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for if it is so treated it will be barred by limitation.

10. Learned Counsel for the appellant however urges that section 17 gives power to the Court to set aside the award and that such power can be exercised even where an objection in the form of a written statement has been made more than 30 days after the service of the notice of the filing of the award as the Court can do so *suo motu*. He relies in this connection on Hastimal Dalichand

Bora v. Hiralal Motichand Muthe and Saha & Co. v. Ishar Singh Kripal Singh. Assuming that the Court has power to set aside the award suo motu, we are of opinion that power cannot be exercised to set aside an award on grounds which fall under section 30 of the Act, if taken in an objection petition filed more than 30 days after service of notice of filing of the award, for if that were so the limitation provided under Article 158 of the Limitation Act would be completely negative. The two cases on which the appellant relies do not in our opinion support him. In Hastimal case it was observed that “if the award directs a party to do an act which is prohibited by law or if it is otherwise patently illegal or void it would be open to the Court to consider this patent defect in the award suo motu, and when the Court acts suo motu no question of limitation prescribed by Article 158 can arise”. These observations only show that the Court can act suo motu in certain circumstances which do not fall within section 30 of the Act.

18. It is to be seen that so far as 1996 Act is concerned, there is no provision similar to the section 34 of the 1940 Act. Therefore, it cannot be said that in the scheme of 1996 Act there is any suo motu power in the Court to set aside an award and the power of the Court of suo motu setting aside an award in 1940 Act do not extend to set aside the award on the grounds which fall within section 30 of the 1940 Act. In our opinion, therefore, the submission has no substance. It is to be seen that the challenge both under sections 34(2)(a) and 34(2)(b) is adversarial and adjudicatory and is not suo motu or inquisitorial. Under both sub-sections 34(2)(a) and 34(2)(b) appropriate grounds and material facts for such grounds, need to be stated in the petition. The only difference in section 34(2)(b) is regarding the burden of proof, apparently on the basis that a Court would be aware of the law for the time beings in force and the public policy of India. In our opinion, therefore, the learned Single Judge was not justified in considering the challenge to the award in relation to Claim No. 7 only on the basis of ground (q) in the petition. The order of the learned Single Judge to that extent is liable to be set aside.

31) Following the ratio of the Division Bench judgment in *Patel Engineering Company Ltd.*, a Single Judge of this Court held in *Ashesh Busa* (supra) as under:-

14. The Division Bench of this court in case of Patel Engineering Company Ltd. (supra) has categorically held that there has to be a specific ground raised in the petition filed under section 34 of the Arbitration and Conciliation Act, 1996 and if there is no such specific ground, the court has no suo-motu power under section 34 of the Arbitration and Conciliation Act, 1996.

15. Learned single Judge of this court in case of Maneesh Pharmaceuticals Limited (supra) has followed the principles of law laid down by the Division Bench of this court in case of Patel Engineering Company Ltd. (supra) and has held that the petitioner ought to have submitted the details in support of the grounds raised in the petition and such grounds cannot be vague. The ground raised in the petition was that the impugned award was against and in violation of the principles of natural justice. The principles of law laid down by this court and the Division Bench in the

said judgments would apply to the facts of this case. I am respectfully bound by the said judgments.

32) However, in State of Maharashtra v. Hindustan Construction Co. Ltd.¹², the Apex Court has rejected the contention that in no case an amendment in the application for setting aside the arbitral award can be made after expiry of period of limitation provided therein. It is held as under:-

29. There is no doubt that the application for setting aside an arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) i.e. within three months and a further period of thirty days on sufficient cause being shown and not thereafter. Whether incorporation of additional grounds by way of amendment in the application under Section 34 tantamounts to filing a fresh application in all situations and circumstances. If that were to be treated so, it would follow that no amendment in the application for setting aside the award howsoever material or relevant it may be for consideration by the court can be added nor existing ground amended after the prescribed period of limitation has expired although the application for setting aside the arbitral award has been made in time. This is not and could not have been the intention of the legislature while enacting Section 34.

30. More so, Section 34(2)(b) enables the court to set aside the arbitral award if it finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India. The words in clause (b) “the court finds that” do enable the court, where the application under Section 34 has been made within prescribed time, to grant leave to amend such application if the very peculiar circumstances of the case so warrant and it is so required in the interest of justice.

31.L.J. Leach & Co. Ltd. [AIR 1957 SC 357 : 1957 SCR 438] and Pirgonda Hongonda Patil [AIR 1957 SC 363 : 1957 SCR 595] , seem to enshrine clearly that courts would, as a rule, decline to allow amendments, if a fresh claim on the proposed amendments would be barred by limitation on the date of application but that would be a factor for consideration in exercise of the discretion as to whether leave to amend should be granted but that does not affect the power of the court to order it, if that is required in the interest of justice. There is no reason why the same rule should not be applied when the court is called upon to consider the application for amendment of grounds in the application for setting aside the arbitral award or the amendment of the grounds in appeal under Section 37 of the 1996 Act.

¹² (2010) 4 SCC 518

32. It is true that, the Division Bench of the Bombay High Court in *Vastu Invest & Holdings (P) Ltd.* [(2001) 2 Arb LR 315 (Bom)] held that independent ground of challenge to the arbitral award cannot be entertained after the period of three months plus the grace period of thirty days as provided in the proviso to sub-section (3) of Section 34, but, in our view, by “an independent ground” the Division Bench meant a ground amounting to a fresh application for setting aside an arbitral award. The dictum in the aforesaid decision was not intended to lay down an absolute rule that in no case an amendment in the application for setting aside the arbitral award can be made after expiry of period of limitation provided therein.

33) Thus, the Apex Court in *Hindustan Construction Co. Ltd* noted use of the language ‘*the court finds that*’ in clause (b) of sub-section 2 of Section 34 where the subject-matter of the dispute is not capable of settlement by arbitration or where the arbitral award is in conflict with the public policy of India. It is held that the words in clause (b) ‘*the court finds that*’ do enable the court, where the application under Section 34 has been made within prescribed time, to grant leave to amend such application if the very peculiar circumstances of the case so warrant and it is so required in the interest of justice.

34) Also, by inserting sub-section (2A) in Section 34 of the Arbitration Act by Amendment Act of 2015, the position has further changed. While introducing the ground of patent illegality, sub-section (2A) uses the language ‘*if the court finds that*’.

35) The present case however does not involve the issue of permissibility to amend Section 34 Petition for introduction of new grounds as no amendment application is filed by the Petitioners. However what is urged is that a ground not specifically pleaded can still be considered by the Court in exercise of suo moto power. From the language

of clause (b) of sub-section (2) and of sub-section 2(A), it does appear that on the grounds of non-arbitrability of dispute, Award being in conflict with public policy or patent illegality, the Court can, in appropriate cases, invalidate an award even though the said three grounds are not specifically pleaded in the Petition. The Apex Court in ***State of Chhattisgarh Versus. Sal Udyog*** (supra) has considered this aspect in relation to failure to raise a ground in Section 37 Appeal and has held in paragraphs 24 to 26 as under:-

24. We are afraid, the plea of waiver taken against the Appellant-State on the ground that it did not raise such an objection in the grounds spelt out in the Section 34 petition and is, therefore, estopped from taking the same in the appeal preferred Under Section 37 or before this Court, would also not be available to the Respondent-Company having regard to the language used in Section 34(2A) of the 1996 Act that empowers the Court to set aside an award if it finds that the same is vitiated by patent illegality appearing on the face of the same. Once the Appellant-State had taken such a ground in the Section 37 petition and it was duly noted in the impugned judgment, the High Court ought to have interfered by resorting to Section 34(2A) of the 1996 Act, a provision which would be equally available for application to an appealable order Under Section 37 as it is to a petition filed Under Section 34 of the 1996 Act. In other words, the Respondent-Company cannot be heard to state that the grounds available for setting aside an award Under Sub-section (2A) of Section 34 of the 1996 Act could not have been invoked by the Court on its own, in exercise of the jurisdiction vested in it Under Section 37 of the 1996 Act. Notably, the expression used in the Sub-rule is "the Court finds that". Therefore, it does not stand to reason that a provision that enables a Court acting on its own in deciding a petition under Section 34 for setting aside an Award, would not be available in an appeal preferred Under Section 37 of the 1996 Act.

25. Reliance placed by learned Counsel for the Respondent-Company on the ruling in the case of ***Hindustan Construction Company Limited*** (supra) is found to be misplaced. In the aforesaid case, the Court was required to examine whether in an appeal preferred under Section 37 of the 1996 Act against an order refusing to set aside an Award, permission could be granted to amend the Memo of Appeal to raise additional/new grounds. Answering the said question, it was held that though an application for setting aside the Arbitral Award Under Section 34 of the 1996 Act had to be moved within the time prescribed in the Statute, it cannot be held that incorporation of additional grounds by way of amendment in the Section 34 petition would amount to filing a fresh application in all situations and circumstances,

thereby barring any amendment, however material or relevant it may be for the consideration of a Court, after expiry of the prescribed period of limitation. In fact, laying emphasis on the very expression "the Courts find that" applied in Section 34(2)(b) of the 1996 Act, it has been held that the said provision empowers the Court to grant leave to amend the Section 34 application if the circumstances of the case so warrant and it is required in the interest of justice. This is what has been observed in the preceding paragraph with reference to Section 34(2A) of the 1996 Act.

26. To sum up, existence of Clause 6(b) in the Agreement governing the parties, has not been disputed, nor has the application of Circular dated 27th July, 1987 issued by the Government of Madhya Pradesh regarding imposition of 10% supervision charges and adding the same to cost of the Sal seeds, after deducting the actual expenditure been questioned by the Respondent-Company. We are, therefore, of the view that failure on the part of the learned Sole Arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an Award. The said 'patent illegality' is not only apparent on the face of the Award, it goes to the very root of the matter and deserves interference. Accordingly, the present appeal is partly allowed and the impugned Award, insofar as it has permitted deduction of 'supervision charges' recovered from the Respondent-Company by the Appellant-State as a part of the expenditure incurred by it while calculating the price of the Sal seeds, is quashed and set aside, being in direct conflict with the terms of the contract governing the parties and the relevant Circular. The impugned judgment dated 21st October, 2009 is modified to the aforesaid extent

36) Keeping in mind the above broad principles, where in an appropriate case, Courts can be urged to trace out the vice of non-arbitrability of dispute, conflict with public policy or patent illegality in the Award even in absence of a specific pleaded grounds, I proceed to decide all the six grounds urged by Mr. Jain on behalf of the Petitioners.

OBJECTION OF NON-RECORDING OF REASONS

37) It is the objection of Petitioners that the learned Arbitrator has failed to record his own reasons while dealing with the point of transactions being illegal due to failure to seek permissions under Section 36A of MLRC and 43 of BTAL Act. It is contended that the learned Arbitrator has merely recorded submissions canvassed by the parties and has accepted the submissions of Respondent without recording his own independent findings. Mr. Jain has relied on judgment of single Judge of this Court in *Board of Control in Cricket Club of India* (supra) in support of his contention that mere acceptance of submissions canvassed by one of the parties does not fall within the accepted definition of 'reasons'. This Court has held in paras-175 and 176 of the judgment in Board Cricket as under :-

175. The learned Sole Arbitrator held that there was no charge (as on 14th/15th September 2012) on the franchise. He also accepted DCHL's case that (i) all charges existed before the Franchise Agreement and (ii) were on the newspaper division. Therefore, these charges did not constitute a breach of the Franchise Agreement. The relevant passage of the Award says:

As regards charge by Yes Bank, it was further submitted by the Learned Counsel for the Claimant that the charge was not on Franchise but on the receivables by the Claimant which would fall within the definition of "Franchisee Income" under the Agreement.

In my opinion, the submission is well-founded. There was no charge on Franchise Agreement.

It was also submitted that the charges said to have been created and were in existence before the execution of Franchise Agreement dated 11.4.2008 on the business of Newspaper Publication carried on by the Claimant could not be considered as a breach of Agreement.

I also find considerable force in the said submission of the Claimant. It, therefore, cannot be said that there were charges which were created by the Claimant on the Franchise. All charges alleged to have been created no more remained inasmuch as during the "cure period", they stood cleared, vacated or withdrawn within the "cure period".

176. A mere acceptance of a submission advanced by one of the parties does not fall within the accepted definition of 'reasons'. The 'reasons' in any judgment or award demand a consideration of the rival arguments, and then a statement why one side's submission ought to prevail over the other's. It also demands, of necessity, a consideration of the evidentiary material.

(emphasis added)

38) The learned Arbitrator has decided the issues relating to requirement to seek permissions under Section 43 of BTAL Act and 36A of MLRC together while answering Issue Nos. 4A and 4B.

39) The objection of requirement to secure permission under section 43 of BTAL Act, is dealt with by the learned Arbitrator by recording submissions of Respondent and by accepting few of them as correct. Respondent had canvassed following submissions:-

2.3 While considering provisions of section 43 of the BT&AL Act it has been held in judgments of learned Single Judges of this Court that a mere agreement to sell would not attract section 43 and it is only at the stage of the execution of the Conveyance that the provision would be attracted.

Balu Baburao Zarole and Ors. Vs. Shaikh Akbar Shaikh Bhikan and Ors., 2001 (3) Bom C.R. 255.

2.4 It is submitted that permission under Section (if otherwise applicable) can be obtained at any time prior to the execution of the Deed of Conveyance. None of the Agreements under which the Claimants claim are void for reason of absence of extension of the permission under Section 43 of the BT&AL Act.

2.5, It has also been held that successive applications under the provisions of the Section 43 can be made.

Shirish Govind Gangakhedkar vs Maruti Narayan Gaekwad 2003 (3) Mh LJ page 587.

40) Accepting the above submissions, the learned Arbitrator has held in para 21(b) as under:-

21(b) Moreover, I am also in agreement with the submissions of the Claimants [referred to paras 2.3, 2.4 and 2.5] quoted in para 20 above.

41) The issue of requirement of permission under section 36A of MLRC has been dealt with by the learned Arbitrator in paras-22 to 24 of the Award. Again, what the learned Arbitrator has done is to record submissions of claimants in defense and to thereafter refer to the findings recorded by the Division Bench of this Court in *Jai Ganesh SRA CHS* (supra). After reproducing the submissions canvassed on behalf of the claimants and findings of the Division Bench, the learned Arbitrator has held in para 24 as under :-

24(a) The Respondents while accepting that SRA is empowered under Section 3(c) of the SRA to pass Orders declaring the land as 'Slums' contended that the Respondent Nos.1 to 17 were not aware of the same and hence they did not challenge the same.

(b) The Respondents further contend that once Agreement dated 11th August, 2010, was terminated orally, they did not think that the Claimants would go behind the back and get all the things done illegally.

(c) The Respondents also acknowledged the Orders passed by the Hon'ble Bombay High Court in Writ Petition No.2270 of 2014 [supra] but however contended that this Writ Petition did not have the Respondent Nos.1 to 17 as party to the proceedings..

(d) It is, however, an undisputed fact that neither the Orders /notification of the SRA Is challenged nor the Order passed by the Hon'ble Bombay High Court in Writ Petition No.2720 of 2014 is challenged by the Respondent Nos.1 to 17.

(e) In view of the aforesaid discussion, Point Nos.4A and 4B are decided in favour of the Claimants and against the Respondents.

42) Thus, even in paras-24(a) to (c), the learned Arbitrator has merely recorded contentions on behalf of the Petitioners and has

proceeded to reject the objection of requirement to procure permission under section 36A of MLRC merely by holding that neither the orders/ notifications of SRA are challenged nor order passed by the Division Bench in *Jai Ganesh SRA CHS* is challenged by the Petitioners. It is contended on behalf of the Petitioners that what is done by the learned Arbitrator while deciding the issue of requirement for securing permission under Section 36A of MLRC cannot be treated as 'recording of reasons'.

43) Section 31(3) of the Arbitration Act requires the Arbitrator to record reasons upon which the award is based unless the parties have agreed that the no reasons are to be given or where the award is on agreed terms. Section 31(3) provides thus:

Section 31: Form and Contents of Award:

(1)

(2)

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

44) In *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*¹³, the Apex Court has dealt with the issue of importance of recording of intelligible and adequate reasons in Arbitral Award. The Court has held thus:-

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

¹³ (2019)20 SCC 1

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. **They are: proper, intelligible and adequate.** If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. **If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all.** Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. **Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.**

36. At this juncture it must be noted that the legislative intention of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.

(emphasis and underling added)

45) In the present case, parties did not agree that no reasons be stated for making the Award. Therefore, the Learned Arbitrator was required to state the reasons for making the Award. As held by this Court in *Board of Control in Cricket Club of India*, mere recording of submissions of parties and accepting them as correct would not amount of stating

reasons within the meaning of Section 31(3) of the Arbitration Act. Therefore, in the present case, this Court would have ordinarily expected the learned Arbitrator to be more vocal while rejecting the objections of requirement of securing permissions under Section 43 of BTAL Act and Section 36A of MLRC. However it appears that the issue relating to requirement of permission under Section 43 of BTAL Act and Section 36A of MLRC was not the main contentious issue before the learned Arbitrator. The main issue pressed before the learned Arbitrator by the Petitioners was about alleged oral termination of the agreements. In Para 14 of the Award, the learned Arbitrator has recorded that the issue of oral termination was the 'principal defence' of the Petitioners. There is also a reason why the objection of failure to seek permissions under Section 36A of MLRC and Section 43 of BTAL Act may not have been strenuously pressed before the Arbitrator by the Petitioners. In prayer clause (vii) of the Counterclaim, Petitioners prayed for following relief:-

(vii) *That this Hon'ble Tribunal be please to pass an ward declaring the Agreement, Power of Attorney and memorandum of understanding dated 25th November 2014 to be valid and subsisting.*

Petitioners have not secured prior permission under Section 36A of MLRC for the 2014 transaction executed in favour of Petitioner No. 24. Thus, the transaction in respect of which declaration of validity is sought by the Petitioners also suffers from the same alleged infirmity as is sought to be pressed in respect of transaction executed in favour of Respondent. This appears to be the reason why no issue is framed relating to objection of failure to secure permission under Section 36A of MLRC.

46) It is also settled law that the Award need not be set aside on the ground of inadequacy of reasons so long as the ultimate conclusions reached by the Arbitral Tribunal are found to be correct. Reference in this regard can be made to the judgment of the Apex Court in *OPG Power Generation Private Limited Versus Enxio Power Cooling Solutions India Private Limited and another*¹⁴ in which it is held in para-168 as under :-

168. We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there but appear inadequate or insufficient. **In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents recited/relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/intelligible, and the same exhibits no perversity, the Court need not set aside the award while exercising powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for a better and clearer understanding of the award.**

(emphasis added)

47) Therefore even if the reasons recorded by the arbitral tribunal for repelling the objection of requirement to secure permission under Section 43 of BTAL Act or Section 36A of the MLRC are to be construed as inadequate or insufficient, I am of the view that the Award is not rendered bad on that ground alone. It is not that the learned Arbitrator has recorded absolutely no reasons. I am in agreement with the ultimate conclusion reached by the learned Arbitrator for the reasons indicated in the later part of the judgment. The objection of failure to record reasons is accordingly rejected.

¹⁴ 2025 SCC Online SC 417

FAILURE TO SECURE PERMISSION UNDER SECTION 36A OF MLRC

48) The Petitioners have raised the objection of violation of provisions of Section 36A of the MLRC while executing the transactions in question. The objection is rejected by the learned Arbitrator.

49) Section 36A of the MLRC provides for restrictions on transfer of occupancies by tribals and provides thus :-

36A. Restrictions on transfer of occupancies by Tribals.— (1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction—

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector ; and

(b) in all other cases, of the Collector with the previous approval of the State Government

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

Provided further that, in villages in Scheduled Areas of the State of Maharashtra, no such sanction allowing transfer of occupancy from tribal person to non-tribal person shall be accorded by the Collector unless the previous sanction of the Gram Sabha under the jurisdiction of which the tribal transferor resides has been obtained.

Provided also that, in villages in Scheduled Areas of the State of Maharashtra, no sanction for purchase of land by mutual agreement, shall be necessary, if,

(i) such land is required in respect of implementation of the vital Government projects; and

(ii) the amount of compensation to be paid for such purchase is arrived at in a fair and transparent manner.

Explanation.— For the purposes of the second proviso, the expression “vital Government project” means project undertaken by the Central or State Government relating to national or state highways, railways or other multimodal transport projects, electricity transmission lines, Roads, Gas or Water Supply pipelines canals or of similar nature, in respect of which the State Government has, by notification in the

Official Gazette, declared its intention or the intension of the Central Government, to undertake such project either on its own behalf or through any statutory authority, an agency owned and controlled by the Central Government or State Government, or a Government company incorporated under the provisions of the Companies Act, 2013 (18 of 2013) or any other law relating to companies for the time being in force.

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force; or any decree or order of any court or award or order of any tribunal, or authority, either suo motu or on application made by the tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), it is noticed that any occupancy has been transferred in contravention of sub-section (1) 48[the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on the application made by any person interested in such occupancy,] 49[or on a resolution of the Gram Sabha in Scheduled Areas] 50[within thirty years from the 6th July 2004] hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal-transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally ; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

Explanation.— For the purpose of this section, the expression “economic holding” means 6.48 hectares (16 acres) of jirayat land, or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the land held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jirayat land.

50) It is contended on behalf of the Petitioners that since prior permission of the Collector is not obtained before execution of various

documents, the said documents are *ab-initio-void* and nullity and the transaction reflected therein would not bind the Petitioners. This objection was apparently raised before the learned Arbitrator, though not very prominently, but by a sidewind. The reason for holding so is apparent from the frame of issues. The learned Arbitrator did not frame any specific issue with regard to Section 36A of the MLRC. Issue No. 4A and 4B were framed in relation to provisions of the BTAL Act, which read thus:-

4A Whether the 7/12 extracts and mutation entry prove that the order of sale has been passed by the Collector as per the BTAL Act?

4B. Whether the order of sale permission dated 5 August, 1998, claimed by the Claimants being order under Section 43/63 of the BTAL Act passed by the Collector is valid and subsisting?

51) However, while deciding Issue Nos. 4A and 4B, the learned Arbitrator did record that Petitioners raised the contention in relation to requirement of permission under the MLRC. In para-18 of the Award the learned Arbitrator has observed as under:-

18. In the background of the aforesaid discussion, Point No.1(a) to (j), Point Nos.2 and 3 are answered in favour of the Claimants and against the Respondents, viz. the above referred Agreements/ Documents and Power of Attorneys are valid, subsisting and binding and have not been terminated. The Respondents have raised further contention in relation to validity of the aforesaid Agreement by reference to the requirement of permission under the BT&AL Act, **as also by reference for requirement of permission under the MLR Code.** The same are being dealt with hereinafter under Point Nos. 4A and 48.

(emphasis added)

Thus, the objection of non-securing of permission under Section 36A was not raised very seriously by the Petitioners. While recording the submission of the Petitioners, the learned Arbitrator has not even quoted the provisions of Section 36A and has recorded a vague allegation raised

on behalf of the Petitioners that the permission under MLRC was not secured.

52) The learned Arbitrator has taken into consideration the judgment of this Court in *Jai Ganesh SRA CHS* wherein the issue was with regard to implementation of slum scheme in one of the suit properties. In *Jai Ganesh SRA CHS*, SRA had declared the land admeasuring 2330.10 sq. mtrs as slum rehabilitation area and passed order dated 7 August 2012 under section 3C of the Slum Act. However, one of the conditions specified in the said order dated 7 August 2012 was that provisions of Maharashtra Restoration of Land to Schedule Tribes Act, 1974 (**Restoration Act**) were applicable to the land in question and that necessary permission in that regard was required to be obtained. The provisions for permission under the Restoration Act is now incorporated in the MLRC in the form of Section 36A. In the light of the above condition incorporated in the order dated 7 August 2012, SRA was not giving further clearances for implementation of Slum scheme. The Division Bench took note of Development Agreement dated 26 October 2010, Power of Attorney dated 26 October 2010 Agreement for Sale dated 11 August 2010 by which Respondent has taken over rights in respect of the land in question. This Court permitted implementation of slum scheme by allowing the Petition filed by Jai Ganesh SRA CHS. True it is that a specific prayer was made before the Division Bench that provisions of Slum Act would prevail over Section 36A of MLRC. However, the Division Bench found it unnecessary to consider the said prayer and permitted implementation of slum scheme on the land in question by holding that SRA had directed declaration of title as slum rehab area despite noticing the fact that provisions of Restoration Act were applicable thereto. This Court held that once Slum Act could be invoked in respect of

the land, it was futile to urge that SRA could not carry the declaration and notifications further to their logical end in absence of a clear embargo or provision. It is now sought to be suggested on behalf of the Petitioners before me that the Division Bench did not accept the contention of supremacy of Slum Act over Section 36A of MLRC or the contention of non-application of Section 36A to non-agricultural lands. In my view, however, what is necessary to take note of is the fact that Petitioners permitted implementation of slum scheme on the land in question without objecting to the same on the ground of flouting the provisions of Section 36A of the MLRC. Also of relevance is the fact that Petitioners themselves wanted to have the entire suit properties declared as slum areas through Petitioner No.24 and had submitted proposals to that effect to the SRA. As rightly contended by Mr. Madon, Petitioners are therefore now estopped from blowing hot and cold by raising the objection of requirement of permission under section 36A of the MLRC in the present Petition.

53) The learned Arbitrator has considered the judgment of Division Bench of this Court in *Jai Ganesh SRA CHS* and has accordingly repelled the contention of requirement to secure permission under section 36A of the MLRC. Though the reasons recorded by the learned Arbitrator are sketchy and could more elaborate, the ultimate conclusion recorded by him is correct. The view expressed by the learned Arbitrator after taking into consideration the judgment of this Court is a plausible view.

54) Mr. Jain has also contended that use of the words 'or otherwise' in Section 36A of MLRC would take in its stride all modes by which land can be transferred and has relied upon judgment of this Court in *Atul Projects India Ltd., Murlidhar Dayandeo Keshkar* and *Gautamsheth Kisan Wadve (supra)*. In my view however, there can be no dispute to the

position that the agreements executed in favour of Respondent No.1 would otherwise be covered by provisions of Section 36A of the MLRC. However, since the land is/was encroached upon by slums, this Court has permitted execution of slum scheme thereon. The objection raised by SRA with regard to requirement for securing permission under Restoration Act or Section 36A of the MLRC has not been upheld in two Division Bench judgments relating to the very land in question. It appears that the decks are now clear for implementation of Slum Scheme on balance land as well as the Division Bench has passed order dated 3 July 2024 in Writ Petition No. 2430 of 2024 (*Harasiddh Corporation Versus State of Maharashtra and ors.*) rejecting the objections raised by SRA of tribal land.

55) In my view therefore, the objection of requirement to secure permission under section 36A of MLRC raised on behalf of the Petitioners deserves rejection.

NON-SECURING OF PERMISSION UNDER SECTION 43 OF BTAL ACT

56) So far as the objection with regard to securing permission under section 43 of the BTAL Act is concerned, the learned Arbitrator has recorded a finding of fact, after taking into consideration the evidence on record, that the requisite permissions have been obtained. The learned Arbitrator has held in para-21(a) as under :-

21(a) The fact such permissions have been obtained is also admitted and acknowledged by the Respondents. In this regard, the following Questions put-to. CW-1, are relevant:-

"Q.63 You have produced a sale permission, but the 7/12 extract does not show this. Can you explain why?

Ans. Although we have obtained a sale permission, we had not applied to the Tehsildar for taking effect of the same and therefore there is no entry in 7/12 Extract."

"Q.71 You have stated that you had filed an application for getting the sale permission and you have exhibited sale permission dated 5th May 1998. By whom this application was made?

Ans. The application for sale permission was done by Ladhikar Khanjode and Others."

"Q.74 Can you explain to me why this document has been exhibited and what is the connection of the document with the suit property?

Ans. The Respondents, although having executed agreement in 1997 with the Claimant, have entered into an agreement in August 2008 with Mr. Vinod Bhurkud and Mr. Mahesh Valvi in respect of the suit property and to secure a proper title, the Claimant has taken Deed of Assignment from the said Mr. Vinod Bhurkud and Mr. Mahesh Valvi Therefore, the Agreement dated 10th August 2008 has been produced, I am not a signatory to this agreement.

Q.75 When you already held a permission of sale, what was the necessity for this Deed of Assignment?

Ans. I have mentioned in my earlier answer that this was to secure a proper title after the Respondents having entered into some agreement with the said Mr. Vinod Bhurkud and Mr. Mahesh Valvi." "(Shown Agreement dated 11th August 2010 (Exhibit C-30), and in particular fourth Recital therein at page 2 of the document)

Q.83.....

Q 84.....

Q.85 Can I say that this Development Agreement is in continuation of the earlier agreements executed with Khanjode family?

Ans. Yes.

Q.86 You have made various Deeds of Assignments with the partners of M/s. Makewell, can you explain why?

Ans. The Khanjode's had executed an agreement in respect of the suit property in 198 with M/s. Makewell and therefore to secure a proper title, the Claimant has obtained various Deeds of Assignments from the partners of M/s. Makewell.

Q.87 Is it true to say that M/s. Makewell had applied for sale permission they have received the sale permission and they have not complied with the conditions of sale permission?

Ans. It is true that M/s. Makewell had applied and obtained the sale permission. I do not agree that M/s. Makewell has not complied with the conditions."

Thus it appears that the witness of Petitioners accepted the factual position that M/s. Makewell Corporation had secured the permission.

57) Even otherwise, this Court has taken a view in *Balu Baburao Zarole* that permission under section 43 of the BTAL Act needs to be obtained at the time of execution of conveyance and not at the time of execution of agreement for sale. I therefore do not find any merit in the contention raised on behalf of the Petitioners with regard to the requirement of permission under section 43 of the BTAL Act.

CONSIDERATION OF UNSTAMPED DOCUMENTS

58) It is sought to be contended that the learned Arbitrator has taken into consideration inadequately stamped documents while awarding the claim of the Respondent. Here, it must be observed that though Petitioners have not specifically raised this ground in the Petition under the heading 'Grounds', the objection is repeatedly raised while referring to each of the documents executed in favor of the Respondent in paras-8 to 34. However, no specific issue with regard to permissibility to consider documents which were inadequately stamped was raised and there is no discussion in the Award on the said issue. There is reason behind this. As rightly pointed out by Mr. Madon, the learned Arbitrator was informed during the course of meeting held on 14 October 2021 that the Respondent was taking steps for adjudication of stamp duty on the Agreement dated 11 August 2010 and by paying requisite penalty. Mr. Madon has placed on record copy of Agreement dated 11 August 2010 on which stamp duty of

Rs.1,09,70,275/- and penalty of Rs.2,01,85,306/- is shown to have been paid. Mr. Madon submits that copy of the said receipts of payment of stamp duty and penalty were placed on record before the learned Arbitrator. This is a reason why the learned Arbitrator was not required to go into the issue of consideration of inadequately stamped documents. The objection in this regard is thus baseless, deserving outright rejection.

READINESS AND WILLINGNESS NOT DEALT BY ARBITRATOR

59) So far as the objection of not recording any findings on the aspect of readiness and willingness is concerned, no specific ground in this regard is raised by the Petitioners in the Petition. However, the said contention appears to be factually incorrect as there is some discussion by the Learned Arbitrator in para 36 (c) of the Award, while holding that Respondent had taken all steps to develop the property and that it never resiled from the Agreement dated 11 August 2010. It is held in para-36(c) of the Award as under :-

36.(c) As noted above, the Claimants has not resiled from Agreement dated 11th August, 2010, and they have in fact taken various steps to develop the property (as set out in para 8 above); and have produced documentary evidence supporting many of these events;

60) Therefore, the objection of non-recording of findings with regard to readiness and willingness is again found to be factually incorrect. It is also seen that the entire development on part of the suit property concerning Jai Ganesh SRA CHSL is complete. Apparently, the land on which other slum society (Sahayog Society) is located is also declared as slum under Section 3C of the Slum Act. Thus, the objection of readiness and willingness raised on behalf of the Petitioners is otherwise factually incorrect.

GRANT OF RELIEF INCAPABLE OF BEING GRANTED IN LAW

61) Though the ground of grant of relief by the learned Arbitrator which is incapable of being granted in law, is orally argued, the same is not pleaded in the Petition. It is also not elaborated during oral submissions. The Petitioners have not been able to even orally demonstrate as to how any relief granted by the learned Arbitrator is barred by any law. Therefore, the objection in this regard also deserves rejection.

CONCLUSION AND ORDER

62) Considering the overall conspectus of the case, I am of the view that the findings recorded by the learned Arbitrator after considering the documentary and oral evidence on record, cannot be termed as perverse. The learned Arbitrator has taken a plausible view that various documents executed in favor of Respondent are legally enforceable. The learned Arbitrator's view about non-requirement of permission under Section 36A of MLRC in the light of judgment of this Court in *Jai Ganesh SRA CHS* is also a plausible view. None of the findings recorded by the Arbitral Tribunal are in conflict with public policy. Thus, no case is made out exhibiting any patent illegality in the impugned Award. Consequently, I do not find any valid reason to interfere in the impugned award.

63) Consequently, the Arbitration Petition is **dismissed** without any imposing any further costs on the Petitioners.

[SANDEEP V. MARNE, J.]