



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5509/2024

- 1] Sunil Shripatrao Dhore,
Aged about 60 years,
Occupation- Agriculturist,
- 2] Chandrashekhar Shripatrao Dhore,
Aged about 52 years,
Occupation- Agriculturist,

All Nos.1 & 2 are R/o Near Rotary
Club, Gorewada, Vasti, Katol Road,
Nagpur-440013.
- 3] Smt. Pushpabai Hiralal Meshram,
Aged about 72 years,
Occupation- Agriculturist,
R/o Plot No.197, Near Jaripatka Bus
Stop, Bezonbagh, Nagpur-440004.
- 4] Smt. Indubai Manik Meshram,
Aged about 71 years,
Occupation- Agriculturist,
R/o Near Buddha Vihar, Bezonbagh
Bus Stop, Bezonbagh,
Nagpur-440004.

... PETITIONERS

...VERSUS...

- 1] Union of India,
The Secretary, Ministry of Shipping,
Road, Transport and Highways

Transport, Bhavan No.1, Parliament Street, New Delhi.

- 2] Additional Commissioner, Nagpur Division, Nagpur & The Arbitrator under National Highways Act, 1956, Commissionerate Building, Civil Lines, Nagpur
- 3] National Highway Authority of India, Ministry of Shipping, Road, Transport No.2, Shubhankar Apartments, Plot No.159, Ambazari Hill Top Bungalow, Ram Nagar, Nagpur.
- 4] The Deputy Collector, Land Acquisition (General), & Competent Authority, Collectorate, Nagpur.
- 5] Rupchand Shripatrao Dhore, Aged about 77 years, Occupation- Agriculturist,
- 6] Sudhir Shripatrao Dhore, Aged about 63 years, Occupation- Agriculturist,

Nos. 5 & 6 both R/o Near Rotary Club, Gorewada, Vasti, Katol Road, Nagpur-440013.

...RESPONDENTS

Shri A.M. Balpande, Advocate for petitioners.
Mr. H.D. Dubey, AGP for respondents/State.
Shri A.A. Kathane, Advocate for respondent No.3

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 07/02/2025

DATE OF PRONOUNCING THE JUDGMENT: 21/02/2025

JUDGMENT

. **Rule.** Rule made returnable forthwith.

2. Heard learned Counsel for the petitioners and learned Counsel for respondents. By consent of the parties matter is taken up for final hearing at the stage of admission.

3. Case of the petitioners is that they have file reference by Arbitration Case No. 54/ARB/2023, Mouza Bharathwada, T.S. No.12, Tahsil Nagpur, before the respondent No.2, under Section 3-G (5) of the National Highways Act ('N.H. Act' for brevity), for arbitration and enhancement of compensation granted in Land Acquisition Case No. 17/A-65/2015-16, the order dated 23/08/2017, in respect of Survey No. 134 area 0.5800 H.R. of village Bharatwada. The reference was filed along with application for condonation of delay. The petitioners challenge the order of acquisition by the respondent No. 4, for the construction of outer

ring road around Nagpur City Building, maintained, management and operation of National Highway on the stretch of land from 7.500 km to 61.800 km (Jamtha, Gondkhiri, Chincholi, Bharatwada, Nara, Bhilgaon, Pawangaon, Dhargaon Section), in Nagpur District, under the provisions of N.H. Act. The respondent No.4, determined the compensation under Section 3-G of the Act. As lower rates are given for acquired land, he received the compensation under the protest and decide to file this application for determination of value of the agriculture land. In the application for condonation of delay, the petitioners explained to cause 330 days of delay and submitted that due to pandemic and having no knowledge about the disposal of a reference, wherein for the same village Bharatwada, the compensation has been enhanced and after getting the knowledge, filed the reference with application for condonation of delay. The said application was rejected on 11/06/2024, observing that the reasons given in applications were not satisfactory. The said order is under challenge in the present petition.

4. Learned Counsel for respondent No. 3 raised

preliminary objection that there is remedy available to the petitioner under Arbitration and Conciliation Act('A and C Act' for brevity). It is submitted that present petition concerns enhancement of compensation for land acquired towards the building, operation and maintenance of National Highway, which is governed by N.H. Act. It is submitted that the petitioners had filed an application under Section 3-G(5) of the said Act for enhancement of compensation which was subsequently rejected by the respondent No. 2, acting as the Arbitrator and was being governed by the provisions of N.H. Act, 1956, and A and C Act, 1996. Thus, the order forming subject matter of the present petition having been passed during the course of arbitration proceedings, the appropriate remedy available to the petitioner is to approach the District Court of competent jurisdiction under Section 34 of the A and C Act. It is further submitted that the petitioners have an alternate and efficacious remedy under the relevant Act which has not been availed and as such, present petition is not maintainable under the writ jurisdiction of this Court.

5. The learned Counsel for respondent No. 3 relied on

judgment in *SBP and Company versus Patel Engineering Limited*, (2005) 8 SCC 618, wherein, Seven Judges Bench of the Hon'ble Apex Court, while considering the scope of judicial intervention by writ courts in arbitral proceedings was pleased to lay down certain principles and hold as follows :

"(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of section 37 of the Act or in terms of section 34 of the Act."

The Hon'ble Court in para 44 and 45 of its judgement was also pleased to hold that:

"It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will

still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

45. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under section 37 of the Act even at an earlier stage."

6. Learned Counsel for Respondent no. 3 also relied on ***Indian Farmers Fertilizers Co-operative Vs. Bhadra Products, (2018) 2 SCC 534***, wherein, paragraph No.18, the Hon'ble Apex Court observed as under :

"18. It may be noticed that Sections 16(1) to (4) are based on Article 16 of the UNCITR Model Law. The Kompetenz principle deals with the Arbitral Tribunal's jurisdiction in narrow sense of ruling on objections with respect to the existence or validity of arbitration agreement. What is important to notice in the language of Section 16(1) is fact that the Arbitral Tribunal may rule on its own jurisdiction, which makes it clear that it refers to whether the Arbitral Tribunal may embark upon an inquiry into the issues raised by the parties to the

dispute.

24. *Interestingly, in a separate concurring Judgment, P.K. Balasubramanyan, J., held*

(NTPC case, SCC pp. 463-64, paras 17-19)

17. *In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In **Pandurang Dhondi Chougule v. Maruti Hari Jadhav** this Court observed that: (SCR p. 107: AIR p. 155, para 10)*

10. *It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code."*

In a particular sense, therefore, any declining to go into the merits of a claim could be said to be a case of refusal to exercise jurisdiction.

18. *The expression "jurisdiction" is a word of many hues. Its colour is to be discerned from the setting in which it is used. When we look at Section 16 of the Act, we find that the said provision is one, which deals with the competence of the Arbitral Tribunal to rule on its own jurisdiction. Under sub-section(6), a party aggrieved by such an arbitral award may make an application for setting aside such arbitral award in accordance with Section 34. It is in the context of*

*the various sub-sections of Section 16 that one has to understand the content of the expression "Jurisdiction" and the scope of the appeal provision. In a case where the Arbitral Tribunal proceeds to pass an award after overruling the objection relating to jurisdiction, it is clear from sub-section (6) of Section 16 that the parties have to resort to Section 34 of the Act to get rid of that award, if possible. But, if the Tribunal declines jurisdiction or declines to pass an award and dismisses the arbitral proceedings, the party aggrieved is not without a remedy. Section 37(2) deals with such a situation. Where the plea of absence of jurisdiction or a claim being in excess of jurisdiction is accepted by the Arbitral Tribunal and it refuses to go into the merits of the claim by declining jurisdiction, a direct appeal is provided. **In the context of Section 16 and the specific wordings of Section 37(2)(a) of the Act, it would be appropriate to hold that what is made directly appealable by Section 37(2)(a) of the Act is only an acceptance of a plea of absence of Jurisdiction, or of excessive exercise of jurisdiction and the refusal to proceed further either wholly or partly.***

27. Likewise, in Hari Prasad Mulshanker Trivedi v. V.B. Raju, a Constitution Bench of this Court again referred to the blurring of lines between errors of law and errors of jurisdiction found in Anisminick as follows: (Hari Prasad case, SCC pp. 423-24, para 28)

"28.The difficulty has arisen, because the word "jurisdiction" is an expression which is used in a variety of senses and takes its colour from its context. Whereas the "pure" theory of jurisdiction would reduce jurisdictional control to a vanishing point, the adoption of a narrower meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmetry."

7. The Hon'ble Apex Court lastly observed that :

“30.Having said this, we are of the view that Parliament may consider amending Section 34 of the Act so as to consolidate all Interim awards together with the final arbitral award, so that one challenge under Section 34 can be made after delivery of the final arbitral award. Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense.”

8. In *Indian Farmers Fertilizers Co-operation Limited* (*supra*), the facts were different. In the said matter before the Hon'ble Apex Court, wherein, the Arbitral Tribunal rejected the plea of limitation prior to rendering of award on other issues.

“15. Tested in the light of the statutory provisions and the case law cited above, it is clear that as the learned arbitrator has disposed of one matter between the parties i.e. the Issue of limitation finally, the award dated 23-7-2015 is an "Interim award" within the meaning of Section 2(1)(c) of the Act and being subsumed within the expression "arbitral award" could, therefore, have been challenged under Section 34 of the Act.”

As such, issues were framed after arbitration is taken up and by consent of parties issue of limitation taken up first to be adjudicated before other issues to be adjudicated.

9. Learned Counsel for respondent also relied on

judgment of Karnataka High Court in *T. Younis versus National Highways Authority of India and others*, ILR 2013 KAR 124, in support of his contention that as there is no specific period of limitation is provided for filing an application under Section 3-G(5) of the N.H. Act, Article 137 of the Limitation Act applies and accordingly application will have to be filed within 3 years from the date when the right to apply accrued to the applicant. In the said matter, Competent Authority held that the application filed under Section 3-G(5) of the N.H. Act was within the period of limitation and refused to interfere in the order.

10. Learned Counsel also relied on *Aptec Advanced Protective Technologies AG Vs. Union of India*, 2025 SCC Online Del 92, however, in my considered opinion, this citation is of no help to the respondents as there were four applications were decided by the Arbitrator, though it is observed that decision on the four applications is not a decision on the merit of the disputes pending in arbitration. However, considering the impugned decision, the Court has held that it creates an impression that the learned Arbitrator has expressed a final view as regards the quality

of the crampons and their compatibility with the boots, to allay any apprehension that the petitioner may entertain in that behalf.

“12. The A&C Act itself does not give us much guidance on the issue in hand. Section 2(1)(c) of the A&C Act states that the term 'arbitral award' shall include an interim Award, however, the A&C Act has not defined an interim Award.”

11. The arbitration was already commenced and counter claim was also filed, thereafter, point of limitation was raised. The learned Counsel for petitioner relied on ***State of H.P. and others versus Gujarat Ambuja Cement Limited and another, (2005) 6 SCC 499***, wherein, in the Hon'ble Apex Court held in paragraph No. 17 as under :

“17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious

alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.”

“22. There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.”

12. On perusal of Section 34 of the Arbitration and Conciliation Act, recourse to a Court against an Arbitral award may be made only by an application for setting aside such award in accordance with Sub Section 2 and sub Section 3. In both the Sections 2 and 3, there has to be final award as mentioned in Sub Section 2 and 3. So far as Section 37, is concerned those are appealable orders. So far as Sub Section 1 of Section 37 is concerned, it has no application in the present matter. Section 37,

sub Section 2, sub Clause (a) refers to the Sub Section 2 and sub Section 3 of Section 16. For the sake of convenience Section 37(2) (a) and Section 16(2) and 16(3) of the Arbitration and Conciliation Act are reproduced below :

“37. Appealable orders.-

(1)

(a).....

(b)

(c).....

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal-

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

16. Competence of arbitral tribunal to rule on its jurisdiction -

(1).....

(a)

(b).....

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”

Sub Section 2 speaks about a plea that the Arbitral Tribunal does not have jurisdiction and Sub Section 3 speaks about

a plea that the Arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond his scope of its authority is raised during the arbitral proceedings. Thus, these two provisions simply make it clear that they are not applicable in the present set of facts, those objections to be raised during the proceeding of arbitration. Neither remedy under Section 34 is available nor under Section 37 of the Arbitration Act.

13. In my considered opinion, in view of ***Sureshchandra Madeshchandra Agrawal versus Secretary to Government of India New Delhi and others 2019(4) Mh.L.J. 754***, it is permissible for this Court to exercise power under Section 226 and 227 of the Constitution of India to correct the error. The availability of alternate remedy cannot by itself be a bar to exercise of such powers. The existence of alternate remedy as a ground for not entertaining a writ petition is a self imposed restriction by the High Court and it is more a rule of policy and certainly not a rule of law. As referred above, in fact, there is no alternate remedy available under A and C Act, when the arbitrator refused to exercise its jurisdiction. In such circumstances, the High Court can exercise writ

jurisdiction. The same is held in *State of H.P versus Gujarat Ambuja Cement Ltd.* (supra). Thus, refusal of exercise jurisdiction on the ground of limitation, can only be challenged under Article 227 of the Constitution of India only before this Court.

14. So far as the order passed by the learned Arbitrator rejecting the application for limitation is concerned, admittedly, there is delay however, it is explained by the petitioner in application.

15. Learned Counsel for petitioner relied on various judgments, wherein, huge delay of even 22 years is condoned. He relied on *IN RE: Cognizance for Extension of Limitation, 2022(1) Mh.L.J. 711*, wherein, Hon'ble Apex Court considered extension of limitation due to outbreak of Covid - 19 pandemic. It is observed that difficulties faced by the litigants in filing petitions, applications, suits, appeals all other quasi judicial proceedings within a period of limitation prescribed under general law of limitation or under any special law, keeping in view impact of surge of virus on public health and adversities faced by the litigants in prevailing condition.

The Hon'ble Apex Court held that period from 15/03/2020 till 28/02/2022, stand excluded for purposes of limitation in respect of all judicial or quasi judicial proceedings. Learned Counsel for petitioners also relied on Arbitration Award passed in Arbitration Case No.227/ARB/2017-18 Mouza Bharatwada, wherein, similarly situated applicants were granted enhanced amount and claimed that he is also entitled for same.

16. Learned Counsel for the petitioners also relied on ***Dhiraj Singh (D) Tr. Lrd. Etc. Etc. Versus Haryana State and Ors. Etc. Etc., 2014 (14) SCC 127***, wherein, the Hon'ble Apex Court held in paragraph Nos. 15 and 16 as under :

"15. Equities can be balanced by denying the appellants' Interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic.

*16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in **Collector(LA) v. Katiji, 1987(2) SCC 107**, where it is stated in para 3 as under:-*

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian

Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

17. Learned Counsel for petitioner relied on ***Imrat Lal and others versus Land Acquisition Collector and others, 2015(1) SCC (Civil) 242***, wherein, Hon'ble Apex Court taken judicial note of the fact as under :

"13. We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co- villagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.

14. In 2015(2) RCR (Civil) 441: Civil Appeal Nos. 5335-

5336 of 2013 titled Samiyathal and others v. Special Tahsildar and others decided on 5.7.2013, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation. The relevant portion of the judgment passed in that case is extracted below:

"We further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other landowners whose land was acquired by notification dated 22.05.1991, but who may have on account of ignorance poverty and other similar handicaps, not been able to approach the Reference Court or may not have been able to contest the matter before the High Court and this Court. The needful be done in respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article 142 of the Constitution."

18. In my considered opinion, the petitioners herein have explained the delay, moreover, he submitted that he is ready to waive the interest on compensation as well as on statutory compensation for the delayed period. In view of **Imart Lal** (supra), it would be appropriate to allow the application for condonation of delay with condition that applicant shall not claim any interest on delayed period on compensation as well as on statutory

compensation from the passing of award till filing of application.
The preliminary objection about alternate remedy is hereby rejected.

19. Petition is allowed in the above terms. No orders as to costs.

(SMT. M.S. JAWALKAR, J.)

Jayashree..