2020:APHC:33297

HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE FIRST DAY OF MAY

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

CIVIL MISCELLANEOUS APPEAL NO: 987 OF 2008

Between:

1. KURRA VENKATESWARA RAO, KANCHIKACHERLA (M), KRISHNA DIST S/o. Venkata Narsaiah
R/o. Kanchikacherla Village,
Kanchikacherla Mandal,
Krishna District.

...PETITIONER(S)

AND:

1. COMPETENT AUTHORITY, LA & MANAGER-II, VIJAYWADA-KRISHNA DIST National High Way Authority of India,rep by Project Director
Project Implementation Unit,
Gurunanak Nagar,
Vijayawada-8,

...RESPONDENTS

Counsel for the Petitioner(s): P PRABHAKAR RAO

Counsel for the Respondents: S RAM BABU

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE BATTU DEVANAND

C.M.A. No. 987, 988, 989, 990, 991, 992 993 & 1014 of 2008

COMMON JUDGMENT: (*Per Hon'ble Sri Justice C.Praveen Kumar)*

1) The Central Government proposed to improve NH-9 by strengthening and widening the existing two lane road to four lane road between Nandigama and Ibrahimpatnam under BOT agreement between NHAI and CIDBI Inventures SDN BHD (Malaysia). Accordingly, the Manager II, P.I.U., N.H.A.I., Vijayawada, was appointed as the competent authority for land acquisition vide Notification No. 692(E), dt: 20-07-2001 published in Gazette No. 495, dt: 20-07-2001. (The Notification under Section 3A(1) of National Highway Act, 1956 ['**N.H. Act**'] was published on 17-05-2002).

2) The Government of India, Ministry of Road Transport and Highway, in exercise of its powers conferred under Sub-section (1) of Section 3(A) of N.H. Act, 1956 gave notice to acquire lands, in Nandigama, Kanchikacharla town and Paritala villages vide Notification dt: 17-05-2002 in E.O. Gazette of India, issue no. 446, dt: 17-05-2002. The notification for acquisition of land to an extent of 2,71.136 sq. mts. in Kanchikacharla village were to be acquired for widening N.H.9, i.e., for formation of bypass road at the said village. The same came to published in leading newspapers on 26-05-2002.

3) Two objection petitions were received in the office within the stipulated period. After issuing notice as required under Sec. 3C(2) of the N.H. Act, to the objectors and after conducting an enquiry, the same were disposed off on 4-7-2002 and a detailed report was also submitted.

4) Proposals were sent to the Government, as contemplated under 3D(1) and 3D(2) of the Act, pursuant to which the Government of India in its notification dt. 8-11-2002 declared that the lands specified in the schedule shall vest absolutely with the central government free from all encumbrances .

5) As required under Section 3G(3) of the Act, a public notice was issued on 15-11-2002, calling for objections from aggrieved persons whose lands were sought to be acquired. Apart from publishing the public notice in local dailies, notices were also served on land holders. Accordingly, the competent authority conducted an enquiry and after verification of the sale transactions, an award came to be passed on 4-4-2003, dividing the land, sought to be acquired (running to 4 kms) into four stretches. The details of which are as under:-

PART I		
Kanchikacharla Widening of NH-9 road starting on - LHS from RS. No. 2 up to 281 and on RHS from RS No. 38 and up to RS No. 267/2A one stretch.	-	Rs.62,500/- Per acre Or Rs.15.45 per sq mts.
PART II		
The RHS starting from RS No. 298 up to RS No. 303 and RHS starting from RS No. 267/3A and up to 277 one stretch.	-	Rs.80,000/- per Ac. Or Rs.19.75 per Sq Mtr.

PART III

By pass road starting from RS No. 476 and upto Rs No. 550 one stretch.	- Rs.2,45,556/- per Ac. Or Rs.60.70 per Sq mts.

PART IV

By pass road starting from RS No. 636/B upto RS. No.705 limits of Paritala village.	- Rs.61,400/- per Ac. Or Rs.15.20 per Sq Mts.

6) Assailing the same, a reference seeking enhancement of compensation was made under Sec. 3(g), 5 and 7 of N.H.A.I. Act, 1927, before the Collector, who is the Arbitration Authority, to deal with cases under Sec. 3 and 5 of National Highway Act, as envisaged in Government Memo, dt: 4-1-2001. By its Award dt: 3-7-2006 the Arbitrator/District Collector, dismissed the reference made for enhancement of compensation.

7) Challenging the award dt: 3-7-2006, the claimants preferred a petition/appeal under Sec. 34 of Arbitration and Conciliation Act, 1996 which came to be rejected on the ground that the court cannot go into question of fact, having regard to the limitations prescribed in Sec. 34 of the Act and that the claimants failed to show any of the grounds, referred to in Sec. 34 of Arbitration and Conciliation Act.

8) Hence, the present appeals came to be filed under Sec. 37 of the Arbitration and Conciliation Act.

9) Sri. P. Prabhakar, the learned counsel representing the claimants in all these appeals, would contend that, the competent authority grossly erred in not taking the market value

of the land at Rs.1,00,000/- per acre, having observed that (1) the prevailing rate of land in this part ranges from Rs.75,000/- to Rs.1,00,000/- per acre, and (2) that the lands are abutting NH9 and have potential value. He would further contend that, the competent authority should have fixed the market value of the land at Rs.1,95,000/- per acre in sale no. 5/2000 as the land was purchased for installation of petrol bunk which is for commercial purpose. As the sale was of the year 2000, it cannot be said the transaction made was to boost the value of the land, more so when the authority himself observed that the prevailing rate of the land in this part ranges from Rs.75,000/- to Rs.1,00,000/-. He further contends that, the competent authority is not correct in ignoring the sale in R.S. No. 551 [wrongly typed as 550/1] for Rs.3,96,000/- per acre and the reasoning given in this regard is not legally sustainable, so also in respect of other small bits of land. According to him, the competent authority ought to have given the rate covered by Part-III, if not more, as the part-III rates are given till the end of Sy. No. 540 which is just abutting the land in Sy. No. 635, 636 in part-IV. Further, fixing different rates between part-III and part-IV is not only artificial but also arbitrary. The land in part-III ends with Sy. No. 540 and 546 from where the land in part-IV begins with Sy. No. 636 and 635, with the continuation of the land in other Survey Numbers. He further contends that, when expansion of the NH9 and bypass were undertaken during the year 2008, by its award no. 4/2008 dated 1.5.2008, a uniform rate of Rs.239 per sq. mtr. was fixed for the land acquired

throughout the length of all the stretches without dividing into parts. Further, the competent authority and arbitrator committed a grave error in not taking note of Section 3G(7) of the National Highways Act, 1956 in fixing the compensation for the acquired land from the total extent of land.

10) On the other hand, Sri S.S.Verma, the learned Standing Counsel for NHAI would submit that in view of the recent Judgment of the Apex Court in ***MMTC V. Vedanta Limited***[1], interference under Sec. 37 cannot travel beyond Sec. 34 and that this Court cannot appreciate independently the merits of the award and must only ascertain that the exercise of power by the Court under Sec. 34 of the Act has not exceeded its jurisdiction.

11) The issues, that arises for consideration are:-

i. *Whether the High Court in exercise of its power under Sec. 37 of Act can re-appreciate the evidence or look into the aspect of determining the quantum of compensation?*

ii. *Whether the same yard-stick as applicable to commercial transaction be extended to land acquisition matters?*

12) Before proceeding further it would be apt to extract Sec. 34 and Sec. 37 of Arbitration and Conciliation Act, 1996, which are as under:-

[1] 2019 (2) ALT 53

"Section 34 - Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

***1**[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--*

(i) the making of the award was inducted or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian Law; or

(iii) it is in conflict with the most basic notions of morality or justice.]

***1**[Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]*

***2**[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or be re-appreciation of evidence.]

1[Subs. by Act 3 of 2016, sec.18(I), for the Explanation (w.r.e.f. 23-10-2015). The Explanation, before substitution, stood as under :

"Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81."]

2[Ins. by Act 3 of 2016, sec.18(II) (w.r.e.f. 23-10-2015)]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Section 37** - **Appealable orders.—

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

***2**[(a) refusing to refer the parties to arbitration under section 8;*

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

2 [Subs. by Act 3 of 2016, sec.20, for clauses (a) and (b) (w.r.e.f. 23-10-2015). Clauses (a) and (b), before substitution stood as under :
(a) granting or refusing to grant any measure under section 9;
(b) setting aside or refusing to set aside an arbitral award under section 34."

(2) *An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—*

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

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

13) The first question which falls for consideration is the scope of Section 34 of the Act vis-à-vis the provision of National Highway Authorities Act. In order to deal with the same, it would be useful to refer to the law laid by the Apex Court with regard to the scope and applicability of Section 34 of the Act. It is to be noted here that interference under Section 37 of the Act cannot travel beyond the restrictions laid down under Section 34.

14) The Hon'ble Supreme Court in the case of **Swan Gold Mining Limited Vs. Hindustan Copper Limited**[2] , in paragraph 12 of the judgment held as under:

> *"12. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the face of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Court would be erroneous or illegal."*

15. In **M/s.Navodaya Mass Entertainment Vs. M/s. J.M.Combines**[3], the Hon'ble Apex Court again reiterated that

[2] (2015) 5 SCC 739
[3] (2015) 5 SCC 698

the scope of interference by the Court under Section 34 of the Act is very limited and the Court is not justified in re-appraising the material on record and substitute its own view in place of the arbitrators view. The relevant portion of the judgment is as below:

> *"In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot re-appraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. (See:* ***Bharat Coking Coal Ltd. Vs. L.K. Ahuja****, (2004) 5 SCC 109;* ***Ravindra & Associates Vs. Union of India****, (2010) 1 SCC 80;* ***Madnani Construction Corporation Private Limited Vs. Union of India & Ors****., (2010) 1 SCC 549;* ***Associated Construction Vs. Pawanhans Helicopters Limited****, (2008) 16 SCC 128; and* ***Satna Stone & Lime Company Ltd. Vs. Union of India & Anr****., (2008) 14 SCC 785)."*

16. The Kolkota High Court in **National Highways Authority of India Vs. Gammon India Limited**[4] held that while exercising jurisdiction under Section 34 of the Act, the Court does not sit as a court of appeal and the Arbitral Tribunal is the final adjudicator of the facts and evidence adduced before it. Paragraph 28 of the judgment is quoted below for ready reference:

> *"(28) We have heard the learned Counsel for the parties at length. Detailed submission was made on the merits of the disputes*

[4] AIR 2015 (NOC) 1214 (CAL)

between the parties. Although we did not stop the learned Counsel from making their submission, we do not think that the same is very germane since this Court while exercising jurisdiction under Section 34 of the 1996 Act does not sit as the Court of appeal. It is settled law that the Arbitral Tribunal is the final adjudicator of the facts and evidence adduced before it. We do not find any perversity or anything contrary to public policy or the law of the land in the award. The view taken by the Arbitral Tribunal is a plausible view and just because the Court may have a different view, the arbitral award should not be interfered with Under Section 34 of the 1996 Act. The scope of Section 34 is very limited and advisedly so. When two commercial parties agreed to have their disputes resolved through arbitration reference, they should be bound by the award of the Arbitral Tribunal unless, of course, rules of natural justice have been breached or there is something so shocking in the award staring at the face of the court that would prompt the Court to interfere. We find nothing like that in the instant case".

17) In ***M/s. Sumitomo Heavy Industries Ltd vs Oil & Natural Gas Company***[5] the Hon'ble Apex Court in paragraph 36, held as under:-

"As held by this Court in ***Kwality Manufacturing Corporation versus Central Warehousing Corporation*** *reported in (2009) 5 SCC 142, the court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding".*

18) In ***Oil & Natural Gas Corpn.Ltd vs Western Geco International Ltd***[6]**,** a Three Judge Bench of the Hon'ble Apex Court held as follows:-

[5] 2010 (11) SCC 296

"24. We may at this stage deal with the contention urged on behalf of the respondent that the jurisdiction of the Court to set aside an arbitral award being limited to grounds set out in Section 34 of the Arbitration and Conciliation Act, 1996, this Court ought not to interfere with the same. It was contended that none of the grounds on which a Court is authorised to interfere with an arbitral award are present in the case at hand. Alternatively, it was contended that even if a contrary view is possible on the facts proved before the Arbitral Tribunal, the Court cannot, in the absence of any compelling reason, interfere with the view taken by the Arbitrators as if it was sitting in appeal over the award made by the Tribunal.

27. The view taken by Lord Reid was relied upon by a Constitution Bench of this Court in ***A.C. Companies Ltd vs. P.N. Sharma and Anr****. (AIR 1965 SC 1595) where Gajendragadkar, C.J. speaking for the Court observed:*

"In other words, according to Lord Reid's judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the watch committee had been authorised to reach under S.191(4). It would thus be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of writ jurisdiction has been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under A. 226 of our Constitution, the test prescribed by Lord Reid in this judgment may afford considerable assistance."

29. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a Court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury's principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a Court of law often in writ jurisdiction of the Superior courts but no less in statutory processes where ever the same are available."

19) In ***Vedanta Limited*** case, the Apex Court observed as under:-

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[6] AIR 2015 SC 363

"10. Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the 1996 Act"). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.

11. As far as Section 34 is concerned, the position is wellsettled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii), i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)

(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

12. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings".

20) A reading of the judgment in ***Vedanta Limited's case*** would show that under Section 34 of the Act, review is limited to situations where the findings of the arbitrator are arbitratory, capricious or perverse or when the conscious of the court is shocked or where the illegality goes to the root of the matter. Apart from that, the court has also held that an arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (Emphasis supplied by the court)

Further, referring to Sub-Section 2(b)(ii) to Section 34 the Court held that in domestic arbitration, violation of Indian Public Policy also includes patent illegality appearing on the face of the award and the award cannot be set aside on the ground of erroneous application of law or by re-appreciation of evidence.

21) Dealing with the expression "public policy" contained in Section 34(2) (b)(ii) of the Arbitration Act, 1996, the Apex Court in ***ONGC Ltd. v. Saw Pipes Ltd.***[7], after referring to ***Renusagar's case***, held as under :

> "31. Therefore, in our view, the phrase 'Public Policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar's case (supra) it is required to be held that the award could be set aside if it is patently illegal. The result would be--award could be set aside if it is contrary to:
>
> (a) fundamental policy of Indian law; or
>
> (b) the interest of India; or
>
> (c) justice or morality, or
>
> (d) in addition, if it is patently illegal.
>
> Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such

[7] (2003) 5 SCC 705

award is opposed to public policy and is required to be adjudged void."

22) In ***Associate Builders vs. Delhi Development Authority***[8], the Hon'ble Apex Court held that, none of the grounds contained in sub- clause 2 (a) deal with the merits of the decision rendered by an arbitral award, and it is only when the award is in conflict with the public policy of India that merits of arbitral award are to be looked into under certain specified circumstances.

23) All the judgments referred to above deal with scope of interference of Court under Section 34 of the Arbitration and Conciliation Act. But, one important aspect that is to be noted is that the disputes involved in all the cases referred to above, are commercial disputes where two commercial parties agreed to have their dispute resolved through arbitral reference. Even in those cases, the Apex Court held that interference under Section 34 is warranted where the findings of the Arbitrator are perverse; shocks the conscious of the Court; where it goes to the root of the matter; and when the Award is in conflict with the public policy of this country.

24) The question now is whether the Court, in the given set of circumstances, can modify the Award?

25) Unlike the Arbitration Act of 1940, the jurisdiction of the Court to interfere with an arbitral award is now statutorily restricted by certain well defined parameters stipulated in

[8] (2015) 3 SCC 49

Section 34. Under Section 30 of 1940 Act, an Award can be set aside when (i) an Arbitrator or umpire has misconducted himself or misconducted the arbitral proceedings; (ii) an Award was made after the Court had superseded the arbitration after the arbitration proceedings had become invalid; and (iii) an award had been improperly procured or otherwise invalid. But, under 1996 Act an arbitration award can be set aside in terms of Section 34(2)(a), if the party approaching the court furnishes proof that anyone of the five contingencies stipulated in clauses I to V thereunder exist. Alternatively, the Award will be set aside in terms of Section 34(2)(b) if the court finds :- (i) that the subject matter of dispute is not capable of settlement by arbitration under the law for the time being in force; or (ii) that the arbitral award is in conflict with public policy of India.

26) Further, it is to be noted that Section 34(1) of the Act provides that recourse to an act against an arbitral award may be made only by an application for setting aside of such award in accordance with sub-section (2) and sub-section (3). In view of the expression so used under sub-section (1), the other sub-sections used only the expression “set aside by court”. There is no reference to the expressions “modify”, “revise”, “reference” or “vary”. Under Section 15 of the Arbitration Act, 1940 the Court was conferred with the power to modify or correct an award subject to restrictions contained in clauses (a), (b) and (c). But, the 1996 Act, which followed the UNCITRAL model law, does not contain a provision similar to Section 15 of the 1940 Act.

Section 34 (1) is a replica of Article 34(1) of UNCITRAL Model Law, which only speaks about setting aside of the Award.

27) The question here is with regard to modification of the Award. Petitioners herein are not questioning the very passing of the Award, but they are seeking modification of the Award. In other words, petitioners, who are agricultural ryots, are not satisfied with the quantum of compensation awarded by the authorities when their lands were acquired by the State for widening the highway. These lands, as stated earlier, were compulsorily acquired from poor agriculturists for laying a highway, thereby denying them their property and also their livelihood. Under those circumstances, can it be said that the Award of the Arbitrator even if passed ignoring the basic principles, or contrary to public policy, or passed to the whims and fancies of the authorities without adopting any uniform methods, should remain untouched. In other words, whether the remedy under Section 34 Clause-(5) be curtailed to within the scope of Section 34(2) of the Act. As observed by the Division Bench of the Tamilnadu High Court in ***Gayatri Balaswamy's case***, should the Courts be a mute spectators when lands of poor ryots are acquired by paying a paltry amount as compensation on the ground that the scope under Section 34 is very limited.

28) The expression "recourse to a court against an arbitral award" is a comprehensive and inclusive expression and it cannot be construed that the power of the Court is limited only

to set aside the award and leave the parties in a position much worse than what was contemplated or deserved before commencement of the arbitral proceedings. Therefore, we hold that the expression "recourse to a court against an arbitral award" appearing in Section 34(1) cannot be construed to mean only a right to seek set aside of an award; it could be either for setting aside or for modifying or for enhancing or for varying the award. This view of ours gets support from the Division Bench Judgment of the Madras High Court in the case of ***Project Director, Madurai v. M.Vijayalakshmi and Ors.*** [9], wherein, it has been held that the right to have a re-course to a Court is a substantial right and the right is not liable to be curtailed by the form in which the right has to be enforced or exercised. Apart from that, as observed, the power given to the Court under Section 34 is only supervisory in nature, which is somewhat similar to Section 115 of C.P.C., meaning thereby, the Court can vary or revise the Award if need be in the circumstances of the case.

29) The Apex Court dealt with the aspect of modification, in the case of ***Gautam Constructions and Fishers Limited v. National Bank for Agricultural and Rural Development*** [10] , wherein the parties entered into an agreement for sale and purchase of office accommodation in respect of built up area of 48,000 square feet at the rate of 400 per square feet. The transaction was governed by two agreements one of which

[9] MANU/TN/1404/2020
[10] (2000) 6 SCC 519

prescribed the rate of Rs.250/- per square feet, another relating to amenities at Rs.150/- per square feet. Dispute arose between the parties and the matter was referred to arbitration. The Arbitrator allowed Rs.400/- per square feet and interest at 18% per annum. A petition was filed under 1940 Act to make the award a rule of the Court. The award debtor filed a petition for setting aside the same. The learned single Judge of Madras High Court upheld the claim for a rate of Rs.400/- per square feet modifying the interest part. The Division Bench reversed the same and reduced the rate to Rs.150/- per square feet and also the rate of interest. When the matter was taken on appeal to the Supreme Court, the Hon'ble Supreme Court fixed the rate at Rs.250/- per square feet. As observed by the Madras High Court in ***Ms.G. v. Isg Novasoft Technologies*** (Original Petition No. 463/2012) decided on 2/9/2014, the modification in ***Gautam Constructions and Fishers Limited's case***, was not the one covered by Clauses (a), (b) or (c) of Section 15 of the 1940 Act.

30) In ***Tata Hydro Electric Power Supply Co. Ltd. v. Union of India***[11], a dispute arose out of an agreement between the appellant Company and the Union of India, for supply of electric power on railway tracks which was referred to arbitration. The Arbitrator awarded a sum of Rs.4.00 Crores to the claimant, payable with interest at 12% per annum. The petition filed by the Union of India under Section 34 was allowed by a learned

[11] [2003 (4) SCC 172]

Judge and the award was set aside, on the ground that the dispute could be resolved only under Section 26 of the Indian Electricity Act, 1910 and not through private arbitration. The Division Bench confirmed the said view and Tata Hydro Electric Power Supply Co. Ltd., took the matter in appeal to the Supreme Court. After holding that the dispute was not covered by Section 26 of the Special Enactment, the Supreme Court reversed the judgments of the High Court. Consequently, the award passed by the Arbitrator was upheld. However, the Hon'ble Supreme Court modified the order, restricting interest only from the date of the award and not from the date of submission of bills. This case arose only under the 1996 Act. Though in this case also, the question relating to the power of the Court to modify the award was not specifically addressed, it is a matter of fact that the award was in fact modified by the Hon'ble Supreme Court.

31) The issue in ***Hindustan Zinc Limited v. Friends Coal Carbonisation*** [12] pertains to a contract for the sale and supply of metallurgical coke. The award passed by the Arbitrator was modified by the District Court. In the appeal filed under Section 37 of the Act, the same was allowed upholding the award in its entirety. On challenge, the Hon'ble Supreme Court set aside the order of the High Court and restored the judgment of the trial court. In the said case, the Hon'ble Supreme Court did not specifically address the issue as to whether the Court has got

[12] 2006 (4) SCC 445

power to modify the award. But, however, affixed a seal of approval on the decision of the trial court modifying the award.

32) At this stage, it would be appropriate to refer to the judgment of the Apex Court in ***Mc Dermott International Inc. v. Burn Standard Co. Ltd.***[13] wherein the Supreme Court was dealing with a challenge to various partial/interim awards as well as a final award passed by the Arbitrator, appointed by the Supreme Court. The Arbitrator in that case first passed a partial award. Thereafter, applications under Section 33 of the 1996 Act were filed on the ground that certain claims had not been dealt with by the Arbitrator in his partial award. Though a preliminary objection was raised with regard to the entitlement to pass a partial award, the Arbitrator passed an additional award. It was only thereafter that an application under Section 34 was filed questioning both the partial award and the additional award. During the pendency of the application, a final award was also passed and an application challenging the same under Section 34 was filed. Several questions arose before the Supreme Court, including the question as to whether a partial award is permissible in law. Taking note of the radical departure made in the 1996 Act from the 1940 Act, the Supreme Court observed in paragraph 52 as follows:

> *"The 1996 Act makes provision for the supervisory role of Courts, for the review of the arbitral award only to ensure fairness. Intervention of the Court is envisaged in few circumstances only like in case of fraud or bias by the arbitrators, violation of natural justice etc. The Court cannot correct errors of arbitrators. It can only quash the award leaving the*

[13] 2006 (11) SCC 181

parties free to begin the arbitration again if it is desired. So the scheme of the provision aims at keeping the supervisory role of the Court at minimum level and this can be justified as the parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

33) It is also to be noted here that in ***Krishna Bhagya Jala Nigam Ltd. vs. G.Harischandra Reddy*** [14] the Hon'ble Apex Court modified the award. Similarly, the Bombay High Court in ***Union of India vs. Artic India*** [15] and High Court of Delhi in ***Union of India vs. Modern Laminators*** [16] modified the Award passed by the Arbitration. From the judgments of the Apex Court, referred to earlier in the previous paragraphs, it is clear that the Apex Court did not deal with expression "set aside" appearing in Section 34, but still modified the order. Even in ***Mc Dermott International Inc.'s case*** the said issue was not dealt with and the judgment did not give any interpretation to the expression "set aside" appearing in Section 34.

34) From the various decisions of the Supreme Court and of the different High Courts, the judicial trend appears to favour interpretation that would read into Section 34, a power to modify, or revise or vary the award. This view also gets support not only from the judgment of the Single Judge of Madras High Court in ***Ms.G. v. Isg Novasoft Technologies's case***, but also from the two Division Bench judgments of the High Court in

[14] AIR 2007 SC 817
[15] (2007) 4 Arb. L.R. 524 (Bom)
[16] (2008) Arb. L.R. 489 (Del)

Project Director, Madurai's case and ***Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.*** [17].

35) Now, coming to the issue of public policy of India, in so far as acquisition of land is concerned, the same is for the benefit of the person who is losing the land, especially in rural areas. This being a beneficial legislation, the court would normally see that the loser of the land would get just and reasonable amount as compensation, basing on the law existing and the guidelines issued from time to time.

36) The doctrine of eminent domain empowers the sovereign to acquire land for public use. The 44th amendment, which took away right to property, ensured that right to property is no longer a fundamental right, but rather a constitutional/legal right and in the event of breach, the remedy is to seek compensation at the market value. The word compensation deployed in Article 31(2) implies full compensation, that is the market value of the property at the time of acquisition. It should be equivalent to what the owner has been deprived of. In ***State of Maharastra v. Chandrabhan Tale*** [18] Justice O.Cinnappa Reddy speaking for the bench observed that fundamental right to property has been abolished because of its incompatibility with the goals of 'justice', social, economic and political' and 'equality of status and of opportunity' and with the establishment of 'a socialist democratic republic'. Therefore, the

[17] MANU/TN/2293/2014
[18] 1983 AIR 803

displaced persons have to be compensated to the extent they are entitled to, for which we feel that a check over the orders passed by the arbitrator, who is the 'District Collector', is required, having regard to Article 300A of the Constitution and the policy of the country.

37) In view of the above findings, it is now to be seen whether the findings arrived at by the Arbitrator requires any modification or whether the said findings are opposed to public policy.

38) Before proceeding further, it would be appropriate to note that the lands were compulsorily acquired from the agricultural ryots, for extending the highway. In other words, the cases which we are dealing with relate to compulsory acquisition of land, by which a person is deprived of his property and livelihood. Compulsory acquisition of lands came to be made under the provisions of National Highway Act, 1956. Prior to this Act came into force, the acquisition of lands were made under Land Acquisition Act, 1894. By virtue of Act 16 of 1997, Section 3 of N.H. Act stood substituted with Section 3A – giving power to acquire the land. Section 3B to 3J deal with various steps to be taken for acquisition of the lands. Section 3C - hearing of objections, 3D - declaration of acquisition, 3E - power to take possession, 3F - right to enter into land where land has vested with the Central Government, 3G - determination of amount payable as compensation, 3H - deposit and payment of amount, 3I - competent authority to have certain powers of civil

court and 3J - Land Acquisition Act 1 of 1894 do not apply. Therefore, the acquisition of lands under the National Highway Act are to be made in consonance with Section 3A to 3H of National Highway Act. It is also to be noted that if the party is not agreeable or not satisfied with the amount of compensation awarded under 3G, the claimant can ventilate his grievance before an Arbitrator, appointed by the Central Government. The District Collector of each District was authorized to act as an Arbitrator under the Act, for determining the amount of compensation payable. From the above, it is clear that the amount fixed by the Arbitrator i.e., the District Collector will attain finality if the power to modify or vary the award is excluded from the jurisdiction of the Court. It is also to be noted that the scheme of National Highways Act which mandates deposit of amount determined under Section 3G as required under Section 3(1) of 3H clearly demonstrates that there is a major shift as to how land losers have to be treated vis-à-vis the provisions of the Land Acquisition Act, 1894. As held by the Division Bench of the Madras High Court in ***Project Director, Madurai's case***, if the District Court finds that the award passed by the Arbitrator is against the principles of fair play and justice, all that can be done is to set aside the award and leave the land loser to work out his remedy under the law. If such an approach is to be adopted under the N.H. Act, the purpose of substitution of existing Section 3 of the N.H. Act with Sections 3A to 3J would be rendered redundant. In fact, it has been held that by substituting Section 3 of the N.H. Act, the land loser

would be in a worse position than 1894 Act, which at least provides for a reference to civil court.

39) Apart from that, it is also to be noted that applicability of provisions of Arbitration & Conciliation Act, 1996 shall be subject to provisions of National Highway Act. Therefore, it is accepted and well established that the substantive legislation being the National Highway Act and the Arbitration Act being a procedural one, the procedure to be adopted by the competent authority while determining as to whether the amount of compensation fixed by the competent authority under Section 3G(1) or 3G(2) was proper or not. The procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved by substantive law. Procedural law is always subservient to the substantive law.

40) What would be the effect if the District Collector, who is Arbitrator, is given all the power to fix the quantum of compensation to be paid? If the quantum of compensation awarded has no rationale or that the same came to be made without any basis or that the quantum of compensation awarded is unreasonable, the poor agriculturist would be left with no remedy except to accept the amount awarded by the Arbitrator. If the interpretation as sought for by the counsel for respondents is accepted, the Court can at the most set aside the award and send it back to the Arbitrator. But that does not appear to be the intention of the legislature while enacting the National Highway Act. Its purpose is to acquire the land and

settle the amount at the earliest, but, at the same time, such a settlement shall not be to the whims and fancies of the Arbitrator or the Land Acquisition Authority. There has to be some check in one form or the other by the Court, thereby the agricultural ryots, whose lands are being taken away by the State, would get just and reasonable amount as compensation.

41) As seen from the record, the subject dispute is divided into four stretches i.e., stretch I to IV. All the lands were acquired for expansion of National Highway. Lands forming part of stretch I were paid Rs.15.45 per sq. mts. while lands in stretch II were paid Rs.19.75 per sq. mt. Lands forming part of stretch III, which commence immediately after stretch II, were paid Rs.60.70 per sq. mt. Definitely, there cannot be so much of variation in costs with regard to the value of the land between the point where stretch II ends and the point from where stretch III begins. Similarly, lands falling in stretch IV were paid Rs.15.20 per sq. mts. But here also, the last point is stretch III was valued at Rs.60.70 per sq. mts and immediately thereafter, the land is valued at Rs.15.20 per square meter. There cannot be such a drastic fall in value of land between the last point of stretch III and the beginning point of stretch IV. The entire land is a running piece land covering a distance of 4 kms. to bypass the Kanchikacherla town. Therefore, the valuation arrived at by the competent authority was not based on judicial or at least a reasonable approach. There cannot be so much of variation in the value of lands between the stretch II and III & III and IV.

42) It is useful to note the findings of the competent authority while dealing with lands in stretch No.I. Though the said lands were classified as "Seri dry land", it was observed that price fetched in most of the sales, are above the basic value. It was also held that as the sales were undervalued, the same may not reflect the true value. While dealing with sales in RS No. 35/1A-1, LAC etc., though it was held that basic value is Rs.50,000/- per acre, but observed that prevailing rate of land in this part ranges from 75,000/- to 1,00,000/-, thus not reflecting the true value. Similar such observations came to be made while dealing with lands in part II. Higher compensation came to be awarded in stretch no. III as they are wet lands, where the value was found to be on high side, but the same was brought down immediately thereafter. But it is to be noted that the said part of the stretch was already developed with engineering college, petrol bunk, hotels etc., whereby these lands had a great potential for development, more so where the said place is close to Vijayawada.

43) Therefore, when the value of the lands in stretch III was fixed at Rs.60.70 per sq. mt., fixing the value at Rs.19.75 in stretch II and Rs.15.20 per sq. mt. in stretch IV, in our view is definitely on a lower side. The gradation in value of the land cannot be so abrupt, but should have been in a gradual manner. If that is not possible, then a uniform method should have been adopted as was done in 2008, when lands in the same area were acquired for widening the roads.

44) Having regard to the value fixed at Rs.239/- per sq. mts. in respect of the very same stretch in the year 2008, the learned counsel for the Appellant would suggest that even if a decrease of 10% of the value is made from 2008 to 2001-2002, fixing the value of land uniformly at Rs.100/- per square meter would meet the ends of justice. But it is to be noted, the value of land got appreciated after 2002, when they were acquired for forming a 4-way National Highway. Six years later, lands adjoining the said Highway came to be acquired for making a six way road and also service roads. Hence, the analogy suggested cannot be accepted, as the appreciation would be faster after the lands were acquired for developmental process.

45) Taking into consideration the manner in which the compensation has been fixed, more particularly with regard to the manner in which the rates of land are determined up to a particular extent of land and then drastically bringing them down to the immediate next piece of land, appears to be arbitrary and shocking the conscious of the Court. Hence, we feel that a uniform rate be fixed, as was done in the year 2008, when lands adjoining to the lands in question were acquired, for widening the highway. Though learned counsel for the appellant would submit that an amount of Rs.100/- per square meter may be fixed uniformly, but the analogy suggested for arriving at such figure is not acceptable. After giving anxious consideration to the issue involved, we are of the view that the maximum amount that was fixed by the arbitrator i.e., at the rate of

Rs.60.70, rounding it off to Rs.61.00 per square meter, be fixed uniformly to all the lands acquired from stretch-I to stretch-IV.

46) Accordingly, the C.M.As. are allowed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE BATTU DEVANAND

Date: 01.05.2020

Note : L.R. copy to be marked.

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