IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1010 of 2018

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National Highways Authority of India (herein after referred as N.H.A.I.) through its Project Director, (the competent authority on behalf of 'N.H.A.I.'), Project Implementation Unit (herein after referred as 'P.I.U.') Patna, House No. D-63, Rajesh Kumar Path, Sri Krishnapuri,Patna

... ... Appellant

Versus

1. The State of Bihar through District Land Acquisition Officer, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
4. The District Magistrate cum Collector, Patna.
5. The Competent Officer-cum-District Land Acquisition Officer, Patna.
6. The Additional Collector, Patna-cum-Arbitrator Collectorate, Patna.
7. Mantu Kumar, son of Late Ramchandra Singh, resident of New-Yarpur, Janta Road, P.S.-Gardanibagh, District-Patna.

... ... Respondents

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with

Miscellaneous Appeal No. 1011 of 2018

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National Highways Authority Of India (herein after referred as N.H.A.I.) through its project Director,(the competent authority on behalf of 'N.H.A.I.'), Project Implementation Unit (herein after referred as 'P.I.U.') Patna, House No. D-63, Rajesh Kumar Path, Sri Krishnapuri, Patna. ... ... Appellant

Versus

1. The State of Bihar through the District Land Acquisition Officer, Patna
2. The Chief Secretary, Govt. of Bihar, Patna
3. The Arbitrator cum-Additional Collector, Vikash Bhawan, Patna
4. The District Magistrate-cum-Collector, Patna.
5. Mantu Kumar S/o Late Ramchandra Singh Resident of New-Yarpur, Janta Road, P.S.- Gardanibagh, Dist.-Patna.

... ... Respondents

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Appearance :

(In Miscellaneous Appeal No. 1010 of 2018)

For the Appellant : Mr. Kumar Goutam, Advocate

For the State : Mr. Arun Kumar Bhagat, AC to AAG-12

For the Respondent No. 7 : Mr. Indradeo Prasad, Advocate

(In Miscellaneous Appeal No. 1011 of 2018)

For the Appellant : Mr. Kumar Goutam, Advocate

For the State : Mr. Arun Kumar Bhagat, AC to AAG-12

For the Respondent No. 5 : Mr. Indradeo Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 04-01-2023

These two miscellaneous appeals are raising a common question of law, hence, on the request of learned counsel for the parties, both the appeals have been taken up for consideration together and are being disposed of by this common judgment.

M.A. No. 1010 of 2018

2. This miscellaneous appeal has been preferred for setting aside the order dated 16.08.2018 passed by learned Additional District and Sessions Judge-VIII, Patna in Miscellaneous Case No. 98 of 2016 whereby and whereunder the application filed on behalf of the claimant-respondent no. 7 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act of 1996") has been allowed by setting aside the arbitral award dated 15.10.2016 passed by the Additional Collector in exercise of his power under Sub-Section (5) of Section 3-G of the National Highways Act, 1956 (hereinafter referred to as the "Act of 1956"). By the impugned order, after setting aside the arbitral award, the learned court has been pleased to direct the appellant herein to pay compensation of the land in question considering the nature of the land as residential.

3. This arbitral award pertained to the land bearing plot no. 368 in Mauza- Nathupur, Thana- Phulwarisharif, District- Patna measuring an area of two katha.

MA No. 1011 of 2018

4. In this appeal, challenge is to the order dated 16.08.2018 passed by learned Additional Sessions Judge- VIII, Patna in Misc. Case No. 99 of 2016 by which he has been pleased to set aside the arbitral award dated 15.10.2016 passed by the Additional Collector in exercise of his power under Sub-Section (5) of Section 3-G of the Act of 1956 in Vivachan Case No. 69 of 2014. The learned court has been pleased to set aside the arbitral award with a direction to pay the compensation of the land in question considering the nature of the land as residential. In this case, the land involved is Plot No. 292 in Khata No. 44, Tauzi No. 5075 measuring area two katha in revenue village Pakari, Thana- Phulwarisharif, District- Patna.

Submissions on behalf of the Appellant:-

5. Mr. Kumar Goutam, learned Advocate representing the appellant in both the matters submits that the appellant is aggrieved by and dissatisfied with the order impugned in these two appeals to the extent that while setting aside the arbitral award, the learned court has committed an error of jurisdiction in changing the very nature of the land acquired by the appellant under the Act of 1956. This, according to him amounts to modifying the award which is not permissible in exercise of power under Section 34(2) of the Act of 1996. Learned counsel has relied upon the judgment of the Hon’ble Supreme Court in

the case of **Project Director, National Highways No. 45 E and 220 National Highways Authority of India versus M. Hakeem and Another** reported in **(2021) 9 SCC 1**. Learned counsel further submits that the same view has been reiterated in a recent judgment of the Hon'ble Supreme Court in the case of **National Highways Authorities of India Vs. P. Nagaraju @ Cheluvalah and Another** reported in **2022 SCC Online SC 864**. It is submitted that the appellant would have no objection if the Arbitrator reconsiders the entire matter in accordance with law and take an appropriate view of the matter as regards the value of the land to be fixed and the quantum of compensation but in no case, such a power may be exercised by the court dealing with an application under Section 34(1) of the Act of 1996. It is, thus, his submission that the impugned orders are bad in law and in the teeth of the judgments of the Hon'ble Supreme Court, hence those are liable to be set aside to the extent that nature of the land has been declared as residential and direction has been issued to pay compensation treating the land as that of residential nature.

Submissions on behalf of the Claimant-Respondent:-

6. The claimant-respondent has opposed these two appeals. He has defended the impugned orders by submitting that the learned court below has rightly taken a view that the nature of the land is residential. It is submitted that the land of the applicant-respondent

has been illegally and arbitrarily devalued from commercial to agricultural, behind the back of the applicant by ignoring the market rate fixed by the Government for registration of the land. It is submitted that the respondent no. 1 has determined the compensation for the acquired land unilaterally. According to the applicant, the land has been acquired for the National Highway Project namely NH-30 and NH-84 (Patna-Buxar four lane). As per valuation fixed by the Registration Department of the Government of Bihar itself, not even a single plot of village Nathupur is of agricultural nature. The entire village lands are either of residential or commercial nature.

7. Learned counsel further submits that in the entire village, none of the land has been registered as agricultural land in last about 16 years and in the first notification under Section 3-A of the Act of 1956, the nature of the land of the applicant was shown as residential even as according to the applicant, his land is of commercial nature situated at 12 feet road and the adjoining land owners namely Tuntun Rai, Gani Rai and Rajesh Rai, all sons of Rajendra Rai and several others have already constructed their houses and commercial shops. It is, thus, his case that by ignoring the factual position of the land and the circle rate fixed by the Registration Department itself, the Respondent No. 1 has ascertained the compensation by treating the land as agricultural land. Much emphasis has been given by the applicant on

the submissions that the respondents cannot produce even a single sale deed showing agricultural land of village Nathupur because in last 20 years, all the land of village Nathupur has been declared either residential or commercial. It is contended that the market rate of the land is to be fixed as per provisions contained in Section 3-G (7) of the Act of 1956 which speaks of only the present market value of the land.

8. Learned counsel for the applicant submits that from the pleadings available on the records before the learned Arbitrator, it would appear that the value of the land was fixed taking into consideration the nature of land mentioned in the Khatian and on the basis of the recommendation of a six-members committee which was formed only after the first notification under Section 3A of the Act of 1956 lapsed. The basis of recommendation of the six-members committee to treat these land as agricultural land was never known to the applicant and in course of arbitral proceeding, neither the said report was proved nor the member of the committee could be produced to testify. Relying upon the judgment of the Hon'ble Supreme Court in the case of **P. Nagaraju @ Cheluvalah and Another** (Supra), learned counsel submits that the manner in which the recommendations of the six-members committee was taken into consideration amounts to denial of opportunity to the applicant amounting to violation of principles of natural justice. In the aforesaid case, the Hon'ble Supreme Court has

taken a view that where necessary pleadings in the claim petition and evidence as regards the value to be applied for the land notified for ‘Zunadu’ and ‘city greens’ were not placed on the record before the Arbitrator and the Arbitrator has not considered as to applicability of the said guideline value fixed under the notification, the decision of the Arbitrator would vitiate. Learned counsel submits that in this case, the procedures required to be followed in the matter of conduct of an arbitration proceeding in terms of the provisions of the Act of 1996 has not been followed, therefore, the learned court has rightly set aside the arbitral award and on the face of the evidences available on the record, took a view that the land is to be treated as residential land and compensation is to be awarded accordingly.

Consideration:-

9. This Court having heard learned counsel for the parties and on perusal of the records finds that there is no contest on the orders setting aside the arbitral award, however, in course of argument a question as to the interplay of the provisions of the Act of 1956 and that of the Act of 1996 in the matter of an arbitration for determination of the market value of the land and the procedures required to be followed by the Arbitrator has come up for consideration.

10. It would, thus, be important to take note of the relevant provisions in the matter of an arbitration as envisaged under Sub-Section (5) of Section 3-G of the Act of 1956 is to be conducted.

11. This Court would first briefly take note of the relevant provisions of the Act of 1956. Section 3-A of the Act of 1956 provides for the power of the central government to acquire land, etc. for a public purpose by issuing a notification in the Official Gazette declaring its intention to acquire such land. Every notification under Sub-Section (1) of Section 3-A shall give a brief description of the land. The substance of the notification is to be published in two local newspapers, one of which will be in a vernacular language. Under Section 3-B, on the issue of a notification under Sub-Section (1) of Section 3-A, it shall be lawful for any person, authorized by the Central Government in this behalf to make any inspection, survey, measurement, valuation or enquiry, take levels, dig or bore into sub-soil, set out boundaries and intended lines of work or do such other acts or things as may be laid down by rules made in this behalf by the Government.

12. Further, Section 3-C provides an opportunity to any person interested in the land to submit his objection within twenty-one days from the date of publication of the notification under Sub-Section (1) of Section 3A and every such objection shall be heard giving an

opportunity to the person either to appear himself or by a legal practitioner. After such hearing, the competent authority has to by an order either allow or disallow the application. The order passed by the competent authority under Sub-Section (2) of Section 3-C is to be treated as final. Thereafter comes a declaration of acquisition under Section 3-D of the Act of 1956. On publication of the declaration under Sub-Section (1) of Section 3-D, the land shall vest absolutely in the Central Government free from all encumbrances. In terms of Sub-Section (3) of Section 3-D where in respect of any land, a notification has been published under Sub-Section (1) of Section 3-A for its acquisition but no declaration under said Sub-Section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect.

13. Section 3-G provides for determination of amount payable as compensation. Where any land is acquired under the Act of 1956, there shall be paid an amount which shall be determined by an order of the competent authority. Sub-Sections (2), (3) and (4) of Section 3-G lay down the procedure to be followed by the competent authority. Sub-Section (5) to Sub-Section 7 of Section 3-G would be the most relevant provisions for purpose of this case, therefore, this Court would reproduce those provisions hereunder for a ready reference:-

> "(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.
>
> (6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.
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> (7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-
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> (a) the market value of the land on the date of publication of the notification under section 3-A;
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> (b) the damage, if any, sustained by the person interested at the time of taking possessions of the land, by reason of the severing of such land from other land;
>
> (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
>
> (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

14. By virtue of Sub-Section (6) and Sub-Section (7) of Section 3-G, subject to the provisions of the Act of 1956, the provisions of the Act of 1996 shall apply to every arbitration under the Act of 1956. Further, as regards determination of compensation, the competent authority or the Arbitrator while determining the amount are obliged to take into consideration the factors which are enumerated under Clause (a), (b), (c) and (d) of Sub-Section (7).

A Glance Over the Arbitration and Conciliation Act, 1996

15. At this stage, a perusal of the relevant provisions of the Act of 1996 as regards the conduct of arbitration proceeding would be relevant for the purpose of this case. Chapter V of the Act of 1996 contains Section 18 to Section 27 which deal with the conduct of arbitral proceedings. Under Section 18, it is provided that the parties shall be treated with equality and each party shall be given a full opportunity to present his case. Accordingly to Sub-Section (1) of Section 19, the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. Sub-Section (2) of Section 19 says that "subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings" and according to Sub-Section (3) of Section 19 in case, "where the parties fail to enter into any agreement in terms of Sub-Section (2), the Arbitral Tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate". According to Sub-Section (4) of Section 19, the power of the arbitral tribunal under Sub-Section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

16. Section 23 provides for the statements of claim and defence which are to be filed by the claimant and the respondent respectively. Section 24 lays down the provision for hearings and

written proceedings. According to Sub-Section (1) of Section 24, “unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials; provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held: provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause”.

17. Further Section 26 of the Act of 1996 provides that unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal and require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

18. This Court has taken a brief note of the procedures relating to conduct of arbitral proceedings only to examine as to whether at all in the present case, the Arbitrator has conducted the

proceedings in accordance with those provisions. If it is found that the Arbitrator has not followed those procedures and that has resulted in violation of principles of natural justice, it would be in the nature of a jurisdictional error and would be covered as a ground within the meaning of word ‘patent illegality’ and such award would be liable to be set aside by the Court in exercise of its power under Sub-Section (2) of Section 34 of the Act of 1996.

19. In the case of **P. Nagaraju @ Cheluvalah and Another** (Supra), the Hon’ble Supreme Court was hearing an appeal preferred by the National Highway Authority of India (in short ‘NHAI’) being aggrieved by the judgment of the Hon’ble Division Bench of the High Court of Karnataka. The High Court had dismissed the appeals preferred by the NHAI and upheld the judgment of the Principal District Sessions Judge, Ramanagara in Arbitration Suit No. 22 of 2019 and analogous suits filed under Section 34 of the Act of 1996. The said arbitration suits under Section 34 of the Act of 1996 were filed by NHAI assailing the award passed by the Deputy Commissioner and Arbitrator, National Highway.

20. What has been held by the Hon’ble Supreme Court on consideration of various provisions of the Act of 1996 read with the provisions of the Act of 1956 in some of the paragraphs of the judgment are being reproduced hereunder for a ready reference:-

"26. Having taken note of the rival contentions and while examining the scope available under Section 34 of Act 1996 in the backdrop of the precedents, what is also to be kept in perspective is the decision referred to in the case of *NHAI* v. *Sayedabad Tea Company Ltd.* (2020) 15 SCC 161. In the said case, this Court while examining the question as to whether the land loser can seek the appointment of an Arbitrator in terms of Section 11 of Act, 1996, it was noted that such power would not be available in view of the provisions contained in Section 3G(5) of NH Act since Arbitrator is to be appointed by the Central Government to discharge its functions as per the provisions of the Arbitration and Conciliation Act. Having taken note of the said decision, though it is seen that it was held so while considering the maintainability of petition under Section 11 of the Act, 1996 to exclude the right of the land loser to seek the appointment of an Arbitrator keeping in view the statutory provision in the NH Act, the larger perspective of such limited right to the land loser in the process of arbitration is also to be kept in view. Unlike the arbitration in a contractual matter where the parties from the very inception at the stage of entering into a contract would mutually agree to refer any future dispute to an arbitrator, at that very stage are aware that in the event of any dispute arising between the parties the contours of the right, remedy, and scope from the commencement of the arbitration up to the conclusion through the judicial process. The terms of arbitration and the rights and obligations will also be a part of the agreement and a reference to the same in the award will constitute sufficient reasons for sustaining the award in terms of Section 31(3) of Act, 1996. Whereas, in the arbitration proceedings relating to NH Act, the parties are not governed by an agreement to regulate the process of arbitration. However, in the process of determination of just and fair compensation, the provisions in Section 26 to 28 of RFCTLARR Act, 2013 will be the guiding factor. The requirement therein being adverted to, should be demonstrated in the award to satisfy that

Section 28(2) and 31(3) of Act, 1996 is complied. Therefore, what is also to be kept in perspective while noticing the validity or otherwise of an award regarding which the non-furnishing of reasons is contended as patent illegality is the reason assigned for determining just compensation in terms thereof. The situation which may arise in cases when a lesser compensation is determined in the arbitration proceedings and the land loser is complaining of the award is also to be kept in perspective since the requirement of reasons to be given by the learned Arbitrator in cases for determination of market value and compensation should indicate reasons since the same will have to be arrived at on a comparative analysis for which the reasons should be recorded and Section 26 to 28 of RFCTLARR Act will be relevant. Neither the land loser nor the exchequer should suffer in the matter of just and fair compensation. Hence the reasons under Section 31(3) is to be expected in that manner, the absence of which will call for interference under Section 34 of Act, 1996.

29. Under the scheme of the Act 1996 it would not be permissible to modify the award passed by the learned Arbitrator to enhance or reduce the compensation based on the material available on record in proceeding emanating from Section 34 of Act, 1996. The option would be to set aside the award and remand the matter. In this regard it would be apposite to take note of the observation in *M. Hakeem* (supra), as hereunder:—

> "**42.** It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited

> remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

33. Be that as it may, in our opinion the mere provision as contemplated under Section 3G(5) of NH Act providing for either of the parties to assail the determination made by the SLAO by itself does not provide a better status to the award passed by the SLAO. Even the award passed by the SLAO under the provisions of NH Act would still continue to remain as an offer of compensation by the Acquiring Authority to the land loser and the materials relied on by the SLAO even if discussed in detail does not provide the status of a judicially considered order so as to interfere with the same only if error is pointed out. It is not necessary to critically examine the award made by SLAO before considering enhancement. Notwithstanding the documents relied upon by the SLAO it would still be open for the learned Arbitrator to rely upon any additional material that may be brought before the learned Arbitrator not necessarily to point out an error in the consideration made by SLAO but such material could be considered despite the consideration made by the SLAO if such material aids in deciding just and fair compensation. Though, as contended by the learned Additional Solicitor General it is seen that in *Tarsem Singh* (supra) it is held that there is a regime change and the stage to offer an amount by way of compensation is removed, it only means that the process of award notice etc. from Section 9 to 15A, before possession under Section 16 of L.A. Act is removed, which only alters the procedure and enables immediate vesting of the land with the acquiring authority but does not take away the character of the SLAO award from being an offer of compensation. Hence, in the present case, though the SLAO has taken note of the guideline dated 07.11.2014 it would be open for the learned Arbitrator to take note of any other evidence that would be more relevant than the said guideline to re-determine the compensation in terms of the

parameters under Sections 26 and 28 of RFCTLARR Act, 2013.

36. In that backdrop, in the instant case it is no doubt true that the notification issued by the Department of Stamps and Registration on 07.11.2014 is prior to the acquisition notification dated 01.02.2016. It is also to be noted that there was a time gap of more than one year between the two. In a normal circumstance, even if the notification dated 07.11.2014 was taken into consideration it would be open for the learned Arbitrator to consider certain amount of escalation to determine the market value. The said process could have been adopted if there was no other document. At this juncture, it is necessary to note that the SLAO in fact had relied on the said notification dated 07.11.2014 and determined the market value but had ignored the fact that the lands regarding which the market value was to be determined had been converted for purposes other than agriculture. The SLAO had therefore taken into consideration the registration value which had been fixed in respect of the agricultural property. In that light, firstly it would have been open for the learned Arbitrator to take note of the value fixed for the commercial/industrial lands under that notification itself and provide certain amount of escalation.

40. To consider this aspect of the matter what is necessary to be taken note is that the SLAO had determined the compensation by taking note of the market value assigned to agricultural property under the notification dated 07.11.2014. The claimants were before the learned Arbitrator in terms of Section 3G(5) of the NH Act, a copy of which is available at Annexure-P6 to the appeal papers. The grievance essentially put forth in the claim petition is that the preliminary notification is dated 01.02.2016 and the notice of award for fixing the amount of compensation for the acquired land has been issued on 03.07.2017. In that light, it was contended that the market value of the non-agricultural lands adjoining the Bengaluru Mysuru National Highway such as the one owned by the claimant has increased considerably after

the acquisition of the schedule land and accordingly the Registration Department has revised the guideline value. However, there is no reference to any specific notification relating to the guideline value much less the notification dated 28.03.2016. Further, there is no other indication to the manner in which the notification dated 28.03.2016 was brought on record though the said notification is published in the gazette. Comparison with lands in 'Zunadu' and 'City Greens' is also not pleaded. Further, as pointed out by the learned Additional Solicitor General the land situate in Madhapura and Mayaganahalli have been notified at serial Nos. 519, 524 and 525 respectively with reference the same survey number as that of the acquired land. The land value for 'Zunadu' and 'City Greens' are notified separately at Serial Nos. 250 and 529. In that circumstance not just to place reliance on the notification dated 28.03.2016 but also to apply the value notified for 'Zunadu' and 'City Greens' to the acquired lands, necessary pleading in claim petition and evidence with opportunity to NHAI to rebut the same should have been placed before the learned Arbitrator. Based on the same a consideration in that regard was required to be made by the learned Arbitrator to arrive at a conclusion with regard to the applicability of the guideline value fixed under notification dated 28.03.2016 for the lands that had been converted to purposes other than agriculture. Further while applying the guideline value fixed for 'Zunadu' and 'City Greens' to the acquired lands by discarding guideline value for the same survey number, necessary evidence to derive comparison between the lands so as to apply the value fixed in respect of another item of land in the same notification was necessary to be brought on record and was to be considered by the learned Arbitrator by assigning reasons.

42. The above extracted portion of the award would demonstrate, prior to said finding being recorded, the learned Arbitrator has not referred to the manner in which the notification dated 28.03.2016 was brought on record and relied upon

in the proceedings. The award, except for recording that the notification indicates the value fixed at Rs. 8,000/- per sq.mtr in respect of converted land situate in the survey numbers of Mayaganahalli village and stating that the price of the converted lands of the Green City in the same village has been fixed at Rs. 15,400/- per sq.mtr has not referred to any evidence relating to the comparability with that land despite noting the guideline value of Rs. 8000/- fixed for claimant's land. The very fact that the layout is named as ‘City Greens’ and ‘Zunadu’ appears to be that the lands therein are situate in a self-contained and developed lay out with all civic amenities due to which it is separately indicated in the notification for specifically fixing the guideline value. Even if the lands belonging to the claimants is converted for residential purposes, value for the same was fixed in the notification by specifying the survey number. If the value as fixed under the guideline for ‘City Greens’ and ‘Zunadu’ was to be adopted as comparable land to the acquired land, necessary reasons ought to have been indicated in the award with reference to the evidence brought on record, with opportunity to NHAI to have their say on that aspect and reasons justifying such comparison should have been recorded. Further the manner in which the notification dated 28.03.2016 has been relied upon and the value fixed under the said notification in respect of two distinct layouts has been automatically made applicable to the lands in question despite noting the guideline value notified for the same survey number would indicate that the said exercise has been undertaken without sufficient opportunity to NHAI. Further, appropriate reasons have not been indicated by the learned Arbitrator to arrive at the conclusion to uniformly adopt the value of Rs. 15,400/-per sq.mtr fixed in respect of lands in a layout which was separately indicated in the notification. As stated above, if there is evidence brought on record in the manner known to law with opportunity to the opposite side, it certainly would be open for the learned Arbitrator to adopt the said value. However, from the pleading in the claim petition

> and from the portion extracted from the award which is the only basis for the ultimate order made by the learned Arbitrator, it would indicate that the NHAI did not have sufficient opportunity before the learned Arbitrator to controvert the material sought to be relied upon by the learned Arbitrator nor has the learned Arbitrator indicated sufficient reasons which to that extent would indicate patent illegality in the award passed by the learned Arbitrator being contrary to Section28(2) and 31(3) of Act, 1996.
>
> **43.** That being the fact situation and also the position of law being clear that it would not be open for the court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter to the learned Arbitrator in terms of Section 34(4) to keep in view these aspects of the matter and even if the notification dated 28.03.2016 relied upon is justified since we have indicated that the same could be relied upon, the further aspects with regard to the appropriate market value fixed under the said notification for the lands which is the subject matter of the acquisition or comparable lands is to be made based on appropriate evidence available before it and on assigning reasons for the conclusion to be reached by the learned Arbitrator. In that regard, all contentions of the parties are left open to be put forth before the learned Arbitrator."

21. This Court is conscious of the fact that in **P. Nagaraju @ Cheluvalah (**supra), the Hon'ble Supreme Court referred Sections 26 to 28 of RFCTLARR Act, 2013 as the guiding factor whereas in the present case the acquisition was that of the period prior to coming into force of the RFCTLARR Act, 2013. The principles of determination of the market value as laid down

by the law in force at the relevant time would be applicable and the scope and ambit of an arbitration under the Act of 1956 shall be the same as held by the Hon'ble Supreme Court in **P. Nagaraju @ Cheluvalah** (supra).

22. In the aforementioned background of the legal provisions and the judgment of the Hon'ble Supreme Court when this Court goes through the records of the arbitral proceeding, this Court would readily come to a conclusion that the arbitral proceeding in this case was not conducted in accordance with the procedures laid down under Chapter V of the Act of 1996.

23. On record, there is an application of the applicant-respondent in which he has made assertions in so many paragraphs that the respondent no. 1 had unilaterally fixed the market rate of the land showing the nature of land as agricultural land whereas the fact is that for last about 16 years and more no registry of the land of village Nathupur had taken place showing the land of the village as agricultural land. The applicant asserted in his pleading that the value of the land of the applicant was devalued and the market rate as envisaged under Sub-Section (7) of Section 3-G of the Act of 1956 was not fixed by adhering to the various factors.

24. In response to the said application of the applicant-respondent, the NHAI filed a reply. It is stated in paragraph '5' of

the reply that 3-A Gazette notification was published vide SO 2282 (E) dated 28th September, 2011 in which plot no. 368 was notified as housing land. After saying so, nothing is stated as to what happened to the said notification. Copy of which has been annexed as Annexure ‘A’ to the reply petition.

25. Learned counsel for the NHAI has informed this Court that the said notification under Section 3-A lapsed upon expiry of one year period whereafter another notification under Section 3A was published on 04.07.2012. After publication of the said notification on 04.07.2012, Section 3-D notification was published in Gazette vide SO No. 143 (E) dated 14th January, 2013. Copy of which has been brought on the record as Annexure ‘B’. This time, the nature of land shown in Annexure ‘B’ is agricultural. Further, it appears from Annexure ‘C’ to the reply of NHAI that for purpose of acquisition of land for NH 30 (Patna-Buxar four lane), an inspection was conducted on 03.02.2012 to ascertain the nature of land mentioned in the khatiyan and the present nature of the land. There were five members of the Committee who conducted the inspection and recommended to determine the rate of Mauza Chitkohra as residential whereas Mauza Nawada, Nohosa, Phulwari, Kurkuri, Beur, Hasanpura, Nathupur and Pakri,

the recommendation was to keep the land of these mauzas in agricultural category. This recommendation was made.

26. Further it appears from Annexure ‘D’ that for NH 30 and 84 four lane a Committee presided over by the competent authority-cum-District Land Acquisition, Patna prepared a rate based on the sale deeds which were said to have been executed within 3 years prior to the date of notification under Section 3-A i.e. 23.08.2012. The rate fixed by the Committee presided over by the competent authority has been seriously challenged on behalf of the applicant-respondent. In fact, an application under Section 340 Cr.P.C. has been filed being I.A. No. 04 of 2022 on behalf of the applicant-respondent.

27. Mr. Indradeo Prasad, learned counsel for the claimant has also filed a supplementary affidavit together with the copy of the certified copy of 51 sale deeds which are the sale deeds mentioned in Annexure ‘D’ to the reply of the NHAI before the learned Arbitrator. A specific statement has been made that from the certified copy of the 51 sale deeds, it would appear that the rate fixed by the competent authority vide Annexure ‘D’ is based on description of forged kind of sale deeds only to defeat the claim of the applicant. Paragraph ‘6’ of the supplementary affidavit is being reproduced hereunder for a ready reference:-

> "6. यह कि इस अपील में उपरोक्त फर्जी दर प्रतिवेदन दिनांक 23.03.2013 को मेरे आवासीय किस्म की भूमि मौजा – नथुपुर, थाना नम्बर – 109, खाता नम्बर– 224, खेसरा नम्बर – 368, रकबा – दो कट्टा को कृषि किसम में परिवर्तित करवाने के लिये दाखिल किया है, इसलिये शपथकर्ता वगैरह की गलती माफी के योग्य नहीं है।"

28. It further appears that before the learned Arbitrator the competent authority did not file any response even as from the order passed by the learned Arbitrator, it appears that the District Land Acquisition Officer, Patna was duly served with a notice of the arbitration proceeding.

29. After taking note of the pleading of the claimant and the NHAI very briefly, the learned Arbitrator proceeded to consider the case. Prior to proceeding with the arbitration, the procedures which are to be followed in accordance with Sub-Section (2) of Section 19 of the Act of 1996 were not fixed. No opportunity was given to the claimant to lead evidence. The records show that the arbitration case was registered on 12.01.2016 whereafter it was fixed for 05.02.2016. On 05.02.2016, it was recorded that the District Land Acquisition Officer and the Project Director have not filed any reply and the applicant may file any other evidence. The case was thereafter fixed for 24.02.2016. On 24.02.2016, the Arbitrator was busy in some other work, therefore, date was fixed for 11.03.2016. Again, on 11.03.2016, the

Arbitrator was busy in some other work so the case was fixed for 29.04.2016. The record was placed thereafter only on 03.06.2016 when order was passed once again to issue notice to the District Land Acquisition Officer with a stipulation that on his non-appearance on the next date, it will be presumed that he has nothing to say. The case was fixed for 08.07.2016 but it appears that the records were taken up only on 12.08.2016 and on that day also, the Arbitrator was busy in some other work. The ordersheet of this date does not contain any signature of the Arbitrator. Thereafter, the matter was taken up on 16.09.2016. On that date, both the parties were absent. The copy of the order dated 04.07.2016 passed by this Court in CWJC No. 5982 of 2014 was received and a letter from the District Land Acquisition Officer bearing No. 1946 dated 06.08.2016 was received which were taken on the record. On the next date i.e. 07.10.2016, the applicant and the NHAI were heard and the case was fixed for order. This is how the arbitration proceeding has been conducted by the Arbitrator in complete disregard to the provision of the Act of 1996.

30. By no stretch of imagination, the course adopted by the Arbitrator may be said to be in consonance with the principles of natural justice. In the entire proceeding save and except two

dates on almost all the dates, the Arbitrator was not present, perhaps he had no time to look into the requirements of law to be followed in conduct of an arbitral proceeding.

31. While passing the award, the Arbitrator has recorded that the applicant has filed a copy of the sale deed in which the nature of the land is mentioned as agricultural raiyati (kast raiyati) and it has not been shown as residential land.

32. Learned counsel for the applicant-respondent has vehemently argued that this kind of wrong recording in the order cannot come within the meaning of simple mistake. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Muzaffar Husain versus State of Uttar Pradesh and Ors.** reported in **AIR 2022 SC 612.** Paragraph '15' of the said judgment is being reproduced hereunder for a ready reference:-

> "15. In our opinion, showing undue favour to a party under the guise of passing judicial orders is the worst kind of judicial dishonesty and misconduct. The extraneous consideration for showing favour need not always be a monetary consideration. It is often said that "the public servants are like fish in the water, none can say when and how a fish drank the water". A judge must decide the case on the basis of the facts on record and the law applicable to the case. If he decides a case for extraneous reasons, then he is not performing his duties in accordance with law. As often quoted, a judge, like Caesar's wife must be above suspicion."

33. Learned counsel for the NHAI has disputed the aforesaid submission of learned counsel for the applicant saying

that in the sale deed the nature of land is being shown as हकियत कास्त रैयती कायमी वसींगे, the word 'वसींगे' is being interpreted as if the nature of land was residential but learned counsel for the NHAI submits that there can be no definite opinion about the interpretation of the word 'वसींगे'. It is, however, not disputed that in village Nathupur or Pakari the nature of land for purpose of registration has been shown as residential or commercial nature of land. So far as sale deed of plot no. 292 of village of Mauza Vishunpur Pakari is concerned, sale deed which is available on the record clearly shows that the nature of the land is residential parti land.

34. To this Court, it appears from the aforementioned discussions that the Arbitrator in this case has not followed the procedures required for purpose of conducting the arbitration but has also acted in haste and committed grave error. He was required to look into the entire materials after giving appropriate opportunity to the parties to adduce their respective evidences oral or documentary as could have been agreed or determined as a matter of procedure at the beginning stage.

35. In result, this Court finds no error with the order of the learned Additional District and Sessions Judge, VI Court in so far as to direct setting aside of the impugned award. So far as

further direction to pay the compensation of the land in question considering the nature of the residential land is concerned, at this stage, the learned court has definitely transgressed its jurisdiction and after setting aside the award, in fact modified the same which was not permissible.

36. In this connection, learned counsel for the NHAI has rightly relied upon the judgment of the Hon'ble Supreme Court in the case of **Project Director, National Highways No. 45 E and 220 National Highways Authority of India** (Supra) to submit that in an application under Section 34 of the Act of 1996, the Court can set aside the award leaving the parties free to begin the arbitration again if it is desired but the award cannot be modified. In this connection this Court would reproduce paragraphs '41' and '42' of the said judgment as under:-

> "**41.** As has been pointed out by us hereinabove, *McDermott*[7] has been followed by this Court in *Kinnari Mullick*[8]. Also, in *Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*[38], a recent judgment of this Court also followed *McDermott*[7] stating that there is no power to modify an arbitral award under Section 34 as follows : (*Dakshin Haryana Bijli Vitran Nigam case*[38], SCC p. 676, para 44)

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7. [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181]
8. [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106]
38. [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657]

> "*44*. In law, where the court sets aside the award passed by the majority members of the Tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34 of the Arbitration Act, the court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2-A) are made out. There is no power to modify an arbitral award."

> **42.** It can therefore be said that this question has now been settled finally by at least 3 decisions[7, 8, 38] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

37. In result, these miscellaneous appeals are allowed to the extent indicated hereinabove. The matters are remitted to the Arbitrator.

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7. [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181]
8. [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106]
38. [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657]

38. This Court has been informed that pursuant to the latest order issued by the Ministry of Road, Transport and Highways, Government of India under Sub-Section (5) of Section 3-G of the Act of 1956 now Divisional Commissioner, Patna would be the Arbitrator. The Divisional Commissioner, Patna would, thus, be obliged to take up the arbitration proceedings keeping in view the procedures laid down under the Act of 1996 as discussed hereinabove.

39. Let the records be sent to the Divisional Commissioner, Patna where the parties shall appear on 6th February, 2023. On appearance of the parties, the Divisional Commissioner, Patna shall determine the procedure to be followed in conduct of arbitration proceedings and adequate opportunity will be provided to the parties to adduce their respective evidences oral or documentary as the case may be whereafter upon hearing the parties, the Arbitrator shall determine the issues and pass an award.

40. These appeals are disposed of.

41. So far as the application under Section 340 Cr.P.C. filed on behalf of the applicant-respondent is concerned, this Court is not taking any view thereon at this stage because the matter is

still to be considered by the Arbitrator and only after determination of the issues, any view as to the said application may be taken up.

42. For the present, the Interlocutory Application No. 4 of 2022 is disposed of with liberty to the applicant-respondent to take all such pleas which are available to him in this regard at appropriate stage.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	09.01.2023
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