

Neutral Citation No. - 2024:AHC:18990-DB

Reserved on 10.01.2024.

Delivered on 05.02.2024.

A.F.R.

Court No. - 21

Case :- WRIT - C No. - 33840 of 2023

Petitioner :- Dr. Rajeev Sinha

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Kalpana Sinha, Sr. Advocate

Counsel for Respondent :- A.S.G.I., C.S.C., Pranjali Mehrotra, Raghav Dwivedi

Connected With

Case :- WRIT - C No. - 42177 of 2023

Petitioner :- National Highways Authority Of India

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Raghav Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Kshitij Shailendra, J.

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. These two connected writ petitions arise out of same controversy and, therefore, were heard together. Since all the relevant facts and arguments are covered by Writ C No.33840 of 2023, a detailed

judgement is being pronounced treating the said writ petition as the leading one and after conclusion of the judgement in the said writ petition, a separate order shall be passed in the connected Writ C No.42177 of 2023.

2. The Writ C No.33840 of 2023 under Article 226 of the Constitution of India has been filed assailing the order/award dated 28.07.2023 passed by the Collector, Jhansi in the capacity of Arbitrator under the provisions of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') made applicable by virtue of Section 3G(6) of the National Highways Act, 1956 (hereinafter referred to as 'the Act of 1956') in Case No. 2337 of 2023 (Computerized Case No.D202306370002337) (Dr. Rajeev Sinha v. National Highways Authority of India, Jhansi), with a further prayer directing the District Magistrate /Collector /Arbitrator, Jhansi to decide the said case in terms of guidelines/directions contained in the judgment and order dated 27.04.2022 passed by the District Judge, Jhansi.

THE WRIT PETITION

3. The facts of the case are that the petitioner purchased part of land covered by Plot No.481, ad-measuring 0.230 hectares, i.e. 2300 sq. mtrs., situated in Village Koncha Bhanwar, Pargana, Tehsil and District-Jhansi, vide registered sale deeds dated 27.03.1993 and 04.02.1994. It is pleaded that, in exercise of powers under the Act of 1956, the Central Government issued a notification dated 03.09.2009 under Section 3A of the Act which

was followed by notification dated 09.04.2010 under Section 3D of the Act acquiring the petitioner's land and the Special Land Acquisition Officer, assessing the market value of the land @ Rs.15 lacs per hectare and attaching certain value to the constructions existing thereon, declared an award dated 30.09.2010. The petitioner approached the Competent Authority as per Section 3G(5) of the Act of 1956 whereafter an Arbitration Case No.521 of 2012 was registered before Collector/ District Magistrate, Jhansi. The Arbitrator declared his award on 15.09.2017 on the lines of the Special Land Acquisition Officer principally on the ground that the land had not been declared as 'abadi' under Section 143 of the UP. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'U.P. Z.A. & L.R. Act') and, therefore, would continue to remain an 'agricultural land'.

4. The petitioner assailed the award dated 15.09.2017 by availing statutory remedy under Section 34 of the Act of 1996 made applicable by virtue of Section 3G(6) of the Act of 1956. The District Judge, Jhansi, by judgment and order dated 27.04.2022, passed in Misc. Case No.12 of 2017 under Section 34 of the Act of 1996, set aside the award dated 15.09.2017 and remanded the matter to the Arbitrator for fresh consideration in the light of observations made in the order itself after affording opportunity of hearing to the parties. After remand, the District Magistrate/Collector, Jhansi, as Arbitrator, has, by the order impugned dated 28.07.2023, rejected the reference holding that the compensation awarded under the award dated 30.09.2010 was

according to the law and that the petitioner was not entitled to any further compensation. It is this order of the Arbitrator which is under challenge in the present writ petition and has been assailed mainly on the ground that the directions contained in the order of the District Judge dated 27.04.2022 have not been followed by the Arbitrator. The detailed arguments advanced on behalf of the petitioner shall be noted at appropriate place in this judgement.

PREVIOUS PROCEEDINGS IN THE INSTANT CASE

5. This Court, in its order dated 04.10.2023, noted the main contention advanced on behalf of the petitioner that the Collector had chosen to overlook the directions issued by the District Judge and, by making some observations, this Court directed the learned Additional Chief Standing Counsel to communicate the order to the State-respondents for due compliance. Later on, by an order dated 02.11.2023, Shri Rajiv Gupta, learned Additional Chief Standing Counsel was granted further time to enable the Collector to revisit the matter and file a fresh affidavit. Then, the order dated 08.11.2023 records that the respondent No.3 (Collector, Jhansi) has recalled the order dated 28.07.2023 fixing 10.11.2023 as date of hearing and learned counsel representing the National Highways Authority of India (hereinafter referred to as 'N.H.A.I.') was granted time to obtain instructions. Thereafter, various dates were fixed and, in the meantime, the fresh order dated 03.11.2023 passed by the Collector, Jhansi whereby he had recalled the order dated 28.07.2023 (impugned in the present writ petition) was challenged by the N.H.A.I. by filing Writ C No.42177 of 2023

(National Highways Authority Of India v. State of U.P. and Another) which was directed to be connected with the present writ petition and both the matters were heard simultaneously.

COUNTER AFFIDAVIT OF THE STATE RESPONDENTS

6. In the present case, though the State-respondents initially justified passing of the order impugned dated 28.07.2023 making various submissions in the affidavits of certain officers, later on, the State came up with the stand that since the Collector had already recalled order dated 28.07.2023, the State-Authorities were ready to comply with the directions issued by this Court or any other court of law. Therefore, the N.H.A.I. remained the only contesting party and, hence, the Court proceeds to examine the defence taken in the counter affidavit filed on behalf of N.H.A.I.

COUNTER AFFIDAVIT OF THE N.H.A.I.

7. The counter affidavit filed on behalf of N.H.A.I. principally raises an objection regarding maintainability of the present writ petition by taking aid of Section 34 of the Act of 1996 and it has been stated that since the said provision speaks that recourse to the Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3), challenge made by the petitioner to the award of the Collector by means of the present writ petition under Article 226 would tantamount to by-passing statutory alternative remedy and, hence, the writ petition should be dismissed on this ground

alone. Further pleadings in the counter affidavit are that even the subsequent exercise carried out by the Arbitrator, in terms of the order dated 03.11.2023, is unsustainable due to the fact that, after making the award, the Arbitrator became *functus officio*, having no power/jurisdiction to make changes in his decision. The defence taken by N.H.A.I. in relation to the order dated 03.11.2023 has been made a ground of challenge by it in the connected Writ C No.42177 of 2023. Reference to certain Authorities of the Hon'ble Supreme Court has been made to contend that writ jurisdiction cannot be invoked once the matter arises from arbitral award. The Authorities would be referred to at appropriate place in this judgement.

8. On merits of the order dated 28.07.2023, impugned in the present writ petition, it has been pleaded that as per Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'Act of 2013'), read with Section 3G(7) (a) of the Act, 1956, the criteria that shall be adopted by the Collector would be referable to the market value of the property acquired as specified in the Indian Stamp Act, 1899 for registration of the sale deeds or agreements to sell and it is further pleaded that the Arbitrator had considered the sale deeds of three years prior to the date of notification issued under Section 3A of the Act of 1956 and, therefore, even on merits, the writ petition has no force.

REJOINDER AFFIDAVIT

9. The petitioner has filed a rejoinder affidavit against the counter affidavit of N.H.A.I. and, by placing reliance upon certain judgements of the Apex Court (that shall be referred to hereinafter), it has been pleaded that the petitioner had already availed the statutory remedy provided under the Act by approaching the District Judge against the award of the Collector, however, since the directions issued by the District Judge in the order of remand dated 27.04.2022 have been given a complete go-by, it would not be a case of by-passing the statutory remedy under Section 34 of the Act of 1996. Further stand is that when the Authority fails to adopt the judicial procedure required for taking a decision, the existence of alleged alternative remedy would not be a bar in entertainment of writ petition. On merits of the impugned award dated 28.07.2023, it has been pleaded that the Arbitrator has failed to consider the sale deeds for the purposes of determination of market value and has violated the provisions of Section 3G(7)(a) of the Act of 1956 read with Section 26 of the Act, 2013 and not only the documents placed on record but also the directions issued by the District Judge in her order dated 27.04.2022 were ignored. Further stand is that mere revenue entries cannot be construed to determine the market value of the land.

COUNSEL HEARD

10. Heard Shri Navin Sinha, learned Senior Counsel assisted by Shri Utkarsh Srivastava, learned counsel for the petitioner, Shri Raghav Dwivedi, learned counsel for respondent No.2-National Highways Authority of India and Shri Rajiv Gupta, learned Additional Chief Standing Counsel on behalf of State-respondent No.3-the District Magistrate/Collector/Arbitrator, Jhansi.

SUBMISSIONS OF THE PETITIONER

11. Shri Navin Sinha, learned Senior Counsel appearing for the petitioner has made following submissions:-

(a) Once the District Judge, in her order dated 27.04.2022, particularly in paragraph Nos.14, 15, 16 and 18 thereof, clearly observed that the Arbitrator who had passed the award dated 30.09.2010 had not proceeded to independently assess the market value of the land and had given the award only on the basis of there being no declaration under Section 143 of the U.P. Z.A. L.R. Act and had refrained himself from going through the sale deeds filed as exemplars and had also ignored the potentiality of land ignoring certain judgements, the Collector/Arbitrator, being an Authority sub-ordinate to the District Judge, was bound in law to declare an award strictly in consonance with the observations made and guidelines issued by the Superior Court/Authority i.e. the District Judge;

(b) the remand order passed by the District Judge being not a subject matter of challenge before any superior forum, was binding upon sub-ordinate authority, i.e. the Collector and, hence, he was supposed to decide the matter strictly in accordance with the directions contained in the earlier order;

(c) the test for determining the compensation is as to what price a prospective buyer is willing to pay to the prospective seller in an open market and the utility of land would not be judged merely on the basis of its entry in the revenue records;

(d) the petitioner's land is adjoining to the existing Highway and just near to the boundary of Maharani Laxmibai Medical College, Jhansi and within proximity of about 1 to 1.5Kms, there are number of schools, nursing homes and Government Engineering College and also towards Gwalior at a distance of half kms, there is Government Para-Medical College and, further, all around the petitioner's land, commercial activities are going on and as per the circle rates notified by the District Magistrate/Collector, the land falls in the commercial category. Even for the purposes of levy of stamp duty, certain rates applicable in the area w.e.f. 07.01.2008 to 01.02.2010 have been referred to and it is submitted that the market value of the petitioner's land, at the time of notifications in reference, was about Rs.18,000/- per square

mtrs. It is further argued that in view of the special location of the petitioner's land adjoining to the National Highway, a further 10 % was required to be added and, hence, the market value of the petitioner's land would become about Rs.19,800/- per sq. mtrs. Various other facts and circumstances justifying the market value towards higher side have been pointed out to the Court;

(e) As regards the objection raised by N.H.A.I. with regard to maintainability of writ petition on the ground of remedy available under Section 34 of the Act of 1996, reference to the decision of the Apex Court in the case of **(State of Himachal Pradesh & Ors. v. Gujarat Ambuja Cement Ltd & Anr.) (2005) 6 SCC 499** and another judgement in the **Commercial of Income Tax and Ors. v. Chhabil Dass Agarwal (2014) 1 SCC 603** has been made and it has been argued that when the Authority fails to adopt judicial procedure required for passing a decision, the writ petition would be maintainable, even if, there is any alternative remedy; and

(f) since the Collector has recalled the order impugned dated 28.07.2023 by his subsequent order dated 03.11.2023, in any case, there has to be a fresh adjudication by the Collector on merits as per directions contained in the order dated 27.04.2022 passed by the District Judge.

SUBMISSIONS OF THE STATE RESPONDENTS

12. Shri Rajiv Gupta, learned Additional Chief Standing Counsel for the State-respondents, though initially justified passing of the order impugned by referring to certain aspects, which according to the State, were rightly discussed by the Collector in the order impugned, however, later on, it was argued that since the Collector, in furtherance of the orders issued by this Court in the present writ petition, has already recalled the order dated 28.07.2023, the challenge made to the order impugned does not survive and the writ petition should be dismissed as infructuous but in any case, the State-Authorities are ready to comply with the directions issued by this Court or any other court of law.

SUBMISSIONS OF THE N.H.A.I.

13. Shri Raghav Dwivedi, learned counsel appearing for N.H.A.I. has vehemently opposed the writ petition and by emphatically pressing the stand taken in the counter affidavit, it has been argued that the legislative intent enshrined under Section 34(1) of the Act of 1996 is clear to the effect that challenge to the arbitral award can be made only by filing an application for setting aside such award before the principal Civil Court of original jurisdiction, i.e. the District Judge and, once the petitioner earlier approached the District Judge against the award declared on a previous occasion, the same recourse should be taken this time also. Learned counsel

has referred to the decision of Supreme Court in the case of **Bhawan Constructions v. Executive Engineer, (2022) 1 S.C.C. 75** in support of his contention. He further submits that even on merits, the order impugned dated 28.07.2023 is perfectly in accordance with law as the Collector has exercised his powers as per Section 3G(7)(a) of the Act, 1956 read with Section 26 of the Act of 2013 and, hence, no interference is required.

ANALYSIS OF RIVAL CONTENTIONS

14. Having heard learned counsel for the parties, the first question that arises for consideration by this Court is as to whether, in view of a remedy provided under Section 34 of the Act of 1996 against an award passed by the Arbitrator under Section 3G(5) of the Act of 1956, the challenge made to the order dated 28.07.2023, impugned in the present writ petition, filed under Article 226 of the Constitution of India can be turned down.

15. Admittedly, in the present case, an award was made by the Special Land Acquisition Officer, Joint Organisation, Jhansi on 30.09.2010, against which, the petitioner availed remedy under Section 3G(5) of the Act of 1956 by approaching the Arbitrator/District Magistrate, Jhansi where the dispute was registered as Arbitration Case No. 521 of 2012 (Dr. Rajeev Sinha v. N.H.A.I & Others). The said Arbitrator declared his award on 15.09.2017 on merits which was set aside by the District Judge, Jhansi in exercise of powers under Section 34 of the Act of 1996 by order dated 27.04.2022 and following findings were recorded:-

(a). The Arbitrator did not consider any material on record, which could go to show the market value of the land in question. He rather took into consideration the valuation done on behalf of N.H.A.I., who is one of the opposite sides. The Arbitrator did not proceed to independently assess market value;

(b). The Arbitrator, while coming to a conclusion that there had not been any declaration of change of land use under Section 143 of the U.P. Z.A.L.R. Act, completely ignored the provisions of Section 3G(7) of the Act of 1956 which mandates taking into consideration various parameters while determining the amount under sub-section (1) of Section 5 of Section 3(G);

(c). The Arbitrator was bound to take into consideration the market value on the date of publication of notification;

(d). As per the judgements of the High Court in **Shiv Ram Singh v. State of U.P., (2019) 6 ADJ 741** read with **P.P. Buildcon Pvt. Ltd. v. Chief Controlling Revenue & Ors., 2014 (7) ADJ 663**, as well as judgements of the Apex Court in the case of **O.N.G.C. Ltd. v. Western GECO International Ltd. (2014) 9 SCC 263** and **Union of India & Anr. v. Tarsem Singh & Ors. (2019) 9 SCC 304**, the principles for determination of compensation had not been considered;

(e). The view of the Arbitrator that sale deeds executed between 04.10.2008 and 05.10.2009, as recorded by the Special Land Acquisition Officer, were examined by the Sub Registrar, Jhansi, however, the Arbitrator, before observing that the sale deeds were not found to be of any utility by the said officials as they did not match the local conditions of the land acquired, committed a patent error in not examining the sale deeds himself;

(f). The Arbitrator, who was expected to embark on the inquiry by himself in the matter, was not justified in ignoring the potentiality of land and, hence, his order is a non-speaking one;

(g). The market value of the land is to be assessed on the basis of factors like situation, surroundings and other topographical traits as well as its probable use.

16. The District Judge, in the operative portion of the order dated 27.04.2022, while setting aside the arbitral award dated 15.09.2017, issued a clear direction to the Arbitral Tribunal, i.e. the Arbitrator/Collector, Jhansi to decide the case afresh, in the light of observations given in the body of the order after affording opportunity of hearing to both the sides. Therefore, the Arbitrator was certainly bound by the directions issued and all the observations recorded in the order of the District Judge, however, the Court finds from perusal of the order impugned dated

28.07.2023 that the Arbitrator/Collector, in one and half page, has considered absolutely nothing, except what had been recorded by the Special Land Acquisition Officer in the initial award dated 30.09.2010. The so-called reasoning recorded in the order impugned reads as follows:-

"मैंने सक्षम प्राधिकारी की पत्रावली तलब कर उसका गहनता से अध्ययन किया गया। प्रकरण में तथ्य निम्न प्रकार है। वादी द्वारा अपनी भूमि को न तो धारा-143 ज०उ० एक्ट के अन्तर्गत आवासीय घोषित कराया गया और न ही कोई इस आशय का साक्ष्य वादी द्वारा प्रस्तुत किया गया। जिससे यह स्पष्ट हो सके कि उक्त भूमि अकृषक भूमि है और इसका उपयोग अकृषक भूमि के रूप में होता रहा।

यह कि ग्राम-कोछाभावर की अर्जित भूमि के बाजार मूल्य की जानकारी हेतु धारा 3 ए की अधिसूचना दिनांक 03-09-2009 भारत के राजपत्र असाधारण दिनांक 03-09-2009 के प्रकाशन के एक वर्ष पूर्व दिनांक 04-10-2008 से 05-10-2009 तक की अबधि में निष्पादित विक्रय पत्रों का संकलन सब रजिस्ट्रार कार्यालय, झाँसी से कराया गया। उक्त विक्रय पत्रों के आधार पर आने वाली भूमि के बाजार दर के अनुरूप न होने के कारण उक्त विक्रय पत्रों को अस्वीकार करने के उपरान्त अब मात्र स्टाम्प ड्यूटी हेतु जिलाधिकारी द्वारा निर्धारित बाजार दर पर विचार करना न्यायोचित समझा। तदनुसार अर्जित भूमि में निहित समस्त गाटा संख्याओं के लिए मु० 15,00,000=00 रूपया प्रति हैक्टेयर एवं परिसम्पत्ति की नाप-जोख परियोजना निदेशक, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, झाँसी द्वारा अधिकृत सुगम इंटर नेशनल संस्थान (एन०जी०ओ०) द्वारा की

गयी जिसे परियोजना निदेशक, भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, झाँसी द्वारा सत्यापित किया गया। उक्त प्राप्त विवरण पत्र को सहायक अभियन्ता, प्रान्तीय खण्ड, लोक निर्माण विभाग, झाँसी द्वारा प्रतिहस्ताक्षरित किया गया। सक्षम प्राधिकारी द्वारा भूमि एवं परिसम्पत्ति के सम्बन्ध में दिनांक 30-09-2010 को एवार्ड पारित किया गया। राष्ट्रीय राजमार्ग अधिनियम की धारा-3 जी(2) के अनुसार 10 प्रतिशत अतिरिक्त धनराशि भी दी गयी है।

आर०डी० 2020 (147) पेज 199 पर मा० उच्चतम न्यायालय, नई दिल्ली ने भी सिविल अपील संख्या-7346 सन् 2010 अपर आयुक्त राजस्व व अन्य बनाम अखलाक हुसैन व अन्य में स्पष्ट रूप से अवधारित किया गया है कि उ०प्र० जमींदारी विनाश एवं भूमि व्यवस्था अधिनियम, 1950 धारायें 143 एवं 3(14) भूमि की प्रकृति क्या कृषिकीय है या अकृषिकीय निर्धारित की जायेगी। अधिनियम की धारा-143 के अन्तर्गत निर्धारण के अभाव में भूमि अधिनियम की धारा -3(14) के प्राविधानों के अन्तर्गत कृषिकीय मानी जायेगी।

भूमि की वास्तविक भौतिक स्थिति जो भूमि अधिग्रहण के समय होगी उसी के आधार पर मूल्यांकन किया जाना ही विधिक व्यवस्थाओं के अनुरूप होता है। इसलिए एवार्ड दिनांक 30-09-2010 में भूमि कृषिकीय थी इसलिए धारा-3(14) जमींदारी विनाश अधिनियम के अन्तर्गत अधिग्रहीत भूमि कृषिकीय मानी जायेगी।

यह कि वादी द्वारा भूमि की दरों के निर्धारण के सम्बन्ध में दौरान मुकदमा प्रस्तुत किये गये अभिलेखों, भूमि अधिग्रहण सम्बन्धी मूल वाद पत्रावली पर उपलब्ध अभिलेखों इत्यादि, बहस में प्रस्तुत तर्कों एवं मा० न्यायालय जिला न्यायाधीश, झाँसी द्वारा पारित आदेश दिनांक 27-04-2022 को संज्ञान में रखकर प्रकरण

में अर्न्तनिहित समस्त बिन्दुओं पर विचारोपरान्त मेरा यह स्पष्ट मत है कि सक्षम प्राधिकारी / विशेष भूमि अध्याप्ति अधिकारी, झाँसी ने एवार्ड आदेश दिनांक 30-09-2010 के अर्न्तर्गत भूमि / परिसम्पत्ति का जो मूल्य निर्धारित किया है वह सही है। जिसे यथावत रखना उचित प्रतीत होता है और उसे निरस्त किया जाना न्यायोचित नहीं है। विद्वान सक्षम प्राधिकारी / विशेष भूमि अध्याप्ति अधिकारी, झाँसी ने एवार्ड के अर्न्तर्गत प्रतिकर राशि के अतिरिक्त 10 प्रतिशत अतिरिक्त धनराशि भी अनुमन्य की है। उपरोक्त समीक्षा के फलस्वरूप वादी अर्जित भूमि / परिसम्पत्ति के प्रतिकर के रूप में कोई अतिरिक्त धनराशि पाने का अधिकारी नहीं है।

आदेश

यह कि वादी को अर्जित भूमि / परिसम्पत्ति का एवार्ड दिनांक 30-09-2010 द्वारा दिया गया प्रतिकर नियमानुसार है। अतः वादी प्रतिकर के रूप में कोई अतिरिक्त धनराशि पाने का अधिकारी नहीं है। प्रस्तुत वादपत्र तदनुसार निर्णीत किया जाता है। पत्रावली दाखिल दफ्तर की जाये। "

17. It is apparently clear from the order impugned that not even a single direction issued by the District Judge in the order of remand dated 27.04.2022 has been obeyed and, in fact, the Arbitrator/Collector has not even discussed any of the directions in the entire order impugned. This Court seriously deprecates the approach of the Arbitrator/Collector who is vested with statutory powers to determine lawful compensation as per the scheme of the Act of 1956 and, therefore, once the Court superior to him analyzed each and every aspect of the initial award dated

30.09.2010 as well as the arbitral award dated 15.09.2017 and set aside the same after recording findings on merits of the petitioner's claim as regards market value of the land on the date of notifications acquiring the land, the Arbitrator/Collector was bound to follow the quasi-judicial discipline and record finding on each of the parameters discussed by the learned District Judge. The Court finds that the Arbitrator/Collector has simply referred to the non-declaration under Section 143 U.P. Z.A. L.R. Act and swept away the sale deeds produced by the petitioner in a single line that only the stamp duty determined by the Collector has to be considered. In the considered opinion of this Court, the Arbitrator/Collector has expressly violated the directions issued by the District Judge in order dated 27.04.2022.

18. As regards the discretion of the High Courts to entertain writ petition under Article 226 of the Constitution of India, despite a remedy provided under any statute, law in this regard needs reiteration.

19. The Constitution Bench of Supreme Court, in the case of **State of U.P. v. Mohammad Nooh, AIR 1958 Supreme Court 86**, has held that there is no rule with regard to Certiorari as there is with Mandamus, that it will lie only where there is no other equally effective remedy. A Writ of Certiorari will lie, provided the requisite grounds exist, although a right of appeal has been conferred by Statute. It was observed that the fact that the aggrieved party had another adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to

whether it should, in exercise of its discretion, issue a Writ of Certiorari to quash the proceedings and decisions of inferior courts subordinate to it and, ordinarily, the superior court will decline to interfere until the aggrieved party has exhausted other statutory remedies, if any. This rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law.

20. Another Constitution Bench of the Supreme Court, in the case of **K.S. Rashid & Son v. Income Tax Investigation Commission & Ors.**, AIR 1954 SC 207, observes that there are only two limitations placed upon the exercise of the powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 226 of the Constitution is to be determined.

21. The Supreme Court, in the case of **Ram and Shyam Company v. State of Haryana and Others**, (1985) 3 S.C.C. 267, laid down that ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where

the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the Court.

22. The three judges Bench of the Supreme Court, in the case of **Sangram Singh v. Election Tribunal Kotah And Another, A.I.R. 1955 S.C. 425**, observed that the jurisdiction which Articles 226 and 136 confer, entitles the High Courts and the Supreme Court to examine the decisions of all Tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is *vis-a-vis* all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136.

23. The Supreme Court, in the case of **Commissioner of Income Tax and Others v. Chhabil Dass Agarwal, (2014) 1 S.C.C. 603**,

spelt out at least five illustrative and non-exhaustive exceptions to the rule of exhaustion of remedies as follows:-

- (i) Where remedy available under statute is not effective but only mere formality with no substantial relief; or
- (ii) Where statutory authority not acted in accordance with provisions of enactment in question, or ;
- (iii) Where statutory authority acted in defiance of fundamental principles of judicial procedure, or;
- (iv) Where statutory authority resorted to invoke provisions which are repealed, or;
- (v) Where statutory authority passed an order in total violation of principles of natural justice.

24. A Constitution Bench of the Supreme Court, in **State of Madhya Pradesh and Anr. Bhailal Bhai, AIR 1964 SC 1006**, held that the power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in **N.T. Veluswami Thevar v. G. Raja Nainar and Others, AIR 1959 SC 422; Municipal Council, Khurai and Anr. v. Kamal Kumar and Another, AIR 1965 SC 1321; Siliguri Municipality and Others v. Amalendu Das and Others, AIR 1984 SC 653; S.T. Muthusami v. K. Natarajan, AIR 1988 SC 616; Rajasthan SRTC v. Krishna Kant, AIR 1995 SC 1715; Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Others, AIR 2000 SC 2573; A. Venkatasubbiah Naidu v. S. Chellappan, (2000) 7 SCC 695; and L.L. Sudhakar Reddy and Others v. State of Andhra Pradesh and Others, (2001) 6 SCC**

634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and others, (2001) 8 SCC 509; Pratap Singh and Anr. v. State of Haryana, (2002) 7 SCC 484 and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Others, (2003) 1 SCC 72.

25. In **Harbans Lal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107**, the Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged..... But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. Reference to another judgement of Supreme Court in the case of **Harbanslal Sahnia & Anr. v. Indian Oil Corpn. Ltd. & Ors., JT 2002 (10) SC 561** can be made, in which also the view taken by the Supreme Court is that the rule of exclusion of Writ Jurisdiction by availability of alternative remedy is the rule of discretion and not one which is compulsory.

26. In view of the above discussion, the argument of learned counsel for NHA that the writ petition should be dismissed on the ground of availability of alternative remedy under Section 34 of the Act of 1996, does not have any force in the facts and circumstances of the present case and this Court is satisfied that the instant case falls within the well recognised exceptions to the general rule of exhaustion of alternative remedies, as held above by the Supreme Court and, therefore, the present writ petition is not liable to be dismissed on this ground.

27. As regards the duty of a Court to which matter is remanded by its superior court/authority, a learned Single Judge of this Court, in a case arising out of U.P. Imposition of Ceiling of Land Holdings Act, 1961, reported as **Ram Nagina Chaudhary v. State of U.P. and Others, 1978 AWC 610**, deprecated the approach of the Prescribed Authority acting in ignorance of the directions issued by its superior court that had remanded the matter to it. This Court referred to the remand order which observed that the Prescribed Authority should have made inquiries to find out as to what was share of the appellant in the concerned plots and that the case should go back to the Prescribed Authority for fresh decision after inquiry in that respect. While referring to the operative portion of the remand order which directed the Prescribed Authority to take a fresh decision in the light of the observations made in the body of the order, this Court observed that by not following the directions contained in the remand order, not only the Prescribed Authority but also, subsequently, the Appellate Authority committed the

errors and mistakes that were apparent on the face of the record and set aside the said illegal orders.

28. A learned Single Judge of the Calcutta High Court, in **Scientific Instruments Company Ltd. v. Collector of Customs & Anr., AIR 1976 Calcutta 38**, was dealing with a case arising out of Customs Act, 1962 and the rules framed thereunder and found that the Assistant Collector acted in excess of his jurisdiction and in violation of the order of the Appellate Authority. The Court held that the Assistant Collector's jurisdiction and powers were limited by the order of the Appellate Authority and it was his duty to comply with it. The High Court, having found the order being contrary to the directions of the Appellate Authority as illegal, unjustified and without jurisdiction as well as an error apparent on the very face of it, set aside the same and issued appropriate directions to the Assistant Collector of Customs to proceed to re-determine the issue involved in accordance with law in compliance of the order passed by the Appellate Authority within stipulated period of time.

29. The Supreme Court, in **Union of India And Others v. Kamlakshi Finance Corporation Ltd., 1992 Supp (1) SCC 443**, was dealing with a case under Central Excise Act, 1944 and found that order of the Appellate Collector is binding on the Assistant Collectors working within jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. It was held that the principles of judicial discipline require that the

orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities and if this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration.

30. In the present case, this Court is fully satisfied that Arbitrator/Collector, Jhansi has acted in defiance of fundamental principles of judicial procedure particularly by not following the directions of the learned District Judge, as aforesaid, and in view of the above discussion, the order impugned dated 28.07.2023 cannot sustain on merits and is liable to be quashed despite the fact that it has been recalled by the Collector on 03.11.2023, inasmuch as, reasons for setting aside the order on merits were required to be recorded in the present judgement so that the fresh exercise to be carried out by the Arbitrator/Collector Jhansi even after recalling his order, should be strictly in accordance with law and based upon material on record, as noted by the District Judge in the order of remand dated 27.04.2022.

31. Accordingly, the writ petition succeeds and stands **allowed**.

32. The order impugned dated 28.07.2023, passed by the District Magistrate/Arbitrator/Collector, Jhansi in Case No.2337 of 2023 (Dr. Rajeev Sinha v. National Highways Authority of India) is hereby **quashed**.

33. It is left open to the petitioner to approach the Arbitrator/Collector, Jhansi for passing fresh award strictly in consonance

with the directions issued in the order dated 27.04.2022 passed by the District Judge, Jhansi in Misc. Case No. 12 of 2017, as reiterated in this judgement.

Order Date:-05.02.2024

Jyotsana

(Kshitij Shailendra, J.) (Manoj Kumar Gupta, A.C.J.)