

At Residence

Reserved
A.F.R.

Case :- MATTERS UNDER ARTICLE 227 No. - 56 of 2022

Petitioner :- Smt. Tulsarani And Another

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Nand Kishor Mishra, Shilpa Ahuja

Counsel for Respondent :- A.S.G.I., C.S.C., Jai Krishna Narain
Sharma, Pranjal Mehrotra

Hon'ble J.J. Munir, J.

1. This petition under Article 227 of the Constitution is directed against an order of the Presiding Officer, Commercial Court, Jhansi dated 28.09.2021, to the extent it directs return of Arbitration Misc. Case No. 52 of 2021 and Arbitration Misc. Case No. 2 of 2021, under Section 34 of the Arbitration and Conciliation Act, 1996, for presentation to the proper Court.

2. It is common ground between parties that the petitioners' land comprised in a part of *Arazi* No. 73 of Village Raimalpura, Tehsil Kulpahar, District Mahoba, was acquired by the Central Government for widening of National Highway No. 76 from 89.600 kms. to 133.520 kms. The petitioners' land in *Arazi* No. 73 aforesaid, which shall hereinafter be called 'the land in question' was acquired through a Notification No. 2345 dated 18.08.2017, issued and published by the Central Government under Section 3(2) of the National Highways Act, 1956 (for short, 'the Act of 1956'). The notification last mentioned was followed by Notification No. 3378 dated 08.12.2017, published in the Gazette Extraordinary dated 08.12.2017 of the Government of India. Under the said notifications, a total 0.7507 hectare of land was acquired in Village Raimalpura, out of which 0.6587 hectare was found to be agricultural land, while the balance 0.0920 hectare was determined as State land. The

land in question is part of the aforesaid total area of land acquired in Village Raimalpura.

3. A notification was published in two local newspapers i.e. Dainik Jagran and Times of India dated 22.12.2017, asking persons affected to produce their claims for compensation under Section 3G of the Act of 1956. The first petitioner laid claim to the land in question supported by necessary evidence before the Competent Authority under Section 3G. The Competent Authority/ Special Land Acquisition Officer, Banda passed an award dated 07.07.2018, assessing compensation for the entire land acquired in Village Raimalpura, including the land in question, on the basis that it is agricultural land. Compensation was determined, treating the land to be agricultural.

4. The petitioners, aggrieved by the award passed by the Competent Authority dated 07.07.2018, moved the Statutory Arbitrator, appointed by the Central Government under Section 3G(5) of the Act of 1956, seeking enhancement of the compensation awarded. The Statutory Arbitrator, appointed in terms of a notification dated 30.07.2020 issued by the Government of India for acquisitions made in District Mahoba, was notified to be the District Magistrate, Mahoba. The Statutory Arbitrator dealt with all objections relating to the entire land in Village Raimalpura, admeasuring 0.6587 hectare, that was found to be *bhumidhari*.

5. The petitioners' case relating to a higher rate compensation for the land in question was also dealt with together with those of others, who had approached the Statutory Arbitrator. The Statutory Arbitrator did not accept the petitioners' contention, as he did not for other land similarly

situate that the land in question was residential in character and ought to be compensated for its acquisition at residential rates. It was held to be agricultural. In agreement with the Competent Authority, the Statutory Arbitrator/ District Magistrate, Mahoba upheld the Competent Authority's award dated 07.07.2018 by his arbitral award dated 10.12.2020 passed in Case No. 00333 of 2020.

6. The petitioners, like others, aggrieved by the Statutory Arbitrator's award, moved the Commercial Court, Jhansi under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') with a prayer to set aside the Statutory Arbitrator's award.

7. All the applications by landholders of acquired land in Village Raimalpura, who were aggrieved by the Statutory Arbitrator's award dated 10.12.2020, were consolidated and heard together with Arbitration Misc. Case No. 51 of 2021 being treated as the leading case. The petitioners' cases are Arbitration Misc. Case Nos. 52 of 2021 and 2 of 2021.

8. The Commercial Court, Jhansi held that the Statutory Arbitrator's award could not be questioned under Section 34 of the Act of 1996 and the petitioners' remedy was to seek a reference under Section 67 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') to the Land Acquisition and Rehabilitation and Resettlement Authority, constituted under Section 51 of the Act of 2013. Accordingly, the Presiding Officer, Commercial Court, Jhansi directed return of the applications under Section 34 of the Act of 1996 under Order VII Rule 10 CPC for presentation to the proper Court. It was further directed that in case steps were not taken to take

back the applications, the applications would stand rejected under Order VII Rule 11 (d) CPC.

9. It is this order of the Presiding Officer, Commercial Court, Jhansi that the petitioners have impugned in the present petition.

10. Heard Mr. Nand Kishor Mishra, learned Counsel for the petitioners, Mr. Pranjal Mehrotra, learned Counsel appearing on behalf National Highway Authority of India, respondent no.5, Mr. Jai Krishna Narain Sharma, learned Central Government Counsel appearing on behalf of the Union of India and Mr. Sanjay Kumar Singh, learned Additional Chief Standing Counsel for respondent nos.2, 3 and 4.

11. The moot point involved in this case is whether the award of the Statutory Arbitrator passed under Section 3G(5) of the Act of 1956 can be questioned through an application under Section 34 of the Act of 1996? If yes, before which Court or Tribunal?

12. The provisions of Section 3G of the Act of 1956 read:

3G. Determination of amount payable as compensation.-(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims

from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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.

(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-

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession 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.

13. Upon hearing the learned Counsel for parties and perusing the impugned judgment, this Court finds that the Presiding Officer, Commercial Court may not be wrong in saying that he does not have the jurisdiction to entertain the application under Section 34 of the Act of 1996, but he is

certainly wrong in thinking that the award of the Statutory Arbitrator under Section 3G(5) of the Act of 1956 cannot be challenged by an application under Section 34 of the Act, last mentioned. Sub-Section (6) of Section 3G clearly mentions that subject to the provisions of the Act of 1956, the provisions of the Act of 1996 shall apply to every arbitration under the former Act. There is nothing in the scheme of Section 3G of the Act of 1956 to exclude the application of Section 34 *vis-à-vis* the award of the Statutory Arbitrator, passed under Section 3G(5) of the Act of 1956. An award by the Statutory Arbitrator may be questioned before the Court of competent jurisdiction under Section 34 of the Act of 1996, like any other award by an Arbitrator.

14. This Court is of opinion that the Commercial Court was misled by the application of the provisions of the Act of 2013 relating to determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule to acquisitions made under the Act of 1956, by including it in the Fourth Schedule to the Act of 2013. The said provisions of the Act of 2013 have been made applicable to acquisitions under the Act of 1956 by the Central Government issuing an order in exercise of powers under sub-Section (1) of Section 113 of the Act of 2013.

15. The provisions of the Act of 2013 have been made applicable to acquisitions under the Act of 1956 for the limited purpose of calculation of compensation and entitlement to solatium, interest etc. in order to place land oustees under both the statutes at par. It is not that the entire procedure, including remedies for determination and assailing the quantum of

compensation awarded under the Act of 1956, have been subsumed by the Act of 2013 by the limited extension of certain benefits under the Act of 2013 to acquisitions made under the Act of 1956. The provisions of reference to the Land Acquisition, Rehabilitation and Resettlement Authority under the Act of 2013 for the purpose of seeking enhancement of compensation awarded available to a land oustee, would not be available to a land oustee, whose land is acquired under the Act of 1956. His remedies are confined to the four corners of Section 3G of the Act of 1956.

16. This is the clear import of the holding of their Lordships of the Supreme Court, to the understanding of this Court, in **Union of India and another v. Tarsem Singh and others, (2019) 9 SCC 304**. In **Tarsem Singh** (*supra*), it has been held:

13. The First Schedule to the said Act provides that solatium equivalent to 100% of the market value multiplied by various factors, depending on whether the land is situated in a rural or urban area, constitutes minimum compensation package to be given to those whose land is acquired. The Fourth Schedule to this Act, to be read along with Section 105, expressly includes under Item 7, the National Highways Act, 1956. In Item 9, this Schedule also includes the Requisitioning and Acquisition of Immovable Property Act, 1952. By a Notification dated 28-8-2015 issued under Section 105 read with Section 113 of the 2013 Act, it is provided that the 2013 Act compensation provisions will apply to acquisitions that take place under the National Highways Act. The result is that both before the 1997 Amendment Act and after the coming into force of the 2013 Act, solatium and interest is payable to landowners whose property is compulsorily acquired for purposes of National Highways. This is one other very important circumstance to be borne in mind when judging the constitutional validity of the 1997 Amendment Act for the interregnum period from 1997 to 2015.

48. It is thus clear that the Ordinance as well as the notification have applied the principle contained in *Nagpur Improvement Trust* [*Nagpur*

Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to *similarly placed* landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of *Nagpur Improvement Trust* [*Nagpur Improvement Trust v. Vithal Rao*, (1973) 1 SCC 500] would apply to acquisitions which take place under the National Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore, require a re-look in the light of this development. [The Defence of India Act, 1971, was a temporary statute which remained in force only during the period of operation of a proclamation of emergency and for a period of six months thereafter – vide Section 1(3) of the Act. As this Act has since expired, it is not included in the Fourth Schedule of the 2013 Act.] In any case, as has been pointed out hereinabove, *Chajju Ram* [*Union of India v. Chajju Ram*, (2003) 5 SCC 568] , has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court [*Union of India v. Tarsem Singh*, 2018 SCC OnLine P&H 6036] , [*Jang Bahadur v. Union of India*, 2018 SCC OnLine P&H 6034] , [*Union of India v. Abhinav Cotspin Ltd.*, 2016 SCC OnLine P&H 19319] is correct, whereas the view of the Rajasthan High Court [*Banshilal Samariya v. Union of India*, 2005 SCC OnLine Raj 572 : 2005-06 Supp RLW 559] is not correct.

52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral

awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed.

17. From a reading of the principles extensively laid down in **Tarsem Singh**, it is evident that what has been made applicable by the Central Government through their order dated 28.08.2015, quoted *in extenso* in Paragraph No. 47 of the report in **Tarsem Singh**, is a limited application of the provisions of the Act of 2013 relating to determination of compensation, rehabilitation and resettlement and extension of infrastructure amenities. It is not a complete supplant of the provisions of the Act of 1956 by those of the Act of 2013. The Commercial Court has, in our opinion, therefore, completely gone wrong in holding that the remedy against the award passed by the Statutory Arbitrator under the Act of 1956 would not be an application under Section 34 of the Act of 1996, but a reference to the Authority constituted under Section 51 of the Act of 2013. It is held, accordingly.

18. There is another aspect of the matter. And, that is, what would be the forum before which the application under Section

34 of the Act of 1996 would lie. The petitioners thought that since it is an arbitration application, they should go to the Commercial Court, instead of the Principal Civil Court of original jurisdiction in the district. This issue fell for consideration before the Uttarakhand High in **Richa Bisht v. Union of India, AIR Online 2020 UTR 478**. It was held in **Richa Bisht (supra)**:

13. From the scheme of the Act, it is apparent that only a commercial dispute can be tried by a commercial Court. For a dispute to qualify as commercial dispute, it must fall within one of the clauses of Section 2 (i) (c) of the Commercial Courts Act, 2015. A dispute will not become a commercial dispute merely because it is an arbitration matter and has been dealt with separately under Sections 10 and 15(2) of the said Act.

14. Every application filed under Section 34 of the Arbitration and Conciliation Act cannot be transferred to the commercial Court under Section 15(2) of the Commercial Courts Act, 2015 and only such applications will be required to be transferred, which are relating to a commercial dispute of a specified value.

15. The dispute, which petitioners raised before learned District Judge does not fall under any clause of Section 2 (1) (c) of the Act, which defines 'commercial disputes'.

16. Clause (xxii) of Section 2 (1) (c) enables the Central Government to include any other dispute in the definition of 'commercial dispute' by notification.

17. On 03.03.2020, Mr. Manoj Kumar, learned Central Government Standing Counsel was asked to get instructions whether the Central Government has issued any notification, as contemplated under Section 2(1) (c) (xxii) of the Commercial Courts Act, 2015. He was further asked to get definite instruction as to whether the dispute arising out of land acquisition for the purpose of construction of highway has been treated as commercial dispute by any notification issued by the Central Government under Section 2(1) (c) (xxii) of the Act.

18. Today, Mr. Manoj Kumar, learned Central Government Standing Counsel, on instructions, submitted that no such notification has been issued by the Central Government under Section 2(1) (c) (xxii) of the aforesaid Act.

19. It is nobody's case that petitioners are into real estate business. Learned counsel appearing for respondent no. 2 fairly concedes that petitioners are not doing trade or business in immovable property. It is an admitted position that the property belonging to the petitioners were compulsorily acquired under the provisions of National Highways Act, 1956, therefore, Clause-vii of Section 2(1) (c) of the Commercial Courts Act, 2015 also cannot be pressed into service for treating the dispute raised by the petitioners before the District Judge, as commercial dispute.

20. In view of the aforesaid discussion, this Court has no hesitation in holding that the dispute raised by the petitioners before the learned District Judge is not a 'commercial dispute', therefore, learned District Judge erred in transferring the application filed by the petitioners under Section 34 of the Arbitration and Conciliation Act to the Commercial Court, Dehradun.

19. The principles in **Richa Bisht** are squarely applicable to the facts here, because the petitioners' land has been acquired for the purpose of a National Highway. It is by no means a 'commercial dispute' within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015. For the said reason, the application under Section 34 of the Act of 1996 would not be maintainable before the Commercial Court. Thus, for reasons very different from those that have weighed with the Commercial Court in passing the order impugned, this Court concurs in the conclusions reached. It is made clear that upon return of the application under Section 34 of the Act of 1996 to the petitioners, it would be open to them, subject of course to the law of limitation, to institute proceedings, if so advised, before the Court of competent jurisdiction, entitled to hear an application under Section 34 of the Act of 1996.

20. Subject to the above clarifications, this petition is **dismissed**. There shall be no order as to costs.

Order Date :- 26.9.2022

Anoop