IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ARBITRATION APPEAL NO. 99 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

DINESH SINGH

ARBITRATION APPEAL NO. 100 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

GEETA BAI

&

ARBITRATION APPEAL NO. 101 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

SHIVRAJ SINGH

ARBITRATION APPEAL NO. 103 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

VIRENDRA SINGH

ARBITRATION APPEAL NO. 105 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

DILIP KUMAR NAGAR

ARBITRATION APPEAL NO. 106 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

SIRNAM SINGH

ARBITRATION APPEAL NO. 107 of 2021

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA

Versus

BRIJENDRA

Appearance:

Shri Ashish Saraswat – learned counsel for the appellants in all appeals.

Shri Deependra Singh Raghuvanshi – learned counsel for the respondents.

Reserved on : 01.05.2025
Delivered on : 07.05.2025

ORDER

1. Looking to the similitude of the controversy involved, with the consent of the parties, these Arbitration Appeals are being heard and decided by this common order.

2. For convenience the facts of Arbitration Appeal No.99/2021 are being referred here to.

3. Invoking the appellate jurisdiction of this Court under Section 37(1)(C) of the Arbitration and Conciliation Act, 1996 (hereinafter called as "Act of 1996"), the appellant herein i.e. National Highways Authority of India (Ministry of Road Transport and Highways) has preferred this appeal questioning the order passed by 4th Additional District Judge, Shivpuri in MJC No. AV21/2018 dated 13.09.2021, by which application filed by the respondents under Section 34 of the Act of 1996 has been allowed and the Award passed by the Arbitrator dated 05.12.2016 has been set-aside.

4. Short facts confining to arbitration appeal no.99/2021 are that on 15.10.2011 as per section 3 (A) of the National Highways Act, 1956, a Gazette Notification: Extra ordinary was published by the Ministry of Road Transport and Highways for widening /construction of the National Highway No. 3 (Shivpuri - Dewas Section) from Km. 269.250 to Km. 294.190 and for that lands adjacent to National Highway No. 3 of Village - Lukwasa were proposed to be acquired as per the schedule annexed.

5. Admittedly, the lands of present respondents were included in acquisition on 18.09.2012 as per Section 3 (D) of the National Highways Act, 1956. The Gazette Notification: Extra ordinary was published and the scheduled land, thereafter, vested in the Central Government free from all encumbrances. On 15.01.2013 an award was passed by SDO-cum-Competent Authority Land Acquisition, National Highway No.3, Tehsil Kolaras District Shivpuri as provided under Section 3(G)(1) of the National Highways Act, 1956.

6. Aggrieved by the aforesaid award, an application under section 3 (G) (5) of the National Highways Act, 1956 was preferred

by present respondents before the Arbitrator-Cum-Divisional Commissioner, Division Gwalior on 07.05.2014 for enhancement of compensation amount.

7. A reply was filed by present appellant to the said application. On 05.12.2016, Arbitrator-Cum-Divisional Commissioner, Division Gwalior passed an award whereby application preferred by the respondents was dismissed.

8. Aggrieved by the said dismissal, on 22.07.2017, an application under Section 34 of the Act of 1996 was preferred by the respondents before the learned District Judge, Shivpuri which was, thereafter, transferred to 4th Additional District Judge, Shivpuri and was registered as MJC No.AV21/2018.

9. On 13.09.2021, an order was passed by learned 4th Additional District Judge, Shivpuri, whereby delay in preferring the application was condoned and the application preferred by respondents was allowed and the award dated 05.12.2016 passed by Arbitrator-Cum-Divisional Commissioner, Gwalior Division was set-aside. Being aggrieved by the aforesaid order, the present appeals have been filed.

10. Learned counsel for the appellant while referring to the order passed by Coordinate Bench of this Court in **M.P. No. 1537/2021 (Madhya Pradesh Road Development Corporation Vs. Baisakhu @ Sadhu) dated 05.05.2021 also reported in AIR 2021 MP 125** has argued that the order dated 13.09.2021 passed by learned 4th Additional District Judge, Shivpuri was without jurisdiction since as per the notification of Central Government, Commissioner Gwalior Division was notified to be an Arbitrator and both parties had participated in the arbitration proceedings before

the Commissioner, Gwalior Division, the seat as well as venue of arbitration proceedings, thus, can be said to be at Gwalior, therefore, application for setting aside the award under Section 34 of the Arbitration and Conciliation Act, 1996 would lie before principal seat of original jurisdiction at Gwalior and not at Shivpuri where the lands were situated.

11. Learned counsel for the appellant while referring to Section 2(i)(e) of the Arbitration and Conciliation Act, 1996 has argued that Court in the case of an arbitration would be the principal Civil Court of original jurisdiction in district and would include the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of the suit and as the seat of arbitration was at Gwalior, the Principal Civil Court of original jurisdiction at Gwalior would only have jurisdiction to hear any objections. To bolster his submission, learned counsel has further placed reliance on the decision rendered in the case of **NHAI Vs. Aneeta Mahajan in M.P. No.1939/2021 dated 12th October, 2022** and other connected matters.

12. Learned counsel for the appellant has further placed reliance in the matter of **Ram Chandra Singh Vs. Savitri Bai reported in 2003 (8) SCC 319 and** had argued that the issue to territorial jurisdiction is a pure question of law and the same can be raised at any point of time and also the order passed by the Court being without jurisdiction since is is nullity, any order or action taken pursuant thereto or in furtherance thereof would also be nullity. Thus, when the Courts at Shivpuri lacked jurisdiction, the objections heard and allowed by the Court at Shivpuri being *per se*

illegal deserves to be quashed and at the most, respondents can be directed to file objections before the Courts at Gwalior.

13. It was further argued that the respondents had never raised the issue about the compensation being not calculated in the light of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 in the application preferred under Section 3(G)(5) of the National Highways Act, 1956 before the Arbitrator-Cum-Divisional Commissioner, Gwalior Division (M.P.), therefore, the same was not the part of statement of claim before the Arbitrator during pendency of arbitration proceedings. Thus, when the issue of applicability of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 was not within the term of statement of claim before the Arbitrator, then addressing the said issue and holding that non-consideration thereof had rendered the award to be in violation of the public policy, therefore, is required to be set-aside iss bad in law and can be said that the 4th Additional District Judge, Shivpuri has travelled beyond the terms of statement of claim and statement of defence and also could be said that the said consideration was beyond the scope of Section 34 of Arbitration and Conciliation Act, 1996.

14. Apart from the aforesaid grounds, no other grounds were raised and it was prayed that the order passed by the Court below while adjudicating the objections under Section 34 of the Arbitration and Conciliation Act, 1996 being perverse and illegal, deserves to be dismissed.

15. On the contrary, learned counsel for the respondents has argued that when the provisions of Section 2(i)(e) r/w Section 42 of

the Arbitration and Conciliation Act, 1996 with respect to an arbitration agreement are seen, in case any application under Chapter I of the Arbitration and Conciliation Act, 1996 is made to a Court, then that Court alone would have jurisdiction over the arbitral proceedings and all the subsequent applications arising out of that agreement and the arbitration proceedings shall be made in that court alone and no other court will have jurisdiction but here-in case the arbitration which took place between the parties was not an arbitration arising out of a commercial contractual agreement but was a statutory arbitration mandated by the provision of National Highways Act, 1956 and the arbitrator was appointed by the Central Government, thus, when there was no contractual agreement, no seat of arbitration or venue of arbitration can be said to have been decided with the express approval of both the parties, therefore, mere appointment of Commissioner, Gwalior would not construe that it is the seat of Arbitration. To buttress his submissions, learned counsel has placed reliance on the decision of Hon'ble Apex Court rendered in the case of **BGS SGS Soma JV Vs. NHPC Limited reported in (2020) 4 SCC 234** and while referring to Para 38, 57 and 59 had submitted that on conjoint reading of aforesaid paragraphs, it would be evident that where the parties have selected the seat of arbitration in their agreement, such selection would then amount to an exclusive jurisdiction clause but herein case there is no arbitration agreement existing between the parties, therefore, the judgment cited by learned counsel for the appellant i.e. **Madhya Pradesh Road Development Corporation Vs. Baisakhu @ Sadhu (supra)** is highly misplaced.

16. Learned counsel on the basis of Paragraph 19 of the

aforesaid judgment, has further argued that where it is found on the facts of a particular case that either no seat is designated by agreement or so called seat is only a convenient venue, then there may be several courts where a part of cause of action arises may have jurisdiction. Hence, in a case where no arbitration agreement exists and where the cause of action arose at various places, all such places will have jurisdiction to hear the case under Section 34 of the Arbitration and Conciliation Act, 1996 and as the lands in question were situated at Shivpuri, the objections were rightly filed before the Court at Shivpuri and therefore, were well within jurisdiction. To substantiate the arguments further, learned counsel submitted that by virtue of Section 42 r/w Section 2(i)(e) of the Arbitration and Conciliation Act, 1996 where there are exist various places forming part of cause of action, the territorial jurisdiction with regard to challenge the arbitration proceedings would be a place where any party had filed the application before the Court first.

17. Learned counsel for the appellant has further submitted that an application under section 34 of the Arbitration and Conciliation Act, 1996 would actually be an application in terms of section 42 of the Arbitration and Conciliation Act, 1996 and therefore, the filing of application before the Court at Shivpuri at the first instance would give it a jurisdiction to hear the said application.

18. While referring to the judgment of Apex Court rendered in the case of **Punjab State Electricity Board Vs. Gurunanak Cold Storage reported in (1996) 5 SCC 411**, it was argued that statutory arbitration consists of a deemed agreement between the two parties and despite absence of an arbitration agreement, rest of the provisions of Arbitration and Conciliation Act, 1996 would apply, as

if there was an arbitration agreement between the parties and the dispute becomes arbitrable under the Arbitration and Conciliation Act, 1996 as if there was arbitration agreement between the parties, therefore, the provisions of Section 42 had a bearing for deciding the issue of jurisdiction as there can be said to be a deemed agreement.

19. Learned counsel has also referred to the judgment passed by the Hon'ble Apex Court in the case of **State of West Bengal and Others Vs. Associated Contractors reported in (2015) 1 SCC 32** and has argued that Section 42 of the Arbitration and Conciliation Act, 1996 would apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I and if the first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original jurisdiction in a State, then such application would be outside the purview of section 42 since was not filed in a court as defined under Section 2(i) (e) and also an application made to the Court without subject matter jurisdiction would be outside Section 42.

20. Learned counsel has also pressed upon the judgment of Hon'ble Apex Cout rendered in the case of **State of Jharkhand Vs. Hindustan Construction Co. Ltd. (2018) 2 SCC 602** wherein the judgment of **Associated Contractors (supra)** was affirmed by the Constitutional Bench of Hon'ble Apex Court.

22. It was further submitted that so far as the arguments advanced by learned counsel for the appellant that the award passed by the arbitrator was held to be beyond the scope of arbitration, therefore, was bad in law is concerned, after the advent of Arbitration and Conciliation (Amendment) Act, 2015, in the light of judgment of Hon'ble Apex Court in the matter of **Ssangyong Engg. & Construction Co. Ltd. Vs. NHAI reported in (2019) 15 SCC 131**

any award which has been passed either in contravention of principles of natural justice or where the proceedings have been conducted behind the back of either party or has been passed in contravention of the judgment of superior courts which has a binding precedent, meaning thereby that an award has been passed in contravention of the statute linked to the public policy or public interest, is liable to be set-aside and as in the present case, the compensation was not awarded as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 despite it is deemed the law of land under Article 141 of the Constitution of India, the Arbitral Award was thus liable to be set-aside.

23. It was further argued that wrong proposition has been placed before this Court that the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 would not be application to the proceedings under the National Highways Act, 1956, as in the light of the judgments of Hon'ble Apex Court rendered in the case of **Sunita Mehra & Another Vs. Union of India and Others reported in (2019) 17 SCC 672** which has been reiterated in the case of **Tarsem Singh Vs. Union of India reported in (2019) 9 SCC 304** and has been considered in the recent judgment of Hon'ble Apex Court rendered in the case of **National Highways Authority of India Vs. P. Nagaraju alias Cheluvaiah & Anr. reported in (2022) 15 SCC 1,** the said argument does not hold water as it had been made applicable to NH Act. Moreover, once the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 has been made applicable, the compensation ought to have been allowed under the

Act itself.

24. Lastly, it was argued by learned counsel that the order of arbitrator has been set-aside but the matter has not been remanded back which had left the present respondent remediless since application under Section 11 of the Arbitration and Conciliation Act, 1996 has been excluded to the arbitration carried out in pursuant to section 3(G)(5) of the National Highways Act, 1956 and therefore, no application further can be moved by the present respondents to appoint another arbitrator, therefore, in the factual scenario, remand in only option to harmonize the law and provide remedy to the respondents. While referring to the judgment of Hon'ble Apex Court rendered in the case of **Bombay Slum Redevelopment Corporation Private Limited Vs. Samir Narain Bhojwani reported in (2024) 7 SCC 218,** it has been argued that in the Arbitration Act, there is no statutory embargo on the power of the Appellate Court under Section 37(1)(c) to pass an order of remand, this Court can exercise the power of remand and remit the matter back to the Arbitrator for deciding the arbitration afresh. To buttress his submission, learned counsel has again placed reliance on Para 72 of the judgment of Hon'ble Apex Court in the matter of **P. Nagaraju (supra)** wherein it is observed that though the award passed by an Arbitrator cannot be modified but in appropriate cases, the award can be set-aside and the matter can be remitted back to the Arbitrator in terms of Section 34(4) of the Arbitration and Conciliation Act, 1996. Thus, prayed for remand of the matter to the Arbitrator.

25. Heard the counsel for the parties and perused the record.

26. With regard to ground of jurisdiction at Shivpuri to hear the objections under Section 34 of the Arbitration and Conciliation

Act, 1996 as raised by the learned counsel for the appellant is concerned, for answering the aforesaid proposition, certain provisions of sections of the Arbitration and Conciliation Act, 1996 are required to be analyzed.

27. Section 2(i)(e) of the Arbitration and Conciliation Act, 1996 defines "Court" " which means —

> *(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*
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> *(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]*

28. Section 42 of the Arbitration and Conciliation Act, 1996 deals with jurisdiction and is quoted herein-below:-

> ***42. Jurisdiction.****—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.*

29. The Apex Court in the matter of **BGS SGS Soma JV (supra)** in Para 59. has held as under:-

> *59. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this Part has been made in a Court..." It is obvious*

that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered in- effective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so- called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of ac- tion arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest appli- cation having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

30. In the aforesaid judgment, the Hon'ble Apex Court has observed that where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so- called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction as in the arbitration proceedings relating to National Highways Act, the parties are not governed by an agreement to regulate the process of arbitration. It is noteworthy that under the National Highways Act, 1956, the arbitration is not initiated based on an agreement entered into between the contracting parties under a contract but it is under a statutory provision which provides for such arbitration in lieu of 'reference' under the regime for acquisition of land for public purpose. One of the parties to such arbitration proceedings would also be a land loser and the adjudication in the arbitration proceedings is not based on any

definite terms of the contract providing for mutual obligations determinable under the contract but for determination of 'just compensation' in respect of land which is compulsorily acquired for a public purpose.

31. As per Section 3G (5) of National Highways Act, 1956, Central Government is authorized to appoint an Arbitrator in case, the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties and in that context, the Central Government has appointed Commissioner, Gwalior Division as an Arbitrator. Thus, the said appointment cannot be said to be a seat of the Arbitrator rather would be a convenient venue, therefore, in the light of the judgment of Hon'ble Apex Court in the case of **BGS SGS Soma JV (supra),** the courts where a part of cause of action had arisen will also have jurisdiction. Thus, in the said situation the earliest application having been made to the Court at Shivpuri where a part of cause of action had arisen would then be the exclusive court under Section 42 which would have controlled over the arbitration proceedings. Further in the matter of **BGS SGS Soma JV (supra)** in Para 60 and 61, test for determination of seat has been laid down. For reference Para 60 and 61 are quoted herein-below:-

> *60. The judgments of the English Courts have examined the concept of the "juridical seat" of the arbitral proceedings, and have laid down several important tests in order to determine whether the "seat" of the arbitral proceedings has, in fact, been indicated in the agreement be- tween the parties. The judgment of Cooke, J., in Roger Shashoua (supra), states:*
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> > *"34. "London Arbitration is a well known phenomenon which is often chosen by foreign nationals with a dif- ferent law, such as the law of New York, governing the substantive rights of the parties. This is because of the legislative framework and supervisory powers of the courts here which many parties are keen to adopt. When*

> *therefore there is an express designa- tion of the arbitration venue as London and no desig- nation of any alternative place as the seat, combined with a supranational body of rules governing the arbi- tration and no other significant contrary indicia, the in- exorable conclusion is, to my mind, that London is the juridical seat and English law the curial law. In my judgment it is clear that either London has been des- ignated by the parties to the arbitration agreement as the seat of the arbitration, or, having regard to the parties' agreement and all the relevant circumstances, it is the seat to be determined in accordance with the final fall back provision of section 3 of the arbitration act."*

> *61. It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.*

32. From the aforesaid legal position, it can be said that wherever there is an express designation of a "venue", the inexorable conclusion would be that the stated venue is actually the juridical seat of the arbitral proceeding, but here only the Commissioner, Gwalior Division has been appointed as an Arbitrator by the Central Government without there being any express designation of the venue at Gwalior. Thus, it can very well be said that Gwalior is chosen as a venue by the Commissioner, Gwalior Division to conduct arbitration proceeding would not term to be a juridical seat of the arbitration proceedings. Thus, the contention of the appellant in that regard is misconceived and accordingly it is held that the Courts at Shivpuri would also be termed as Principal Civil Court of Original Jurisdiction where the application under Section 34 would lie and as the application by respondent on first occasion had been filed at Shivpuri, this Court

has no hesitation to hold that no jurisdiction error has been committed by learned 4th Additional District Judge, Shivpuri in entertaining the application under Section 34 of the Arbitration and Conciliation Act, 1996.

33. So far as the contention raised by the appellant that the court below had travelled beyond the scope of provisions of Section 34 of the Arbitration and Conciliation Act, 1996 is concerned, Para 43 of the judgment of Hon'ble Apex Court rendered in the case of **P. Nagaraju (supra)** can be resorted to, for reference Para 43 of the said judgment is quoted herein-below:-

> *43.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.*

34. Though this fact has been agitated by the appellant that with regard to adjudication of the compensation reference was not required to be taken by the Arbitrator of the provisions of Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 and therefore, there is no illegality in dismissing the claim by the Arbitrator and ignoring the aforesaid fact, the Court below while analyzing the objections under

Section 34 has held that non-consideration and determination of the claim in the light of Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 had made the award *per se* illegal, had amounted to travelling beyond the terms of statement of claim which is not permissible under section 34, in the light of the Para quoted above of the judgment of **P. Nagaraju (supra)** is without any sum and substance. As has been held by the Hon'ble Apex Court, the situation may arise when a lesser compensation is determined in the arbitration proceedings and the land loser is complaining of the Award, non-furnishing of reasons for not determining the market value and the compensation would be one of the perspective since the same will have to be arrived at on a comparative analysis and for that Section 26 and 28 of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 would be relevant. Neither land loser nor the exchequer would suffer in the matter of just and fair compensation, hence, the reasons are to be expected in that matter, the absence of which will call for interference under Section 34 of the Arbitration and Conciliation Act, 1996 and as the said determination was not done by the Arbitrator, keeping in view the provisions of Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013, learned court below had rightly taken note of it which cannot be said that the Court has travelled beyond the scope of Section 34 of the Arbitration and Conciliation Act, 1996, thus, the aforesaid contention since also has no force.

35. So far as the contention of the appellant that Right to Fair

Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 is not applicable to the proceedings of National Highways Act, in the light of the judgment of Hon'ble Apex Court in the matter of **Sunita Mehra & Another (Supra), Tarsem Singh (surpa) and P. Nagaraju (surpra),** the said argument does not hold water.

36. The Central Government while exercising powers under sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 had made following order to remove certain difficulties, namely -

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the 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 shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

37. Further in Para 42 of the judgment of **P. Nagaraju (supra**), it has been held that in the arbitration proceedings relating to the 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 and the requirement therein being adverted to, should be demonstrated in the award to satisfy that Section 28(2) and 31(3) of the Arbitration and Conciliation Act, 1996 is complied with. Thus, this argument also does not have any force.

38. As no ground on merits has been raised by the appellant with regard to perversity and illegality committed by the Court below while deciding application under Section 34 of Arbitration and Conciliation Act, 1996, this Court finds that no illegality and perversity has been committed by learned court below in deciding the said application and setting-aside the award passed by the Arbitrator.

39. Another fact which comes for determination whether the respondents could be left remediless even though the award passed by the Arbitrator has been set-aside, since there are no powers of remand to the Court hearing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 ?

40. True it is that that law in that regard is well settled that while deciding an application Section 34 of Arbitration and Conciliation Act, 1996, the Court can set aside or allow but cannot remand the matter to the Arbitrator for fresh decision as has been held by the Hon'ble Apex Court in the case of **Radha Chemicals Vs Union of India passed in Special Leave to Appeal (C) No(s).2334/2018 dated 10.10.2018 and Kinnari Mullick and Another Vs. Ghanshyam Das Damani, (2018) 11 SCC 328**, but the fact remains that a landowner whose land was acquired cannot be left remediless, therefore, in the light of Para 72 of the judgment

of Hon'ble Apex Court rendered in the case of **P. Nagaraju (supra)**, in the fitness of things, this Court deems it appropriate to remit the matter to the learned Arbitrator to decide it afresh.

41. So far as the judgment of coordinate Bench of this Court rendered in the case of **Madhya Pradesh Road Development Corporation Vs. Baisakhu (M.P. No. 1532/2021)** decided on **05.05.2021** and the decision rendered in a bunch of petitions including M.P. No.1939/2021 on 12.10.2022, relied upon by learned counsel for the appellant is concerned, the said judgment being in the nature of per inqurium will not have binding effect and are therefore, unenforceable.

42. With the aforesaid, these appeals stand disposed of.

(MILIND RAMESH PHADKE)
JUDGE

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