

IN THE COURT OF DISTRICT JUDGE , SONITPUR AT TEZPUR

Misc.(Arb) Case No. :- **01 of 2022.**

**Present :- Sri C.B. Gogoi,
District Judge.
Sonitpur::Tezpur.**

Petitioners

- :- 1. Union of India**
Represented by the Secretary to the Ministry of Road Transport & Highways, Government of India, Transport Bhawan, 1, Parliament Street, New Delhi- 110001.
- 2. National Highways and Infrastructure Development Corporation Limited (NHIDCL),**
A fully owned company of the Ministry of Road Transport & Highways, Government of India, represented by its Managing Director, having its Corporate office at 3rd Floor, PTI Building, 4 Parliament Street, New Delhi- 110001.
- 3. The Deputy General Manager (Project),**
Project Monitoring Unit- Tezpur having its office at Saraf Tower, 1st Floor, Opposite Don Bosco School, Mazgaon, Tezpur- 784001.

-Vs-

Respondents

- :- 1. Sri Nilamoni Bhattacharyya,**
S/o Sri Sibanath Bhattacharyya,
Niz- Gohpur, Ward No. 2 Mouza Gohpur, P.O. & Sub-Division- Gohpur, District- Biswanath- 784168 and also at 22 Bataghuli, Panjabari, Guwahati- 781037.
- 2. The Deputy Commissioner,**
Sonitpur, Tezpur.

**3. The Competent Authority cum
Additional Deputy Commissioner
Land Acquisition,**
Sonitpur, Tezpur.

**4. The Competent Authority cum
Additional Deputy Commissioner
Land Acquisition,**
Biswanath, Dist.- Biswanath, Assam.

5. The Circle Officer,
Gohpur Revenue Circle, Gohpur.

6. The Executive Engineer PWD(B),
Sonitpur, Tezpur.

**7. The Assistant Executive Engineer
PWD(B),**
Biswanath Sub-Division.

Counsel for the Petitioners Advocate.	:-	Mr. Uttam Kr. Dhakal,
Counsel for Respondent No. 1	:-	Mr. Abhijit Kar, Advocate.
Counsel for Respondent No. 2 to 7 Pleader.	:-	Mr. Surendra Mishra, Govt.
Date of Argument	:-	19-09-2022.
Date of Judgment	:-	07-12-2022.

J U D G M E N T

1. This judgment has arisen out of petition No. 698/2022 dated 09-02-2022 registered as Misc. Arbitration Case No. 01/2022 filed by Union of India represented by Deputy General Manager, Project NHIDCL, PMU, Tezpur having its office at Saraf Tower, 1st Floor, Opposite Don Bosco School, Mazgaon, Tezpur, Sonitpur against Sri Nilamoni Bhattacharyaya & Ors.

2. In the petition the petitioner/ applicant National Highways and Infrastructure Development Corporation Ltd. (in short NGIDCL) assailed the arbitral award dtd. 30-10-2021 passed by sole Arbitrator in Arbitration Case No. 23/2019.

3. The petitioner/ applicant pleaded in the petition that the Land measuring 0.031 hectares under Dag No. 225 & Patta No. 172 in the ownership of the appellant respondent No. 1 has been acquired under the NH Act, 1956 vide 3A Gazette Notification S.O. 148 (E) dated 12-01-2015 and u/s 3D vide 3D Gazette Notification S.O. 61(E) dated 08-01-2016 and compensation has been again revised/ determined by Competent Authority for Land Acquisition (CALA), Sonitpur as per the Final Award dated 28-05-2018 keeping in view the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act 2013) and as per Section 3H(1) of the NH Act, 1956, the compensation determined by the CALA as per Section 3H(1) of the said act has been deposited by National Highways & Infrastructure Development Corporation Ltd. (NHIDCL). Further, the respondent No. 1/ aggrieved land owners/ aggrieved persons/ interested persons/ affected persons has been fully compensated as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. It is also submitted that with due compliance with the direction and Final Award passed by the Commissioner, North Assam Division cum Arbitrator at Tezpur, Sonitpur, Assam (India) vide No. CNA/RR.8/2017/149 passed on 28-05-2018 resurvey was done and the complete 3G Award was revised and paid to the respondent/ interested persons and as such the respondent No. 1 did not avail any remedy and has no locus standi u/s 35 of Arbitration and Conciliation Act, 1996 and to claim any further compensation and/or additional compensation for the same issue as it is finally settled as per the Final Award of Arbitrator and is not questionable u/s 35 of the Arbitration and Conciliation Act, 1996.

5. In the year, 2017 one Arbitration was initiated on 3G Award for an amount of ₹297.90 Crore against 3D Gazette Notification S.O. No. 224 (E) dated 22-01-2015 and S.O. 61 (E) dated 08-01-2016 on the application of Deputy Commissioner/ Collector, Sonitpur vide his letter No. SRA.22/2011/Pt.-I/94 dated 07-11-2017 and other by large members of public, affected/ interested

people due to acquisition of land in the matter of declaring the revised 3G Award in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013) and other related issues and accordingly, the Arbitration Award was declared on dated 28-05-2018 with a direction to the Collector, Sonitpur to conduct resurvey and prepare the estimates as per the provisions of RFCTLARR Act, 2013. Accordingly, the resurvey was conducted and complete 3G Award was revised and prepared covering all issues raised by public petition or by the individual applications and submitted the respondent/ NHIDCL vide its letter No. SRA.22/2011/Pt-II/15 dated 09-01-2019 and sanctioned thereof by HQ NHIDCL vide order No. NHI/FIN/3432 dated 18-02-2019.

6. The petitioner/ applicant submit that in the final Arbitral Award dated 28-05-2018 the subject matter/ issues of the case of Respondent No. 1 in which the impugned Award/ order dated 30-10-2021 has been passed by the Arbitrator, Sonitpur have already been dealt by the arbitrator in the final arbitration award dated 28-05-2018 and accordingly, resurvey was done. Hence, the learned Arbitrator, Sonitpur has adjudicated upon the same issues again and declared the impugned award/ order dated 30-10-2021 on same revised 3G Final Award dated 28-05-2018 which is in contravention to the provisions of Section 35 of the Arbitration and Conciliation Act, 1996 as once arbitration award has been declared it can be challenged as per the procedure prescribed in Section 34 of the Act, 1996 and as such the petitioner/ NHIDCL seeks recourse u/s 34 for recourse against the impugned award/ order dated 30-10-2021.

7. It is contended that 100% Solatium awarded as per the RFCTLARR Act, 2013 covers the damages in the form of compensation given as solace for suffering loss or injury and other liability by the petitioner/ applicant authority. It is also stated that the predecessor Commissioner passed the final award dated 28-05-2018 covering all the issues and as such, the present impugned Arbitral Award dated 30-10-2021 by the Commissioner, North Assam, Tezpur cum Arbitrator for NH-4Lane on the appeal filed by Sri Nilomoni Bhattacharyaya and order passed by the learned Commissioner cum Arbitrator, North Assam Division in case No. 23/2019 is not maintainable.

8. In the final Award passed by the Arbitrator vide No. CAN/RR.8/2017/149 dated 28-05-2018, the learned Arbitrator granted compensation and other benefits for acquisition of land for the National Highway 37A, 52 and 52A of Sonitpur, District and affected land owners and respondent has already received total amount of compensation of ₹1,36,55,385.50 (Rupees One Crore Thirty Six Lakhs Fifty Five Thousand Three Hundred Eighty Five and Fifty paise) only as per land, structures/ other assets on Dag No. 225(P) PP NO. 172 (acquired portion of land 0.031 hectars) as per payment letter No. LA Case No. 127(left out)/2015/546 dated 16-09-2019 received from LA Branch, Sonitpur.

9. Being highly aggrieved and dissatisfied with the award/ order passed in C/No.23/2019 dated 30-10-2021 passed by learned Arbitrator cum Divisional Commissioner, North Assam Division, the present petition has been filed for setting aside the award/ order amongst other on the following grounds:

i) That the impugned arbitral award dated 30-10-2021 is bad in law and fact as at the time of passing the first Arbitration proceeding natural justice of hearing has not been denied to the petitioner/ applicant.

ii) While passing the impugned award arbitrator did not apply the provisions of Arbitration and Conciliation Act, 1996 as arbitrator cannot entertain an Appeal as the appeal petition is dealt by Section 37 of Arbitration & Conciliation Act, 1996. The learned Arbitrator exceeded his jurisdiction and passed the impugned order.

iii) Moreover, in the instant arbitration proceeding, learned arbitrator failed to go through the final award dated 28-05-2018 wherein all claims of higher compensation and other benefits for acquisition of land for National Highway 37A, 52 & 52A has been satisfied but learned Arbitrator ignored all and held the arbitration proceeding afresh without the backing of any law under Arbitration and Conciliation Act, 1996.

iv) The learned Arbitrator totally failed to appraise the claim as the claimant did not seek any recourse u/s 33 of Arbitration & Conciliation Act, 1996 before filing the claim petition.

v) As the claimant did not put his claim either in fact or in law, the learned Arbitrator ignored Section 3C(1) which states that within 21 days from the date of publication of Notification under Sub-Section 1 of Section 3A, no objection has been raised by person interested. The notification u/s 3A

has been published in daily English Paper 'Assam Tribune' and 'Dainik Agradoot' on 01-08-2015 and 31-07-2015 but the claimant did not file any objection within the prescribed period u/s 3C of NH Act, 1956.

vi) That the claimant did not pursue any recourse against the final arbitral award u/s 34 of Arbitration & Conciliation Act, 1996 even after having ample opportunity u/s 33(1) within 30 days of received of Arbitral Award or u/s 34(3) within 3 months.

vii) That in view of the above, the claimant has no locus standi under Section 35 of Arbitration & Conciliation Act, 1996 to claim any further compensation after the passing final award by the Arbitrator dated 28-05-2018.

10. Apart from the above grounds, it is further contended that as per award/order in Case No. 23/2019 at Para No. 10 it is stated that the appellant has received ₹63,93,374/- (Rupees Sixty Three lakhs Ninety Three Thousand Three Hundred Seventy Four) only but in fact; claimant received ₹1,36,55,385.50 (Rupees One Crore Thirty Six Lakhs Fifty Five Thousand Three Hundred Eighty Five and Fifty paisa) only. So, the impugned Arbitral award is totally misconceived and bad in law. That the learned Arbitrator failed to record sufficient reasons in passing the impugned order dated 30-10-2021. Therefore, it is prayed that the arbitral award dated 30-10-2021 passed in case No. 23/2019 be set aside and quashed.

11. Having received notices, respondent No. 2 to 7 had filed written statement stating that on the strength of order Memo No. CAN/RR.23/2019/31-33 dated 22-10-2021 the Commissioner, North Assam Division and Arbitrator of NH-4Lane Tezpur on the petition filed by Nilomoni Bhattacharyya the valuation statement of the whole building/ structure were submitted. However, in the final award passed by the Arbitrator vide CAN/RR.8/2017/149 dated 28-05-2018 the assessment of the building was made only in respect of damage portion but now the whole multistory building of the respondent No.1 has been taken into consideration as more than 33% of the building has been affected as a result of expansion of 4Lane as the remaining portion of the building will be of no use and will be rendered useless.

12. On the other hand, respondent No. 1 also filed separate written statement stating that the present application u/s 34 of Arbitration & Conciliation Act,

1996 is not maintainable as the petitioner failed to establish their case within four corners of Section 34(2)(a) & (b) of Arbitration & Conciliation Act, 1996. It is settled law that the arbitrator is the judge of fact as well as law and has jurisdiction and authority to decide wrong as well as right and the decision arrived at fairly after hearing the parties not liable to attack u/s 34 of Arbitration & Conciliation Act, 1996. In the present case, the award passed by the Arbitrator in accordance with the principle of justice and in conformity of provision of law as such the present application is not maintainable. The Arbitral Award passed on 30-10-2021 is not contrary to fundamental proceeding of Indian Law, Justice or Morality or patently illegal so as to require any intervention by this court u/s 34 of Arbitration & Conciliation Act, 1996. That no new documents or new pleas raised by the applicant ought not to be entertained by this court while exercising jurisdiction u/s 34 of Arbitration & Conciliation Act, 1996 and it has been settled provision of law that scope of enquiry in respect of an application for setting aside an Arbitral Award u/s 34 of Arbitration & Conciliation Act, 1996 is very limited and the court cannot go into the merits or reappraise or re-examine evidence or look into deficiency of evidences and cannot sit as a court of appeal over the factual findings by Arbitrator until and unless conditions enumerated are satisfied for setting aside the same. That the petition is out & out incorrect and misconceived.

13. That the applicant company utterly failed to understand the intricacies of two awards dated 28-05-2018 & 30-10-2021. The first award No. CAN/RR.8/2017/149 dated 28-05-2018 was directory and mandatory in nature with clear direction to the authority/ authorities concerned to act upon: reassess, resurvey and find out the correct and just compensation payable to dozens of aggrieved applicants land owners 3G compensation. That way the directive nature of award dated 28-05-2018 was disposed of by the learned Arbitrator. The applicant misconstrued, misconceived and focused a distorted picture of the said directive and mandatory nature award dated 28-05-2018. It is further submitted that the applicant company having miserably failed to take part in the legally and logically commenced proceeding before the learned Arbitrator vide petition dated 15-11-2019 which culminated into the award dated 30-10-2021 and now the applicant filed this petition u/s 34 of Arbitration

& Conciliation Act, 1996 with the sole motive to delay, defeat and frustrate the just and reasonable award dated 30-10-2021.

14. That the findings of the learned Arbitrator relating to the material and evidence on record is exclusively within the jurisdictional domain of the learned Arbitrator and the said finding which otherwise do not suffer any infirmities does not deserve to be interfered by this court u/s 34 of Arbitration & Conciliation Act, 1996. That in view of the above, it is prayed that the award passed by Arbitrator is not liable to be interfered rather petitioners be directed to comply with the award dated 30-10-2021.

15. During the course of argument the learned counsel for the petitioner Mr. Uttam Kr. Dhakal painstakingly drawn the attention of the court to the drawbacks and deficiencies in the impugned award to convince the court that the impugned award fall within the parameters of Section 34 to be interfered by this court. The award dated 30-10-2021 is according to learned counsel is beyond the jurisdiction and scope of the arbitrator as learned Arbitrator cannot entertain an appeal and reassess, reevaluate and award fresh amount of compensation after passing final award by the Arbitrator on 28-05-2018.

16. Learned counsel appearing for the respondent however assiduously contended that the arbitrator is Judge of fact as well as law and have jurisdiction and authority to decide wrong as well as right and in the impugned award the learned Arbitrator after considering all the pros and cons came to a fair conclusion by awarding additional amount of ₹43,86,164 + ₹43,86,164 (100% Solitium as per RFCTLARR, Act 2013) = ₹87,72,328 (Rupees Eighty Seven Lakhs Seventy Two Thousand Three Hundred Twenty Eight) only as additional compensation for acquisition of remaining portion of three storied building for NH 4 Lane purpose.

17. It is contended that the Arbitrator passed the order dated 30-10-2021 as an extension to the directive of the earlier award dated 28-05-2018 and the award passed was within the exclusive jurisdictional domain of the learned Arbitrator which do not suffer any infirmity requiring any interference by this court u/s 34 of Arbitration & Conciliation Act, 1996.

18. Having heard the assiduous contentions of the learned counsels appearing for both sides and on careful perusal of the documents annexed by the

petitioner Annexure 'C', it transpires that competent authority had already sanctioned an amount of ₹63,17,600/- (Rupees Sixty Three Lakhs Seventeen Thousand Six Hundred) as compensation to the respondent No. 1 and Annexure 'E' (revised 3G Final Award) shows that the competent authority in terms of award dated 28-05-2018 reassessed and fixed the total compensation as ₹1,36,55,385.50 (Rupees One Crore Thirty Six Lakhs Fifty Five Thousand Three Hundred Eighty Five and Fifty paise) only to be awarded to respondent No. 1 covering all the components of damages in the form of compensation and out of which an amount of ₹63,17,600/- (Rupees Sixty Three Lakhs Seventeen Thousand Six Hundred) had already been paid to respondent No. 1.

19. Therefore, it is crystal clear that the competent authority in terms of the award dated 28-05-2018 had reassessed the full value of the damaged building/ property (consisting of three slabs only) and accordingly, assessed the total compensation as ₹1,36,55,385.50 (Rupees One Crore Thirty Six Lakhs Fifty Five Thousand Three Hundred Eighty Five and Fifty paise) only in the form of compensation to be paid to the respondent No. 1.

20. In spite of that, the sole arbitrator vide impugned award dated 30-10-2021 on the basis of application of respondent No. 1 u/s 3G(5) of National Highway Act, 1956 and u/s 44(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 again reassessed the compensation for the multistoried building of the respondent No. 1 acquired for NH 4 Lane purpose and awarded an additional compensation of ₹43,86,164 + ₹43,86,164 (100% Solitium as per RFLTLARR, Act 2013) = ₹87,72,328/- (Rupees Eighty Seven Lakhs Seventy Two Thousand Three Hundred Twenty Eight) only holding that damage caused to the acquired house of respondent No. 1 was reassessed and additional compensation granted in terms of earlier award dated 28-05-2018 prima facie appears to be misconceived and without jurisdiction.

21. As per Section 37(2) of Arbitration & Conciliation Act, 1996 an appeal shall lie to a court from an order of the arbitral tribunal accepting the plea referred to in Sub-Section (2) or Sub-Section (3) of Section 16 of the Act. Therefore, it logically follows that if the respondent No. 1 at all aggrieved by the award dated 28-05-2018, he ought to have preferred an appeal under Section 37(2) of Arbitration & Conciliation Act, 1996 but no such appeal had been preferred by

him in court as provided u/s 37 of the Act. More so, the impugned award dated 30-10-2021 was passed in contravention of Section 35 of Arbitration & Conciliation Act, 1996. The remedy lies against the award is Section 34 of the Act, 1996 but the respondent No. 1 without seeking recourse to Section 34 of Arbitration & Conciliation Act the award dated 30-10-2021 passed by the arbitrator was arbitrary, whimsical and without any backing of law.

22. Moreover, Section 3G(6) of National Highway Act, 1956 provides that 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. Therefore, had the respondent No. 1 been aggrieved by the Arbitration award dated 28-05-2018 his remedy lies only by way of filing petition u/s 34 of Arbitration & Conciliation Act, 1996 in court but instead of availing the provision prescribed under the Arbitration & Conciliation Act, 1996 as prescribed u/s 3G(6) of National Highway Act, 1956 the respondent No. 1 approached the arbitrator directly who passed the impugned award dated 30-10-2021 without the authority of law.

23. In view of the discussion made above, it is crystal clear that the learned Arbitrator totally failed to understand and appreciate the claim of the respondent No. 1 and wrongly passed the impugned Arbitral Award on the basis of application made by respondent No. 1 under misconception of law & fact. If the respondent No. 1 was at all aggrieved by the arbitral award dated 28-05-2018 his only remedy lies u/s 34 of the Arbitration & Conciliation Act, 1996 but having not done so, the respondent No. 1 is clearly debarred u/s 35 of Arbitration & Conciliation Act from filing petition u/s 3G(5) of National Highway Act, 1956 and u/s 44(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 because he is bound by the arbitral award dated 28-05-2018 on the basis of which competent authority had already awarded adequate compensation amount of ₹1,36,55,385.50 (Rupees One Crore Thirty Six Lakhs Fifty Five Thousand Three Hundred Eighty Five and Fifty paise) only after resurvey.

24. Since the award dated 30-10-2021 was inflicted with the vice of fraud or element of corruption and it is in direct conflict with the public policy of India because the subsequent arbitrator even after awarding of fare compensation on the basis of the earlier Arbitration Award dated 28-05-2018, again sit in appeal

& tried to give unfair benefit to the petitioner/ respondent No. 1 in the name of granting fare compensation under the garb of Right to Fare Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which tantamount to giving wrongful gain to respondent No. 1 causing wrongful loss to the State even in the face of adequate compensation being granted by the competent authority to the tune of ₹1,36,55,385.50 (Rupees One Crore Thirty Six Lakhs Fifty Five Thousand Three Hundred Eighty Five and Fifty paise) after resurvey. Public money cannot be drained in such a manner for wrongful gain of individual concern with nexus of causing wrongful loss to State. Every penny of tax payers' money is worthy for nation building which cannot be wasted by extending undue benefit to person who have already been adequately compensated by again awarding additional compensation which is not entitled under the law. Moreover, the so called building of respondent No. 1 was consisting of only three slabs not a fully constructed house. Therefore, the additional compensation awarded by the Arbitrator vide award dated 30-10-2021 appears to be high handed, exponential in quantum and a concerted nexus with the respondent No. 1 to siphon of public money for illegal gain rather than awarding fair compensation in accordance with law which is the reflection of unlimited greed not healthy for greater societal interest.

26. In view of the foregoing discussion and reasons, the impugned Arbitral Award dated 30-10-2021 is declared as null and void and cannot be allowed to stand in law accordingly the same is set aside.

27. Consequently, the present petition No. 698/2022 dated 09-02-2022 filed u/s 34 of Arbitration & Conciliation Act, 1996 r/w Section 3G(6) of the National Highway Act, 1996 is allowed.

28. Let the relevant files of Arbitration Case No. 23/2019 file No. CNA/RR.23/2019 and Arbitration File No. CNA/RR.8/2017 be send back to the Special Officer to Commissioner, North Assam Division, Tezpur along with a copy of this judgment.

29. Given under my hand and seal of this court, on this day, the **07th day of December, 2022.**

(C.B. Gogoi)
District Judge,
Sonitpur::Tezpur.