

Mohd. Umar And Another vs State Of U.P. And 3 Others on 4 February, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15785

Court No. - 9 "AFR"

Case :- MATTERS UNDER ARTICLE 227 No. - 1034 of 2025

Petitioner :- Mohd. Umar And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Anubhav Srivastava, Sunil Kumar Srivastava

Counsel for Respondent :- Anurag Yadav, C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Sunil Kumar Srivastava, learned counsel for the petitioners, Sri Anurag Yadav, learned counsel appearing on behalf of respondent no.4, learned Standing Counsel appearing on behalf of respondent nos.1 and 2 and perused the record.

2. By means of the present petition under Article 227 of the Constitution of India a prayer has been made to set-aside the impugned order dated 07.12.2024 (Annexure No.4 to this Misc. Petition), passed by Additional District and Sessions Judge/Fast Track Court, Court No.1, Mainpuri, in Application No.14-G, filed by the petitioners, in Misc. Petition (Civil) No.84 of 2021 (Mohd. Umar and another Vs. Collector, Mainpuri and others).

3. It has been submitted by learned counsel for the petitioners that the petitioners are recorded owners of Gata Nos.327 and 329, area 0.0862 hectares and 0.1720 hectares, situated at

Village/Kasba Kurawali, Tehsil Kurawali, District Mainpuri. It has been submitted that the Government for making a four-lane for extending the National Highway from four-lane to six-lane have issued a notification under the National Highway Authority Act, 1946, where the land of the petitioners were acquired. In order to ascertaining the compensation payable to the petitioners on acquisition of the land, notices were issued by the District Collector, Mainpuri and the claim of the petitioners was considered and decided by means of the order dated 25.08.2021.

4. It is further submitted that the petitioners had sought enhance compensation, looking into the location of the land, but the said objections was rejected by the District Collector, Mainpuri, while passing the said award. Against the award passed by the District Collector, Mainpuri, the petitioners had preferred an application under section 34 of the Arbitration and Conciliation Act, 1996, before the District Judge, Mainpuri. During the pendency of the proceeding under section 34, the petitioners had moved an application for fresh spot inspection of the disputed property, which has been rejected by means of the order dated 07.12.2024, which has been assailed by the petitioners in the present writ petition.

5. While rejecting the said application the Additional District and Session Judge/F.T.C., Court No.1, Mainpuri, had duly considered the objection filed by the respondent and has also taken into account the fact that prayer to making the said award proper inspection of the said land was undertaken by the S.D.M., Kurawali, Mainpuri and on the basis of spot inspection report dated 20.10.2020, the estimation of valuation of the land was undertaken and this exercise has been completed at the stage of the arbitration proceeding and consequently in absence of there any provision or necessity, the application preferred by the petitioners was dismissed.

6. Learned counsel for the petitioners submits that the land which has been acquired by the respondents has been highly under valued and the said aspect can be verified only by re-inspecting the disputed property of the petitioners.

7. The court had made a quarry to the effect that as to whether, even if on the basis of the spot inspection, it came out that the land was under value, would be District Judge have powers while exercising jurisdiction under section 34 of the Arbitration and Conciliation Act, 1996 to enhance the compensation granted by the arbitrator and secondly as to whether the District Judge has any power to take additional evidence in exercise of power under section 34 of the Arbitration and Conciliation Act, 1996 ?

8. Learned counsel for the petitioners submits that it is always open for the District Judge in exercise of power under section 34 to re-examine the award and in case he finds that the same has been under value, he can pass necessary orders in this regard, but could not point out any power in exercise of which the District Judge could take additional evidence on record.

9. Learned counsel for the respondent on the other hand opposed the writ petition. He submits that the powers of District Judge under section 34 are confined for a judicial review of the award only on the limited grounds as stated therein and the District Judge would not have any power to re-examine the award of the Collector on merits and enhanced the compensation granted by him. It

was submitted that even if spot inspection was conducted and a report in favour of the petitioners was submitted, still amount of compensation could not be enhanced as it would be beyond the jurisdiction of the District Judge, exercising power under section 34 of the Arbitration and Conciliation Act, 1956. Accordingly, he submitted that no injustice has been meted out to the petitioners by rejecting his application for holding a spot inspection afresh and accordingly prays for dismissal of the writ petition.

10. I have heard the counsel for the parties and perused the record.

11. The question which fall for consideration before this Court is as to whether the District Judge in exercise of power under section 34 of the Arbitration and Conciliation Act, 1996 can re-examine the award on merits and in case he finds that the arbitrator has not rightly considered the facts in its proper prospective, can interfere with the said award and enhance the compensation granted by him and also as to whether he can take additional evidence on record ?

12. A perusal of section 34 of the Arbitration and Conciliation Act, 1996, which is being reproduced for convenience, herein below:-

"34. Application for setting aside arbitral award.?(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if?

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]?

(i) a party was under some incapacity, orSom Dutt Builders - NCC-NEC(JV) Vs. National Highway Authority of India-Civil Appeal No.2058 of 2012

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains

decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that?

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

2[Explanation 1.?For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,?

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.?For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.] 3[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.] (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume

the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

1[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]"

13. A perusal of the aforesaid provisions may indicate that the power of District Judge is limited only for setting aside of the arbitrator award and that too on the grounds, pertaining to the capacity, validity of the arbitration agreement, proper locus/ proceeding not having been granted to the parties with regard to his appointment and in case the award is rendered on a subject, which is not subject matter of the dispute before the arbitrator can be a ground to interfere and set-aside the said award.

14. It is noticed that the District Judge does not have any power to re-examine the said award on merits and substitute his discretion with the discretion of the arbitrator and also take additional evidence on record.

15. Hon'ble Apex Court in the case of Som Dutt Builders - NCC-NEC(JV) Vs. National Highway Authority of India-Civil Appeal No.2058 of 2012 has held as under:-

"36. In MMTC Ltd. Vs. Vedanta Ltd.¹³, this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality 13 (2019) 4 SCC 163 36. In MMTC Ltd. Vs. Vedanta Ltd.¹³, this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality 13 (2019) 4 SCC 163 38 is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid

down under Section 36. In *MMTC Ltd. Vs. Vedanta Ltd.*¹³, this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality ¹³ (2019) 4 SCC 163 38 is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As ^{fa}36. In *MMTC Ltd. Vs. Vedanta Ltd.*¹³, this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality ¹³ (2019) 4 SCC 163"

16. In the present case the grievance of the petitioners was with regard to the inadequate compensation granted to him on acquisition of his land by the National Highway Authority. It is in this regard that he had moved an application for a spot inspection so that the exact location of his disputed property may be re-examine and its proximity to the highway be ascertain afresh, so as to enable the authorities to enhanced the compensation.

17. This Court is of the considered view that in the above aspects pertaining to the merits of the controversy which could have been examined by the arbitrator himself and the District Judge was denuded of any powers in exercise of the power under section 34 of the Arbitration and Conciliation Act, 1996, to enter into the matter which is not provided for in any of the contingency by the clause 2(i)(ii), 34(2)(v) and accordingly could not have allowed the application for fresh spot inspection, as the same would be a futile exercise.

18. Apart from the above, this Court finds that there is no provision in proceedings under Section 34 of the Arbitration and Conciliation Act to adduce additional evidence, in absence of which it was not open for the District Judge to have entertained the application for fresh spot inspection. All the material and evidence in the present case can be filed only before the Arbitrator during arbitration proceedings and jurisdiction of the District Judge under Section 34 of the Arbitration and Conciliation Act is extremely limited and in absence of any specific provision, he could not have passed any order for permitting the petitioner to adduce additional evidence in the form of spot inspection.

19. Accordingly, in absence of any statutory provision in this regard, this Court do not find any infirmity having been committed while rejecting the application of the petitioner.

20. Accordingly, I find that, apart from the above, the counsel for the petitioners could not demonstrate, as to under which provision the application for spot inspection was entertainable by the District Judge. Accordingly, in absence of any provision under which the such application could have been entertained, this Court does not find any infirmity or any cause for interference being made by this Court in the impugned order dated 07.12.2024. Accordingly, the instant petition is without merit, and no ground is made out for interfere in the said matter in exercise of of extraordinary powers under Article 227 of the Constitution of India.

21. Accordingly, the present writ petition under Article 227 of the Constitution of India is dismissed.

Order Date :- 4.2.2025/VKG (Alok Mathur,J.)