

# Lal Chandra vs N.H.A.I. Project Implemnt.Unit ... on 2 January, 2025

**Author: Rajan Roy**

**Bench: Rajan Roy**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:136-DB

Court No. - 2

Case :- WRIT - C No. - 15297 of 2021

Petitioner :- Lal Chandra

Respondent :- N.H.A.I. Project Implemnt.Unit Varanasi Thr.Project Dir.Andors

Counsel for Petitioner :- Anita Tiwari, Anita Tiwari, Digvijay Singh Yadav, Poonam Goswami

Counsel for Respondent :- C.S.C., Abhinav Singh, Jyotsana Singh, Samidha

Hon'ble Rajan Roy, J.

Hon'ble Brij Raj Singh, J.

1. Heard.

2. According to the petitioner, land of the petitioner bearing Gata No. 1303 measuring 0.5429 hectares was acquired on 7.9.2012 for the the National Highways Authority under the National Highways Act, 1956 (in short 'the Act, 1956'). Initially, the competent authority determined the compensation payable at the rate of Rs.8000/- per square meters, however, the Arbitrator determined the rate of compensation as Rs.3700/- per square meter. The award was dated 3.3.2017. The submission is that the amount payable under the award has not been fully paid.

3. Sri Abhinav Singh, leaned counsel for the opposite parties says that remedy is not under Article 226 of the Constitution of India, but under Section 36 of the Arbitration and Conciliation Act, 1996 (for short "Act, 1996") which is applicable by virtue of Section 3G(6) of the National Highways Act,

1956. However, we find that there is a judgement of this Court dated 07.10.2021 rendered in Writ Petition No.22953 (LA) of 2021, which reads as under:-

"Petitioner seeks payment of the compensation awarded by the Arbitrator under Section 3G(5) of the National Highways Act, 1956 on 12.03.2018 in Case No. 887 of 2018.

The petitioner's counsel categorically states that he is not seeking any enhancement of the amount awarded, by means of this petition.

The counsel for the National Highway Authority informs that a similar writ petition bearing No. 533 (LA) of 2021 has been decided on 11.01.2021 by this Court relegating the petitioner to the remedy available under Section 36 of the Arbitration and Conciliation Act, 1996, therefore, in this case also as there is a remedy for enforcement of the award under the said provision and as the Act, 1996 is applicable in the case at hand in view of sub-section (6) of Section 3G of the National Highways Act, 1956 therefore, this petition should also be dismissed in terms of the said judgement. The judgement referred by Shri Sarvesh Kumar Dubey, learned counsel for National Highway Authority reads as under:

"Heard.

Petitioners herein seek enforcement of an arbitral award dated 19.02.2020. The acquisition was made under the National Highways Act, 1956. As per provisions of Section 3G(6) subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "Act, 1996" ) shall apply to every arbitration under this Act.

Learned counsel for the petitioners admits to the fact that concerned opposite party has challenged the arbitral award dated 19.02.2020 under Section 34 of the Act, 1996.

Learned counsel for the concerned opposite party asserts that such arbitral award is executable under Section 36 of the Act, 1996, therefore this writ petition is not maintainable especially as challenge to the said award is still pending. However, he is not in a position to inform the Court as to what is the stage of the proceedings under Section 34 of the Act, 1996 and whether there is any interlocutory order therein.

Nevertheless considering the availability of remedy under Section 36 of the Act, 1996 this petition is not maintainable. Accordingly, the petition is dismissed. This order is being passed without prejudice to the rights of the parties.

It is further provided that if any proceedings under Section 34 of the Act, 1996 is pending before the concerned Court below, as informed by the learned counsel for

the opposite parties, then the Court below shall consider and dispose of the same in accordance with law at the earliest."

The counsel for the petitioner has invited our attention to Sub-section (6) of Section 3H which provides- where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit. As per sub-section (2) of Section 3H, which becomes applicable in the context of sub-section (6) referred herein above, as soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto. As per sub-section (3) of Section 3H - where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. As per sub-section (4) of Section 3H- if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

Thus, subject to the provisions of sub-sections (3) and (4) of Section 3H, in the event of an excess amount having been awarded by the arbitrator under Section 3G(5), the said amount would not only be deposited in terms of sub-section (6) of Section 3H by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority, but the same would also be payable by the competent authority on behalf of the Central Government to the person or persons entitled thereto in view of sub-section (2) of Section 3H. Even in cases where a determination is made under sub-section (3) of Section 3H or the matter is determined after a reference under sub-section (4) of Section 3H, such amount would be deposited accordingly and paid to the person or persons entitled thereto.

In the context of sub-section (6) of Section 3H, we may also refer to the Rules known as the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019. Rule 3 of the Rules, 2019 provides as under:

"3. The manner of making requisite funds available to the competent authority shall be as follows: -

(i) Subject to provisions of the Act, the executing agency authorised by the Central Government in this behalf, shall open and maintain an account with one or more Scheduled Commercial Banks for remittance of the amount for land acquisition across the country, with arrangements for access to such account by the competent authority for specific jurisdiction as per authorisation of limits by the executing agency. The Executing Agency shall, on the demand raised by the competent

authority before announcement of the award, issue requisite authorisation limits in favour of the competent authority for withdrawal of amount from such account as per requirements from time to time for disbursement to the landowners or persons interested therein through an electronic banking mechanism as per extant Reserve Bank of India regulations and the said authorisation limits, revolving in nature, shall entitle the competent authority to withdraw money from such account as per requirements, without any further reference to the land acquiring agency, for disbursement to the landowners or persons interested therein, as follows: -

(a) The amount determined under section 3G of the Act within fifteen days of the raising of demand by the competent authority, and

(b) Where the amount determined by the Arbitrator under sub-section (7) of Section 3G of the Act is in excess of the amount determined by the competent authority, the excess amount, together with interest, if any, awarded by the Arbitrator, within 30 days of the communication of Arbitrator's award, unless such Award has been further challenged by either of the aggrieved parties.

Explanation.- The authorisation limits, revolving in nature, are explained with the help of an illustration as under:-

Say, the amount of award is Rs. 200 crore for which the CALA places demand on the acquiring/ executing agency. The executing agency shall issue an authorisation in favour of CALA to draw an amount up to Rs. 200 crore from the Central account, in limits of Rs. 50.00 crore at any point in time. As the CALA keeps disbursing the amount, the limit of Rs. 50.00 crore shall keep getting automatically recouped and so on till the utilisation of total amount of authorisation of Rs. 200 crore.

(ii) The executing agency, authorised by the Central Government in this behalf, shall ensure that the requisite account is maintained with a Scheduled Commercial Bank, against which an authorisation limit is issued in favour of the competent authority for disbursement of the compensation amount, duly determined under Section 3G of the Act, to the landowners or persons interested therein. Further, the said authorisation limit shall be utilised by the competent authority for the intended purpose of disbursement and shall be duly reflected in the books of accounts of the executing agency for the purpose of proper monitoring and reconciliation thereof and any interest earned thereon shall be credited into the said account and shall belong to the executing agency.

(iii) In cases where the executing agency of a project is any State Government or Union territory, the amount shall preferably be disbursed through the Public Financial Management System of the Ministry of Finance.

(iv) The competent authority shall, in turn, disburse the compensation amount to the landowners or the persons interested therein preferably by electronically crediting the said amount into their respective bank accounts."

From the aforesaid provision, it is evident that the competent authority is entitled to withdraw money from the account referred in Rule 3 of the Rules, 2019 as per requirements, without any further reference to the land acquiring agency, for disbursement to the land owners or persons interested therein and in a case where the amount determined by the Arbitrator under sub Section (7) of Section 3G of the Act, 1956 is in excess of the amount determined by the competent authority, the excess amount, whether with interest, if any, awarded by the arbitrator. The same can be withdrawn within 30 days of the communication of the Arbitrator's award for disbursement to the land owners or persons interested therein, unless such award has been further challenged by either of the aggrieved parties. Thus, Section 3H of the Act, 1956 read with the aforesaid Rules, 2019 themselves contain a mechanism for payment of the amount awarded by the Arbitrator, as such, there is merit in the contention of learned counsel for petitioner that recourse to Section 36 of the Act, 1996 Act may not be necessary. Of course, in the event the award of the Arbitrator is challenged under Section 34 of the Act, 1996, then, the withdrawal and disbursement as envisaged in Rule 3 of Rules, 2019 may not take place. We were not apprised of these rules on the earlier occasion, when we decided Writ Petition No. 533 (LA) of 2021.

In view of the opening word of Sub-section (6) of Section 3G - "subject to the provisions of this Act" as there is a mechanism for payment of the amount awarded by the Arbitrator under Section 3H read with Rules, 2019, therefore, the remedy under Section 36 of the Act 1996 would not apply at least at this stage of the case. This aspect of the matter could not be considered earlier.

Shri Dubey, learned counsel for the National Highway Authority says that the award dated 12.03.2018 in its entirety has been challenged under Section 34 of the Act, 1996. However, he is not sure as to whether the petitioner's land is included in the said award.

We are of the considered opinion that the matter can be resolved by allowing the petitioner to approach the competent authority, under the Act, 1956, who shall verify the fact as to whether there is an award in favour of the petitioner, if it is so, whether it has been challenged by the authority or any other aggrieved person under Section 34 of the Act, 1996 or not. If the award has not been challenged, then, he shall proceed in accordance with Section 3H of the Act, 1956 read with Rules, 2019 as discussed herein above. If he finds that there is a challenge to the award under Section 34 of the Act, then of course, he cannot proceed any further, but in such eventuality, he shall inform the petitioner in writing about the factual position. This exercise shall be completed within one month. Whether the remedy under Section 36 of the Act, 1996 would be available in the event the provisions of Section 3H of the Act, 1956 and Rules, 2019 are not complied, or not, and whether it will be available after disposal of proceedings under Section 34 or for that matter during its pendency, if there is no stay of the award, are questions which are left open for consideration in some other appropriate case.

With the aforesaid observations, the writ petition is disposed of."

4. In the said judgement, in the context of sub-section (6) of Section 3H of the Act, 1956, the Rules known as the "National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019 (for short "Rules, 2019") have been considered. This Court has opined that Section 3H of the Act, 1956 read with the aforesaid Rules, 2019 themselves contain a mechanism for payment of the amount awarded by the Arbitrator, as such it found merit in the contention of the counsel for the petitioner therein that recourse to Section 36 of the Act, 1996 may not be necessary. Of course, in the event the award of the Arbitrator is challenged under the 34 of the Act, 1996, then the withdrawal and disbursement as envisaged in Rule 3 of Rules, 2019 may not take place. A coordinate Bench has further noticed the opening words of Section 3G(6) of the Act, 1956 "subject to the provisions of this Act" and then observed that- "as there is a mechanism for payment of the amount awarded by the Arbitrator under Section 3H read with Rules, 2019, therefore, the remedy under Section 36 of the Act 1996 would not apply at least at this stage of the said case". In the case at hand, the NHAI had filed an application for setting aside the award of the Arbitrator, which has been rejected as accepted by Sri Abhinav Singh, counsel for the NHAI. Therefore, there is no impediment in application of the Rules, 2019 referred in the above quoted judgement. Whether the remedy under Section 36 of the Act, 1996 would be available in the event the provisions of Section 3H are not applied are not complied, or not, this Court had further observed in the aforesaid judgement- "Whether the remedy under Section 36 of the Act, 1996 would be available in the event the provisions of Section 3H of the Act, 1956 and Rules, 2019 are not complied, or not, and whether it will be available after disposal of proceedings under Section 34 or for that matter during its pendency, if there is no stay of the award, are questions which are left open for consideration in some other appropriate case."

5. At this stage, Sri Abhinav Singh, counsel for the NHAI says that in the case at hand the Arbitrator had not mentioned the amount payable, but the rate at which the compensation was payable and based on the said rate, the competent authority has calculated the amount and paid it to the petitioner. Petitioner's counsel says that the competent authority has not taken into consideration the entire land of the petitioner which has been acquired. If the dispute is only with regard to the area of land acquired, then this can be got verified by the competent authority from the notification by which the land was acquired and if he finds that while calculating the compensation in the light of arbitral award he has committed any error, then he can rectify the same. However, if there is any other dispute, then the petitioner will have to seek appropriate remedy.

6. Writ petition stands disposed of.

[Brij Raj Singh, J.] [Rajan Roy, J.] Order Date :- 2.1.2025 Anuj Singh/Rao