

A NATIONAL HIGHWAYS AUTHORITY OF INDIA

v.

SHEETAL JAIDEV VADE & ORS.

(Civil Appeal No. 5256 of 2022)

B AUGUST 24, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

- Alternative Remedy – Availability of – Constitution of India – Article 226 – Arbitration and Conciliation Act, 1996 – s.34 – Writ petitions u/Article 226 seeking reliefs to execute award passed by Arbitral Tribunal/Court – Entertainment of – Disapproved – Held: Reliefs sought by the private respondents-land owners were in the nature of execution of the award passed by the Arbitral Tribunal/Court – Apart from the fact that the award has been challenged by the appellant-NHAI by initiating proceedings u/s.34, Arbitration Act which are pending, the High Court ought not to have entertained the writ petition u/Article 226 seeking the reliefs to execute the award passed by the Arbitral Tribunal/Court, when the award passed is to be executed by initiating an execution proceeding before the concerned Executing Court – By passing the impugned order directing NHAI to deposit the compensation amount as awarded by the Arbitrator, the High Court virtually converted itself into Executing Court – Once the original writ petitioner was having an efficacious, alternative remedy to execute the award passed by the Arbitral Tribunal/Court, by initiating an appropriate execution proceeding before the competent Executing Court, the High Court ought to have relegated the original writ petitioners to avail the said remedy instead of entertaining the writ petition u/Article 226 – If the High Courts convert themselves to the Executing Court and entertain the writ petitions u/Article 226 to execute the award passed by the Arbitral Tribunal/Court, they would be flooded with such writ petitions – Further, in view of similar order passed by the Supreme Court in Saraswatibai Chandrakant Shinde case, present proceedings disposed of with directions – Impugned order modified – Deprecation.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5256 A
of 2022.

From the Judgment and Order dated 01.04.2022 of the High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No. 144 of 2021.

Ms. Aishwarya Bhati, ASG, Ms. Shivika Mehra, Ms. Ameya Mahadik, Nithin Pavuluri, Ms. Poornima Singh, Aman Sharma, Rishabh Dua, Ms. Neetica Sharma, T. S. Sidhu for M/s M. V. Kini & Associates, Advs. for the Appellant. B

Shirish K. Deshpande, Ms. Rucha Pravin Mandlik, Mohit Gautam, C
Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.04.2022 passed by the High Court of Judicature of Bombay at Aurangabad in Writ Petition No.144 of 2021 by which in a writ petition filed by the respondents herein – original land owners, in exercise of powers under Article 226 of the Constitution of India, the High Court has directed the appellant – NHAI to deposit the entire compensation amount as awarded by the learned Arbitrator and thereafter permitting the original land owners – original writ petitioners to withdraw the amount as mentioned in paragraph 4, the NHAI has preferred the present appeal. D

2. That the land of the respondents herein – original land owners – original writ petitioners came to be acquired by the NHAI under the provisions of the NHAI Act. That the amount of compensation came to be enhanced by the learned Arbitrator. The award passed by the learned Arbitrator has been challenged by the NHAI by availing the statutory remedy under Section 34 of the Arbitration Act to the extent of the enhanced amount. That as there was no stay of the award passed by the learned Arbitrator in a proceedings under Section 34 of the Arbitration Act, the respondent herein – original land owners instead of filing the execution petition to execute the award declared by the learned Arbitrator enhancing the amount of compensation, filed the writ petition before the High Court and prayed for a Writ of Mandamus and/or appropriate directions/orders directing the NHAI to deposit the amount with the F

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- A Competent Authority, Land Acquisition and Sub-Divisional Officer in pursuance of the award dated 12.06.2018. By the impugned judgment and order the High Court has disposed of the said writ petition by directing the appellant – NHAI to deposit the entire amount along with interest with the Land Acquisition Authority and thereafter has directed the original writ petitioners – land owners to withdraw 50% of the amount along with interest on filing an affidavit of undertaking that if in the litigation journey, an adverse order is passed against them and they are found to have withdrawn excess amount, the said amount would be re-deposited with the authority. So far as the remaining 50% of the amount with interest is concerned, the High Court has permitted the original writ petitioners – original land owners to withdraw 25% of the amount by tendering a solvent surety and the remaining 25% of the amount to be deposited with the competent authority with a liberty to invest the said amount in a fixed deposit account in any Nationalized Bank. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court, the NHAI has preferred the present appeal.
- D 3. Ms. Aishwarya Bhati, learned ASG appearing on behalf of the appellant – NHAI has vehemently submitted that the Hon'ble High Court has seriously erred in passing the impugned order in exercise of powers under Article 226 of the Constitution of India.
- E 3.1 It is further submitted by Ms. Bhati, learned ASG that as the award passed by the learned Arbitrator was executable before the concerned Executing Court and therefore when the original writ petitioners had a statutory remedy available to execute the award by initiating the execution proceedings before the concerned Executing Court, the High Court ought not to have entertained the writ petitions under Article 226 of the Constitution of India to execute the award passed by the learned Arbitrator.
- F 3.2 It is further submitted by Ms. Bhati, learned ASG that even otherwise the Hon'ble High Court has committed a serious error in permitting the writ petitioners – original land owners to withdraw 75% of the amount of compensation with interest, when the appellant had already availed the statutory remedy available to the NHAI to challenge the award passed by the learned Arbitrator, by way of appeal/application under Section 34 of the Arbitration Act.
- G 3.3 Ms. Bhati, learned ASG has placed reliance on the order passed by this Court in **Special Leave to Appeal No.12409 of 2022** passed

in the case of **The Project Director, National Highways Authority of India vs. Saraswatibai Chandrakant Shinde & Ors.** by which, on the similar set of facts and circumstances this Court has directed the NHAI to deposit 50% of the compensation amount, as awarded by the Arbitral Tribunal with the Executing Court and has permitted the original land owners to withdraw the same unconditionally, and the balance amount of compensation as per the award to be passed under Section 34 of the Arbitration Act to be deposited by the NHAI with the Executing Court within four weeks after such determination. A

4. Present appeal is vehemently opposed by Mr. Shirish K. Deshpande, learned Advocate appearing on behalf of the private respondents herein – original writ petitioners – original land owners. C

4.1 It is submitted that in the facts and circumstances of the case more particularly considering the fact that there is no stay of the award passed by the learned Arbitral Tribunal/Court in a proceeding under Section 34 of the Arbitration Act and that NHAI took possession of the land without paying any compensation, the Hon'ble High Court has not committed any error in passing the impugned order. However, learned Counsel appearing on behalf of the private respondents herein – original land owners – original writ petitioners, is not in a position to dispute and is not disputing that the award passed by the learned Arbitral Tribunal/Court is executable by way of an execution proceeding before the concerned Executing Court. D E

5. We have heard the learned counsel for the respective parties at length.

6. At the outset, it is required to be noted that the private respondents herein – original writ petitioners filed the writ petition before the High Court and prayed for the following reliefs in exercise of powers under Article 226 of the Constitution of India: F

- “(a) This Writ Petition may kindly be allowed.
 - (b) That, by way of writ of mandamus of the direction like in nature the respondents No.1 and 2 may kindly be directed to deposit the amount with respondent No.3 in pursuance of the award dated 12.06.2018 vide No.2016/LA/NH-351/CR-01 passed by the respondent No.3 forthwith.
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A (c) That, by way of writ of mandamus of the directions like in nature the respondent No.3 may kindly be directed to make the payment to petitioners forthwith after the respondents No.1 and 2 deposit the amount.”

B 6.1 Therefore, reliefs which have been sought by the private respondents herein - original writ petitioners were in the nature of execution of the award passed by the learned Arbitral Tribunal/Court.

C 6.2 Apart from the fact that the award dated 12.06.2018 has been challenged by the NHAI by initiating proceedings under Section 34 of the Arbitration Act which are reported to be pending, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India seeking the reliefs to execute the award passed by the learned Arbitral Tribunal/Court, when the award passed by the learned Arbitral Tribunal/Court is to be executed by initiating an execution proceeding before the concerned Executing Court. But, by passing the impugned order/directions the High Court has virtually converted itself into Executing Court. Therefore, once the original writ petitioner was having an efficacious, alternative remedy to execute the award passed by the learned Arbitral Tribunal/Court, by initiating an appropriate execution proceeding before the competent Executing Court, the High Court ought to have relegated the original writ petitioners to avail the said remedy instead of entertaining the writ petition under Article 226 of the Constitution of India which was filed to execute the award passed by the Arbitral Tribunal/Court. If the High Courts convert itself to the Executing Court and entertain the writ petitions under Article 226 of the Constitution of India to execute the award passed by the Arbitral Tribunal/Court, the High Courts would be flooded with the writ petitions to execute awards passed by the learned Arbitrator/Arbitral Tribunal/Arbitral Court.

G 7. We disapprove the entertaining of such writ petitions under Article 226 of the Constitution of India to execute the award passed by the learned Arbitral Tribunal/Court, without relegating the judgment creditor in whose favour the award is passed to file an execution proceeding before the competent Executing Court.

H 7.1 In view of the above discussion, we would have set aside the impugned judgment and order passed by the High Court on the aforesaid ground alone. However, taking into consideration the similar order passed by this Court in the case of **Saraswatibai Chandrakant Shinde (supra)**,

we deem it appropriate to dispose of the present proceedings/appeal A
with the following directions:

- (i) The NHAI shall deposit 50 per cent of the compensation amount, as awarded by the Arbitral Court, with the Executing Court within a period of four weeks. The said amount shall be released to the land owners unconditionally. B
- (ii) The learned District Court, before whom the proceedings under Section-34 of the Arbitration Act are pending, shall make an endeavour to decide such proceedings within a period of six months from the next date of hearing before the said court.
- (iii) The balance amount of compensation as per the Award to be passed under Section 34 of the Arbitration Act, shall be deposited by the NHAI with the Executing Court within four weeks after such determination. The said amount shall also be released by the Executing Court in favour of the land owners subject to the rights and remedies available to the parties in law. C D

With these observations and directions, the Appeal is disposed of.

The impugned order passed by the High Court of Bombay dated 01.04.2022 stands modified in above terms. E

Pending application(s), if any, shall stand disposed of.

Divya Pandey

Appeal disposed of.