

# Hariram & Ors. vs National Highway Authority Of India & ... on 4 April, 2025

**Author: Manoj Kumar Ohri**

**Bench: Manoj Kumar Ohri**

IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 86/2021

HARIRAM & ORS.

Through:

.....Peti  
Mr. Pardeep Gupta, M  
Gupta and Mr. Harshv  
Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA  
& ORS.

.....Respondents

Through: Mr. Akshay Kumar Tiwari and Ms.  
Shubhi Dhiman, Advocates for R-1 &  
R-2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter, „the A&C Act ), the petitioners seek to challenge the Award dated 16.10.2020, passed by the District Collector, Division Meerut, District Baghpat, Uttar Pradesh.

2. At the outset, the respondents have taken a preliminary objection that this Court does not have jurisdiction to entertain the present petition filed under Section 34 of the A&C Act. The respondents have urged that before the petition is entertained on merits, the issue of territorial jurisdiction of this Court be decided first. In view of this preliminary objection raised by the respondents, the Court has heard the learned counsel for the parties at length on the said aspect.

3. Learned counsel for the respondents submits that the subject matter of the present proceedings is the land of the petitioner, which is located in District-Baghpat, Uttar Pradesh and has been compulsorily acquired by the Central Government for construction of National Highways under the National Highways Act, 1956 ("NH Act"). It is further submitted that the original land compensation was issued by District Collector, Bhagpat, U.P. and the arbitral proceedings under Section 3G (7) OF NHAI Act vide which enhancement of compensation was sought, took place in Baghpat and the

impugned arbitral award dismissing the claims of the petitioner was also passed in Baghpat. It is hence submitted that since the subject matter of dispute as well as the arbitration proceedings are all located in Uttar Pradesh, this Court would not be the appropriate forum to challenge the impugned award.

4. Learned Counsel for the petitioners, on the other hand, submits that the objections put forth by the respondents are meritless. It is submitted that the land has been acquired by the Central Government and respondent No.1 has its headquarters located in Delhi. It is further submitted that even earlier, the petitioners had approached this Court with respect to the same acquisition proceedings vide Writ Petition No. 11920/2016 and this Court has also been pleased to entertain the same and even grant relief. It is submitted that factum of the earlier petition being filed would attract Section 42 of the A&C Act and consequently, this Court alone would have jurisdiction to entertain this petition. Petitioners have placed reliance on the decisions in Union of India v. Tarsem Singh,<sup>1</sup> Emkay Global Financial Services Ltd. v. Girdhar Sondhi,<sup>2</sup> K.B. Ramachandra Raje v. State of Karnataka,<sup>3</sup> Milkfood (P) Ltd. v. GMC Ice Cream (P) Ltd.,<sup>4</sup> Ram Chand v. Union of India,<sup>5</sup> ONGC Ltd. v. Saw Pipes Ltd.<sup>6</sup>

5. To this, learned counsel for the respondent submits that according to the plain language of Section 42, the prior writ petition cannot be deemed to be an application made under Part I of the A&C Act. Respondents place reliance on the decisions in Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.,<sup>7</sup> BALCO v. Kaiser Aluminium Technical Services Inc.,<sup>8</sup> Sundaram Finance Limited v. M.K. Kurian,<sup>9</sup> Pacific Greens Infracon Pvt. Ltd. v. Senior Builders Ltd.,<sup>10</sup> Jatinder Nath v. Chopra Land Developers Pvt.Ltd.,<sup>11</sup> Harshad Chiman Lal Modi v. DLF Universal Ltd.,<sup>12</sup> Dipankar Singh & Ors. V. UOI Through NHAI & 3 connected matters.<sup>13</sup>

6. Having heard learned counsels for the parties, this Court sets out the limited controversy. The background facts are that in the year 2006, the Central Government issued notification dated 28.07.2006 thereby seeking to acquire a stretch of land from Baghpat Division to Baghpat District, Uttar Pradesh under Section 3A(1) of the NH Act. While some portion of land was compulsorily acquired, qua the other portion, possession was taken (2019) 9 SCC 304 (2018) 9 SCC 49 (2016) 3 SCC 422 (2011) 12 SCC 573 (1994) 1 SCC 44 (2003) 5 SCC 705 (2017) 7 SCC 678 (2012) 9 SCC 552 2006 SCC OnLine Mad 5 2009 SCC OnLine Del 862 JT 2007 (4) SC 300 (2005) 7 SCC 791 2019 SCC Online Del 11121 without acquisition vide Notification dated 08.02.2007. Aggrieved by the non-receipt of compensation, the landowners including the petitioners approached this Court by way of above noted writ petition praying for quashing of these notifications as well as for directions to pay land compensation/additional land compensation amongst other ancillary reliefs. The Writ petition was disposed on 27.11.2018 in following terms:

"12. Considering that more than 10 years have elapsed since the Award was passed and portions of the land have already been utilised for construction of the Expressway, the prayer of the Petitioners that they should be paid compensation and that directions in that regard should be issued to the Respondent is justified. The Petitioners are also asking enhanced compensation for having been made to wait for more than ten years.

13. Learned counsel for the Petitioners states that he is at this stage nor insisting on any declaration about the acquisition having lapsed although he claims that in terms of a judgment of the Karnataka High Court, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would also apply. Consequently, the Court is not going into that question in these proceedings.

14. The Court accordingly issues the following directions:

(i) The competent authority i.e., Respondent No.4 will take steps to ensure that the compensation payable to each of the Petitioners pursuant to the Award dated 20th December 2007 is disbursed to each of them in accordance with the Award not later than 6 months from today.

(ii) Each of the Petitioners will appear in person before the Competent Authority on 21st January 2019 with all the relevant documentation which will identify them and their ownership of the lands in question.

(iii) A representative of the NHAI will also remain present and extend in terms of the undertaking made before this Court, help and full cooperation to each of the Petitioners to process their claims in terms of the Award dated 20 December 2007 to get the amounts which are due to them.

(iv) The competent authority will after verification of the documents and upon being satisfied about the ownership of the claimants disburse the compensation to each of the Petitioners whose documentations are in order without any delay whatsoever and in any event not later than ten days thereafter.

(v) Among the 112 Petitioners, some of them are claiming ownership of lands which have not yet been notified for any acquisition. It is up to the competent authority to decide how to proceed in such cases and what should be done when such lands have already been taken over without payment of any compensation.

(vi) As far as such of those Petitioners whose lands have already been notified and included in the notifications dated 28th July 2006 and 8th February 2007 referred to above, the competent authority will proceed to implement the directions of this Court.

(vii) The Petitioners who seek enhanced compensation will proceed in terms of Section 3G(5) read with Section 3G(7) of the NHAI Act.

(viii) The Secretary, District Legal Services Authority, Baghpur is also requested to render full assistance to the Petitioners in pursuing their claims for higher compensation.

15. The writ petition is disposed of in the above terms. A certified copy of the order be forthwith sent to the Secretary, District Legal Services Authority, Baghpat. "

7. Consequent to the abovementioned order, the petitioners received original land compensation as per the market value adjudged in the year 2006 when Section 3A notification was issued vide order dated 27.5.2019 passed by District Collector, Bhagpat, U.P. Unsatisfied with the quantum of compensation received, the petitioners and other landowners filed proceedings in form of Suit No. 00747 of 2019 before District Collector- Division Meerut under Section 3G(5) and 3G(7) of the National Highway Act, 1956 seeking enhanced compensation. Vide the impugned Judgement dated 16.10.2020, the suit was dismissed.

8. The A&C Act defines „Court in the following manner:-

2. Definitions.--(1) In this Part, unless the context otherwise requires,--

(e) "Court" 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;...

Thus, it is seen that as per the definition extracted above, the relevant Court would be the one having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. Subject matter of Arbitration should not be equated with subject matter of the suit, as the former is related to proceedings initiated under Part I of the Act. The purpose of the provision is to identify the courts having supervisory control over the arbitration proceedings. The Courts have held that territorial jurisdiction lies with the court within whose jurisdiction the subject matter of the suit is situated, as well as the courts within whose jurisdiction the dispute resolution process, i.e., arbitration, is conducted. Furthermore, it has been consistently held that the moment the seat of arbitration is designated, it is akin to an exclusive jurisdiction clause. [Ref:

BALCO v. Kaiser Aluminium Technical Services Inc. (Supra) and BGS SGS SOMA JV v. NHPC<sup>14</sup>].

9. The Supreme Court in the case of Indus Mobile (Supra), while analysing the definition of Court given in the A&C Act, interpreted the same in the following manner:-

2. Definitions.--(1) In this Part, unless the context otherwise requires-- (a)-(d)\*\*\*

(e) „Court means 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;

(2020) 4 SCC 234 We are of the opinion, the term “subject-matter of the arbitration” cannot be confused with “subject-matter of the suit”. The term “subject-matter” in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.

10. Factual matrix to the extent necessary and relevant and as captured in the petition is that the impugned arbitral award dated 16.10.2020 in relation to enhanced compensation for land acquisition was rendered by an arbitrator appointed under the scheme of section 3G(5) and 3G(6) of the National Highways Act, 1956; which award was rendered in Baghpat, Uttar Pradesh; all proceedings in arbitration were also conducted in Baghpat, Uttar Pradesh; and even the land that is the subject matter of the impugned arbitral award is situated in Uttar Pradesh. Nothing has been shown which would prove that any part of the arbitral proceedings had taken place within the territorial jurisdiction of this Court.

11. The next facet and the primary ground of the petitioner’s claim of jurisdiction in the present petition, is the invocation of Section 42 of the A&C Act. The petitioner asserts that the previously filed writ petition, W.P. (C) 11920/2016, which was entertained by this Court, should be considered as an earlier application. On this premise, the petitioner argues that jurisdiction for any subsequent application arising out of the same agreement and arbitral proceedings rightfully vests with this Court.

12. Section 42 of the A&C Act reads as follows:

"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."

The section envisions a situation where, if an application under Part I of the A&C Act has already been made to a Court, that same Court is entrusted with the jurisdiction to deal with all subsequent applications arising out of that agreement and arbitral proceedings and other Courts are barred from entertaining such applications. 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. [Ref: BGS SGS SOMA JV (Supra)]

13. The Supreme Court, in *State of West Bengal v. Associated Contractors*<sup>15</sup>, provided a detailed analysis of the legal position concerning section 42 of the A&C Act, observing as follows:

"25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:

(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined. Since applications made Under Section 8 are made to judicial authorities and since applications Under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court

having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If a 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, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42. The reference is answered accordingly."

14. In the present case, the previous proceedings were in the nature of a writ petition. It is apposite to state that a writ petition cannot be construed as an "earlier application" under Section 42 of the Arbitration Act to decide jurisdiction as the very nature of a writ petition is to challenge an administrative action or a legal decision, not to initiate arbitration proceedings; Section 42 specifically refers to an "application made in a Court with respect to an arbitration agreement," which implies an initial application to commence or regulate arbitration, rather than a challenge to an existing decision. Notably, while the notification issued by the Ministry (2015) 1 SCC 32.

of Shipping, Road Transport, and Highways (MoSRTNH), Department of Road Transport and Highways (DRTNH), may confer jurisdiction upon this Court under Article 226 of the Constitution, it does not, in itself, make the writ petition filed pursuant to the said notification qualify as an earlier application under Section 42 of the Act.

15. To claim jurisdiction of this Court, the petitioner has placed reliance on certain decision in Union of India v Tarsem Singh (Supra), which is found to be misplaced. In Tarsem Singh, the issue pertained to non-grant of solatium and interest in terms of S.3-J of National Highways (amendment) Act 1997 which excluded applicability of Land Acquisition Act, 1894 for lands acquired under National Highway Act. The Court held the same to be violative of Article 14 of the Constitution of India. Similarly, the reference to decisions in K B Ramachandra Raje (Supra) and Ram Chand (Supra) is also misplaced as the issue of jurisdiction did not arise in the cases. In Emkay Global (Supra), the jurisdictional issue to entertain objections under Section 34 of the A&C Act was considered in light of Jurisdiction clause in the Contract providing for civil courts in Mumbai to have exclusive jurisdiction. The arbitral proceedings took place under National Stock Exchange bye-laws which provided for exclusive jurisdiction to civil courts in Mumbai. The Arbitrator held sittings in Delhi. The Supreme Court held that in light of aforementioned exclusive jurisdiction clauses, merely because the venue of arbitral sittings was in Delhi, that itself would not confer jurisdiction of courts in Delhi to hear objections under Section 34. ONGC v. Saw Pipes Ltd. (Supra) was a decision defining scope and parameters of interference while considering objections against arbitral award. The issue involved in present case did not arise. The decision in Milkfood (Supra) arose in the context of Section 31(4) of the old act which is pari materia with Section 42 of the amended A&C Act.

16. A Co-ordinate Bench of this Court in Dipankar Singh & Ors. (Supra), while dealing with a case wherein the Seat of arbitration and the land sought to be purchased was in Saharanpur, U.P, held that the courts in Saharanpur would have the requisite jurisdiction. A reference may be made to the following extract:-

"9. In the case in hand, there is no dispute that the competent authority under Sections 3(G)(1) or 3(G)(5) of the Act of 1956 was the concerned Officer in the District Administration (Saharanpur). Similarly, the Arbitrator was the District Magistrate exercising Revenue Jurisdiction, i.e. the Collector of District Saharanpur. There is also no dispute that the proceedings were actually held before the said authorities in District Saharanpur. In the given background, I am of the view that the issue whether the petitions shall be maintainable in this court is no more res integra in view of the Judgment of the Supreme Court in the case of Indus Mobile Pvt. Ltd. Supra) .."

13. From the reading of the aforesaid paras of the Judgments of the Supreme Court, the following position emerges:--

- (i) Subject matter of Arbitration cannot be confused with the subject matter of suit.
- (ii) The purpose of Section 2(1)(e) has to be to identify the courts having supervisory control over arbitration proceedings. It refers to the court of the seat of arbitration process.
- (iii) Section 2(1)(e) has to be read with Section 20 which gives recognition to party autonomy.
- (iv) Legislature has intentionally given jurisdiction to two courts i.e.; (a) courts where cause of action has arisen, (b) courts where arbitration takes place. This was necessary as the agreement may provide for a seat which is neutral to both parties and the Courts are to exercise supervisory control over the arbitration process.
- (v) The moment the seat is designated, it is akin to an exclusive jurisdiction clause.

14. Having noted the position of law, this court is of the view that the parties having agreed to the Seat of Arbitrator to be at Saharanpur, it is the competent court under whose jurisdiction Saharanpur falls, which shall have the jurisdiction to entertain a petition under Section 34 of the Arbitration and Conciliation Act, 1996.

17. Keeping in view the above-noted facts and circumstances as well as the position of law, this court is of the view that the parties agreed upon Baghpat as the seat of arbitration, the land which forms the subject matter of the arbitration falls outside the purview of this Court, the impugned award has also been passed in Baghpat, UP. Further, considering that similarly placed claimants had earlier approached this Court in the case of Dipankar Singh & Ors. (Supra) which already came to be



dismissed on account of lack of jurisdiction, it is held that the competent court under whose jurisdiction Baghpat falls, which shall have the jurisdiction to entertain a petition under Section 34 of the Arbitration and Conciliation Act, 1996.

18. Consequently, the present petition stands dismissed for lack of territorial jurisdiction.

MANOJ KUMAR OHRI (JUDGE) APRIL 04, 2025 ry