

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.6850/2022</u>	
<u>PETITIONERS:</u>	<p>1. M/s Omanand Industries, Nagpur A Registered Partnership Firm, Through its Partner Shri Liladhar s/o Ramjibhai Patel, R/o :- Ashirwad Palace, Near Sule High School, Abhyankar Road, Dhantoli, Nagpur, Tah. & Dist. Nagpur.</p> <p>2. M/s Om Enterprises, [M/s Omanand Enterprises], A Registered Partnership Firm, Through its Partner Shri Himmatlal S/o Ramjibhai Patel, R/o Dhantoli, Nagpur, Tah. & Dist. Nagpur.</p>
<u>...VERSUS...</u>	
<u>RESPONDENTS :</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p>

	4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001
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WITH

<u>WRIT PETITION NO.6837/2022</u>	
<u>PETITIONER:</u>	Karnal Singh Gurudas Singh Saini, aged about 75 years, Occ: Business, R/o. Hanuman Nagar, Nagpur, Tahsil & District Nagpur.
	<u>...VERSUS...</u>
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p> <p>4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001.</p>

WITH

<u>WRIT PETITION NO.6839/2022</u>	
<u>PETITIONER</u>	Chandrashekar Kashinath Shiralkar, aged about 75 years, Occ: Retired, R/o. Q-14, Laxmi Nagar, Tahsil & District Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector, (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p> <p>4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001.</p>

WITH

<u>WRIT PETITION NO. 6847/2022</u>	
<u>PETITIONER</u>	Yash Travels and tours Private Limited, Nagpur, through its Chief Manager (Accountant), Mr. Prashant Kailash Sharma, Aged about 45, R/o. 236, Mahalaxmi Nagar, Nagpur.

<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p> <p>4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001</p>

WITH

<u>WRIT PETITION NO.6822/2022</u>	
<u>PETITIONER</u>	Dayanand @ Jaiprakash S/o. Baliram Sahajramani, aged about 58 years, Occ: Business, R/o. 14, Sindhu Nagar, Jaripatka, Nagpur, Tahsil & District Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p>

	<p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p> <p>4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001</p>
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WITH

<u>WRIT PETITION NO.6833/2022</u>	
<u>PETITIONER</u>	Baliram Girdharilal Sahajramani, aged about 82 years, Occ: Business, R/o. 14, Sindhu Nagar, Jaripatka, Nagpur, Tahsil & District Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p>

	<p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p> <p>4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001</p>
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WITH

<u>WRIT PETITION NO.6829/2022</u>	
<u>PETITIONER</u>	Late Shri Bhupinder Singh Arneja, through his Legal Heir Dr. Sarabjeet Kaur Arneja, aged about 55 years, Occ: Medical Practitioner, R/o. “Gurukrupa”, Gurunanakpura Nagar, Nagpur
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p>

	4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001
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WITH

<u>WRIT PETITION NO.1374/2023</u>	
<u>PETITIONER</u>	Durgadevi Baliram Sahajramani, aged about 80 years, Occ: Housewife, R/o. 14, Sindhu Nagar, Jaripatka, Nagpur, Tahsil & District Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	<p>1. The Secretary to the Government of India, Ministry of Road Transport and Highways, Dwarka, New Delhi – 110 075.</p> <p>2. The Deputy Collector (Land Acquisition - General), Nagpur (Maharashtra) and Competent Authority for Acquisition of Land for National Highways, Collectorate, Nagpur.</p> <p>3. The National Highways Authority of India, through it's Project Director, National Highway No.7, having registered office at Shubhankar Apartment, Plot No.159, Ambazari Hill Top Area, Ram Nagar Nagpur – 440033.</p> <p>4. The Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G (5) of the National Highways Act, 1956, C/o. Commissionerate having office Building at Civil Lines, Nagpur 440001</p>

 Shri S.P Bhandarkar, Advocate for the petitioners
 Ms T.H.Khan, Mrs. M.A. Barabde and Mr. N.R.Patil, AGPs respondents/State

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 10/03/2023

Judgment pronounced on : 31/03/2023

1] Heard Shri S.P. Bhandarkar, learned counsel for the petitioners and Ms T.H. Khan, Mrs. M.A. Barabde and Shri N.R. Patil, learned Assistant Government Pleaders for the respondents/State. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

2] All these petitions raise the same challenge and therefore are being decided by this common judgment. For the sake of brevity the facts in Writ Petition No.6850/2022 are being taken for consideration of the challenge.

3] The petition challenges the award dated 06/09/2013 passed by the Arbitrator under Section 3-G (5) of the National Highways Act, 1956 (for short, “the N.H. Act” hereinafter) in Arbitration Case No.62/2012 and seeks its modification. The factual position in the instant matter can be encapsulated as under :-

Sr. No.	Date	Event
01		The petitioners claimed to be owners of Khasra

		No.52/1 admeasuring 1.00 HR held in Class-I rights situated at Mouza Gawasi-Manapur, Tahsil Nagpur Rural (District Nagpur), out of which it is claimed that land admeasuring 0.40 HR stood converted into non-agricultural use and the balance land is also claimed to have been to non-agricultural use.
02	21/6/2010	A notification under Section 3 A (1) of the National Highways Act was published indicating the acquisition of the land for the purpose of widening of the National Highway No.7 (Kamptee-Kanhan bye-pass).
03		The claim statement was submitted by the petitioners claiming total compensation of Rs.82,58,23,020/-.
04	23/12/2011	Common award came to be passed in LAC NO.77/A-65/209-2010 granting compensation at the rate of Rs.39,00,000/- per hectare. For the 0.60 HR of land the petitioners were granted Rs.23,40,000/- and for the land admeasuring 0.40 HR (NA land) compensation was granted @ Rs.2,150/- per sq. meter, totalling Rs.86,00,000/-. The petitioners have thus being granted a total compensation of Rs.1,09,00000/-.
05		Being aggrieved by the award dated 23/12/2011 the petitioners approached before the Arbitrator/Respondent no.4 under Section 3-G (5) of the N.H. Act for enhancement of compensation.

06	06/09/2013	The learned Arbitrator by the award partly allowed the claim of the petitioners for enhancement of the compensation to Rs.13,26,37,382/- (pg.172).
07	28/08/2015	An application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the A & C Act”, hereinafter) filed by the respondent no.1 bearing MCA No.54/2014 came to be allowed by the learned Principal District Judge by setting aside the award dated 06/09/2013 passed by the Arbitrator and restoring the award dated 23/12/2011 (pg.52) passed by the Land Acquisition Officer (pg.249).
08	26/11/2021	In appeal under Section 37 of the A & C Act, this Court by the judgment set aside the judgment of the learned Principal District Judge under Section 34 of the A and C Act and restored the award passed by the Arbitrator dated 06/09/2013 (pg.364).
09	11/07/2022	Petition for special leave to appeal (C) No.8136/2022 with connect petitions preferred by the respondent no.1 were dismissed.
10.	28/07/2022	The present petitions have been filed claiming enhancement of the compensation as awarded by the Arbitrator under Section 3-G(5) of the N.H.Act.

4] In the above background, Shri S.P. Bhandarkar, learned counsel for the petitioners submits, that since the petitioners were

not satisfied with the award of the Arbitrator under Section 3-G(5) of the N.H. Act, and as the learned Principal District Judge under Section 34 of the A & C Act, 1996, had no power to modify the award or to substitute a new award for further enhancement, in place of the one passed by the Arbitrator under Section 3-G(5) of the N.H. Act, but his powers were restricted only to set aside the award under Section 34 of the A & C Act, as held by the Hon'ble Apex Court in *The Project Director, National Highways No.45 E and 220 National Highways Authority of India Vs. V.M. Hakeem and another*, AIR 2021 SC 3471, the petitioners were rendered remedy-less, for a claim for further enhancement, than what was awarded by the Arbitrator. It is contended, that since under Section 3-G(5) of the N.H. Act, a finality was given to the award as may be passed by the Arbitrator, and the proceedings before him were to be governed by the A & C Act, the petitioners were deprived of any remedy to seek any redress for further enhancement of compensation. It is, thus, contended, that in such circumstances, it was permissible for the petitioners to invoke the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, to lay a claim for further enhancement of the

compensation as awarded to them by the Arbitrator under Section 3-G(5) of the N.H. Act.

4.1. Inviting my attention to the provisions of the Land Acquisition Act, 1894 (for short, “the L.A. Act” hereinafter), it is contended that against an award under Section 11 therein, a reference under Section 18 of the L.A. Act is provided to the Civil Court. The judgment under reference, is then amenable to appeal under Section 54 to the High Court, thus affording a further remedy to the landowners in case of non-satisfaction as to the judgment in reference under Section 18 of which the petitioners are deprived, under the A & C Act.

4.2. He further relies upon the scheme of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “the RFCTLARR Act” hereinafter) to contend that the provisions of Section 74 therein, which permits the challenge to the award as passed by the Authority as established under Section 51 of the said Act, does not contain any such restrictions and even a plea for enhancement of the compensation is permissible to be entertained and decided by the High Court.

4.3. The learned Counsel places reliance upon the following judgments in support of his contention.

Sr. No.	Name of the parties	Citations
01	PSA SICAL Terminals (P) Ltd. .Vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and others.	2021 SCC OnLine SC 508
02	Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited.	(2022) 1 SCC 131
03	Vishnu Bhagwan Agrawal and another Vs. National Insurance Company Limited through its Regional Director.	(2018) 12 SCC 210
04	Sahyadri Earthmovers Vs. L and T Finance Ltd. and another.	2011 (4) Mh.L.J. 200
05	Atlanta Infrastructure Limited Vs. Municipal Corporation of Greater Mumbai and others.	(2018) 15 SCC 230
06	National Highways Authority of India Vs. JSC Centrodorstroy.	(2016) 12 SCC 592
07	Project Director, National Highways No.45E and 220 National Highways Authority of India Vs. M. Hakeem and another	(2021) 9 SCC 1
08	Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI).	(2019) 15 SCC 131
09	Associate Builders Vs. Delhi Development Authority	(2015) 3 SCC 49

5] In *PSA SICAL Terminals (P) Ltd.* (supra) after considering *Associate Builders* and *Ssangyong Engineering and Construction Company Limited* (supra) the Hon'ble Apex Court while

considering the scope and ambit of Section 34 of the A & C Act has held as under :-

“43. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

44. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would

certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

45. To understand the test of perversity, it will also be appropriate to refer to paragraph 31 and 32 from the judgment of this Court in Associate Builders (supra), which read thus:

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In *Excise and Taxation Officer-cum-Assessing Authority v Gopi Nath & Sons* [1992 Supp (2) SCC 312], it was held : (SCC p. 317, para 7)

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality

incurring the blame of being perverse, then, the finding is rendered infirm in law.”

In Kuldeep Singh v Commr. of Police [(1999) 2 SCC 10:1999 SCC (L&S) 429] it was held : (SCC p. 14, para 10)

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

87. As such, as held by this Court in Sangyong Engineering and Construction Company Limited (supra), the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract has been foisted upon an unwilling party. This Court has further held that a party to the Agreement cannot be made liable to perform something for which it has not entered into a contract. In our view, re-writing a contract for the parties would be breach of fundamental principles of justice entitling a Court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category.”

5.1. In ***Delhi Airport Metro Express Private Limited*** (supra)

the following principles have been laid down.

“26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570], Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as

Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression “patent illegality”.

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression “public policy of India” and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention

with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.”

5.2. ***Vishnu Bhagwan Agarwal*** (supra) is under the Arbitration Act, 1940 and holds that under the said Act an arbitration award is not to be lightly interfered.

5.3. ***Sahyadri Earthmovers*** (supra) is upon the procedure which is required to be followed by the Arbitral Tribunal and the power of the Arbitrator to determine the admissibility, relevant, materiality and width in evidence.

5.4. ***Atlanta Infrastructure Limited*** (supra) holds that when the award is well reasoned it ought not to be interfered with.

5.5. ***JSC Centrodorstroy*** (supra) holds that the interference with an award by the Arbitral Tribunal is not permissible unless Arbitrator construes contract in such a way that no fair-minded or reasonable person would do.

5.6. ***M. Hakeem*** (supra) holds that under Section 34 of the A & C Act the Court does not have any power to modify an award and the power is restricted to setting aside the award.

6] It is, thus, apparent that the grounds of challenge to an award passed by the Arbitrator under Section 3-G(5) of the N.H. Act,

are controlled and limited by the provisions of Section 34 of the A & C Act.

7] The contention that there is no remedy available to the petitioners, to challenge the award of the Arbitrator, seeking further enhancement of the compensation awarded, has to be considered in light of the scheme of the National Highways Act, 1956 read in consonance with the provisions of Section 34 of the A & C Act, 1996.

8] The scheme of acquisition under the National Highways Act, relevant for our purpose, would indicate that after the notification under Section 3-A(1) of the N.H. Act to acquire land, the objection received under Section 3-C of the N.H. Act from any person interested in the land, within 21 days from the date of publication of the above notification has to be decided by the Competent Authority, to which finality has been rendered under Section 3-C (3) of the N.H. Act. Under Section 3-G(1) of the N.H. Act the Competent Authority is enjoined to determine the compensation of the land acquired. In case the compensation determined by the Competent Authority is not acceptable, the same is susceptible to a challenge to be laid before the Arbitrator who is then empowered to determine the compensation under Section 3-G (5) of the N.H. Act.

The provisions of the A & C Act have been made applicable to every arbitration under Section 3-G (5) of the N.H. Act. Section 3-G (7) determines the factors to be taken into consideration by the Competent Authority or the Arbitrator while determining the compensation. The determination of the compensation by the Arbitrator under Section 3-G (5) of the N.H. Act is then open to further scrutiny, by the Court under Section 34 of the A & C Act which, in turn, is susceptible to a further challenge under Section 37 of the A & C Act, which, in turn, can be carried to the Hon'ble Apex Court in a petition for special leave to appeal under Article 136 of the Constitution of India.

9] It is, thus, apparent that there are as many as five opportunities provided to the landowner whose land is acquired under the N.H. Act, to question the grant of compensation awarded to him. It is equally true that as the opportunities of challenge reach the higher Courts, the scope of interference is narrowed down.

10] The National Highways Act itself, grants two opportunities to the landowner, to place on record material regarding the compensation claimed by him, once before the Competent Authority under Section 3-G (1) and the second time

before the Arbitrator under Section 3-G (5) of the N.H. Act for enhancement. This can further be questioned under Section 34 of the A & C Act, however, within the parameters as contained therein.

11] It is true, that the consideration under Section 34 of the A & C Act is restricted to parameters as contained therein, however, that is to be expected as in the hierarchy of authorities/Courts before which claimant can get redress, the parameters, upon which redress can be sought, are narrowed down as the hierarchy progresses upwards.

12] Under the scheme of the Land Acquisition Act, the award passed under Section 11 of the L.A. Act, which is susceptible to a challenge for enhancement under Section 18 to the reference Court, both of which are Courts of fact, a further challenge there against being permissible under Section 54 of the said Act to the High Court and thereafter to the Hon'ble Apex Court.

13] In the scheme under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the compensation is to be determined by the Collector under Section 23 of the said Act, against which a reference under Section 64 to the Authority as established under Section 51 of the

said Act is available, challenge against which is by way of an appeal to the High Court under Section 74 thereof, which then can be carried to the Hon'ble Apex Court by way of a special leave to appeal under Article 136 of the Constitution of India.

14] Section 3 (which includes Section 3-A to 3-J) of the N.H. Act, has been introduced by Act 16 of 1997, w.e.f. 24/01/1997 and provides for a complete mechanism for acquisition of land for the purpose of creating/widening of the National Highway, including the determination and grant of compensation for the acquisition of land for the aforesaid purpose. The mode of conducting the proceedings before the Arbitrator, in case the claimant is not satisfied with the award passed by the Competent Authority, is also governed by the provisions of Section 3-G (6) of the N.H. Act, which applies the provisions of the A & C Act, to proceedings before the Arbitrator. It is, thus, apparent that a remedy of approaching the 'Court', as defined in Section 2 (1) (e) of the A & C Act, has been provided to the claimant, against the award as may be passed by the Arbitrator under Section 3-G-(5) of the N.H. Act, which is a special Statute, governing the acquisition of lands for the National Highways.

15] The Hon'ble Apex Court, while considering the scope of Article 226 of the Constitution, vis-a-vis the remedy provided by the statute, in *United Bank of India Vs. Satyawati Tondon and others (2010) 8 SCC 110* while considering what was held by it in its earlier pronouncement on the point in *Titaghur Paper Mills Co. Ltd. Vs. State of Orissa [(1983) 2 SCC 433]*, has held as under :

“48. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] a three-Judge Bench considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the Central Sales Tax Act, 1956 and corresponding law enacted by the State Legislature and answered the same in the negative by making the following observations: (SCC pp. 440-41, para 11)

“11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by

the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’

*The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd.* [1935 AC 532 (PC)] and *Secy. of State v. Mask & Co.* [(1939-40) 67 IA 222] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”*

16] There is no doubt, a difference between the procedure laid down in the appeals to be dealt with under the L.A. Act and the RFCTLARR Act on the one hand and the N.H. Act on the other, all of which relates to acquisition of land, inasmuch as the N.H. Act applies the A & C Act to matters before the Arbitrator, because of which the course of action to be followed in matters governed by the N.H. Act, after the award by the Arbitrator has to be the one as contemplated by the A & C Act. That however, is something which cannot be avoided, for if a matter is governed by a particular statute, then what is provided in the statute, has to be the course of action which the matter has to follow in case a litigant desires to agitate it further. Different ways a matter has to take while in its journey, based upon the remedies for challenges to the higher forums the statute provides and the parameters for such challenges. The scope and parameters for such challenges also goes on reducing as a higher forum is to be approached, for that is the very basis of the hierarchical form of system without which the system may not work at all. That too, such statute govern the same subject matter i.e. acquisition of land in this case but provided for different ways in which to deal with matters thereunder including the right to

challenge in higher forums and narrowing down the parameters for such challenges, cannot be a ground to create an additional remedy by invoking the writ jurisdiction of this Court under Article 226 of the Constitution.

17] Thus since the National Highways Act, is a special statute and provides for a remedy, for such acquisition, by permitting the filing of an application under section 34 of the A & C Act, against the award passed by the Arbitrator under Section 3-G (5) of the N.H. Act, that remedy, was the only course of action which could have been availed of by the petitioners, for challenging the award by the Arbitrator, as held in *Satyawati Tondon* (supra).

18] This remedy, however, has not been availed of by the petitioners, as no application under Section 34 of the A & C Act, has been preferred by the petitioners against the award passed by the Arbitrator under Section 3-G-(5) of the N.H. Act. In fact it is the respondent no.1, who has filed the application under Section 34 of the A & C Act, before the Court as defined under section 2(1)(e) of the A & C Act, in which the award as passed by the Arbitrator had been set aside, which in turn had been challenged by the petitioners by filing an appeal under Section 37 of the A & C Act before this

Court which has been allowed restoring the award of the Arbitrator, which judgment has been confirmed by the Hon'ble Apex Court. Thus in so far as the petitioners are concerned the remedy as provided under Section 34 of the A & C Act, against the award as passed by the Arbitrator under Section 3 G-(5) of the N.H. Act, the same has not been availed of by them at all, and therefore, the plea that the remedy was a limited one, and the extraordinary jurisdiction of this Court under Article 226 of the Constitution can be invoked by them, in my considered opinion, is clearly not available to them.

19] The absence of a remedy and the limited scope of the remedy are two different things altogether. This is not a case of absence of remedy as a remedy is provided as indicated above. This is therefore a case where the limited scope of the remedy as provided, is being pleaded, in view of what has been held by the Hon'ble Court in *M. Hakeem* (supra). In this context, it is necessary to state that it is permissible for the Legislature in its wisdom, to narrow down the scope of a remedy, against any challenge which a Statute may afford to a litigant. When Section 34 of the A & C Act, provides for the setting aside of the award on any of the grounds as

contained therein, it cannot be said that the Legislature while framing Section 3-G-(6) of the N.H. Act, was ignorant of the nature and scope of the grounds as provided in Section 34 of the A & C Act and the position that limited interference was being permitted. Rather, on the contrary, the limitation of the scope of remedy under Section 34 of the A & C Act, is intentional, as is indicated from the language thereof and the departure from the mode of appeals under the L.A. Act and the RFCTLARR Act, which is further clearly discernable from the fact that instead of making the provisions of the L.A. Act or the RFCTLARR Act applicable to the acquisition under the N.H. Act, a totally new procedure has been prescribed by introducing Section 3-A to 3-J in the N.H. Act and so also by making the provisions of the A & C Act, applicable to proceedings before the Arbitrator and thereby limiting the remedy for challenge thereto, to the parameters as set forth in Section 34 of the A & C Act. Thus for laying a challenge to the award as passed by the Arbitrator under Section 3-G (5) of the N.H. Act, it is for the petitioner to make out a case, within the four corners of the grounds permitted in Section 34 of the A & C Act, so as to assail the award as passed by the Arbitrator, as every challenge beyond the scope, ambit and

parameters of Section 34 of the A & C Act, stands excluded, by necessary implication, in view of the express language of Section 34 of the A & C Act.

20] In the instant case, it is clearly apparent that the petitioners were satisfied with the award dated 06/09/2013 as passed by the Arbitrator under Section 3-G (5) of the N.H. Act, which is the reason that they had not preferred any application under Section 34 of the N.H. Act, to the 'Court', under Section 2(1) (e) of the A & C Act, within the time permitted. This is asserted from the fact that the award by the Arbitrator is dated 06/09/2013, whereas the judgment in *M. Hakeem* (supra) was delivered on 20/07/2021 [which was from judgment in *NHAI / M. Vijayalakshmi by the Madurai Bench of the Madras High Court, 2020 SCC OnLine Mad 1119*)] and therefore the view taken by the Hon'ble Apex Court in *M. Hakeem* (supra) could never have been an impediment for the petitioners to assail the award by the Arbitrator by taking recourse to Section 34 of the A & C Act.

21] It is therefore clear that the present petition is merely an attempt to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution, by raising a plea of availability of a

limited remedy under the A & C Act, and opening a new front of litigation, which is impermissible on the facts of the case and the law as applicable thereto. I, therefore, do not see any merit in the challenge for the reasons stated above. The writ petitions are therefore dismissed. Rule stands discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar/Rvjalit