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Should Section 34 Be Construed Liberally As Permitting The Courts To Enhance Compensation In Land Acquisition Matters?

Authored By- Raghav Khetan

Recently, in *Project Director NHAI v. M. Hakeem (NHAI case)*, the Supreme Court held that courts, while exercising their jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) do not possess the power to modify an arbitral award.

Such matters relating to the setting aside and modification of arbitral awards, have always been a long-standing question in Indian courts and with their recent judgement, the Supreme Court cleared the air surrounding it.

This decision by the apex court however, raises a question over the lack of due process and a fair mechanism for compensation in land acquisition matters, as an aggrieved individual can now only expect the courts to either set aside the award or remit the matter back to the arbitrator, instead of modifying it. The judgement can be looked at as a missed opportunity to lay down principles¹ to enhance ‘unjust’ compensation under Section 34 of the Arbitration Act, which is only a “truncated remedy on technical grounds.”²

Factual Background Of The NHAI Case

Several notifications were made by the National Highway Authority of India (NHAI) under the National Highway Act, 1964 (NHA) to acquire land from individuals, for the purpose of constructing national highways.

The competent authority passed awards for the said acquisition under the NHA, which were found to be abysmally lower than the market value of the acquired lands. As a result, these awards were not accepted by aggrieved landowners. Thus, in accordance with Section 3G(5) of

¹ Renu Gupta, *Should Courts Have the Power to Modify Arbitral Award?*, LAW STREET INDIA (December 9, 2021), <http://www.lawstreetindia.com/experts/column?sid=632>

² Sunil Gupta, *The Problem with SC ruling on compensation for land acquisition*, TIMES OF INDIA, September 10, 2021, p. 3.

the NHA, an arbitrator was appointed who agreed with the compensation awarded by the competent authority and found no infirmity with the amounts.

Petitions were then filed in the district courts under Section 34, wherein the court enhanced the compensation in favour of the landowners. On subsequent appeal, the High Court upheld the decision made by the lower court. The impugned judgement of the High Court was then challenged in the Supreme Court.

Where Did The Problem Arise?

Under the NHA, the Government can acquire land for public purpose from individuals in lieu of just or fair compensation. Aggrieved individuals, like M. Hakeem, who feel dissatisfied with the compensation awarded, can seek for the settlement of the dispute through an arbitrator. Section 3G (5) of the NHA provides for an arbitrator to be appointed in such cases. However, the main contention of individuals like M. Hakeem is that the arbitrator is to be appointed unilaterally by the Central Government, without the landowner's consent. This makes the arbitration one sided and the arbitrator simply 'rubber-stamps' the inadequate compensation instead of independently judging it.

In the present case, awards made by the competent authority were based on the 'guideline value' of the land and not on the sale deeds that would've reflected the true market value of these lands. Further, Section 3G (7)(a) of the NHA provides for taking into consideration the "market value of the land on the date of publication of the notification." As a result, abysmally low amount of compensation was awarded to M. Hakeem on basis of the guideline value of the land, which was far lower than the market value of such land. It was found from the sale deeds of similar lands, that the compensation awarded to Hakeem was almost one-tenth the value of his land³.

The only remedy remaining for M. Hakeem was to file a Section 34 petition against such unjust compensation. The District Court and the High Court had taken cognizance of the peculiar facts of the case, and instead of remitting the matter back to an arbitrator, construed Section 34 in a more liberal sense to allow the enhancement of the inadequate compensation. The lower courts recognized the grave injustice done at hand and allowed the modifying of awards in the definition of "setting aside" under Section 34. However, the Supreme Court ruled that Section 34 does not give courts the authority to modify an arbitral award and denied the

³ The Project Director NHA v. M. Hakeem, (2021) SC 473, p. 3.

enhancement of the compensation in question. It left the question to be legislated on by the parliament and refused to provide Hakeem with the compensation he sought.

Conclusion And The Way Forward

While the Supreme Court also recognized that grave injustice had been done in the present case and that the NHA favoured the Government, it failed to provide the aggrieved individual with any relief. The Government got what they sought i.e., land for the construction of the National Highways, without essentially compensating Hakeem, who would have to again apply for *de novo* arbitration. Hakeem's only relief was bound to a non-consensual arbitrator who failed to correct the insufficient compensation and his eventual remedy under Section 34 was dismissed by the Supreme Court, leaving lower courts as mere spectators who can only set an unjust award aside or remit it back to the arbitrator.

On the other hand, had the Supreme Court (which recognized the 'perverse' and 'abysmally low' amount of compensation) construed Section 34 in a more liberal sense like the courts below it, Hakeem would've got the compensation he deserved. Such an approach is also followed by other jurisdictions like England, Australia, and Singapore whose statutes "empower their courts to modify an award."⁴ In the United States for example, Section 11 of the United States Federal Arbitration Act 1925, provides that courts can modify an arbitral award based on certain conditions, including evident miscalculation of figures. Even in India, the Madras High Court had held that courts should have the competence to modify an award under Section 34, as the mere setting aside of an award would "leave the parties in a position much worse than what they contemplated or deserved before the commencement of the arbitral proceeding."⁵

Further, relegating parties to *de novo* arbitration after setting aside an award and not having the power to modify it, does not serve any purpose and only costs the courts and parties valuable time and resources. Parties would be better off litigating in court rather than opting for arbitration in the first place. The Supreme Court while failing to provide Hakeem with any relief in this regard however, made a suggestion to the Parliament to amend the legislation and

⁴ Deeksha Pokhriyal & Aviral Agrawal, *Modification of Arbitral Awards and Section 34: An Alternative Perspective*, INDIA CORPLAW (October 6, 2021) <https://indiacorplaw.in/2021/10/modification-of-arbitral-awards-and-section-34-an-alternative-perspective.html>

⁵ Gayatri Balaswamy v. ISG Novasoft Technologies Ltd, (2014), p. 51.

bring it in line with legislations around the world,⁶ permitting the courts to modify an arbitral award.

Under the NHA, there is only a limited appeal to the arbitrator's award provided by Section 3G read with Section 34 of the Arbitration Act, replacing the wholesome regime of appeals under the Land Acquisition Act. This invites the scope for discrimination based on the different principles of compensation given, which was evident even in Hakeem's case. The Supreme Court in *Nagpur Improvement Trust v. Vithal Rao* had held that "different principles of compensation cannot be formulated for lands acquired on the basis...of unreasonable classification."⁷ A similar scenario was created in this case by the principles of awarding compensation under the NHA. Hakeem received far lower and unjust compensation as compared to other landowners with similar lands, creating a different class of people based on an unreasonable classification with no proper justification. Further, the Supreme Court had recently held Section 3J of the NHA violative of Article 14, as the principles regarding solatium and interest did not conform with that of the Land Acquisition Act⁸. Hence, a challenge under Article 14 is also an alternative route if the compensation given creates different classes of people by virtue of being unreasonable and unjust.

Thus, there is a need for a balance to be struck between the court's authority and the scope of Section 34, to modify unjust compensation in land acquisition matters.

⁶ The Project Director NHAI v. M. Hakeem, (2021) SC 473, p. 46.

⁷ (1973) 1 SCC 500, p. 22,23 & 24.

⁸ Union of India v. Tarsem Singh, (2019) 9 SCC 304, p. 41.