

CASE NO.:
Appeal (civil) 1531 of 1999

PETITIONER:
Union of India

RESPONDENT:
M/s. Banwari Lal & Sons(P) Ltd.

DATE OF JUDGMENT: 12/04/2004

BENCH:
S.B. Sinha.

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

How the quantum of damages should be calculated by an arbitrator for occupation of a property by the appellant herein pursuant to or in furtherance of notification issued under the provisions of the Land Acquisition Act which was declared illegal is the short question involved in this appeal.

The premise in question admeasuring 50,328 sq. ft. is situated at 6, Ansari Road, Darya Ganj. It was requisitioned by Delhi Administration under the provisions of Requisition and Acquisition of Immovable Property Act, 1952. The said Act lapsed on 10th March, 1987. A notification was issued under Section 4 of the Land Acquisition Act for acquisition of the entire property on 6th March, 1987 whereafter a declaration purported to be in terms of Sections 6 and 17 thereof was issued on 10th March, 1987. The said notification was set aside by the High Court by a judgment dated 04.02.1991 on a writ petition filed by the Respondent herein.

The High Court while quashing the said acquisition proceeding appointed Justice T.V.R. Tatachari as an arbitrator to determine the damages payable by the Delhi Administration for occupation of the said property. It is not in dispute that this Court while permitting the appellant to remain in possession upto 31.03.1993 directed it to hand over vacant possession on or before the said date. It was, however, clarified that the arbitrator appointed by the High Court may give his award and file the same in the High Court for appropriate orders.

Even if the contention of the appellant to the effect that its possession in relation to property in question was not of a trespasser is not accepted; what should be the reasonable amount of damages for occupation thereof was the question required to be determined by the Arbitrator. The learned Arbitrator posed unto himself a correct question when he said:

"It has to be remembered that the income a private property would fetch by being let out, is not a fixed and rigid figure, but would depend upon various factors such as the need and urgency of the lessee, the bargaining ability of the lessor, the prevailing competition in the locality and the like."

The learned Arbitrator passed a reasoned award. Before the Arbitrator parties adduced evidences. As many as 16 issues were framed by the Arbitrator. The learned arbitrator was also required to determine a question as regard status of the appellant herein vis-à-vis the said property

upon delivery of the judgment of the High Court dated 4.2.1991 declaring the acquisition proceedings to be illegal on the ground that Section 17 of the Land Acquisition Act could not have been taken recourse to.

It is now well settled that when a question of law is referred to the arbitrator the award cannot be set aside only if a different view is possible. However, it is also trite that if no specific question of law is referred, the decision of the Arbitrator on that question would not be final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. Only in a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for determining his jurisdiction by the parties, then the finding of the arbitrator on the said question between the parties may be binding. (See Rajasthan State Mines & Minerals Ltd. Vs. Eastern Engineering Enterprises and Another [(1999) 9 SCC 283] and Pure Helium India (P) Ltd. Vs. Oil & Natural Gas Commission [(2003) 8 SCC 593]).

It is also trite that where the award contains reasons, the same may be interfered, *inter alia*, when it is based on a wrong proposition of law. However, when the view of the arbitrator is a plausible one, the Court would not normally interfere.

The questions raised in this appeal are required to be considered keeping in view the aforementioned legal principles. Correct determination of the quantum of damages by the arbitrator would depend upon application of the correct principles therefor. The authorities on valuation of property lay down such principles. It has not been shown that the learned Arbitrator in determining the quantum of damages adopted any known or accepted principle of valuation. Determination of quantum of damages would depend upon the fact of the matter as also the terms of the contract and other relevant factors. (See M.D. Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., 2003 (8) SCALE 424)

In Bharat Coking Coal Ltd. Vs. Annapurna Construction [(2003) 8 SCC 154], this Court in no uncertain terms held that the arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract. It was further opined:

"There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameter of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the records."

The decision of this Court in Bharat Coking Coal Ltd. (supra) was followed in M/s. Sathyanarayana Brothers (P) Ltd. Vs. Tamil Nadu Water Supply & Drainage Board [2003 (9) SCALE 769] where it was emphasised that the arbitrator while making his award cannot ignore very material and relevant documents relevant for determining the controversy so as to render a just and fair decision.

It is further trite that an arbitrator cannot clothe himself with the jurisdiction when it has none.

As the learned Arbitrator did not adopt any known method of valuation of the property, it must be held that while making the award he applied a wrong principle of law and, thus, the same cannot be sustained.

For the aforementioned reasons, I respectfully concur with the

judgment and order proposed to be delivered by Brother Kapadia, J.

JUDIS