



2025:CGHC:34431-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBA No.21 of 2024**

Gopal Agrawal S/o Late Shir Ramkumar Agrawal, Aged About 60 Years
Presently R/o A-77, Anandam World City, Kachna, Raipur, District -Raipur,
Chhattisgarh- 492007

... Appellant**versus**

1 - Union Of India Through Its Chief Engineer (Construction), South Eastern
Central Railway, Bilaspur, (CG)

2 - Land Acquisition Officer And Sub-Divisional Officer (Revenue), Kharsia,
District-Raigarh, Chhattisgarh.

... Respondents

For Appellant : Shri Ankit Singhal appears along with Shri Ashish
Mittal, Advocates

For Respondent No.1 : Shri Tushar Dhar Diwan, Advocate

For Respondent No.2 : Shri Atanu Ghosh, Dy.GA

**DB: Hon'ble Shri Justice Sanjay S. Agrawal &
Hon'ble Shri Justice Radhakishan Agrawal
Judgment On Board**

Per Sanjay S. Agrawal, J**21/07/2025**

- 1) This appeal has been preferred by the Claimant/Gopal Agrawal under
Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter
referred to as "the Act, 1996") read with Section 13 of the Commercial
Court's Act, 2015, questioning the legality and propriety of the order
dated 26.02.2024 passed in Arbitration M.J.C. No.193/2020, whereby,

the Presiding Judge, Commercial Court (District Level), Bilaspur has allowed the application filed by the respondent No.1-Union of India under Section 34 of the Act, 1996 and, the award dated 26.02.2020 as was passed by the Additional Commissioner, Bilaspur [Appointed Authority to Act as an Arbitrator under Section 20 (F) of the Railways Act, 1989] (hereinafter referred to as “Arbitrator”) has been set-aside.

- 2) Learned counsel appearing for the appellant submits that the learned Commercial Court has set-aside the award dated 26.02.2020 passed by the Arbitrator mainly on the ground that proper opportunity of hearing was not provided to the Respondent No.1-Union of India, therefore, under such circumstances, the learned Commercial Court ought to have remanded the matter to the concerned Arbitrator with a direction to decide the claim of the claimant in accordance with law. In support, he placed his reliance upon the principles laid down by the Supreme Court in the matter of '**National Highways Authority of India vs. P. Nagaraju Alias Cheluvaiah and another**' reported in **(2022) 15 SCC 1** and also relying upon the principles laid down by the Constitution Bench of the Supreme Court, in the matter of '**Gayatri Balasamy vs. ISG Novasoft Technologies Limited**' reported in **2025 SCC Online SC 986**.
- 3) On the other hand, learned counsel appearing for Respondent No.1-Union of India has supported the order impugned as passed by the learned Commercial Court.
- 4) We have heard learned counsel appearing for the parties and perused the entire record carefully.

- 5) From perusal of the record, it appears that the land bearing Khasra No.58/1 (ख) admeasuring 0.413 hectare situated at Village Bhalunara, Tahsil Kharsia, District Raigarh (C.G.) owned by the Claimant-Gopal Agrawal, was acquired by the Respondent No.1-Union of India, as per the provisions prescribed under the Railways Act, 1989. The award to this effect was passed on 04.09.2015 by the Sub Divisional Officer (Revenue)-cum-Land Acquisition Officer, Kharsia of District Raigarh, in Land Acquisition Case No.12/A-82/2014-15, assessing the amount of compensation of the claimant's land to the tune of Rs.8,99,951/- and, being aggrieved with the same, the claimant has questioned the said award before the Arbitrator as per the provisions prescribed under Section 20-F of the Railways Act, 1989, who in turn, vide its order dated 26.02.2020 (Annexure-A/7) has directed for determining the amount of compensation of the claimant's alleged land as per the approved guidelines for the year 2015-16 issued by the Central Valuation Board, i.e. at the rate of Rs.32,21,000/- per hectare.

- 6) It appears further that being aggrieved with the aforesaid order, an application enumerated under Section 34 of the Act, 1996 was filed by the Respondent No.1-Union of India before the learned Presiding Judge, Commercial Court, (District Level) Bilaspur. The said proceeding was registered as Arbitration M.J.C. No.193/2020 and vide order dated 26.02.2024 (Annexure A-1), the said authority has allowed the said application and, the order dated 26.02.2020 passed by the learned Arbitrator was set-aside as due and proper opportunity of hearing was not provided to the Respondent No.1-Union of India. The learned Commercial Court, after holding as such, should have

remanded the matter to the concerned Arbitrator for determining the amount of compensation with regard to the land held by the claimant- Gopal Agrawal, in accordance with law, in view of the principles laid down by the Supreme Court in the matter of **National Highways Authority of India** (supra), wherein, it was held at paragraphs 45 and 72, as under :-

“45. Therefore, while examining the award within the parameters permissible under Section 34 of the 1996 Act and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of the 1996 Act to modify the award and alter the compensation as it was open to the Court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that Act, it should certainly be open to the Court exercising power under Section 34 of the 1996 Act to set aside the award by indicating reasons and remitting the matter to the arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under the RFCTLARR Act, 2013.”

“72. That being the fact situation and also the position of law being clear that it would not be open for the Court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter to the learned arbitrator in terms of Section 34(4) to keep in view these aspects of the matter and even if the Notification dated 28-3-2016 relied upon is justified since we have indicated that the same could be relied upon, the further aspects with regard to the appropriate market value fixed under the said notification for the lands which is the subject-matter of the acquisition or comparable lands is to be made based on appropriate evidence available before it and on assigning reasons for the conclusion to be reached by the learned arbitrator. In that regard, all contentions of the parties are left open to be put forth before the learned arbitrator.”

- 7) Likewise, the Constitutional Bench of the Apex Court, recently in the matter of **Gayatri Balasamy** (*supra*), has held at paragraphs 55, 56 and 62, as under :-

“55. As elucidated above, if a fog of uncertainty obscures the exercise of modification powers, the courts must not modify the award. Instead, they should avail their remedial power and remand the award to the tribunal under Section 34(4). Under the sub-section, either party-whether the one challenging the award under Section 34 or the one defending against such a challenge-may request the court to adjourn the proceedings for a specified period. If the court deems it appropriate, it may grant such an adjournment, allowing the arbitral tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. Thus, Section 34 (4) provides a second opportunity for a party to seek recourse through arbitral channel.

56. However, the power of remand permits the court only to send the award to the tribunal for reconsideration of specific aspects. It is not an open-ended process; rather, it is a limited power, confined to limited circumstances and issues identified by the court. Upon remand, the arbitral tribunal may proceed in a manner warranted by the situation - including recording additional evidence, affording a party an opportunity to present its case if previously denied, or taking any other corrective measures necessary to cure the defect. In contrast, the exercise of modification powers does not allow for such flexibility. Courts must act with certainty when modifying an award - like a sculptor working with a chisel, needing precision and exactitude. Therefore, the argument that remand powers make modification unnecessary is misconceived. They are distinct powers and are to be exercised differently.

62. We are unable to accept the view taken in *Kinnari Mullick (supra)*, which insists that an application or request under Section 34 (4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is recorded by the court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37 (Annexure A) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the court deciding objections under Section 34. Hence, the contention that the tribunal becomes functus officio

after the award is set aside is misplaced. The Section 37 court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 court. But the Section 37 court still possesses the jurisdiction to remand the matter to the arbitral tribunal.”

- 8) Applying the aforesaid principles to the case in hand, the appeal preferred by the claimant is, thus, allowed and, the order impugned dated 26.02.2024 passed by the learned Presiding Judge, Commercial Court (District Level) Bilaspur in Arbitration M.J.C. No.193/2020 is, accordingly, set-aside and the matter is remitted back to the learned Additional Commissioner, Bilaspur [Appointed Authority to Act as an Arbitrator under Section 20 (F) of the Railways Act, 1989], with a direction to decide the claim of the claimant-Gopal Agrawal, in accordance with law.

No orders as to cost.

**SD/-
(Sanjay S. Agrawal)
Judge**

**SD/-
(Radhakishan Agrawal)
Judge**