

SUPREME COURT OF INDIA

National Highways Authority of India

Vs.

Sayedabad Tea Company Ltd.

C.A.No.6958-6959 of 2009

(N.V.Ramana,J., Mohan M. Shantanagoudar and Ajay Rastogi,JJ.,)

27.08.2019

JUDGMENT

Ajay Rastogi,J.,

1. The moot question which arises before us is whether the application under Section 11 of the Arbitration and Conciliation Act, 1996(hereinafter being referred to as “Act 1996”) is maintainable in view of Section 3G(5) of the National Highways Act, 1956 (hereinafter being referred to as “Act 1956”) which provides for appointment of an Arbitrator by the Central Government.

2. The relevant seminal facts are that the subject land comprised in “Sayedabad Tea Estate” situated at Mouza Purba Madati, J.L. No. 108, Police Station Phansidewa, Dist. Darjeeling measuring 5.08 acres was acquired by the appellant (National Highways Authority of India) in exercise of its powers under Section 3(D) of the Act 1956 vide notification dated 22nd November, 2005 under L.A.P. Case No. 4/2004-05 for the purpose of construction of the highways.

3. The Act, 1956 is a comprehensive code in itself and a special legislation enacted by the Parliament for acquisition and for determining compensation and its disbursement where there are several claimants over the amount deposited towards compensation determined by the competent authority in accordance with the mechanism provided under Section 3G of the Act, 1956. If the amount so determined by the competent authority under sub-section(1) or sub-section (2) of Section 3G is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the Arbitrator to be appointed by the Central Government under Section 3G(5) of the Act. While determining the amount of compensation under sub-section(1) or sub-section(5), it is the duty of the Arbitrator to take into consideration the relevant pointers envisaged under sub-section(7) of Section 3G of the Act, 1956. Where the amount determined by the Arbitrator is in excess of the amount determined by the competent authority under Section 3G of the Act, 1956, the Arbitrator may, at its discretion, award interest at nine per cent per annum on the excess amount under sub-section (5) of Section 3H from the date of taking

possession under Section 3D till the date of actual deposit.

4. The extract of the sections of the Act 1956 relevant for the purpose are as under:-

“3G. Determination of amount payable as compensation.—

- (1)
- (2)
- (3)
- (4)

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount.—

- (1)
- (2)
- (3)
- (4)

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof. (6) 12 ”

5. In the instant case, the respondent-applicant being dissatisfied with the award of compensation determined by the competent authority under sub-section(1) of Section 3G

of the Act, 1956 filed application for appointment of an Arbitrator in terms of Section 3G(5) to the Central Government on 8th December, 2006. As alleged, since the Central Government has not responded to his request for appointment of an Arbitrator in terms of letter dated 8th December, 2006 within a period of 30 days from receipt of the request, application was filed on 7th March, 2007 to the Chief Justice/his designate for appointment of an Arbitrator invoking Section 11(6) of the Act, 1996. It reveals that the Arbitrator was appointed by the Central Government sometime in April 2007.

6. The High Court of Calcutta taking note of the fact that the Arbitrator has been appointed by the Central Government under Section 3G(5) of the Act, 1956 after the respondent-applicant had moved an application to the Chief Justice/his Designate invoking its power under Section 11(6) of the Act, 1996 held that right of appointment of the Arbitrator by the Central Government stands forfeited as it failed to appoint the Arbitrator until filing of the application under Section 11(6) of the Act, 1996 before the High Court of Calcutta and appointment of Arbitrator during the pendency of proceedings, cannot be said to be a valid appointment and hence referred the matter to be placed before the Chief Justice for naming an Arbitrator vide its Order dated 6th July, 2007.

7. Immediately after passing of the order dated 6th July, 2007, the appellant moved an application for review and it was brought to the notice of the High Court that the Act, 1956 being a special enactment laying down a procedure for appointment of an Arbitrator where the power is being exclusively vested with the Central Government under Section 3G(5) of the Act, 1956, the application made under Section 11(6) of the Act, 1996 is not maintainable but this was not considered to be a valid reason for invoking review jurisdiction by the High Court as envisaged under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure and the review application was dismissed vide Order dated August 27, 2007.

8. It may be relevant to note that the sole Arbitrator (Justice P.N. Sinha) who was appointed by the High Court of Calcutta pursuant to Order dated 6th July, 2007 under Section 11 of the Act, 1996 before initiation of the proceedings, sent the letter of his recusal dated 25th January, 2008 (Annexure P-12).

9. It is informed to this Court that the Arbitrator who was appointed by the Central Government under Section 3G(5) of the Act, 1956 in April, 2007 could not have proceeded after the intervention was made by the High Court of Calcutta in appointing the sole Arbitrator under Section 11(6) of the Act, 1996. That for all practical purposes, the dispute raised by the respondent-applicant aggrieved by the compensation awarded under sub-sections(1) or (2) of Section 3G of the Act, 1956 has so far not been adjudicated because of the competence of the authority in appointing the Arbitrator remain pending decision as to whether it would be under the Act, 1956 or Act, 1996 as invoked by the High Court of Calcutta under the order impugned before us.

10. Mr. Vikas Goel, learned counsel for the appellant submits that the Act 1956 being a special enactment is a code in itself provide not only the procedure of acquisition but also

the mode of determining compensation by the competent authority and any person, if aggrieved by the compensation determined under sub-sections(1) or (2) of Section 3G of Act 1956 can certainly move an application for appointment of an Arbitrator to which a Central Government is under obligation to appoint under Section 3G(5) of the Act 1956. But before the matter could be proceeded, the respondent-applicant approached the High Court by filing an application under Section 11(6) of the Act 1996 which was not maintainable and this being the settled principles of law that the special law prevail over the general law, the provisions of Act 1996 could not have been invoked at least for the appointment of an Arbitrator in abrogating the power of the Central Government in appointing the Arbitrator as contemplated under Section 3G(5) of Act 1956 and this being an apparent error in law committed by the High Court needs to be interfered by this Court.

11. In support of his submission, learned counsel for the appellant has placed reliance on the recent judgment of two Judges' Bench of this Court in General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. Vs. Prakash Chand Pradhan & Ors. passed in Civil Appeal No. 5250 of 2018 decided on 16th May, 2018 and taking assistance thereof submits that the order passed by the High Court of Calcutta in the appointment of an Arbitrator under Section 11(6) of Act 1996 is not legally sustainable and both the Orders passed by the High Court, i.e. 6th July, 2007 and 27th August, 2007 deserves to be quashed and set aside.

12. Per contra, Mr. Prashant Bhushan, learned counsel for the respondents, while supporting the order passed by the High Court of Calcutta impugned in the instant proceedings submits that sub-section(6) of Section 3G clearly postulates that subject to the provisions of the Act 1956, the provisions of Act 1996 shall apply to every arbitration under the Act, 1956. If the authority to whom application was filed for appointment of an Arbitrator under Section 3G(5) of Act, 1956 has failed to discharge its obligations within 30 days of presentation of the application which indisputedly was December, 2006 or until filing of the application for appointment of an Arbitrator to the Chief Justice/his Designate under Section 11(6) of the Act, 1996 i.e. 7th March, 2007, the respondent was justified in taking recourse to sub-section(6) of Section 3G of Act, 1956 for appointment of an Arbitrator under Section 11(6) of Act, 1996.

13. Learned counsel further submits that the appellant under the Act, 1956 has forfeited its right to appoint an Arbitrator after presentation of the application under the Act, 1996 before the High Court of Calcutta and in the given circumstances, there was no legal impediment before the High Court of Calcutta in appointment of an Arbitrator invoking Section 11(6) of Act 1996 and in support of his submission placed reliance on the judgment of this Court in Deep Trading Company Vs. Indian Oil Corporation and Others .

14. We have heard learned counsel for the parties and with their assistance perused the material available on record.

15. At the very outset, we may notice that the two Judge Bench of this Court in the recent judgment in General Manager (Project), National Highways and Infrastructure

Development Corporation Ltd. case(supra), while dealing with the scope of sub-sections (5) and (6) of Section 3G of the Act 1956 with reference to Section 11 of the Act, 1996 has held that the Act 1956 being a special enactment and Section 3G in particular provides an inbuilt mechanism for appointment of an Arbitrator by the Central Government. Hence Section 11 of the Act, 1996 has no application and the power is exclusively vested with the Central Government under Section 3G(5) of the Act, 1956 for appointment of an Arbitrator and if the Central Government does not appoint an Arbitrator within a reasonable time, it is open for the party to avail the remedy either by filing a writ petition under Article 226 of the Constitution of India or a suit for the purpose but the remedy of Section 11 of Act 1996 is not available for appointment of an Arbitrator.

16. We are in full agreement with the legal position stated by a two Judge Bench of this Court in General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. case(supra) but like to add further that the Act, 1956 has been enacted under Entry 23 of the Union List of the Seventh Schedule of the Constitution with the exclusive power to legislate with respect to highways, which are declared to be national highways by or under law by the Parliament. It is a comprehensive code and a special enactment which provides an inbuilt mechanism not only in initiating acquisition until culmination of the proceedings in determining the compensation and its adjudication by the Arbitrator to be appointed by the Central Government and if still remain dissatisfied, by the Court of law.

17. In compliance of the mandate of Sections 3A to 3F of the Act, 1956, after the land is acquired, there shall be paid an amount of compensation which shall be determined by an order of the competent authority under sub-sections (1) or (2) of Section 3G of the Act, 1956 and any person who is aggrieved by the amount so determined by the competent authority or what being determined is not acceptable to either of the parties, on an application being filed by either of the parties, has to be determined by the Arbitrator to be appointed by the Central Government in terms of sub-section (5) of Section 3G of the Act, 1956.

18. After analysing the scheme, it can be assumed that the legislature intended the Act, 1956 to act as a complete code in itself for the purpose of acquisition until culmination including disbursement and for settlement of disputes and this conclusion is further strengthened in view of Section 3J of the Act which eliminates the application of the Land Acquisition Act, 1894, to an acquisition under the Act, 1956.

19. It is settled principles of law that when the special law sets out a self-contained code, the application of general law would impliedly be excluded. In the instant case, the scheme of Act, 1956 being a special law enacted for the purpose and for appointment of an arbitrator by the Central Government under Section 3G(5) of Act, 1956 and sub-section (6) of Section 3G itself clarifies that subject to the provisions of the Act 1956, the provisions of Act 1996 shall apply to every arbitration obviously to the extent where the Act 1956 is silent, the Arbitrator may take recourse in adjudicating the dispute invoking the provisions of Act, 1996 for the limited purpose. But so far as the appointment of an Arbitrator is

concerned, the power being exclusively vested with the Central Government as envisaged under sub-section (5) of Section 3G of Act 1956, Section 11 of the Act 1996 has no application.

20. The plea of the respondents that they have rightly taken recourse in the facts and circumstances of Section 11 of the Act, 1996 cannot be accepted for the reason that Section 3G(6) of the Act, 1956 clearly stipulates that the provisions of the Act, 1996 will apply subject to the provisions of the Act, 1956. The usage of the expression “subject to” clearly indicates that the legislature intended to give overriding effect to the provisions of the Act, 1956 where it relates to the disputes pertaining to determination of the amount of compensation under the Act. The irresistible conclusion is that the legislature in its wisdom intended to abrogate the power for appointment of an Arbitrator under the provisions of the Act, 1996.

21. In our considered view, the High Court of Calcutta was not holding its competence to appoint an Arbitrator invoking Section 11 of Act, 1996.

22. This very question earlier arose before this Court whether the application under Section 11(6) of the Act 1996 is maintainable in view of statutory provisions of Electricity Act, 2003 adjudicating the dispute between the licencees and the generating companies of the special enactment and Section 86(1) of the Electricity Act, 2003 in particular, this Court in Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Limited in para 28 observed as under:-

28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation.

23. We are also of the considered opinion that in view of the power being vested exclusively with the Central Government to appoint an Arbitrator under Section 3G(5) of the Act 1956, being a special enactment, the application filed under Section 11(6) of the Act 1996 for appointment of an Arbitrator was not maintainable and provisions of the Act, 1996 could not be invoked for the purpose.

24. The submission of learned counsel for the respondents that as the appellant failed to make an appointment of the Arbitrator pursuant to a letter dated 8th December, 2006 in terms of Section 3G(5) of the Act, 1956 within a period of 30 days, the High Court of Calcutta alone was holding its competence to appoint an Arbitrator and application was submitted by the respondent- applicant on 7th March, 2007 the right of appointment of an Arbitrator by the Central Government stands forfeited and has relied on the Judgment of this Court in Deep Trading Companu case(supra) is of without substance for the reason that there is no statutory limitation provided under sub-section (5) of Section 3G of Act 1956 for the Central Government to appoint an Arbitrator but that may not give an

unguided discretion to the authority and in the absence of any statutory limitation, it must be within the reasonable time and if the Central Government fails in discharge of its statutory duty in appointing an Arbitrator on a request being made by either of the party aggrieved, it will be open to the party to invoke either the writ jurisdiction of the High Court under Article 226 of the Constitution of India or the Civil Court for the purpose. But as long as the power is exclusively vested with the Central Government for appointment of an Arbitrator under Section 3G(5) of the Act 1956, the provision of Section 11 of Act 1996 has no application. The judgment in Deep Trading Company case(supra) on which learned counsel has placed reliance is of no assistance for the reason firstly that controversy there was not in reference to the appointment of an Arbitrator under the special enactment as in the instant case under Act 1956 and secondly, if one party fails to exercise its power of appointment in terms of Clause 29 of the agreement in vogue, the provisions of Act 1996 would apply and the question for consideration was whether the rights of the party stand forfeited to appoint an Arbitrator after the party has invoked Section 11(6) of the Act 1996 which, as already observed by us, is not the question for consideration in the instant case.

25. It is indeed true that the Arbitrator who was appointed by the Central Government subsequent to the filing of an application under Section 11 of the Act 1996 in April, 2007 could not proceed after the Arbitrator was appointed pursuant to the Order impugned in the instant proceedings, who too has later recused and almost 12 years have rolled by now, we deem it appropriate to observe that there is no need to file any application by the respondent-applicant and the Central Government shall consider and appoint an Arbitrator in terms of Section 3G(5) of the Act 1956 within a period of 30 days with prior intimation to the respondents. As the litigation has consumed a sufficient long time, we consider it appropriate to further observe that the Arbitrator so appointed by the Central Government may adjudicate and decide the dispute within a reasonable time but in no case later than six months after the respondent-applicant record its presence in the proceedings.

26. The appeals accordingly succeed and are allowed. The orders passed by the High Court dated 6th July, 2007 and 27th August, 2007 are hereby set aside. The Arbitrator may be appointed by the appellants in terms indicated above. No costs.

27. Pending application(s), if any, stand disposed of.