



**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

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**FAO-5266-2024 (O&M)  
Date of Decision: 15.01.2025**

**NATIONAL HIGHWAYS AUTHORITY OF INDIA ..... Appellant**

versus

**SUMER SINGH AND ANOTHER ..... Respondents**

**CORAM: HON'BLE MS. JUSTICE LAPITA BANERJI**

Present:- Mr. Mayank Aggarwal, Advocate,  
for the appellant.

Mr. Sharad Aggarwal, DAG, Haryana.

Mr. R. S. Randhawa, Advocate with  
Ms. Tarranum Madan, with  
Mr. Anuj Chauhan, Advocate,  
for respondents.

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**LAPITA BANERJI, J.(Oral)**

1. In the present appeal, the judgment and order passed by the Additional District Judge, Palwal dated August 12, 2024 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') has been impugned. The NHAI had filed the application under Section 34 of the 1996 Act for setting aside of the arbitration Award dated March 16, 2018 (Annexure A-4).

2. Vide the impugned order August 12, 2024, the learned ADJ, Palwal had set aside the impugned award and directed the learned Arbitrator to decide the claim of the objector-land owner afresh by giving him benefits of Sections 23(1A) & (2) and the proviso relating to interest under Section 28 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') as per the Judgments in **Union of India and another vs Tarsem**

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**Singh and others** (2019) 9 SCC 304, and **M/s Golden Iron and Steel Forging Vs. Union of India** 2011(4) R.C.R. (Civil) 375 (P&H) (D.B.).

3. Learned counsel appearing for the appellant submits that the Court deciding the application under Section 34 of the 1996 Act erred in not appreciating that no interest could be granted on the amount of compensation granted under Section 23(1A) of the 1894 Act. He submits that the judgment of **Tarsem Singh (supra)** has been modified by the Apex Court in Miscellaneous Application Diary No.2572 of 2020 passed in Civil Appeal No.7086 of 2019 “**National Highway Authority of India & Anr. Versus Tehal Singh & Ors.**” dated July 30, 2021. Therefore, interest could have only been granted in respect of the compensation relating to Sections 23(1) and (2) of the 1894 Act. Furthermore, he submits that the Court while adjudicating an application under Section 34 of the 1996 Act could neither have set aside the award nor could have remanded the same back for fresh adjudication by the learned Arbitrator. Therefore, the learned Court committed a jurisdictional error.

4. Issue notice of motion.

5. Mr. R. S. Randhawa, Advocate appears and accepts notice on behalf of the respondents. He submits that the land-owners are entitled to interest under Sections 23(1A) and (2) of the Land Acquisition Act, 1894.

6. Heard the learned counsel for the parties and perused the materials on record.

7. It is apparent that the order passed by the Hon’ble Supreme Court in **Tehal Singh (supra)** has not been considered by the learned Court deciding the application under Section 34 of the 1996 Act. It was

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incumbent upon the learned Court to consider the issue whether or not the Court under Section 34 has the power to either modify an arbitral award or the power to remand the arbitration case back to the learned Arbitrator for fresh adjudication.

8. It would be appropriate to take into consideration the terms of reference made on February 20, 2024 by the Supreme Court in “**Gayatri Balasamy versus M/S ISG Novasoft Technologies Limited**” in Special Leave to Appeal (C) Nos.15336-15337/2021 to a larger Bench for adjudication of the following issues.

*“1. Whether the powers of the Court under section 34 and 37 of the Arbitration and Conciliation Act, 1996, will include the power to modify an arbitral award?”*

*2. If the power to modify the award is available, whether such power can be exercised only where the award is severable and a part thereof can be modified?”*

*3. Whether the power to set aside an award under section 34 of the Act, being a larger power, will Include the power to modify an arbitral award and if so, to what extent?”*

*4. Whether the power to modify an award can be read into the power to set aside an award under section 34 of the Act?”*

*5. Whether the judgment of this Court in **Project Director NHAI vs. M. Hakeem**, followed in **Larsen Air Conditioning and Refrigeration Company vs. Union of India** and **SV Samudram vs. State of Karnataka** lay down the correct law, as other benches of two Judges (in **Vedanta Limited vs. Shenzden Shandong Nuclear Power Construction Company Limited, Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala** and **M.P. Power Generation Co. Ltd. vs. Ansaldo Energia Spa**) and three Judges (in **J.C. Budhraj vs. Chairman, Orissa Mining Corporation Ltd., Tata Hydroelectric Power Supply Co. Ltd. vs. Union of India** and **Shakti Nath vs. Alpha Tiger Cyprus Investment No.3 Ltd.**) of*

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*this Court have either modified or accepted modification of the arbitral awards under consideration?"*

9. Accordingly, this Court sets aside the impugned judgment and order dated August 12, 2024 passed by the learned Additional District Judge, Palwal, keeping in mind the judgment passed by the Apex Court in Civil Appeal No.7247 of 2024 “**Bombay Slum Redevelopment Corporation Private Limited versus Samir Narain Bhojwani**” and remands the matter back for fresh adjudication of the application under Section 34 for setting aside of the award dated March 16, 2018.

10. With the aforesaid directions, the present appeal is **disposed of.**

11. Pending application(s), if any, are accordingly disposed of.

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*Jyoti Thakur*

**(LAPITA BANERJI)  
JUDGE**

*Whether speaking/reasoned:*

*Yes/No*

*Whether reportable:*

*Yes/No*