

In the High Court of Madhya Pradesh
At Indore

BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 12TH OF OCTOBER, 2022

Miscellaneous Petition No.1939/2021

Between: -

National Highway Authority Of India, PIU – Indore,
Through Project Director,
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

Smt. Anita W/o Shri Arvind Mahajan,
Smt. Sarita W/o Shri Harish Mahajan,

All R/o – Dewas, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

(By Mr. Ravindra S. Trivedi, Advocate)

.....RESPONDENTS

Miscellaneous Petition No.1967/2021

Between: -

National Highway Authority Of India, PIU – Indore,
Through Project Director,
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

Smt. Balbeer Kaur W/o Jaswant Singh Punjabi,
R/o – 11, Bahadur Shah Marg, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

(By Mr. Ravindra S. Trivedi, Advocate)

.....RESPONDENT

Miscellaneous Petition No.1972/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,**
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

Smt. Anand Kuwar W/o Dasrath Singh,
Village Aagrodh, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

.....RESPONDENT

(By Mr. Ravindra S. Trivedi, Advocate)

Miscellaneous Petition No.1986/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,**
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

**Harish S/o Shri Kishanji Mahajan,
Rohit S/o Shri Mangilal Mahajan,**

All R/o – Dewas, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

.....RESPONDENTS

(By Mr. Ravindra S. Trivedi, Advocate)

Miscellaneous Petition No.2025/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,**
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

**M/s. Anil Industries Limited, Through Director,
Manish Sahara S/o Suresh Sahara,
R/o – Indore, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)**

(By Mr. Ravindra S. Trivedi, Advocate)

.....RESPONDENT

Miscellaneous Petition No.2026/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)**

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

**Amarjeet S/o Amarik Singh Khanuja,
R/o – Dewas, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)**

(By Mr. Ravindra S. Trivedi, Advocate)

.....RESPONDENT

Miscellaneous Petition No.2029/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)**

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

**M/s. Dharamdas & Sons, Through Director,
Prataprao S/o Dharamdas Arora,
Through Legal Representatives**

1. **Damodar S/o Prataprao Arora**
2. **Chandradhar S/o Prataprao Arora**
3. **Asha D/o Prataprao Arora W/o Nar Singhlal**
4. **Roma D/o Prataprao Arora W/o Kamal Hirani**
5. **Lajwanti W/o Prataprao Arora**

Land Owner, All R/o – Dewas, Village Bilawali,
Tehsil & District Dewas (MP)

(By Mr. Ravindra S. Trivedi, Advocate)

.....RESPONDENTS

Miscellaneous Petition No.2041/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,**
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

Dilip Singh S/o Umrao Singh,
R/o – Dewas, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

Deceased through Legal Representatives
TO BE BROUGHT ON RECORD

**Jenendra Singh Pawar S/o Dilip Singh,
Ajay Singh Pawar S/o Dilip Singh,
Geeta Devi Pawar W/o Dilip Singh,**
All R/o – Dewas, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

(By Mr. Ravindra S. Trivedi, Advocate)

.....RESPONDENTS

Miscellaneous Petition No.2114/2021

Between: -

**National Highway Authority Of India, PIU – Indore,
Through Project Director,**
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

.....PETITIONER

(By Ms. Anita Sharma, Advocate)

AND

Bhim Singh S/o Shri Jagannath,
Land Owner Village, R/o – Bilawali,
Tehsil & District Dewas (MP)

(None present, though respondent is served)

.....RESPONDENTS

Miscellaneous Petition No.2101/2021

Between: -

National Highway Authority Of India, PIU – Indore,
Through Project Director,
Address: 14, Sampat Hills, Bicholi Mardana,
Indore-Dewas Bypass Road, Indore, District Indore (MP)

(By Ms. Anita Sharma, Advocate)

.....PETITIONER

AND

Smt. Baby Bai W/o Bhim Singh Pahadia,
R/o Bhawani Sagar, Dewas, Land Owner Village Bilawali,
Tehsil & District Dewas (MP)

(None present, though respondent is served)

.....RESPONDENTS

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This **PETITION (S)** coming on for orders this day, the court passed the following:

ORDER

Heard finally, with the consent of the learned counsel for the parties.

This order shall govern the disposal of Miscellaneous Petition No.1939/2021 and connected petitions being Miscellaneous Petition No.1967/2021, Miscellaneous Petition No.1972/2021, Miscellaneous Petition No.1986/2021, Miscellaneous Petition No.2025/2021, Miscellaneous Petition No.2026/2021,

Miscellaneous Petition No.2029/2021, Miscellaneous Petition No.2041/2021, Miscellaneous Petition No.2114/2021 and Miscellaneous Petition No.2101/2021, having regard to the similarity of the issue involved. For the sake of convenience, the facts, as noted in Miscellaneous Petition No.1939/2021, are being taken into consideration.

This Miscellaneous petition under Article 226 / 227 of the Constitution of India has been filed by the petitioner / National Highway Authority of India, Project Implementation Unit, Indore (MP) challenging order dated 09.02.2021 (Annexure P/1) passed by the learned 5th Additional District Judge, Ujjain (MP) in Miscellaneous Judicial Case bearing registration number MJC (AV) 31/2018, whereby the application filed by the petitioner for cancellation of the award dated 13.08.2018 passed by the Arbitrator-cum-Commissioner, Ujjain Division, Ujjain, under Section 34 of the Arbitration & Conciliation Act, 1996 (herein after referred to as the Act of 1996) has been rejected on the ground of territorial jurisdiction of the Court, in view of Section 2 (d) of the Arbitration & Conciliation Act, 1996, while allowing the application filed by the respondents under Section 16 of the Code of Civil Procedure, 1908.

2. In brief, the facts of the case are that the respondents herein are the owners of **land situated at District Dewas** which was sought to be acquired by the petitioner National Highway Authority of India for construction of National Highway Number 3 (NH-3) in

Shivpuri-Dewas Zone. In the aforesaid acquisition proceedings, the **Competent Authority (Sub Divisional Officer, Revenue, Dewas)** passed an award on 07.02.2013 (Annexure P/6). This award was challenged by the respondents before the statutory **Arbitrator, National Highway Tribunal & Court of Commissioner, Ujjain Division, Ujjain** (MP), who vide its order dated 13.08.2018 (Annexure P/2) passed the final award. The aforesaid final award was challenged by the petitioner before the Additional District & Sessions Judge, Ujjain under Section 34 of the Arbitration & Conciliation Act, 1996 (herein after referred to as the Act of 1996) for cancellation of the final award dated 13.08.2018. In the aforesaid proceedings, the respondents filed an application dated 29.07.2019 under Section 16 of the Code of Civil Procedure, 1908 (CPC) read with Sections 34 (2) and 34 (5) of the Act of 1996, contending that the Ujjain Court has no jurisdiction to entertain the aforesaid application filed by the National Highway Authority of India under Section 34 of the Act of 1996, as the appropriate forum would be the Court at Dewas only, where the subject matter of the dispute is situated.

3. The learned Judge of the lower Court, vide its impugned order dated dated 09.02.2021, (Annexure P/1) has allowed the aforesaid application under Section 16 of the CPC filed by the respondents and has rejected the application filed by the petitioner under Section 34 of the Act of 1996; and also directing the petitioner to file the application under Section 34 of the Act of 1996

before the appropriate Court of jurisdiction.

4. Ms. Anita Sharma, learned counsel appearing for the petitioner has submitted that the impugned order is liable to be set aside, as it has been erroneously held by the learned Judge of the lower Court that it has no jurisdiction to decide an application under Section 34 of the Act of 1996, despite the fact that the arbitral proceedings took place at Ujjain only; and thus, the Court at Ujjain was competent enough to entertain an application under Section 34 of the Act of 1996.

5. In support of her contentions, Ms. Sharma has also relied upon a decision rendered by a coordinate bench of this Court in the case of **Gopal v. National Highway Authority of India & others, Arbitration Appeal No.41/2018**, order dated **17.12.2018**, wherein also, in similar circumstances, this court held that Dhar court would have jurisdiction to hear an application u/s.34 of the Act of 1996, and where the Additional District Judge, Dhar had rejected an application under Section 34 of the Act of 1996 on the ground of jurisdiction, holding that the award has been passed by the Additional Commissioner, Indore, hence in terms of Section 42 of the Act of 1996, Dhar Court has no jurisdiction to decide an application under Section 34 of the Act of 1996.

6. The petition is opposed by the respondents. Shri Ravindra S. Trivedi, learned counsel appearing for the respondents has submitted that the impugned order is just and proper and no interference is called for.

7. In support of his contention, Shri Trivedi has also relied upon s.16 of CPC, as also on a decision rendered by the Supreme Court in the case of **Executive Engineer, Road Development Division No. III, Panvel & another v. Atlanta Limited** reported in (2014) 11 SCC 619; and a decision dated 12.04.2022 of this Court in the case of **Parenteral Drugs (India) Limited through Shri Nanalal Joshi authorized Signatory v. Gati Kintetsu Express Private Limited**, Arbitration Appeal No.16/2022.

8. So far as the decision rendered by the co-ordinate bench of this court in the case of ***Gopal (supra)*** is concerned, the relevant excerpts of the same read as under:-

“The record reflects that against the Arbitration Award dated 30th December, 2014 passed by the Addl. Commissioner, Indore Division, the petitioner had filed objection u/S.34 of the Arbitration and Conciliation Act, 1996 before the Addl. District Judge, Dhar which has been rejected by the impugned order dated 10/3/2018 on the ground that in terms of Sec.42 of the Act of 1996, Dhar Court has no territorial jurisdiction.

The record reflects that the property which was subject to the acquisition under the National Highways Act is located at village Utavad, District Dhar. The award dated 5/2/2011 in respect of the land acquisition proceedings under the National Highways Act, 1956 was also passed by the SDO Revenue and Competent Authority, National Highways 59, District Dhar. There is no arbitration agreement in existence and matter was referred to the notified arbitrator u/S.3G (5) of the Act of 1956. It is undisputed between the parties that by virtue of

notification issued by the government, the Revenue Commissioner, Indore had acted as arbitrator. Hence the arbitration proceeding before the Revenue Commissioner, Indore was statutory arbitration proceedings. No seat of the Arbitrator was fixed, hence Indore where the arbitration took place was merely the venue of arbitration. Hence, the matter needs to be examined in the aforesaid back ground.

Sec.2(e) of the Act of 1996 defines the Court as under:-

"Court" means—

- (i) In the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

The subject matter of the arbitration was the compensation for acquisition of land which is situated at Dhar, therefore, Dhar is the Principal Civil Court of original jurisdiction for the purpose of present dispute. The Constitution Bench of the Supreme Court in the matter of **Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services INC (2012) 9 SCC 552** after taking note of Sec.2(e) and considering the issue of jurisdiction has held that:-

"96. Section 2(e)-----

We are of the opinion, the term "subject-matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject-matter" in Section 2(1)(e)

is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located."

In terms of the aforesaid judgment also the Dhar Civil Court has the jurisdiction. So far as Sec.42 of the Act of 1996 on which the reliance has been placed by the trial court, the same is attracted when an application under Part I of the Act was made in a court, but in the present case nothing has been pointed out to show that before filing the objection u/S.34, any application in any court was made, therefore, the trial court has committed an error in attracting Sec.42. The trial

court has placed reliance upon the judgment of the Supreme Court in the matter of **State of W.B. and others Vs. Associated Contractors AIR 2015 SC 260** but in this case also it has been held that if first application ie. application u/S.9 is made to a Court having jurisdiction, then the subsequent applications will be made in that Court, but in the present case no prior application made in any other court has been pointed out.

Having regard to the aforesaid factual and legal position, I am of the opinion that the trial court has committed an error in rejecting the application u/S.34 on the ground of lack of territorial jurisdiction. Hence, the impugned order of the trial court cannot be sustained and is hereby set aside.

The Arbitration Appeal is accordingly allowed.”

(emphasis supplied)

9. So far as the case of **Atlanta Limited** (supra) is concerned, it has been held by the Supreme Court as under:-

“24.3. Under the Arbitration Act, therefore, the legislature has clearly expressed a legislative intent different from the one expressed in Section 15 of the Code of Civil Procedure. The respondent had chosen to initiate proceedings within the area of Greater Mumbai, it could have done so only before the High Court of Bombay. There was no other court within the jurisdiction of Greater Mumbai, where the respondents could have raised their challenge. Consequently, we have no hesitation in concluding that the respondent by initiating proceedings under Section 34 of the Arbitration Act, before the Original Side of the High Court of Bombay, had not violated the mandate of Section 2(1)(e) of the Arbitration Act. Thus viewed, we find the submission advanced at the hands of the learned counsel for the appellants, by placing reliance on Section 15 of the Code of Civil Procedure, wholly irrelevant.

(emphasis supplied)

10. On a comparative reading of both the aforesaid decisions, with due respect, this Court finds itself unable to agree with the observations made by the co-ordinate bench of this Court in the

case of *Gopal (supra)* which read as under:-

“So far as Sec.42 of the Act of 1996 on which the reliance has been placed by the trial court, the same is attracted when an application under Part I of the Act was made in a court, but in the present case nothing has been pointed out to show that before filing the objection u/S.34, any application in any court was made, therefore, the trial court has committed an error in attracting Sec.42.”

This is for the reason that the aforesaid observation made by the co-ordinate bench of this Court stands nullified by the observations made by the Supreme Court in the case of *Atalanta Limited (supra)* where it held in para 18, as under:-

“18. The respondent had chosen to initiate proceedings within the area of Greater Mumbai, it could have done so only before the High Court of Bombay. There was no other court within the jurisdiction of Greater Mumbai, where the respondents could have raised their challenge. Consequently, we have no hesitation in concluding that the respondent by initiating proceedings under Section 34 of the Arbitration Act, before the Original Side of the High Court of Bombay, had not violated the mandate of Section 2(1)(e) of the Arbitration Act.”

(emphasis supplied)

11. Meaning thereby that an application filed u/s.34 of the Act of 1996 shall be treated to be an application for the purposes of s.42 of the Act. S.42 which reads as under:-

“42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all

subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

(emphasis supplied)

Thus, it is held that an application u/s. 34 of the Act of 1996 cannot be treated to be mere objections, but in effect, an application under Part I of the Act of 1996.

12. In view of the aforesaid discussion, as also on the strength of the decision of the Supreme Court in the case of *Bharat Aluminium Company (supra)*, as relied upon by the coordinate bench of this court in the case of *Gopal (supra)*, this court has no hesitation to hold that the Court at Ujjain where the application u/s.34 of the Act of 1996 was filed has the jurisdiction to decide the same as the arbitration proceedings also took place before the Divisional Commissioner, Ujjain.

13. Accordingly, the petitions stand **allowed** and the impugned order (s) is stand set aside. The matter is remanded back to the concerned court at Ujjain to decide the case on merits.

Parties are also directed to appear before the Court at Ujjain (5th Additional District Judge, Ujjain, MP) on **2nd of November, 2022** so as to avoid any further delay in issuance of notice to the parties.

With the aforesaid observation and direction, Miscellaneous Petition No.1939/2021, Miscellaneous Petition No.1967/2021, Miscellaneous Petition No.1972/2021, Miscellaneous Petition No.1986/2021, Miscellaneous Petition No.2025/2021,

Miscellaneous Petition No.2026/2021, Miscellaneous Petition No.2029/2021, Miscellaneous Petition No.2041/2021, Miscellaneous Petition No.2114/2021 and Miscellaneous Petition No.2101/2021 stand **disposed of**.

Let the original signed order be kept in Miscellaneous Petition No.1939/2021 and a copy thereof be kept in other connected cases.

All the other pending interlocutory applications, if any, shall stand **disposed of**.

(Subodh Abhyankar)
Judge