IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 25th OF JULY, 2025

ARBITRATION APPEAL No. 37 of 2022

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (MINISTRY OF ROAD TRANSPORT AND HIGHWAYS) GOVT. OF INDIA TH

Versus

SANJAY KUMAR AND OTHERS

Appearance:

Shri Ashish Saraswat - Advocate for appellant.
None for respondents.

JUDGMENT

This appeal, under Section 37(1)(C) of Arbitration And Conciliation Act, 1996, has been filed against the order dated 26.11.2021 passed by IV District Judge, Shivpuri (M.P.) in Case No.MJC AV 100/2015 by which an application filed by respondent under Section 34 of Arbitration and Conciliation Act has been allowed and award dated 18.05.2015 passed by Arbitrator-cum-Divisional Commissioner, Gwalior Division, Gwalior (M.P.) in Case No.102/11-12/Arbitration has been set aside.

2. The facts, necessary for disposal of present appeal, in short, are that on 27.09.2004 and 17.06.2005 a gazette notification was published by Ministry of Road Transport and Highways for acquiring the land situated in District Shivpuri, adjacent to the National Highway of Village Karera, Tahsil Karera,

District Shivpuri (M.P.) for widening/construction of the National Highway No.25 and 76. On 19.05.2005 and 05.05.2005 a Gazette Notification was published as per Section 3(D) of the National Highways Act and the scheduled land stood absolutely vested in the Central Government free from all encumbrances. In Case No.07/2004-05/अ-82 the order/award was passed by the Sub Divisional Officer-cum-Competent Authority Land Acquisition National Highway No.25, Tahsil-Karera, District Shivpuri on 01/06/2006 as provided under Section 3G(1) of the National Highways Act. Being aggrieved by the order passed by the Competent Authority (Land Acquisition), an application under Section 3G(5) of the National Highways Act was preferred by respondent No.1 before the Arbitrator-cum-Divisional Commissioner, Division Gwalior for enhancement of compensation amount but no plea was raised in the application as provided under Section 23 of the Arbitration and Conciliation Act about the applicability of the provisions of the Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013. A reply was submitted by the appellant before the Arbitrator-cum-Divisional Commissioner, Division Gwalior. No Award was passed by the Arbitrator-cum-Divisional Commissioner, Division Gwalior on 19.07.2011 and the application preferred under Section 3G(5) of National Highways Act was allowed and the matter was remanded as a whole to the competent authority (Land Acquisition)-cum-Sub Divisional Officer, Tahsil Karera, District Shivpuri (M.P.) to re-decide the matter on merits after granting opportunity of hearing. The said order was challenged by the respondent No.1 before the High Court by filing WP. No.5882/2011. The writ petition was allowed by High Court by order dated 11.10.2011 by holding that the Arbitrator has no jurisdiction to remand the matter. Accordingly, the Arbitrator-cum-Divisional Commissioner, Gwalior Division, Gwalior, was directed to decide the case on merits itself instead of

remanding the same to the Land Acquisition Officer. By order dated 18.05.2015, Arbitrator-cum-Divisional Commissioner, Gwalior Division, Gwalior, dismissed the application filed by respondent No.1 under Section 3G(5) of National Highways Act. Being aggrieved by the order passed by the Arbitrator-cum-Divisional Commissioner, Gwalior Division, Gwalior, respondent No.1 preferred an application under Section 34 of Arbitration and Conciliation Act, 1996, before the District Judge, Shivpuri (M.P.). Reply was filed by NHAI and by impugned order dated 26.11.2021, the IV District Judge, Shivpuri (M.P.) allowed the application preferred by respondent No.1.

3. Challenging the order passed by IV District Judge, Shivpuri (M.P.) in MJC AV No.100/2015, it is submitted by counsel for appellant that the order passed by the IV District Judge, Shivpuri (M.P.) is without jurisdiction in the light of law laid down by this Court in the case of **Madhya Pradesh Road Development Corporation V. Baisakhu @ Sadhu** reported in **AIR 2021 MP 125**. It is further submitted that even if the question of territorial jurisdiction is not raised before the Court below, the same can be raised at any point of time as any judgment passed by a Court having no jurisdiction is a nullity. It is submitted that the jurisdiction of the Court to entertain an application under Section 34 of Arbitration and Conciliation Act would be determined on the basis of seat of Arbitration as opposed to, on the basis of cause of action. It is submitted that once the seat of arbitration is designated, then the same operates as an exclusive jurisdiction clause, as a result of which only the Courts where the seat is located would have jurisdiction to the exclusion of all other Courts, even courts where part of cause of action may have arisen. It is submitted that since the arbitration was conducted by Divisional Commissioner, Gwalior Division, Gwalior at Gwalior, therefore, only the Principal Civil Court at Gwalior had jurisdiction to entertain an application filed under Section 34 of Arbitration and Conciliation

Act. Thus, it is submitted that the order passed by the IV District Judge, Shivpuri (M.P.) in Case No.MJC AV 100/2015 is nullity and is without jurisdiction.

4. *Per contra*, the submission made by counsel for appellant is vehemently opposed by counsel for the respondent. It is submitted that if the seat of the arbitration is not designated, then the court where the cause of action had arisen will assume jurisdiction to decide the application filed under Section 34 Arbitration and Conciliation Act. Since the land which was acquired is situated within the jurisdiction of Principal Civil Court, Shivpuri, therefore, the IV District Judge, Shivpuri (M.P.) did not commit any mistake by entertaining the application filed under Section 34 of Arbitration and Conciliation Act.

5. Heard learned counsel for the parties.

6. Section 3G of National Highways Act, 1956, reads as under:

> "**3G. Determination of amount payable as compensation.—**
>
> (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.
>
> (2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.
>
> (3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.
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> (4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section

3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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."

7. From the plain reading of the aforesaid section, it is clear that if 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.

8. Letter dated 11/2/2002 issued by GAD, State of M.P. reads as under:-

मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

क्रमांकः—ई—1/20/2002/5/1 भोपाल, दिनांक

प्रति,
आयुक्त,
चंम्बल/ग्वालियर/सागर
एवं जबलपुंर संभाग (म.प्र.)

विषयः— भू—अर्जन की कार्रवाई हेतु संभागीय आयुक्तों को आर्बिट्रेटर नियुक्त किया जाना ।

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भारत सरकार के सडक परिवहन और राजमार्ग मंत्रालय के पत्र क्रमांक एन एच/एल ए/आर आर/2001/9 दिनांक 3.1.2002 के साथ प्राप्त आदेश क्रमांक एनएचएआय/एलए/आरआर/97/5.11/पार्ट—बी, दिनांक 31.12.2001 द्वारा राष्ट्रीय राजमार्ग अधिनियम, 1956 के अधीन केन्द्र सरकार ने आपको आदेश में उल्लेखित जिले के लिए मध्यस्थ (Arbitrator) नियुक्त किया है । उपर्युक्त आदेश की प्रति आपको सूचना एवं आगामी कार्रवाई के लिये संलग्न प्रेषित है ।

(सुभाष डाफगे)
अवर सचिव
मध्य प्रदेश शासन,
सामान्य प्रशासन विभाग

पृ.क्र. इ—1/20/2002/5/1 भोपाल, दिनांक 11 FEB 2002

प्रतिलिपिः—

1. श्री मुकेश कक्कड, भा.प्र.से. सदस्य, (प्रशासन) भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, जल एवं भूतल परिवहन मंत्रालय, ईस्टर्न एवेन्यु, महारानी बाग, नई दिल्ली (110065)
2. कलेक्टर, मुरैना/ग्वालियर/सागर/नरसिंहपुर/सिवनी एवं शिवपुरी की ओर सूचनार्थ प्रेषित है ।

सही/—
अवर सचिव

9. By referring to the letter dated 11.02.2002 issued by GAD, State of Madhya Pradesh, it is submitted that Commissioner, Gwalior Division, Gwalior,

Chambal Division, Chambal, Sagar Division, Sagar and Jabalpur Division, Jabalpur were appointed as Arbitrators. Therefore, it is the case of the appellant that the Commissioner, Gwalior Division, Gwalior was appointed as an Arbitrator. It is submitted that either the seat may be designated in the arbitration agreement itself or the authority based at any place may be appointed as an Arbitrator and in that case the place of office of the said authority shall be a designated seat for arbitration. Accordingly, it is the case of appellant that since the Commissioner, Gwalior Division, Gwalior was appointed as an Arbitrator under Section 3G(5) of National Highways Act, 1956, therefore, the Principal Court of original jurisdiction, Gwalior was competent to entertain the application filed under Section 34 of Arbitration And Conciliation Act, 1996.

10. The Supreme Court in the case of **Hindustan Construction Company Ltd. Vs. NHPC Ltd. And Another** reported in **(2020) 4 SCC 310** has held as under:

> **3.** This Court in Civil Appeal No. 9307 of 2019 entitled *BGS SGS Soma JV* v. *NHPC* [*BGS SGS Soma JV* v. *NHPC*, (2020) 4 SCC 234] delivered a judgment on 10-12-2019 i.e. after the impugned judgment was delivered, in which reference was made to Section 42 of the Act and a finding recorded thus : (SCC pp. 287-88, para 59)
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> > "*59*. Equally incorrect is the finding in *Antrix Corpn. Ltd.* [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a *non-obstante* clause, and then goes on to state '…*where with respect to an arbitration agreement any application under this Part has been made in a court*…' It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would

require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay [*Konkola Copper Mines* v. *Stewarts & Lloyds of India Ltd.*, 2013 SCC OnLine Bom 777 : (2013) 5 Bom CR 29] , [*Nivaran Solutions* v. *Aura Thia Spa Services (P) Ltd.*, 2016 SCC OnLine Bom 5062 : (2016) 5 Mah LJ 234] and Delhi [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] High Courts in this regard is incorrect and is overruled."

(emphasis in original)

4. This was made in the backdrop of explaining para 96 of *BALCO* [*BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , which judgment read as a whole declares that once the seat of arbitration is designated, such clause then becomes an exclusive jurisdiction clause as a result of which only the courts where the seat is located would then have jurisdiction to the exclusion of all other courts.

5. Given the finding in this case that New Delhi was the chosen seat of the parties, even if an application was first made to the Faridabad Court, that application would be made to a court without jurisdiction. This being the case, the impugned judgment is set aside following *BGS SGS Soma JV* [*BGS SGS Soma JV* v. *NHPC*, (2020) 4 SCC 234] , as a result of which it is the courts at New Delhi alone which would have jurisdiction for the purposes of challenge to the award.

> **6.** As a result of this judgment, the Section 34 application that has been filed at Faridabad Court, will stand transferred to the High Court of Delhi at New Delhi. Any objections taken on the ground that such objection filed under Section 34 is out of time hence cannot be countenanced. The appeal is disposed of accordingly.

11. From the above-mentioned judgment, it is clear that once the seat of arbitration is designated, then such clause becomes an exclusive jurisdiction clause, as a result of which only the Courts where the seat is located would then have jurisdiction to the exclusion of all other Courts. The seat of arbitration can be determined by the arbitration agreement, conduct of parties or the arbitrators designated. In the present case, the seat of arbitration was determined by Arbitrator's Designation. By letter dated 11.02.2002, various Divisional Commissioners of different divisions were appointed as Arbitrators for the districts mentioned in the order. The said letter was issued in view of the notification issued by the Union of India dated 31.12.2001. Thus, it is clear that for the purposes of this dispute the Commissioner, Gwalior Division, Gwalior was appointed as the Arbitrator. It is not out of place to mention here that thereafter the Union of India by notification dated 03.01.2022 issued under Section 3G of National Highways Act, 1956, had appointed the Collectors of respective districts as Arbitrators. Therefore, the legal position has changed after the notification dated 03.01.2022 and now every Collector of the respective district where the subject matter is situated has been appointed as the Arbitrator. But in the present case, the arbitration was conducted by the Commissioner, Gwalior Division Gwalior as per the notification issued by the Union of India under Section 3G of National Highways Act, 1956. Accordingly, this Court is of considered opinion that by issuing a notification under Section 3G of National Highways Act, 1956, the Union of India had designated the seat of arbitration by

arbitrator's designation. Accordingly, this Court is of considered opinion that the District Court, Shivpuri had no territorial jurisdiction to entertain the application filed under Section 34 of Arbitration and Conciliation Act.

12. Now, the next question for consideration is as to whether any judgment passed by Court having no jurisdiction can be challenged on the ground of lack of jurisdiction at any stage or the objection with regard to territorial jurisdiction should have been raised at the earliest.

13. The Supreme Court in the case of **Kiran Singh And Others Vs. Chaman Paswan And Others** reported in **AIR 1954 SC 340** has held that it is a fundamental principle, well established, that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

14. The Supreme Court in the case of **M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd., (2021) 14 SCC 548**

> **13.** We refer now to the second argument raised on behalf of the respondent, that the appellant cannot raise an objection relying on Section 86(1)(*f*) of the 2003 Act in the second application filed by it under Section 11(6) of the 1996 Act, when it had not raised the same objection in the first application under Section 11(6) of the 1996 Act or before the arbitrators so appointed. It is pertinent to note that this argument was rejected by the Single Judge of the High Court in the impugned judgment and order dated 30-11-2016 [*Narmada Equipments (P) Ltd.* v. *M.P. Power Trading Co. Ltd.*, 2016 SCC OnLine MP 11903] in the following terms : (*Narmada Equipments case* [*Narmada Equipments (P) Ltd.* v. *M.P. Power Trading Co. Ltd.*, 2016 SCC OnLine MP 11903] , SCC OnLine MP para 9)
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> "*9.* I will be failing in my duty if the basic objection raised by Shri Manoj Dubey about maintainability of this application is not dealt

> with. Merely because in earlier round of litigation, the objection of maintainability was not taken, it will not preclude the other side to raise such objection if it goes to the root of the matter. This is trite law that jurisdiction cannot be assumed by consent of the parties. If a statute does not provide jurisdiction to entertain an application/petition, the petition cannot be entertained for any reason whatsoever. Thus, I am not inclined to hold that since for the reason that in the earlier round of litigation i.e. AC No. 76 of 2011 parties reached to a consensus for appointment of arbitrators, this application is also maintainable. I deem it proper to examine whether because of operation of Section 174 of the Act of 2003, the present application under the Act of 1996 is not maintainable."

14. A similar issue was raised before a three-Judge Bench of this Court in *Hindustan Zinc Ltd.* [*Hindustan Zinc Ltd.* v. *Ajmer Vidyut Vitran Nigam Ltd.*, (2019) 17 SCC 82 : (2020) 3 SCC (Civ) 363] , where an arbitrator was appointed by the State Electricity Commission under Section 86(1)(*f*) of the 2003 Act with the consent of the parties. Subsequently, the arbitral award was challenged under Section 34 of the 1996 Act before a Commercial Court, and the Commercial Court's decision was challenged in an appeal under Section 37 of the 1996 Act where it was held that the State Electricity Commission had no jurisdiction to appoint the arbitrator since Section 86(1)(*f*) refers to disputes only between licensees and generating companies, and not licensees and consumers. When the matter reached this Court, the contention was that the objection to jurisdiction could not have been raised in a proceeding under Section 37 of the 1996 Act once the parties had consented to arbitration earlier. Speaking for the Court, Rohinton F. Nariman, J. held that if there is inherent lack of jurisdiction, the plea can be taken at any stage and also in collateral proceedings. He highlighted the well-established principle that a decree passed by a court without subject-matter jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon. Such a defect of jurisdiction cannot be cured even by the consent of the parties. The above dictum would apply to the present case.

15. In the above view of the matter, the order of the High Court appointing an arbitrator under Section 11(6) of the 1996 Act is unsustainable. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 30-11-2016 in *Narmada Equipments (P) Ltd.* v. *M.P. Power Trading Co. Ltd.* [*Narmada Equipments (P) Ltd.* v. *M.P. Power Trading Co. Ltd.*, 2016 SCC OnLine MP 11903] However, this will not come in the way of the respondent in taking recourse to such remedies

as are available in law. However, we have expressed no opinion either on the merits or the objections of the appellant which, when urged, would be considered by the appropriate forum. There shall be no order as to costs.

15. Therefore, the objection with regard to the lack of territorial jurisdiction can be raised at any point of time and even in the execution stage. Similar view was taken by the Supreme Court in the case of **M/s Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee** reported in **2022 (5) Scale 372**.

16. Thus, it is held that the objection with regard to lack of territorial jurisdiction can be raised at any point of time and therefore the ground raised by the appellant in the present appeal that IV District Judge, Shivpuri (M.P.) had no territorial jurisdiction to decide the application filed under Section 34 of Arbitration and Conciliation Act, has to be upheld.

17. Accordingly, it is held that order dated 26.11.2021 passed by IV District Judge, Shivpuri (M.P.) in Case No.MJC AV 100/2015 is bad in law as it was passed by a Court having no territorial jurisdiction to entertain the application filed under Section 34 of Arbitration Conciliation Act.

18. *Ex consequenti*, order dated 26.11.2021 passed by IV District Judge, Shivpuri (M.P.) in Case No.MJC AV 100/2015 is hereby set aside on the ground of lack of territorial jurisdiction.

19. Accordingly, the appeal succeeds and is hereby ***allowed***.

(G.S. Ahluwalia)
Judge

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