

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 15th OF APRIL, 2026

ARBITRATION APPEAL No. 271 of 2023

NATIONAL HIGHWAY AUTHORITY OF INDIA AND OTHERS

Versus

SMT. GAYATRIDEVI AND OTHERS

.....
Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate
through V.C. for the Appellants.*

Shri Vikas Jyotishi - Advocate for the Respondent No.1.

Shri D.P. Sharma - Advocate for the Respondents No.2 & 3.

.....
WITH

ARBITRATION APPEAL No. 269 of 2023

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND OTHERS

Versus

PARVEEN BANO AND OTHERS

.....
Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate through
V.C. for the Appellants.*

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ARBITRATION APPEAL No. 270 of 2023

NATIONAL HIGHWAYS AUTHORITY OF INDIA

Versus

SHRI SUKANATH AND OTHERS

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Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate through
V.C. for the Appellants.*

Shri Atul Choudhary - Advocate for the Respondent/Caveator.
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ARBITRATION APPEAL No. 272 of 2023

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND OTHERS

Versus

SHRI SUNIL AND OTHERS

.....
Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate through
V.C. for the Appellants.*

Shri Atul Choudhary - Advocate for the Respondent/Caveator.
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ARBITRATION APPEAL No. 273 of 2023

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND OTHERS

Versus

SHRI CHANDRAKANTH AND OTHERS

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Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate through
V.C. for the Appellants.*

Shri D.P. Sharma - Panel Lawyer for the Respondents No.2, 3 & 4/State.
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ARBITRATION APPEAL No. 274 of 2023

NATIONAL HIGHWAY AUTHORITY OF INDIA AND OTHERS

Versus

SMT. RAJNI AND OTHERS

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Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate through
V.C. for the Appellants.*

Shri Gaurav Sharma - Advocate for the Respondent No.1.

Shri D.P. Sharma - Panel Lawyer for the Respondents No.2 and 3/State.
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ARBITRATION APPEAL No. 275 of 2023

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND OTHERS

Versus

MEENAKSHI AND OTHERS

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Appearance:

*Shri Anuj Agrawal - Advocate with Shri Anish A Kathane - Advocate through
V.C. for the Appellants.*

Shri Gaurav Sharma - Advocate for the Respondent No.1.

ORDER

Since all these cases involve a similar question of law which are identical on facts, therefore they are being decided by this common Order.

2. By way of this Petition, challenge is made by the National Highway Authorities of India (NHAI) to the Order passed by the District Court under Section 34 of Arbitration and Conciliation Act, 1956 in remanding the matter to the Arbitrator under National Highways Act, 1956. The Remand has been made by the District Court by specifically holding that the land in question had already fallen within the municipal area and therefore was within an urban area and the land does erroneously not being considered to be urban land by the Arbitrator and therefore directing the Arbitrator to take note of notification of the State Government dated 24.01.2003 whereby the land had been notified to be urban area and part of Multai Municipal Council limits to pass Order afresh by correcting the said illegality in not considering the land in urban area.

3. Learned counsel for the Appellant had vehemently argued that in view of judgment of the Hon'ble Supreme Court in **Kinnari Mullick and Another Vs. Ghanshyam Das Damani reported in (2018) 11 SCC 328**, the power of remand cannot be exercised in light manner and this power has extremely curtailed and can only be exercised upon a written application by one of the parties to remand the matter to the Arbitrator.

4. Per contra, learned counsel for the Respondents/land losers had vehemently supported the aforesaid Order by contending that the aforesaid

judgment had been set aside by a later constitution bench and has been held that in certain circumstances, remand can indeed be ordered by the Court while exercising powers under Section 34 of the Act of 1996.

5. Upon hearing learned counsel for the rival parties and on perusal of the record, it is evident that the sole question that arises in the present matter is whether the District Court in the present case was justified in making remand to the Arbitrator while exercising jurisdiction under Section 34 of the Act of 1996.

6. The matter relates to acquisition of land for construction of National Highway and the acquisition took place under National Highways Act, 1956. In terms of Section 3 (G) of the said Act, the matter was decided by the statutory Arbitrator under the said Act and the statutory Arbitrator upheld the quantum of compensation that was awarded by the Land Acquisition Officer against which the land losers approached the District Court in terms of Section 34 of the Act of 1996.

7. The District Court while exercising the jurisdiction under Section 34 held that there is an inherent defect in the award which is that the Arbitrator has failed to take note of the position that the land had already been notified as land within urban area in the year 2003 and therefore, the fundamental defect needs to be cured.

8. A constitution bench of the Hon'ble Supreme Court in **Gayatri Balasamy Vs. ISC Novasoft Technologies Limited** reported in (2025) 7 SCC 1 has held as under:-

"56. 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 subsection, 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.

57. 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.

58. Section 34(4), derived from the Model Law, is discretionary in nature. This is evident from the use of the word “may” in the provision. The Court may invoke this power when it identifies a defect in the award that could lead to its setting aside. In such cases, the Court may seek to prevent this outcome by granting the Arbitral Tribunal an opportunity to rectify the defect.

59. While it is not appropriate to establish rigid parameters or a straitjacket formula for the exercise of this power, it is clear that Section 34(4) does not authorise the Arbitral Tribunal to rewrite the award on merits or to set it aside. Rather, it serves as a curative mechanism available to the Tribunal when permitted by the Court. The primary objective is to preserve the award if the identified defect can be cured, thereby avoiding the need to set aside the

award. Accordingly, a court may not grant a remand when the defect in the award is inherently irreparable. A key consideration is the proportionality between the harm caused by the defect and the means available to remedy it.

60. While exercising this power, the Court must also remain mindful that the Arbitral Tribunal has already rendered its decision. If the award suffers from serious acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. Clearly, there cannot be a lack of confidence in the Tribunals' ability to come to a fair and balanced decision when an order of remit is passed.

61. Thus, an order of remand should not be passed when such order would place the Arbitral Tribunal in an invidious or embarrassing position. Additionally, remand may be inappropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies. Once an order of remand is granted, the Arbitral Tribunal has the authority to vary, correct, review, add to, or modify the award. Notably, under Section 34(4), the Tribunal's powers, though confined, remain nonetheless substantial. This stands in contrast to the Court's narrow role under the rest of Section 34.

62. This Court in Kinnari Mullick v. Ghanshyam Das Damani [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106], referred to and laid down the preconditions for exercising the power of remand under Section 34(4). It held that the Court cannot exercise the power of remand suo motu in the absence of a written request by one of the parties. Secondly, once an application under Section 34(1) has been decided and the award set aside, the Court becomes functus officio and cannot thereafter remand the matter to the Arbitral Tribunal. Consequently, the power under Section 34(4) cannot be invoked after the Court has disposed of the Section 34(1) application.

63. We are unable to accept the view taken in Kinnari Mullick [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106], 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.

64. Our reasoning does not breach the principle of party autonomy. [Rather, it acknowledges that the parties opting for arbitration also consent to be governed by the applicable statute governing arbitration — in this case, the 1996 Act. Further, principle of party autonomy should not be extended to an extreme to urge that the party misunderstood the law and consequently the consent is invalid. While it is true that a mistake of law may vitiate consent in certain contexts, the interpretation here restricts the Court's role to that of limited judicial scrutiny in terms of the 1996 Act.] Neither does it confer appellate powers on the courts. Instead, it adheres strictly to the parameters stipulated in Sections 34 and 37 of the 1996 Act. The power of the appellate court in civil proceedings under Order 41 of the Code, is as broad as that of a trial court, both in terms of facts and law. Contrastingly, the Court's authority under Sections 34 and 37 of the 1996 Act is limited by the silhouette of Section 34.

65. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , this Court emphasised that the issuance of a reasoned award is not a mere formality under the 1996 Act. For an award to be termed “reasoned”, it must meet three essential yardsticks: it must be proper, intelligible, and adequate. The purpose behind Section 34(4) is clear: it allows for an award to become enforceable after granting the Tribunal an opportunity to cure any defects. This power is exercisable when the Arbitral Tribunal has failed to give any reasoning or the award exhibits

gaps in reasoning and these defects can be cured, thereby preventing unnecessary challenges. The underlying intent is to provide an effective, expeditious forum for addressing curable defects, which Section 34(4) facilitates.

66. In I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd. [I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd., (2022) 3 SCC 121 : (2022) 2 SCC (Civ) 49] , this Court clarified that Section 34(4) does not grant the authority to review or reconsider previous findings or conclusions. As discussed earlier in this judgment, the scope of the power under Section 34(4) is not to be restricted to a rigid, straitjacket formula. Rather, it depends on the specific facts and circumstances of each case. Being a discretionary power, it is to be exercised by the Court judiciously, keeping in mind the grounds raised in the application under Section 34(1). The Court should be prima facie satisfied that the wrong and illegality in the award are curable. While doing so, the Court need not record the final finding on the contentious issue at hand; however, not every request for such relief is warranted. The discretion must be exercised with caution, and only when it is evident that an adjournment will allow the Arbitral Tribunal to resolve the issues and remove the grounds for setting aside the award. However, Section 34(4) is an enabling provision — it does not compel the Tribunal to take corrective action, leaving it free to either amend or refuse to amend the award."

9. The earlier judgment in the case of **Kinnari Mullick (supra)** heavily relied by learned counsel for the Appellant has already been distinguished by the constitution bench in the aforesaid case. It has been held by the Constitution bench that Section 34 (4) does not authorize the Arbitrary Tribunal to rewrite the award on merits or to set it aside but it serves as a curative mechanism available to the Tribunal when permitted by the Court. The primary objective is to preserve the award if the identified defect can be cured avoiding the need to set aside the award. It has been held that a Court may not grant a remand when the defect in the award is inherently

irreparable which means that in such cases the only available option would be to set aside the award. The power of remand as held by the constitution bench permits the Court to send the award to the Tribunal for reconsideration of specific aspects and it is not an open ended process rather it is a limited power confined to limited circumstances and issues identified by the Court.

10. In the present case, the Order of remand passed by the District Court is within the limits of remand as held by the Constitution bench in para 57 of the aforesaid judgment because the matter has been remanded back to the Tribunal not by way of fullsole remand but it is a remand remitting back the matter to the Tribunal for reconsideration of specific aspect i.e, the effect of the land falling within the urban area by notification issued by the State Government in the year 2003 and it is a limited remand for reconsideration of the compensation on specific aspect of the land falling within the notified urban area in the year 2003 and prior to the acquisition proceedings getting initiated.

11. Therefore, this Court finds that the Order of remand passed by the District Court in the present case in remanding the matter back to the Arbitrator is within the purview of powers of remand as laid down in para 57 by the Constitution bench in the case of **Gayatri Balasamy (supra)**.

12. Therefore, no grounds are made out to interfere in the impugned Order of remand passed by the Court.

13. Consequently, the Appeals fail and are **dismissed**.

14. The Arbitrator is requested to expeditiously conclude the proceedings pending before the Tribunal.

(VIVEK JAIN)
JUDGE

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