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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 29th August, 2025*

+ O.M.P. (T) (COMM.) 3/2025

BHUPENDER KUMAR ARORA (HUF), THROUGH ITS KARTA
SH. BHUPENDER KUMAR ARORAPetitionerThrough: Mr. Anurag Ahluwalia, Senior
Advocate with Mr. Vibhor Vardhan and Mr.
Rithwik Narayanan, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Pratima N Lakra, CGSC with
Mr. Chandan Prajapati, Mr. Shailendra Kumar
Mishra and Ms. Kanchan Shakya, Advocates for
R1.Mr. Sanjay Poddar, Senior Advocate with Mr.
Shivam Goel, Mr. Anil Kumar Goyal, Ms. Ramya
S Goel, Mr. Govind Kumar and Ms. Sanya
Sharma, Advocates for R2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 15(2) read with Section 29A of Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of substitute Arbitrator.
2. As per the case set up by the Petitioner, he is the recorded owner of land admeasuring (12-6) falling in Khasra No. 25//24 MIN (4-0) 16 MIN (0-8), 17/1 (1-10), 56/3/1 (0-6), 3/2 (4-0.14), 56/4/1 (0-4) and 4/2 MIN (1-



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0) situated in the revenue estate of Village Bijwasan, South West New Delhi. Ministry of Road and Transport and Highways issued Notification No. 1367 dated 15.05.2017 under Section 3A (1)(ii) of National Highways Act, 1956 ('NH Act'), after being satisfied that the land given in the schedule was required to be acquired for building, maintenance, management and operation of Dwarka Expressway, in public interest. On 20.11.2017, Central Government issued declaration under Section 3(D) of NH Act.

3. It is averred that subsequent to the declaration, Petitioner filed his objections along with other villagers, whose lands were sought to be acquired in order to claim fair compensation as per market value. Notification was issued on 15.05.2017 under Section 3A followed by declaration under Section 3D dated 20.11.2017 for acquisition of land in Village Bijwasan. Basis these notifications, Competent Authority in the Land Acquisition Department passed an award on 20.03.2018 under Section 3G of NH Act and being aggrieved, Petitioner approached the Competent Authority and filed the claim petition under Section 3G(7) of NHAI Act for settlement of claims of the Petitioner. Central Government appointed the District Magistrate as an Arbitrator in exercise of power under Section 3G(5) of NH Act.

4. It is stated that Petitioner filed his Statement of Claim, to which Statement of Defence was filed by NHAI and the Arbitrator framed the issues. Petitioner filed a petition in this Court under Sections 14 and 15 of 1996 Act being O.M.P. (T) 5/2023 seeking termination of the mandate of the Arbitrator and appointment of substitute Arbitrator. This petition was



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disposed of as infructuous since in the meantime, by Notification dated 29.09.2023 issued under Section 3G(5) of NH Act, Central Government appointed Special Secretary, Land and Building Department ('L&B'), to exercise powers of an Arbitrator. It was left open to the Petitioner to question legality of this appointment since it was not a subject matter of this petition. Petitioner appeared before the Sole Arbitrator on 03.10.2024, before whom arbitral proceedings in respect of similarly placed persons were also ongoing. It was decided that parties would approach the Court for extension of mandate of the Arbitrator *albeit* so far no extension has been given. At this stage, Petitioner filed the present petition seeking termination of mandate of Special Secretary (L&B).

5. Mr. Anurag Ahluwalia, learned Senior Counsel for the Petitioner submits that mandate of the Arbitrator deserves to be terminated on multiple grounds. The first ground touches upon the extent of acquisition of the land in question and percentage of its allocation in favour of the Petitioner as also its valuation. The second objection is that the Arbitrator is appointed by the Central Government i.e., the Ministry under which NHAI functions and there is bound to be a bias towards NHAI. This, according to Mr. Ahluwalia, is a unilateral appointment and hit by judgment of the Supreme Court in *Perkins Eastman Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760* and directly impinges on the principle of party autonomy. The third objection is that the Arbitrator is currently handling 20 cases pertaining to similar disputes of similarly placed people, whose lands have been acquired, which is evident from the list of cases filed as Annexure 'A-9' with the petition. This raises justifiable doubts on



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the independence or impartiality of the Arbitrator and makes the Arbitrator ineligible to continue by virtue of Entry 24 of Schedule 5 of 1996 Act.

6. *Per contra*, Mr. Poddar, learned Senior Counsel appearing for NHAI/Respondent No. 2 submits that the petition is completely devoid of merit and deserves to be dismissed. It is urged that insofar as the appointment of the Special Secretary (L&B) by the Central Government under Section 3G(5) of NH Act is concerned, no infirmity can be found in this procedure and this issue is no longer *res integra*. It is submitted that NH Act is a Special Act and a complete Code in itself and arbitral proceedings conducted by the said Arbitrator are statutory arbitrations. In support, reliance is placed on the judgment of the Supreme Court in ***National Highways Authority of India v. Sayedabad Tea Company Limited and Others*, (2020) 15 SCC 161**, more particularly, paragraphs 15 to 23 thereof. Reliance is also placed on the judgments of the Division Bench of this Court in ***Prem Sukh Bothra (HUF) through Karta Prem Sukh Bothra v. Office of the Competent Authority and Others*, 2021 SCC OnLine Del 3984**; ***Anubhav Chand Kathuria v. Union of India and Others*, 2019 SCC OnLine Del 7307**; and ***Manju Arora v. Union of India and Others*, 2020 SCC OnLine Del 3466**. Reliance is also placed on the judgment of this Court in ***Sunita Gupta v. Union of India, O.M.P. (T) 2/2019***, decided on 22.05.2019, where Court negated the plea of the Petitioner that District Magistrate could not act as an Arbitrator since he was the Controlling Officer of the Special Land Acquisition Officer and based on Fifth Schedule of 1996 Act, there were justifiable doubts as to his impartiality and independence.



7. On the issue of ineligibility of the Arbitrator, it is vehemently refuted that the Arbitrator is ineligible only because he is currently handling other cases with similar disputes of similarly placed people. Petition is completely vague and it is not brought forth as to on which ground under Section 12 impartiality or independence of the Arbitrator is questioned. Reliance on Entry 24 of Fifth Schedule of 1996 Act is misplaced as an Arbitrator cannot be held *de jure* ineligible under Schedule 5 and in case, Petitioner questions the impartiality or independence of the Arbitrator, the only recourse is to raise this objection before the Arbitrator under Section 12(3) of 1996 Act in the first instance. Without prejudice and on instructions, Mr. Poddar, learned Senior Counsel for NHAI additionally submits that the Special Secretary (L&B) is not dealing with cases of acquisition of land parcels of NHAI.

8. Ms. Pratima N Lakra, learned Central Government Standing Counsel for Union of India also opposes this petition on the ground that no fault or illegality can be found with the appointment of the Arbitrator by the Central Government exercising power under Section 3G(5) of NH Act. Being a statutory arbitration, it is not open to the Petitioner to question this appointment and more so when the Supreme Court has upheld such appointments recognizing that NH Act is a complete Code.

9. Heard learned Senior Counsels for the Petitioner, NHAI and the learned CGSC for Union of India and examined their rival submissions.

10. Broadly speaking, two separate issues arise for consideration in this petition: (a) whether the appointment of Special Secretary (L&B) by the Central Government under Section 3G(5) of NH Act is sustainable in light



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of the allegation that the Ministry concerned is the Nodal Ministry of NHAI, which is a party to the arbitration; and (b) whether an objection to the impartiality and independence of the Arbitrator under Section 12(3) has to be raised before the Arbitrator in the first instance or can be entertained by the Court at this stage.

11. Before proceeding to examine the issues raised, it would be both relevant and imperative to refer to the earlier litigation in this Court by the Petitioner seeking termination of mandate of the Arbitrator *albeit* not the present Arbitrator but a District Magistrate appointed by the Central Government. Petitioner filed O.M.P. (T) 5/2023 on the ground that appointment of District Magistrate under Section 3G(5) of NH Act may lead to conflict of interest as the Arbitrator was appointed by the Central Government. The petition was disposed of on 22.08.2024 recording that the same was rendered infructuous on account of the fact that even before the petition was filed, Central Government had appointed Special Secretary (L&B) under Section 3G(5) and 3G(6) of NH Act. It was, however, left open to the Petitioner to challenge the appointment, if so advised.

12. Insofar as the argument with respect to extent of acquisition of the land in question and/or percentage allocation in favour of the Petitioner is concerned, this touches upon the merits of the case and is not required to be decided in the present petition. Clearly, this is a matter within the domain and remit of the Arbitrator. Coming to the question of validity of appointment of the Arbitrator under Section 3G(5) of NH Act. This issue need not detain this Court as the same stands decided by the Supreme Court in *Sayedabad Tea Company (supra)*, wherein the Supreme Court referred



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to a judgment of the Supreme Court given earlier in ***General Manger (Project), National Highways and Infrastructure Development Corporation v. Prakash Chand Pradhan and Others, (2020) 15 SCC 533***, where it was held that NH Act is a special enactment and under Section 3G in particular, it provides inbuilt mechanism for appointment of an Arbitrator by the Central Government. Hence, Section 11 of 1996 Act has no application and the power is exclusively vested with the Central Government. Where the Central Government does not appoint the Arbitrator within a reasonable time, it is open to the party to either file a writ petition or a suit but remedy of Section 11 is not available. Agreeing with legal position stated in this judgment in ***Sayedabad Tea Company (supra)***, the Supreme Court observed that NH Act is enacted under Entry 23 of Union List of the Seventh Schedule to the Constitution with exclusive power to legislate with respect to highways, which are declared as National Highways by or under the law of 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 compensation and its adjudication by the Arbitrator to be appointed by the Central Government and if it still remains dissatisfied, by the Court of law. It was observed that after analysing the scheme of the Act, it can be assumed that Legislature intended NH Act to act as a complete Code for acquisition as also settlement of disputes in this regard and this conclusion is strengthened by Section 3J of NH Act, which eliminates application of Land Acquisition Act, 1894 to an acquisition under NH Act. Relevant paragraphs of the judgment are as follows:-



“15. At the very outset, we may notice that the two-Judge Bench of this Court in the recent judgment in National Highways & Infrastructure Development Corpn. Ltd. case [National Highways & Infrastructure Development Corpn. Ltd. v. Prakash Chand Pradhan, (2020) 15 SCC 533] , while dealing with the scope of sub-sections (5) and (6) of Section 3-G of the 1956 Act with reference to Section 11 of the 1996 Act has held that the 1956 Act being a special enactment and Section 3-G in particular provides an inbuilt mechanism for appointment of an arbitrator by the Central Government. Hence, Section 11 of the 1996 Act has no application and the power is exclusively vested with the Central Government under Section 3-G(5) of the 1956 Act 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 the 1996 Act 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 National Highways & Infrastructure Development Corpn. Ltd. case [National Highways & Infrastructure Development Corpn. Ltd. v. Prakash Chand Pradhan, (2020) 15 SCC 533] but like to add further that the 1956 Act has been enacted under Entry 23 of the Union List of the Seventh Schedule to the Constitution with the exclusive power to legislate with respect to highways, which are declared to be national highways by or under law by 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 3-A to 3-F of the 1956 Act, 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 3-G of the 1956 Act 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 3-G of the 1956 Act.

18. After analysing the scheme, it can be assumed that the legislature intended the 1956 Act 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



3-J of the Act which eliminates the application of the Land Acquisition Act, 1894, to an acquisition under the 1956 Act.

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 the 1956 Act being a special law enacted for the purpose and for appointment of an arbitrator by the Central Government under Section 3-G(5) of the 1956 Act and sub-section (6) of Section 3-G itself clarifies that subject to the provisions of the 1956 Act, the provisions of the 1996 Act shall apply to every arbitration obviously to the extent where the 1956 Act is silent, the arbitrator may take recourse in adjudicating the dispute invoking the provisions of the 1996 Act 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 3-G of the 1956 Act, Section 11 of the 1996 Act 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 1996 Act cannot be accepted for the reason that Section 3-G(6) of the 1956 Act clearly stipulates that the provisions of the 1996 Act will apply subject to the provisions of the 1956 Act. The usage of the expression “subject to” clearly indicates that the legislature intended to give overriding effect to the provisions of the 1956 Act 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 1996 Act.

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

22. This very question earlier arose before this Court whether the application under Section 11(6) of the 1996 Act is maintainable in view of statutory provisions of the Electricity Act, 2003 adjudicating the dispute between the licensees and the generating companies of the special enactment and Section 86(1) of the Electricity Act, 2003 in particular, this Court in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. [Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755] in para 28 observed as under: (SCC p. 765)

“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 3-G(5) of the 1956 Act, being a special enactment, the application filed under Section 11(6) of the 1996 Act for appointment of an arbitrator was not maintainable and provisions of the 1996 Act could not be invoked for the purpose.”

13. Division Benches of this Court in ***Prem Sukh (supra)***, ***Anubhav Chand (supra)*** and ***Manju Arora (supra)*** have also taken a view that there is no illegality in the Central Government appointing an Arbitrator in matters relating to land acquisition and compensation, exercising power under Section 3G(5) of NH Act. In fact, it is pertinent to note that in ***Anubhav Chand (supra)***, dealing with the plea of the Petitioners that the District Magistrate appointed by the Central Government will not act impartially, Division Bench observed that under Entry 1 of Seventh Schedule to 1996 Act, an employee of one of the parties would be disqualified to act as an Arbitrator, whereas in the cases such as the present one, Central Government is not a party to arbitration and it is the NHAI which is acquiring the land and will be paying compensation for such acquisition and is party to the proceedings. It was further observed that since District Magistrate is not an employee of NHAI, the Court was unable to agree with the Petitioners that he was disqualified from acting as an Arbitrator. Relevant paragraph is as follows:-



“24. As regards the plea that the DM as appointed by the Central Government under Section 3G (5) of the NH Act will not act impartially, this Court notes that under Entry 1 of the Seventh Schedule to the AC Act, an employee of one of the parties would be disqualified to act as an Arbitrator. Here, the Central Government itself is not a party to the arbitration. It is the NHAI which is acquiring the land and which is going to be paying compensation for such acquisition, and is a party to the proceedings. Admittedly, the DM is not an employee of the NHAI. Consequently, the Court is unable to agree with the submissions of learned counsel for the Petitioners that the DM is disqualified from acting as an Arbitrator in terms of Section 12 (5) of the AC Act read with the Seventh Schedule thereof.”

14. In light of these judgments, both the objections of the Petitioner i.e. appointment of the Special Secretary (L&B) under Section 3G(5) of NH Act by the Central Government, as sole Arbitrator is illegal and being an officer of the Ministry, which is the Nodal Ministry of NHAI, he is not expected to act impartially since NHAI is party to the *lis*, cannot be sustained and are overruled. The officer appointed as the sole Arbitrator is not an employee of NHAI and indisputably, Central Government is not party to the arbitral proceedings. In light of the aforesaid judgments, the argument that the appointment of Special Secretary (L&B) is in the teeth of the judgment of the Supreme Court in *Perkins (supra)* has no merit. This Court is mindful of the fact that Section 3G has been declared *ultra vires* by the High Court of Punjab and Haryana, however, Supreme Court vide order dated 30.05.2025 has stayed the operation of the judgment and further directed that pending proceedings under Section 3G(5) of NH Act shall continue in accordance with law.

15. Insofar as the third and the only other objection with regard to the impartiality and independence of the sole Arbitrator is concerned, this argument of the Petitioner is predicated on Entry 24 of Fifth Schedule of



1996 Act. Section 12 of the 1996 Act provides for grounds to challenge the appointment of an Arbitrator and includes within its ambit the grounds stated in the Fifth Schedule as also Seventh Schedule. Section 13 provides the procedure for challenge as also the stages. Section 13(1) enables the parties to agree on a procedure for challenging the appointment of an Arbitrator and Section 13(2) provides that failing any such procedure, a party who intends to challenge an Arbitrator's appointment shall within 15 days after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of any circumstances referred to in Section 12(3), send a written statement setting out the reasons for such challenge. If the Arbitrator does not withdraw from the proceedings, he is required to take a decision on the challenge and if the challenge is not sustained, the Arbitrator shall continue the proceedings and make an award, as provided in Section 13(4). In such a situation, the party challenging the appointment of the Arbitrator will have to wait till the award is pronounced and thereafter lay a challenge to the award under Section 34 of the 1996 Act. It needs no reiteration that under Section 12(2), an Arbitrator, from the time of his appointment and throughout the arbitral proceedings, has an obligation to make a disclosure in writing of any circumstances referred to in sub-Section (1) of Section 12.

16. Provisions of Section 12(3) make it clear that the grounds mentioned therein are those enumerated in the Fifth Schedule to the 1996 Act indicating circumstances which may give rise to justifiable doubts as to the independence or impartiality of an Arbitrator. The list serves as a guide for the Arbitrator to make disclosure and in case the challenge fails, the only



recourse open to the party, challenging the appointment, is to wait till the award is finally passed as per Section 13(4) and (5) of the 1996 Act. Section 12(5) deals with ineligibility of the person to be appointed as an Arbitrator and Seventh Schedule enumerates the circumstances, though not exhaustive, which would render such a person ineligible. Reading of Section 12(3) and (5) of the 1996 Act shows that both operate differently and stand on separate footings. As can be seen from Seventh Schedule, the circumstances enlisted therein are such that the ineligibility goes to the root of the matter and if the appointment falls in the Seventh Schedule, there is a lack of inherent jurisdiction to act as an Arbitrator. In such a case, the party need not wait to follow the procedure under Section 13 and can take recourse to Section 14 and challenge the appointment in a Court, at the initial stage itself. This position of law is restated and reaffirmed by the Supreme Court in ***HRD Corporation (Marcus Oil and Chemical Division) v. Gail (India) Limited (formerly Gas Authority of India Limited), (2018) 12 SCC 471***. In the present case, the objection of the Petitioner to the appointment of the Arbitrator relates to Entry 24 in Fifth Schedule, which reads as: '*the arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.*' Clearly, the objection is one under Section 12(3) and not Section 12(5) and the only course open to the Petitioner is to challenge the appointment under Section 13 of the 1996 Act before the learned Arbitrator. This challenge cannot be entertained in the present petition.

17. For all the aforesaid reasons, this Court is unable to agree with the



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Petitioner that the mandate of the Arbitrator be terminated and a substitute Arbitrator be appointed. By this petition, extension of the mandate of the Arbitrator is also sought under Section 29A of the 1996 Act and therefore to this extent, the petition is partially allowed extending the mandate of the Arbitrator by 12 months from 29.08.2025. Since the mandate has expired on 30.01.2025, the period between 31.01.2025 and 28.08.2025 is regularised.

18. Petition is disposed of in the aforesaid terms leaving it open to the Petitioner to challenge the appointment of the Arbitrator on the ground raised under Section 12(3) by taking recourse to appropriate proceedings.

JYOTI SINGH, J

AUGUST 29, 2025
Ch /SS/Shivam