

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMAT (ARBAWARD) 14 of 2025

Sariful Islam Molla & Ors.

Vs.

The National Highway Authority of India & Anr.

With

CAN 1 of 2025

CAN 2 of 2025

CAN 3 of 2025

For the Appellants

: Mr. Mukteswar Maity

Ms. Manika Sarkar

For the NHAI

: Mr. Dipankar Das

Hearing concluded on

: **June 24, 2026**

Judgment on

: **June 24, 2026**

Debangsu Basak, J.:-

1. Appeal is under Section 37 of the Arbitration and Conciliation Act of 1996.
2. Appeal is directed against Order No. 34 dated June 3, 2023 passed by the learned Additional District and Sessions' Judge, 7th Court, Barasat, 24 Parganas in Misc No. 169 of 2017 (Arb).

3. Learned advocate appearing for the appellants submits that the appellants are land losers. Land of the appellants was acquired by the National Highway Authority of India (NHAI) under the National Highways Act, 1956.
4. Learned advocate appearing for the appellants submits that the appellants were not heard while a decision with regard to the compensation required to be paid was taken by the authorities. He submits that, initially an award dated April 3, 2017 was passed. The appellants were not parties in the proceedings in which the award dated April 3, 2017 was passed.
5. Learned advocate appearing for the appellants submits that the award dated April 3, 2017 was set aside under Section 34 of the Arbitration and Conciliation Act, 1996 on June 3, 2023. Again, the appellants were not parties in such proceeding.
6. Learned advocate appearing for the appellants submits that the appellants approached the Writ Court for relief by way of a writ petition being WPA 8093 of 2024. Such writ petition was dismissed on August 12, 2024 by observing that there are statutory alternative remedies for the appellants under Section 37 of the Act of 1996. Subsequent to such order, the appellants filed the application under Section 37 of the Act of 1996.

7. Learned advocate appearing for the appellants submits that since the appellants were proceeding *bona fide* in respect of the award dated April 3, 2017, the delay in preferring the appeal under Section 37 of the Act of 1996 be condoned.
8. Learned advocate appearing for the NHAI submits that the land belonging to the appellants were acquired under the Act of 1956. In the acquisition proceeding, an award dated April 3, 2017 was passed. Such award provided that the rate of compensation would be the same for all land losers concerning the respective mouzas governed by the award dated April 3, 2017. Appellants are the persons who were governed by the award dated April 3, 2017 although not being a formal party thereto.
9. Learned advocate appearing for the appellants submits that the award dated April 3, 2017 was challenged by some of the land losers. Such challenge was allowed by the impugned order dated June 3, 2023. The impugned order set aside the award dated April 3, 2017 and required the authorities to pass a fresh award.
10. Learned advocate appearing for the NHAI submits that pursuant to and in terms of the order dated June 3, 2023, authorities undertook a fresh proceeding for the purpose of

- calculating the compensation receivable by the land losers. A fresh award was passed on October 6, 2023. The fresh award also provided the same rate would be applicable to all land losers concerning the respective mouzas. The appellants are governed by the new award dated October 6, 2023.
11. Learned advocate appearing for the NHAI submits that the award dated October 3, 2023 was acted upon and disbursements made. He submits that in terms of the award dated October 3, 2023, NHAI which is the disbursal authority deposited the compensation amount with relevant authority.
 12. Records placed before us establish that NHAI undertook an acquisition proceeding for the purpose of acquiring land to construct NH 34 presently numbered as NH 112.
 13. Land belonging to the appellants was also acquired by NHAI for such project.
 14. Initially, an award dated April 3, 2023 was passed which governed the appellants although the appellants were not parties to such award formally.
 15. The award dated April 3, 2017 was challenged under Section 34 of the Act, 1996 resulting in the impugned order.
 16. By the impugned order, learned Trial Judge set aside the award dated April 3, 2017 and directed adjudicating authority to pass

a fresh award. Adjudicating authority did so and passed an award dated October 6, 2023. The award dated April 3, 2017 does not exist any further. The impugned order dated June 3, 2023 was acted upon and given effect to.

17.Appellants before us approached Writ Court by way of WPA 8093 of 2024 seeking relief with regard to the acquisition proceedings in respect of their land and compensation receivable thereto which was disposed of by an order dated August 12, 2024.

18.By the order dated August 12, 2024, the learned Writ Court disposed of such writ petition by observing that there were statutory alternative remedies under Sections 34 and 37 of the Act of 1996 available to the appellants.

19.Appellants subsequent to the order dated August 12, 2024 did not challenge the award dated October 6, 2023 under Section 34 of the Act of 1996. Appellants filed the present appeal directed against the impugned order dated June 3, 2023.

20.Purely on the ground that the act of advocate should not prejudice a litigant, we deem it appropriate to condone the delay in making and filing the application under Section 37 of the Act of 1996.

21.CAN 3 of 2025 is **disposed** of.

22.As noted above, the award dated April 3, 2017 does not exist. It was set aside by the impugned order. The impugned order was acted upon. Fresh award dated October 6, 2023 was passed. Appellants are aware of the fresh award dated October 6, 2023. Appellants did not challenge the award dated October 6, 2023. Nonetheless the appellants chose to assail the impugned order under Section 34 of the Act of 1996 directed against an award dated April 3, 2017 which no longer exist.

23.In such circumstances, we need not enter into the merits of the award dated April 3, 2017 any further.

24.Moreover, our attention is not drawn to any of the fact to establish that the Court exercising jurisdiction under Section 34 of the Act of 1996 exceeded the parameters of Section 34 of the Act of 1996 in setting aside the award dated April 3, 2017.

25.FMAT (ARBAWARD)/14/2025 is **dismissed** without any order as to costs.

26.In view of the dismissal of the appeal, the applications being **CAN 1 of 2025** and **CAN 2 of 2025** are **disposed** of.

(Debangsu Basak, J.)

27. I agree

s.D.

(Md. Shabbar Rashidi, J.)