



**IN THE HIGH COURT OF MADHYA  
PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR  
ON THE 14<sup>th</sup> OF AUGUST, 2024  
MISC. PETITION No. 3999 of 2024  
*UJJAIN MUNICIPAL CORPORATION AND OTHERS*  
*Versus*  
*SMT. LEELABAI AND OTHERS***

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**Appearance:**

*Shri Piyush Jain- Advocate for the petitioners.*

*Shri Ayushyaman Choudhary- Advocate for the respondents.*

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**ORDER**

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioners under Article 227 of the Constitution of India, against the order dated 21.03.2024, passed in M.J.C. No.222/2019 by the VIII District Judge, Ujjain, whereby, the application filed by the petitioner Ujjain Municipal Corporation under Section 387 of the Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act of 1956') read with Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') has been rejected, predominantly, under Section 34 of the Act of 1996.
- 3] The petitioner has challenged the aforesaid decision on the ground that the learned Judge of the District Court has wrongly invoked the provisions of Section 34 of the Act of 1996, as it ought to



have been the provisions of Section 387 of the Act of 1956 only, under which the award was passed by the Panchayat of three persons, constituted under Section 387(1) of the Act of 1956.

4] In brief, the facts of the case are that the building of the respondents was demolished by the Municipal Corporation in the year 2015 and a compensation of Rs.10 lakhs was also provided to them. However, being aggrieved, the respondents invoked Section 387(1) and (2) of the Act of 1956, which provides for determination of compensation by a Panchayat of three persons, of whom, one was to be appointed by the Corporation and one, by the party, to or from whom such compensation or damages may be payable or recoverable and one, was to be the Sarpanch, selected by members already appointed as above. In the present case, the Sarpanch (the Chief Arbitrator) was appointed by the Court under Section 387 of the Act of 1956 only and the final award by the said Panchayat was passed on 14.11.2019, by majority of 2:1, and the Arbitrator who was appointed by the Municipal Corporation recorded his dissent, holding that the provisions under Section 387 itself ought not to have been invoked, as the matter refers to Section 305 and 306 of the Act of 1956, by referring to the decision rendered by the Supreme Court in the case of ***Ravindra Ramchandra Waghmare Vs. Indore Municipal Corporation, (2017) 1 SCC 667***. The aforesaid award was challenged by the Municipal Corporation before the District Judge, Ujjain, who vide its order dated 21.03.2024 has passed the final impugned order.

5] Counsel for the petitioners has submitted that a bare perusal of the aforesaid order would clearly reveal that it has been passed



predominantly under Section 34 of the Act of 1996 and although, there is a passing reference to Section 387 of the Act of 1956, but the learned Judge of the District Court has erred in not deciding the case strictly under Section 387, as admittedly, the provisions contained under Section 34 of the Act of 1996 are not applicable in the present case, which also provide a limited scope of interference in the award passed by the Arbitrator. Thus, it is submitted that the impugned order be set aside, and the matter may be remanded back to the District Court.

6] Counsel appearing for the respondents, on the other hand, has opposed the prayer and it is submitted that even though a reference to Section 34 of the Act of 1996 has been made by the District Court, but the order has also been passed while referring to Section 387 of the Act of 1956 and thus, it is submitted that no interference is called for.

7] Heard. Having considered the rival submissions and on perusal of the impugned order, this Court finds that there is no manner of doubt that it is predominantly passed while invoking Section 34 of the Act of 1996. The relevant paras of the order (relevant excerpts only) read as under:-

"01- आवेदकगण द्वारा यह आपहति आवेदन पत्र अंतर्गत मध्यास्थता एवं सुलह अधिनियम 1966 धारा 34 की उपधारा 2 (क) (4) एवं धारा 387/3 उपनियम 4 नगर पालिक निगम अधिनियम के अंतर्गत प्रस्तुत किया गया है।

02- आगे आदेश में मध्यमस्थता एवं सुलह अधिनियम 1966 को "अधिनियम, 1996" तथा नगर पालिक निगम अधिनियम, 1956 को "अधिनियम, 1956" के रूप में संबोधित किया जायेगा।

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07- प्रकरण में विचार हेतु मुख्य प्रश्न यह है कि- क्या प्रश्नगत अवाई दिनांक 14.11.2019 माध्यमस्थता और सुलह अधिनियम, 1996 की धारा 34 अनुसार अपास्त किये जाने योग्य है

//सकारण निष्कर्ष//

08- सर्वप्रथम हमें माध्यमस्थता और सुलह अधिनियम 1996 की धारा 34 का



अवलोकन करना होगा, जो इस प्रकार है:-

(1).....”

*(Emphasis Supplied)*

8] Although it is also found that the learned Judge of the District Court has also dealt with the objection raised by the petitioner herein, regarding the applicability of Sections 305 and 306 of the Act of 1956 and the non-applicability of Section 387 of the same. However, it is difficult for this Court to decipher as to which part of the impugned order falls within the parameters of Section 34 of the Act of 1996 and which part is under Section 387 of the Act of 1956.

9] On perusal of the relevant provisions of the Act of 1956, this Court finds that a compensation which is awarded to a party under Section 387(1) can be challenged as provided under Section 387(4) and otherwise also, even if a compensation has been made under Sections 305 and 306 of the Act of 1956, in the considered opinion of this Court, the same can be challenged only by way of Section 387(1) only, by appointment of the Panchayat, as prescribed therein. Section 387 of the Act of 1956 reads as under:-

**“387. Arbitration in cases of compensation, etc.-** (1) If an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a Panchayat of three persons of whom one shall be appointed by the Corporation, one by the party, to or from whom such compensation or damages may be payable or recoverable, and one, who shall be Sarpanch, shall be selected by the members already appointed as above.

(2) If either party or both parties fail to appoint members within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, or if the members fail to select a Sarpanch, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Court.

(3) In the event of the Panchayat not giving a decision within



one month or such other longer period as may be agreed to by both the parties from the date of the selection of the Sarpanch or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party be determined by the District Court which shall, in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court:

Provided that-

(a) no application to the Collector for a reference shall be necessary, and

(b) the court shall have full power to give and apportion the costs of all proceedings in manner it thinks fit.

(4) In any case where the compensation is claimed in respect of land and the Panchayat has given a decision, either party, if dissatisfied with the decision, may within a month of the date thereof apply to the District Court and the matter shall be determined by the District Court in accordance with the provisions of sub-section (3).

(5) In any case where the compensation is claimed in respect of any land or building, the Corporation may after the award has been made by the Panchayat or the District Court, as the case may be, take possession of the land or building after paying the amount of the compensation determined by the Panchayat or the District Court to the party to whom such compensation, may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the appointment of it, the Corporation shall deposit the amount of the compensation in the District Court, and take possession of such property.”

*(Emphasis Supplied)*

**10]** So far as the applicability of the decision rendered by the Supreme Court in the case of *Ravindra Ramchandra Waghmare (Supra)* is concerned, this Court is of the considered opinion that the aforesaid decision is of no avail to the respondent in the facts and circumstances of the case, and in fact, only supports the views expressed by this Court that any compensation awarded under Section 305/306 can be challenged under Section 387 (1) of the Act of 1956 only, which is also apparent from paras 63 and 85 of the said decision,



which reads as under:-

“**63.** The aforesaid submission is too tenuous to be accepted. There is restriction put on the ownership rights and in the area no construction can be raised derogatory to the development plan/master plan. When the property vests is clearly culled out in Section 305, however the property is held by owner once a development plan is prepared, subject to that use and it is not necessary to acquire the land as already discussed by us for the purposes mentioned under Section 305. Section 305 is otherwise also a reasonable method of acquisition of the property and it follows a detailed procedure for preparation of the development plan/master plan or a town improvement scheme, as the case may be, which involves adjudicatory process and once action is taken under Section 305, reasonable compensation follows, special procedure as prescribed, is a complete code in itself and even if a person is not satisfied, he can claim adjudication under Section 387 where the procedure of the Land Acquisition Act, 1894 is applicable.”

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**85.** We find the principles laid down in Sections 305, 306 and 387 are quite reasonable. Reasonable compensation is payable by the Corporation for building or part thereof excluding the land under proviso to Section 305(1) and compensation for inclusion of land in public street is payable under Section 306(3) of the Act. We do not find any ground so as to read down the provisions. We refrain to comment upon the submission with respect to the granting additional FAR is not acceptable to some appellants, as it is not the stage of dealing with compensation how the total indemnification is to be made, whether FAR is acceptable to the appellants or not, cannot be decided at this stage. It need not be decided at this stage whether they have a right to leave the FAR and claim monetary compensation alone which is to be adjudged by the authorities concerned within the pale of the provisions contained in Sections 305, 306 read with Section 387 of the 1956 Act. How the compensation is to be worked out at the appropriate stage, is the outcome of the authorities concerned and the job of the arbitrator/District Court, as the case may be. The appellants are at liberty to raise the question with respect to the adequacy of compensation and how the provision of Section 387 has to be interpreted and what would be the just compensation at the appropriate stage of determination of compensation.”

*(Emphasis Supplied)*

**11]** In view of the same, the petition stands allowed, and the matter is remanded back to the learned Judge of the District Court to pass the



order afresh, in accordance with law and under the provisions of Section 387 (4) of the Act of 1956 only, without referring to Section 34 of the Act of 1996.

**12]** Since the petitioner has not challenged the award passed by the Panchayat on its merits, the petitioner would be at liberty to raise all the grounds available to it under law, and if any additional grounds are raised by the petitioners by filing appropriate application, the same shall be considered by the learned Judge of the District Court on its own merits.

**13]** With the aforesaid direction, the petition stands *disposed of*.

**14]** Parties are directed to appear before the concerned District Court on 31.08.2024.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Bahar**