RAJASTHAN HIGH COURT

REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Arbitration Application No. 44/2025

CNR: RJHC020226042025 | URN: ARBAP / 66U / 2025

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1. Parvesh Kohli S/o Kishan Lal Kohli, Aged About 69 Years, R/o A-604, Emerald Residency, Bundi Road, Near Railway Flyover, Kunhadi, Kota, Girdharpur, Kota 324008
2. Smt. Vimla Devi W/o Jaswant Rai, Aged About 95 Years, R/o 684-A Talwandi, Kota Rajasthan Hal Niwasi Chaudhrioyon Ka Mohalla Dhuri District Sangror, Punjab (Senior Citizen) Through Power Of Attorney Holder Deepak Varma Aged 44 S/o Kulbushan Khatri R/o 684-A, Talwandi Kota 324005

----Petitioners

Versus

1. Union Of India, Through Secretary Ministry Of Road Transport And Highways Of India, Ministry Of Road Transport And Highway Bhawan, 1-Parliament Street New Delhi 110001
2. Land Acquisition Officer, Competent Authority And Sub Divisional Officer, National Highway, Kota

----Respondents

Connected With

S.B. Arbitration Application No. 30/2026

CNR: RJHC020112532026 | URN: ARBAP / 61U / 2026

Vimla Meena W/o Kamlesh Meena, Aged About 45 Years, R/o 941-A Old Railway Colony, Kota At Present, A-24, Ridhi Sidhi Nagar, Rangpur Road, Kota-324002.

----Petitioner

Versus

1. The Chairman, National Highways Authority Of India, G-5 And 6, Sector-10, Dwarka, New Delhi-110075.
2. Secretary, The Ministry Of Road Transport And Highway, Transport Bhawan, 1 Parliament Street, New Delhi 110001.
3. Office Of Competent Officer/ Authority (Land Acquisition), And Additional District Collector (Ceiling) Bundi, Additional District Collector (Ceiling), Bundi (Rajasthan).

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4. Regional Officer, Regional Office, Ministry Of Road Transport And Highway, Dcm, Ajmer Road, Jaipur/302019.

----Respondents

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For Petitioner(s)	:	Mr. Abhishek Bhardwaj with Mr. Aayush Malik & Mr. Abhishek Saini
For Respondent(s)	:	Mr. GS Gill, AAG assisted by Mr. Manoj Kumar, Mrs. Anisha Sharma & Ms. Pooja Sharma Mr. Naman Maheshwari with Mr. Vishwas Fatehpuria Mr. VP Mathur with Ms. Preeti Bale Mathur

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL

Order

23/11/2026

1. Since both the applications have been filed seeking appointment of an Arbitrator in terms of Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996'), therefore, they have been heard together and are being decided by this common order. S.B. Arbitration Application No.44/2025-Parvesh Kohli & Anr. Vs. Union of India & Anr. is being taken as a lead case.

2. It is the case of the applicants that their land was subjected to acquisition under the provisions of the National Highways Act, 1956 (hereinafter referred to as 'the Act of 1956') and they have made an application before the respondent-authorities on 04.03.2024. However, after the lapse of three months, the respondents failed to appoint an Arbitrator as per the mandate of

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Section 3-G(5) of the Act of 1956, leading to filing of the instant applications.

3. On the last date when the matter was taken up for hearing, an objection was raised that the application under Section 11(6) of the Act of 1996 is not maintainable in light of the decision of the Supreme Court in the matter of **General Manager (Project), National Highways and Infrastructure Development Corporation Limited Vs. Prakash Chand Pradhan & Ors.,** reported in **(2020) 15 SCC 533**, therefore, this Court appointed Mr. Naman Maheshwari as *Amicus Curiae* to assist the Court. Accordingly, Mr. Maheshwari today appeared and made his submissions.

4. Learned counsel for the applicant would submit that the applications would be maintainable as there is no express bar contained in the Act of 1996 and in support of his submission, he would rely upon the decision of the Supreme Court in the matter of **M/s Riar Builders Pvt. Ltd. & Anr. Vs. Union of India & Ors., Special Leave Petition (Civil) Diary No.26933/2025.**

5. On the other hand, learned counsel for the non-applicants would submit that the applications are not maintainable.

6. Mr. Naman Maheshwari, learned *Amicus Curiae* would also submit that the applications filed by the applicants under Section 11(6) of the Act of 1996 would not be maintainable and the remedy available to them is to file a writ or a suit for the direction or a *mandamus* to appoint an Arbitrator, as held in the matter of **Prakash Chand Pradhan** (supra).

7. Heard learned counsel for the parties, considered their rival submission and gone through the material available on record.

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8. The Supreme Court in the matter of **Prakash Chand Pradhan** (supra) has clearly held that the application for appointment of an Arbitrator under Section 11(6) of the Act of 1996 in respect of the matters governed by the Act of 1956 would not be maintainable and observed in paragraphs 3 to 6 as under:

> "3. Having heard the learned counsel for the parties, we are, therefore, of the view that a Section 11 application under the 1996 Act cannot be made as the Central Government alone is to determine who is to be an arbitrator under Section 3-G(5) of the National Highways Act. If a demand is made for the appointment of an arbitrator, and the Central Government does not appoint an arbitrator within a reasonable time, the remedy that is to be availed of is a writ petition or a suit for the said purpose, and not Section 11 of the Arbitration and Conciliation Act, 1996.
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> 4. A similar provision contained in Section 86(1)(f) of the Electricity Act, 2003 specifically gives the State Commission power to refer any dispute for arbitration. In this view of the matter, this Court in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., held as under: (SCC p. 765, para 28)
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> "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.
>
> 5. We respectfully agree with the ratio of the said judgment. Likewise, Section 3-G of the National Highways Act is a special provision which will be given effect to insofar as the appointment of an arbitrator is concerned.
>
> 6. The learned counsel appearing on behalf of the respondents has, however, argued that an arbitrator has now been appointed under Section 11 of the Arbitration and Conciliation Act, 1996 and, that, therefore, no prejudice will be caused if he is allowed to continue. This arguments ignores the fact that Section 11 of the Arbitration and Conciliation Act does not apply

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> and that, under Section 3-G, the Central Government alone can appoint an arbitrator."

9. Similarly, in the matter of **National Highways Authority of India Vs. Sayedabad Tea Company Ltd. & Ors.,** reported in **(2020) 15 SCC 161,** the question before their Lordships of the Supreme Court was whether the application under Section 11 of the Act of 1996 is maintainable in view of Section 3-G(5) of the Act of 1956, which provides for appointment of an Arbitrator by the Central Government and formulated the following question for consideration:

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> "1. The moot question which arises before us is whether the application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter being referred to as "Act 1996") is maintainable in view of Section 3G(5) of the National Highways Act, 1956 (hereinafter being referred to as "Act 1956") which provides for appointment of an Arbitrator by the Central Government."

10. Further, the Supreme Court in the aforesaid matter of **Sayedabad Tea Company Ltd.** (supra), relying upon the decision in the matter of **Prakash Chand Pradhan** (supra), has observed in paragraphs 15 to 20 and 23 as under:

> "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, 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 for a suit for the purpose but the remedy of Section

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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 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.

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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

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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.

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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.”

11. In view of the above legal position, I am of the considered view that the applications filed by the applicants under Section 11 of the Act of 1996 pertaining to the acquisition of the land made under the Act of 1956, would not be maintainable.

12. Accordingly, both the applications are rejected. However, liberty is given to the applicants to make an application under Section 3-G(5) of the Act of 1956 for appointment of an Arbitrator, which will be considered and decided strictly in accordance with law.

13. It is made clear that this Court has not made any observation in this order with regard to that application.

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14. A copy of this order be placed in each connected file.

(SANJAY K. AGRAWAL),CJ

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