

**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE
AT HAVERI**

Present: Smt.Yadav Vanamala Anandrao,
B.Com., LL.B.(Spl.)
Prl., District & Sessions Judge,
Haveri.

DATED THIS THE 20th DAY OF SEPTEMBER 2022.

Arbitration Petition No.22/2021

- Petitioners:** 1. The Project Director,
National Highways Authority of India – PIU,
NH-48 (Old NH.4), Near JMIT,
Chitradurga – 577 502,
Rep. by its GM (Tech) & Project Director,
D. Srinivasulu Naidu.
2. The Special Land Acquisition Officer and
Competent Authority,
(Earlier known as the Manager Tech and Office of
Competent Authority for Land Acquisition),
NH-48 (Old NH-4), Near Chamundeshwari Temple,
KSRTC Depot Road, Chitradurga - 577501.

(By Sri.B.V.Prakash Angadi, Advocate)

-Vs-

- Respondents:** 1. Abdurahimsab S/o Rajesab Foujdar,
Since deceased by his L.Rs.
- 1(a) Kaleedahmed S/o Gousemoddin Foujdar,
Age: 68 years,
- 1(b) Ashpakahmed S/o Gousemoddin Foujdar,
Age: 60 years,

1(c) Abdulhameed S/o Gousemoddin Foujdar,
Age: 54 years,

1(d) Shahanaz D/o Gousemoddin Foujdar,
Age: 70 years,

1(e) Muneerahmed S/o Gousemoddin Foujdar,
Age: 64 years,

Respondents No.1(a) to 1(e) are residing at Ranebennur,
Haveri Dist.

1(f) Shakeelabanu W/o Abdullatif Momani,
Age: 57 years,
R/o Sollapur, Maharashtra State.

[By Sri.M.S.Hosamani, Adv. for R.1(a), (b) & (f),
Sri.S.K.Savadi, Adv. for R.1(c), (d) & (e)]

JUDGMENT

Aggrieved by the award passed by the Deputy Commissioner and Arbitrator, Haveri, the petitioners have filed this petition under Section 34 of the Arbitration and Conciliation Act r/w O.VII Rule 1 of the CPC and sought for setting aside the award dated 24.2.2021.

2. The brief facts of the case are narrated below;

The petitioner No.1 being statutory authority constituted under the provisions of National Highways Authority of India Act-1998 (hereinafter called as 'NH Act') for the purpose of strengthening and widening the existing Highways and to implement project called “GOLDEN QUADRILATERAL” linking Calcutta, Delhi, Mumbai, Bengaluru and Chennai into 4/6 lane for National Highway No.48 (Old

NH.4) from Harihar-Belgaum stretch. Accordingly, the lands required for Haveri Bypass in the said project work implemented by acquiring lands with due procedure of law i.e., NH Act. The competent authority for land acquisition i.e., petitioner No.2 acquired lands on either side of NH-4 under Section 3(A)(1) vide Notification No.S.O.1154(E) dt.23.12.2000. The respondents are owners of the land bearing Sy.No.30P situated at Ranebennur and acquired the area measuring 5560 Sq. Meters + 160 Sq. Meters for the purpose of widening the NH.48. The compensation was determined regarding the acquired lands by Competent Authority for Land Acquisition (hereinafter referred to as 'CALA') i.e., petitioner No.2 and award was passed on 05.08.2004 under Section 3G of NH Act.

3. Being aggrieved by the award passed by the competent authority, the respondents invoked Sec.3G(5) of NH Act, for enhancement of amount for compensation referring the matter to the Arbitral proceeding. Hence, the learned Arbitrator heard the parties and passed the award enhancing the compensation amount fixing the market value at Rs.936.90 paise per Sq. Meter, on 24.2.2021. Hence they are challenged it as exorbitant quantum of compensation determined by the Arbitrator, which is unreasonable and arbitrary jumping from 197.74 paise per Sq. Meter determined by CALA to Rs.936.90 paise per Sq. Meter. Thus, stating the said grounds, petitioners have filed this petition challenging the validity, legality and correctness of the award passed by the learned Arbitrator by urging the grounds that the learned Arbitrator has determined the exorbitant

compensation without basis, in contravention of Sec.3G of NH Act and he has travelled out of his jurisdiction and considered irrelevant and non-existent facts and prayed to allow the petition and confirmed the award passed by the SLAO/CALA.

4. After registering the case and in response to notice served, the respondents/claimants appeared through their learned counsel and filed the objections to petition in the form of written statement, denying material contents of the petition stating that the petition filed is false, vexatious, misconceived, in law or on facts and grounds urged are not sustainable. The above arbitration petition is filed beyond the limitation hit by Section 34(3) of the Arbitration and Conciliation Act-1996. The provision of Sec.34 (5) of the Arbitration and Conciliation Act has not been complied by the petitioners before filing the petition. The proviso contemplates the application accompanied by an affidavit of the applicant endorsing the said required compliance, that shall be filed by a party only after issuing a prior notice to other party. Therefore, the petition is liable to be rejected for non compliance of Section 34(5) of the Act. The petitioners have not made out any grounds for interference of this Hon'ble Court U/s 34 of the Arbitration and Conciliation Act, 1996. Hence, the petition is liable to be dismissed.

5. The entire records of arbitration proceedings have been called for. On receipt of the same, it is proceeded to hear the arguments on both the sides.

6. Heard the arguments of learned counsel for the petitioners and respondents. Perused the petition, objections/written statement thereto and the materials available on record.

7. The following common points are formulated for consideration;

1. Whether the petitioners prove that the impugned award passed by the respondent No.2 is irregular, illegal and hit by the guidelines provided under Sec.3G(7) of National Highways Act, 1956 and opposed to public policy ?
2. Whether market value fixed at Rs.936.90 paise per Sq. Meter and consequently passing of award enhancing compensation amount by the learned Arbitrator/Deputy Commissioner, Haveri, in the Arbitration proceedings relating to acquired lands, is exorbitant and unreasonable ?
3. Whether it needs interference of this court to set aside the award passed by the learned Arbitrator on 24.02.2021, as prayed for ?
4. What order ?

8. My findings on the above points are as under;

1. In the Negative
2. In the Negative
3. In the Negative
4. As per final order

for the following:-

REASONS

9. **POINTS No.1 to 3:-** Since these points are interlinked with each other, they are taken up together for common discussion.

The National Highways Authority through Project Director and SLAO - Competent Authority for Land Acquisition (CALA) as petitioners having not satisfied with the fixation of market value of Rs.936.90 paise and passing of award enhancing the compensation amount in this case, as on the higher side, unreasonable and sought the interference of this court. It is well settled that fixation of market value and award of compensation for the acquired lands, involves certain amount of guesswork and sound principles and guidelines laid down in the precedents, on land acquisition proceedings. The determination of the market value cannot be done with any mathematical precision. On perusal of entire records of the Arbitral proceedings received by this court, along with the petition and objection thereto, referred to by the respective parties, following facts are disclosed;

(a) The respondents have lost their land, which was subjected to Land Acquisition Proceedings by the petitioners representing the Government of India and award was passed by the SLAO. The respondents are owners of Sy. No.30P measuring to an extent of 5560 Sq. Mtrs. + 160 Sq. Mtrs. located in Ranebennur.

(b) **PURPOSE and PROCESS:-** The petitioner No.2/SLAO has acquired the lands of Ranebennur town including the land of the respondents for widening of four/six laning of NH-48 (Old NH-4)

under NHDP from Harihar-Belgaum bypass (KM.280-515), by issuing Preliminary Notification dated 13.03.2001 issued under Section 3A(1) Notification dtd.23.12.2000, of National Highways Act, 1956.

(c) The award was passed by SLAO, vide award No.NH-4/CALAQ I-8/2004-05 dated 05.08.2004 and market value fixed by said authority at Rs.197.74 per Sq. Meter.

(d) The respondents/claimants being not satisfied with the award of said authority/petitioners herein, have filed application before the learned Arbitrator and Deputy Commissioner, Haveri under Section 3G(5) of National Highways Act seeking enhancement of compensation amount with other statutory benefits and interest. The case of the respondents/claimants (Original claimant died and his L.Rs.1(a) to 1(f) proceeded with the case) who are land owners, is that, they being owners of the land as described supra located at Ranebennur and they are affected by the acquisition of their land. However, the Arbitrator has fixed the market value taking rate of nearest vicinity as per settled principles and provisions of law. The petitioners did not choose to produce any documents to disclaim them, nor specifically denied the pleadings and objections raised by them. It is material to note that, the learned Arbitrator has given ample and reasonable opportunity to both the parties and considering the materials placed on record specifically the documentary evidence, taking note of development of village in and around the acquired lands and situation, location of land, the market value has been determined and

compensation awarded, is with due consideration of said material aspects. The learned Arbitrator has also placed due reliance on the compensation awarded for neighbouring/adjacent lands acquired for same purpose under common notification and also the market value of the land in the vicinity etc., and duly enhanced the market value to Rs.936.90 paise per Sq. Meters., with interest for 3 years, which needs no interference of this court, when the award is fair, reasonable and as per provisions of NH Act, which cannot be considered as against the public policy, as because it has been adequately determined to compensate the land losers whose land was acquired for the public purpose for widening the Highway which passes through the vicinity.

10. Apart from this, the learned counsel for these claimants rightly pressed upon the locations, potentiality of the said lands which are evident from the records of arbitration proceedings and due consideration and analysis made by the learned Arbitrator, D.C. Haveri in his award and they revealed that, he (Arbitrator) has rightly referred the award passed for Ranebennur village in LAQ/ARBT/NH/CR-562/2004-05 on 29.8.2012 and enhanced market value has been fixed from 197.74 per Sq. Meter to Rs.936.90 per Sq. Meter. It was challenged in Arb. Suit No.141/2012 before the Principal District and Sessions Judge, Haveri and same was dismissed by confirming the award made by the Arbitrator as per the judgment dated 3.2.2015 and National Highways Authority of India paid 50 % of the enhanced compensation amount to the respective land owners in that case. The awarded compensation pertaining to the acquired land is relating to

similar lands of Ranebennur town at Rs.936.90 per Sq. Meters which are (lands) almost similar having N.A. Potentiality. The learned Arbitrator has duly considered all the materials and also the records produced by the petitioners/claimants in proof of the lands having same advantage, potentiality and similarly located lands which have been given higher rate and also he has relied upon the decisions referred to by the learned counsel for the petitioners in connection with the compensation awarded for the acquired lands and the lands situated identically having similar nature for working out just and fair value. And thus, the learned Arbitrator has come to the right conclusion and fixed the market value regarding acquired land by rightly determining it at Rs.936.90 paise per Sq. meter.

11. The learned Arbitrator has also duly considered the materials placed on record and arguments put forth by the learned counsel for the petitioners regarding the damages due to severance of land for having acquired the portion of property, as the petitioners/claimants have not submitted any documents relating to extent of damage caused, the claim has been rightly rejected. Even the learned Arbitrator has placed reliance on the decision reported in 2014(1) KLJ 34 (SC) in connection with regard to condonation of delay, he has considered the economic status, illiteracy and lack of legal knowledge of the claimants in the present case and the delay has been condoned, and restricted the interest for enhanced compensation to 3 years from the date of final notification and therefore awarded the enhanced compensation by fixing the market value at Rs.936.90 paise per Sq. Meter.

12. The petitioners have invoked the powers of this court under Section 34(2) of Arbitration and Conciliation Act, seeking interference with the arbitral award passed by the learned Arbitrator. The court can interfere with the arbitral award under Section 34(2) of Arbitration and Conciliation Act, only when the party applies, furnishing the proof relating to,

- i. *He was under some incapacity.....,*
- ii. *Arbitration agreement is not valid under law.....,*
- iii. *Party making application was not given proper notice or opportunity before arbitrator.....,*
- iv. *Arbitral award deals with the dispute not covered under arbitration agreement.....,*
- v. *Composition of arbitral tribunal or procedure of arbitral tribunal was not agreed by the parties,.....*
- vi. *Subject-matter of the dispute is not capable of settlement before arbitrator.....,*
- vii. *Arbitral award is in conflict with the public policy of India.....*

13. In the present case, the petitioners pressed upon for setting aside the arbitral award, as the fixation of market value and enhancement of compensation by learned Arbitrator, in the impugned award is exorbitant and much higher than the one fixed by SLAO and the determined market value by the learned Arbitrator is not in accordance with the guidelines incorporated under Section 3(G)(7) of National Highways Act and it amounts to violation of Statutory provisions under Section 3(G)(7). It reads thus,

“ 3-G.(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration;

(a) the market value of the land on the date of publication of the notification under Section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”

14. As discussed above, regarding award passed by the Arbitrator who has considered all the materials placed on record and also referred the covered Judgment, the arguments advanced by the learned counsel for the petitioner that, *“Award fixing the market value on the higher side, is opposed to Public Policy”*, is not sustainable.

15. The learned Arbitrator has followed due procedure with reference to the fixation of market value and arrived at right conclusion fixing the market value at Rs.936.90 paise. It is material to note that the land losers i.e. owners of the acquired land cannot get back the land lost by them. The learned Arbitrator has taken into account required materials and there is no any fault found in fixing the market value and thereby enhancing the compensation based on reasonable guess work by the Arbitrator is considered to be adequate and justifiable. He has rightly considered as relevant that the compensation awarded to the owners of acquired lands which are adjacent to the acquired land of this case, for fixation of market value and hence, enhancement of

compensation is quite reasonable. In this connection, with due respect, the following decisions are referred to, which are also considered by the learned counsel for the respondents/claimants referring the covered judgment Arb. Suit No.141/2012;

(1) AIR 1996 SC 651 (State of Madras vs A.M. Nanjan and another), wherein it is held that,

“The compensation as is fixed by the arbitrator cannot also be found fault with it, inasmuch as, person who lost the land cannot get back his land and therefore the guess work carried out by the arbitrator while fixing the compensation to the land cannot be interfered, even if it is little excess. Award of the compensation to the adjacent lands is a relevant matter which is to be taken into consideration while determining the just compensation.”

(2) 2012(4) Kar.L.J. 84 (Spl. Land Acquisition Officer, Mysore vs Chennabasavegowda) wherein it is held that,

“Market value – Determination of – Reliance placed by Reference Court on judgment and award already given in respect of land similarly situated and acquired for same purpose, which having been accepted by Government, has become final, held, on facts, justified - No interference is called for with judgment and award passed by Reference Court and affirmed by First Appellate Court.”

Wherein it is held that the covered judgment can be referred to for determination of market value relating to acquired land, which is similarly situated and acquired for the same purpose and same has been accepted by the Government and thereby it is potential value finally determined and accepted. Therefore, it can be relied upon and thus,

fixation of market value by the learned Arbitrator based on the covered judgment is also justifiable.

16. Another judgment in *ILR 2003 KAR 2336 (State of Karnataka by Spl. Land Acquisition Officer and others vs Mallappa and others)*, wherein it is held that,

“ Grant of uniform rate of compensation for all the acquired lands, which are similarly situated and acquired under the same notification and for the very same purpose cannot be held to be bad.”

Another decision reported in 2010(5) SCC 747 (Union of India vs Bal Ram and another) wherein it has held that,

“ Nature/quality of the lands was by and large similar to those lands - Purpose of acquisition is same - No justification to make any distinction between lands which are identical and similar though lying in different villages – No interference is called for.”

17. It is with regard to covered judgment which reached finality for fixation of market value as because the acquired lands are similarly situated and acquired under same notification for the same purpose. Therefore, the reference made by the learned counsel for the respondents/claimants regarding Judgment passed in Arbitration Suit No.141/2012 as covered judgment is also relevant and same has been referred to by the learned Arbitrator, apart from considering the material placed on record with reference to the acquired lands and its feasibility which are similarly situated and acquired under the same notification and for the same purpose. It is pertinent to note that, the land acquired

in the present case is coming within the limits of non-agricultural land acquired for expansion of national Highway. The land acquired is situated near Ranebennur town and it has got potentiality of developing town abutting to national highway and it has high potential value. Therefore, on this ground also the determination of market value by the learned Arbitrator is in accordance with law. There is no need to interfere with the award passed by the learned Arbitrator, who has considered relevant facts, purpose of acquisition of land, nature of land, NA potentiality, feasibility, location and also the reference of the said covered judgment, the determined market value at Rs.936.90 per Sq. Mtr which is being justifiable, cannot be interfered with by this court to set aside the award passed by the learned Arbitrator.

18. It is also pressed upon in the said Arbitration proceeding in A.S. No.141/2012 regarding the '*public policy of India*' which indicates that all persons must be treated equally irrespective of their caste, creed and financial capacities as is enunciated in the Art.14 of the Constitution of India. Therefore it has guiding force while determining the market value and awarding compensation considering the claim of the litigants. It is also relevant to consider the object of awarding compensation under acquisition proceedings under the statute that, the land losers must be adequately compensated which should be determined as per the guidelines provided under law and also precedents as the land losers cannot regain their lands, but they have to suffer because of acquisition process for public purpose.

19. Therefore, from the above discussion, it is revealed that, there is no infirmity or illegality in the award passed by the learned Arbitrator. It is not opposed to Indian Public Policy. He has followed due procedure, and guidelines and applied sound principles of law and come to right conclusion and awarded adequate, just and reasonable compensation by raising market value to Rs.936.90 paise per Sq. Meter. Hence there is no need to interfere and to set aside the award passed by the learned Arbitrator on 24.2.2021. Hence, Points No.1 to 3 are answered in the negative.

20. **POINT No.4:-** In view of my findings on Points No.1 to 3, it is proceeded to pass the following:-

ORDER

Arb. Petition filed by the petitioners, is hereby dismissed.

The award passed by the learned Arbitrator/Deputy Commissioner, Haveri in LAQ/ARBT/NH/CR-16/2012-13 dtd.24.02.2021, is hereby confirmed.

Under the circumstances, the parties are directed to bear their own cost.

Send back T.C.Rs. to the learned Arbitrator, with copy of the judgment.

(Dictated to the Judgment Writer on computer, typed by her, thereby, corrected, signed and then pronounced by me in open court, on this the **20th day of September, 2022**)

(YADAV VANAMALA ANANDRAO)
Prl., District and Sessions Judge,
Haveri.

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