

KADK010019072025



Presented on : 19-04-2025
Registered on : 21-04-2025
Decided on : 10-06-2026

**IN THE COURT OF I ADDITIONAL DISTRICT AND
SESSIONS JUDGE AT MANGALURU.**

Present:

Sri. Vinay Devaraj, B.Com., LL.M., ACS.
I Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru.

Dated this the 10th day of June, 2026

A.P./59/2025 & 94/2025

Petitioner in A.P.59/2025:

Smt.Zareena
W/o Anwar
D/o Yusuf @ Yusuf Bava
Aged 34 years
R/at 2-206, Madeena House
Near Adduru Market, Adduru
Mangaloare Taluk.

(By Sri.Mayurakeerthi, Advocate)

V/s

Respondents in A.P.59/2025:

1. The Project Director
National Highways Authority of India
Shimoga-Mangalore Section
Presently Sanoor-Bikarnakatte
Bethel Door No.329, Tharethota
Near Pumpwell, Mangaluru, D.K.
2. The Competent Authority and Special Land
Acquisition Officer
NH 169(Earlier No.13)
Shivamoga Mangalore Section, Mangaluru
Presently Sanoor Bikarnakatte
Having office at Karnataka State Employees
Association, Clock Tower, Hampankatta,
Mangalore, D.K.
3. The Arbitrator & Deputy Commissioner,
Dakshina Kannada District, Mangaluru-575001.

(R1 & 2 By Sri. M.V.K./L.R., Advocates
R3 By DGP, Mangaluru)

Petitioner in A.P.94/2025:

National Highways Authority of India
Project Implementation Unit
Door No.3-29, Bethel,
Tharethota, Near Pumpwell (NH-66),
Mangaluru 575 005
Rep. by its DGM(Tech) & Project Director.

(By Sri.Lohidas.R, Advocate)

V/s

Respondents in A.P.94/2025:

1. Smt.Zareena
W/o Mr.Anwar
D/o Mr.Yusuf @ Yusuf Bava
Aged about: Major
R/at 2-206, Madeena House
Near Adduru Market, Adduru
Mangalore Taluk.
Dakshina Kannada District 574145
 2. The Arbitrator & Deputy Commissioner,
Dakshina Kannada District, Mangaluru-575001.
 3. The Competent Authority &
The Special Land Acquisition Officer,
Mangaluru
Karnataka State Employees Association
Clock Tower, Hampankatta, Mangaluru.
- (R1 by Sri.Mayurakeerthi, Advocate
R2 by D.G.P., Mangaluru
R3 : Absent)

COMMON JUDGMENT

These two petitions are filed u/s. 34 of the Arbitration and Conciliation Act, 1996 r/w Order VII Rule 1 to 3 of CPC and U/s.34(2) of A & C Act r/w Sec.3G(5) of National Highways Act. 1956 respectively, assailing the award passed by the Arbitrator in C.DIS.ARB(4)NH LAQ.CR.10/2022-23 dated 11.03.2025.

Facts in A.P.59/2025:

2. The petition averments in brief are that, the respondent No.1 -authority was constituted by National Highway Authority of India Act, 1988 by parliament and was entrusted with the task of development of National Highways. The petitioner was entrusted with the work of widening of National Highway No.169 (old NH-13). The Central Government has approved and issued preliminary notification for acquisition under section 3A(1) of the National Highways Act. Under the said notification, amongst other lands, the land in Sy.No.14/4 which measures 694 sq.mtrs (17.15 cents) Adduru village, Mangaluru Taluk, belongs to the respondent No.1 was also acquired. The competent authority for land acquisition determined the amount of compensation as per sub section (1), (2), (3), (4) of section 3(G) of National Highways Act. The competent Authority/Spl. Land Acquisition Officer awarded compensation of Rs.65,966/- per cent for the land in Sy.No.14/4 which measures 694 sq.mtrs (17.15 cents) of Adduru village, Mangaluru Taluk, including all benefits.

3. The claimant/land looser being dissatisfied with the amount awarded by the Spl.LAO, filed application before the Hon'ble Arbitrator and Deputy Commissioner, Mangaluru under section 3G(5) of National Highways Act. The learned arbitrator has enhanced the compensation to the lands in Sy.No.14/4 which

measures 694 sq.mtrs (17.15 cents) of Adduru village at commercially converted rates.

4. Being dissatisfied by the said order dated 21.1.2025 passed by the Arbitrator, the **petitioner/land looser** approached this Court under Section 34 of Arbitration and Conciliation Act, 1996 and Order VII Rule 1 to 3 CPC on following among other grounds:

a. The respondent No.2 and 3 herein not at all considered the nature of the land as on the date of acquisition of the land. As on the date of notification the subject matter of the acquisition was used for commercial purposes. The said property is situated adjacent to the National Highway and the property was in use of the commercial purposes. Furthermore, the respondent No.2 not at all considered the fact that the said property is best suitable for commercial purpose. The respondent No.2 herein without taking note of these facts taken the guideline valuation on the basis of converted land. If at all the commercial converted guideline value was taken into consideration the petitioner herein was entitled to get the compensation which is much higher than the compensation now fixed by the respondents. Even as per the government guideline value the commercial converted property will fetch 40% higher value than the residential converted property.

b. The schedule property which is acquired is the portion of the major extent of lands. The schedule property is situated at adjacent to the existing national highway. Even a portion of land is acquired the remaining properties of the applicant will become unable for any use. Furthermore the 40 mtrs adjacent to the national highway is considered as nu-undeveloped area. Therefore the adjacent properties of the applicant will become useless therefore while

considering the compensation these facts were not at all considered by the respondents. That if the 40 mtrs adjacent lands to the highway is treated as under developed area then the special land acquisition officer ought to have acquired the properties upto 40 mtr and ought to have paid compensation.

c. The land is acquired for widening of the existence National Highway. The acquired lands adjacent to the national highway ad was fetching very high value in the market . These facts are not at all considered by the respondents while fixing the compensation.

d. It is a compulsory land acquisition. While dealing with the compulsory land acquisition the respondent No.2 and 3 ought to have considered the sacrifice of the petitioner and her sentiments towards the land and the irreparable injuries and hardship which is going to be faced by the petitioner. The land acquisition divided the properties of the petitioner and she is not in a position to enjoy the remaining properties as a unit. The bifurcation of the property caused great hardship to the petitioner and it also resulted in financial loss to the petitioner. The respondents herein while passing the award ought to have considered these facts.

e. While considering the compensation the respondents herein treated the acquired land was situated at interior part of the village infact the land which was acquired is situate adjacent to the existing National Highway.

f. The schedule property is used for non-agricultural use and even if it is not converted for agricultural use and the same are wet lands and used for commercial purpose hence the respondents ought to have considered the valuation of the property on the basis of the converted land and also ought to have taken the market value as the schedule property is situated adjacent to National Highway and at the commercial area. The schedule property which is suitable for commercial transaction or commercial business. Without considering these aspects the respondents herein considered the

said properties as like an agricultural land and fixed the compensation. Even as per the government guideline value the commercial property will fetch 40% higher than the residential converted value. The respondents herein failed to take note of these facts.

g. Even though a portion of the property has been acquired but for the remaining properties the National Highway Authority of India is not issuing permission for conversion of the other remaining lands. Therefore the remaining properties of the petitioner are not in a position to convert or to develop. These facts are not at all considered by the respondent No.2 and 3 while awarding compensation.

h. The method adopted by the respondent No.2 for fixing of the value of the property is not proper and the same is arbitrary. The value fixed @ Rs.1630/- per sq.mtr for the converted land at Addur village of Mangalore taluk is highly disputed and the same is very meager. Further the enhancement made by the respondent No.3 is also not acceptable and even the respondent No.3 has not specified the exact amount of enhancement and he passed a cyclostyle order without considering the facts and circumstances of the case and also without considering the documents produced by the petitioner and also not considering the nature of the land. Further even though the respondent No.3 enhanced the compensation directing to pay the commercial value but he has failed to fix what is the exact value of the non converted land unless the value of the non converted land is fixed it is impossible to get the commercial value.

i. The respondents No.2 and 3 ought to have considered the value of property @ 5,00,000/- per cents and also awarded compensation for developments and on tree growths and also would have paid 4 times compensation on the total market value of the property and also awarded 100% solatium on the compensation.

j. The learned arbitrator has not followed the principles that if at all in a similar proceedings in the same village, if the compensation is enhanced in certain other properties, such enhanced valuation should be considered in a present case the respondent No.3 has failed to apply such principles.

k. Though the respondent No.3 passed an award making meager enhancement but he has not directed the payment of other benefits admissible under the provisions of the RFCTLARR Act 2013, the order is silent regarding the multiplication factor as well as solatium as specified in the first schedule and hence the petitioner herein deprived of the same.

l. The order passed by the arbitrator respondent No.3 to the extent objected herein suffer from non-application of mind and non consideration of material produced before him. While the respondent No.3 was justified in enhancing the compensation, he ought to have seen that during the relevant period the market value adopted in the office of sub-registrar of Mangalore taluk. The compensation granted enhanced is not adequate.

m. Even though the compensation is enhanced, the enhancement made is insufficient. Considering the relevant documents and the law applicable to the facts on hand the compensation amount has been considerably enhanced. Infact, the compensation amount ought to have been enhanced as per the commercial converted value.

n. The respondent ought to have followed the provisions of REFCTLARR Act, 2013 and ought to have granted more compensation that granted on the impugned order. The fixation of value by the respondent No.3 is unjust, unreasonable and beyond all the facts and probabilities under law and he has valued very meagerly and ought to have granted more compensation. Hence prayed to allow the petition.

5. On service of notice to the respondents, the respondent No.1 & 2 appeared through their counsel and filed counter statement. The respondent No.3 has appeared through learned D.G.P and furnished the Arbitral records.

6. i. The respondent No.1 has filed counter statement contending that the petitioner has filed the instant petition under Section 34 of the A & C Act 1996 challenging the order in C.DIS.ARB(4)NH.LAQ.CR.10/2022-23 dated 11.3.2025 passed by the learned arbitrator to set aside the award. The petitioner has no grounds as provided under Sec.34(2) of the A & C Act for setting aside the arbitral award and not even stated in the memorandum of petition. Therefore, the instant arbitration petition is liable to be dismissed.

ii. It is settled position of law that enhancement of compensation amount is not a ground for setting aside the arbitral award under Sec.34(2) of the A & C Act before this court for setting aside the arbitral award. The Division Bench of Hon'ble High Court of Karnataka Bengaluru in the case of H.M.Shankaramurthy Vs. National Highways Authority of India reported in ILR 2010 Kar.3711 has held in para 13 that:

“A provision for setting aside an award contending that the awarded is not sustainable in law on any one of the grounds as indicated above can never be construed as a provision enabling the land owner seeking for enhancement of the compensation amount as determined by the arbitrator.”

Following the aforesaid judgment The Division Bench of Hon'ble High Court of Karnataka, Principal Bench at Bengaluru in MFA 532/2019 and connected case disposed vide order dated 19.7.2021

has held that Section 34(2) cannot be invoked seeking enhancement of compensation. The aforesaid settled position of law as followed in the case of S.Ningappa Vs. Special Land Acquisition Officer & Others reported in 2022 SCC online Kar.680 at para 10 held that:

“10. In view of the aforesaid decision taken by this Court, enhancement of compensation sought by the claimants/appellants would not come within the purview of Section 34 of the Act as explained by the Hon’ble Apex Court in Associate Builders supra and Sangyong Engineering & Construction Co.Ltd. Vs. NHAI (2019) 15 SCC 131.”

To challenge arbitral award on finding on fact is not a ground for setting aside the arbitral award. It is a matter of fact that the grounds raised in the instant arbitration petition is on the finding of facts and therefore arbitration petition filed by the petition is liable to be dismissed. On account of patent illegality on the face of arbitral award the respondent No.1/NHAI filed A.P.94/2025, ground of which is detailed in said petition, which is pending before this court, the same may be read as part and parcel of this statement of objection. Hence prayed to reject the petition.

Facts in AP No.94/2025:

7. Being dissatisfied by the said award dated 11.3.2025 passed by the Arbitrator, the **petitioner/NHAI** approached this Court under Section 34(2) of Arbitration and Conciliation Act, 1996 and 3G(5) of National Highway Act on following among other grounds:

i. The impugned award passed by the arbitrator is patently illegal on the face of the award and hence liable to be interfered with and set aside as per the provisions of Section 34(2)(b)(ii), (iii) & (2A) of A & C Act, 1996

ii. It is submitted that while determination of compensation, the respondent No.3 strictly adhered to the applicable provisions of RFCTLARR and NH Act and followed the procedures prescribed under the NH Act and passed an award fixing compensation for acquired land of the respondent No.1 herein among others.

iii. It is submitted that in terms of Section 26 of RFCTLARR Act, the compensation to be fixed for the acquired land, considering the average sales statistics of 3 years preceding 3A(1) notification dated 9.1.2020 and the guideline values in respect of the lands in Adduru village. Respondent No.3 in accordance with law has considered the highest among the average sales statistics value and guideline value provided by the sub registrar office. As specified U/s. 26 of RFCTLARR Act 2013, while calculating market value, guideline value or average sale price whichever is higher is considered. Having considered all aspects as narrated in Sec.3G(1) of NH Act 1956 and as amended Act 1997 and Sec.26 to 29 of RFCTLARR Act 2013 and accordingly compensation was determined and award passed. However the learned arbitrator ignored the fact, that the acquired land of the respondent No.1 was

residential converted land as per documents as on the date of notification U/s.3A(1) of the NH Act, which is contrary to law and hence liable to be set aside.

iv. The impugned award is prima facie patently illegal, as the learned arbitrator has failed to recognize and duly apply the requisite and applicable legal provisions given under Section 3G(7)(a) of N.H.Act and enhanced the award amount has without any consideration or reasoning enhanced to commercially converted of the arbitral award passed by the competent authority without relying on any documents ordered for the enhanced amount solely on the basis of mere imagination.

v. The impugned award is in conflict with the public policy of India, in as much as the same is in contravention with the fundamental policy of Indian Law since the impugned award is in contravention of provisions of the NH Act, RFCTLARR Act and A & C Act being patently illegal on the face of it and therefore the impugned award is liable to be interfered with and hence liable to be set aside as per the provisions of Section 34(2)(ii)(iii) & (2A) of A & C Act.

vi. The learned arbitrator has completely failed to consider the mandatory provisions of Section 26 of the RFCTLARR Act and enhanced the award amount solely on the basis of mere imagination and with no valid reasoning or evidence to substantiate the claim. Section 3G(5) of the NH Act provides that if the amount determined by the competent authority is not acceptable to either of the parties, the same shall be determined by the Arbitrator and such determination shall be under Section 3G(7) of the NH Act. Therefore, the learned arbitrator is bound to adjudicate the market value of acquired land as on the date of notification issued under Section 3A(1) of the N.H.Act.

vii. The Hon'ble Supreme Court in the case of **Ssangyong Engineering & Construction Co.Ltd. Vs. NHAI – (2019) 15**

SCC 131- following Associate Builder's case and other cases has held that patent illegality appearing on the face of the award goes to the root of the matter. Further, it was held that arbitral award which would potentially result in unjust enrichment out of public exchequer is against the fundamental policy of Indian law.

viii. The finding of the learned arbitrator is wholly perverse, contrary to law and against the settled position of law and hence the impugned arbitral award dated 11.03.2025 passed by the learned arbitrator is liable to be set aside.

ix. The learned arbitrator has failed to give reasons as mandatorily required to be given under section 31(3) of the A & C Act, 1996; which reads as follows:

“31(3) The arbitral award shall state the reasons upon which it is based, unless:-

(a) The parties have agreed that no reasons are to be given, or
(b) The award is an arbitral award on agreed terms under section 30. “Hence, it is therefore clear that learned arbitrator has passed the impugned award in contravention of section 31(3) of the A & C Act and failed to give reasons, therefore the impugned award is liable to be set aside.

x. The learned arbitrator has failed to consider that the onus will be on the claimant/respondent No.1 and 2 to establish if there has to be an enhancement in the market value of the acquired land as on the date of notification issued under Section 3A(1) of the N.H.Act. However, no such proof was adduced by the respondent No.1 and 2. The learned arbitrator without satisfactory evidence/documents has enhanced the compensation which is contrary to law.

xi. The learned arbitrator failed to follow the provision of RFCTLARR Act as well as NH Act in respect of re-determination of compensation respect of acquired lands. It is a settled position of

law that violation of applicable statutes cannot be said to be in public interest.

Hence prayed to allow the petition.

8. The claimant/landloser has filed objection to the petition filed by the NHAI and contended that the above petition is neither maintainable under law nor on merits and is liable to be dismissed in limine. The claimant has taken similar grounds in her petition A.P.No.59/2025. The petition filed by the petitioner/NHAI is not maintainable as there are no grounds to allow the petition. This respondent has also filed petition in A.P.No.59/2025 which is pending before this court. Hence prayed to dismiss the petition filed by the NHAI.

9. The respondent No.2 filed memo adopting the objection of the respondent No.1.

10. Heard arguments of both sides. The learned counsel for the NHAI and claimant-land loser filed notes of arguments.

11. The following points would arise for my consideration:

1. Whether the petitions in A.P.No.59/2025 & 94/2025 are within time as prescribed under Section 34(3) of Arbitration and Conciliation Act 1996?
2. Whether claimant/land loser and NHAI and complied Section 34(5) of the Act?

3. Whether the claimant/land looser and NHAI have made out grounds to set aside the arbitral award as provided under section 34 of Arbitration and Conciliation Act 1996?

4. What order ?

12. My answer to the aforesaid points are as follows :

Point No.1 : In the Affirmative.

Point No.2 : In the affirmative

Point No.3 : In the negative

Point No.4: As per final order
for the following:

REASONS

13. **Point No.1:** Perusal of Section 34(3) clearly places embargo to challenge the arbitral award after 3 months and 30 days of the receipt of arbitral award by the party. In the present case the award was passed on 11.03.2025 and the claimant has filed this petition on 19.4.2025. Hence the petition of the claimant is filed in time i.e. within three months from the date of award.

14. In respect of the petition filed by the NHAI, the impugned award was passed on 11.3.2025. The award was furnished to the petitioner/NHAI on 19.3.2025 and this petition is filed on 11.6.2025. Thereby, petitions filed by NHAI is within three months as provided under Section 34(3) of Arbitration and

Conciliation Act. Hence point No.1 taken up for consideration in both the petitions are held in the **Affirmative**.

15. **Point No.2:-** In the 2015 amendment which came into effect from 23.10.2015, a new sub section(5) has been inserted to section 34, wherein application for setting aside of award is to be filed after issuing prior notice to the other party. Notice dated 21.3.2025 is produced by the **claimant** to establish compliance U/Sec.34(5) of the A & C Act. The postal receipts dated 22.3.2025 are produced to substantiate that notice was sent to the respondents.

16. Further the notice dated 08.4.2025 is produced by **NHAI** to establish compliance U/Section 34(5) of the A & C Act. The postal receipts dated 8.4.2025 are produced to substantiate that notice was sent to the respondents. Accordingly claimant and NHAI have complied the provisions of Sec.34(5) of the A & C Act. Hence, point No.2 taken up for consideration is held in **affirmative**.

17. **Point No.3 in A.P.No.94/2025 (filed by NHAI):**

In so far as grounds to set aside the arbitral award as provided under Sub Section 2 or 2-A of Section 34 of the Act is concerned, it is imperative for this court to examine the scope and power of the court U/s. 34 of the A & C Act.

18. The Hon'ble Supreme Court in its decision reported in **AIR 2021 SC 4661 – PSA SICAL Terminals Pvt.Ltd. Vs. Board of Trustees**, observed that:

“In an application U/s. 34 of the Act, court is not expected to act as an appellate court and re-appreciate evidence. Scope of interference would be limited to grounds provided U/s. 34 of the Act. Interference would be so warranted when award is in violation of “Public Policy of India”, which has been held to mean “Fundamental Policy of Indian Law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sec.18 and Sec.34(2)(a)(iii) of the Arbitration Act would continued to be the grounds of challenge of an award. The ground of interference on the basis that award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral award that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally re-appreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.”

In view of the proposition of law laid down by the Hon'ble Supreme Court, this court has limited jurisdiction to interfere with the award only when petitioner has made out grounds enumerated

under sub-section (2) or 2-A of Sec.34 of Arbitration and Conciliation Act.

19. The impugned award was passed after the Arbitration and Conciliation (amendment) Act, 2015 came into force. The said amendment brought about major changes to Sec.34 of the Act. Changes were aimed at restricting courts from interfering with the arbitral award on the ground of “public policy”. Explanation-2 of Sec.34(2) states that:

“for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute”.

The explanation makes it clear that in no way court be entitled to review the award on merits of the dispute nor reappraise the evidence unless petitioner is able to establish grounds enumerated under that provision of law.

20. In this case the arbitration award arose out of statutory arbitration. Respondent No.1 before arbitrator/claimant has no say in the appointment of arbitrator. Section 3G(5) of the National Highways Act provides that if the amount determined by the Land Acquisition Authority is not acceptable to either of the parties, the

amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. The appointment of arbitrator under the National Highways Act is not a consensual process and it is only by the acquiring authority.

21. The Ministry of Road Transport and Highways by its notification dated 13.1.2016 clarified that in cases initiated under National Highways Act 1956 but award has not been announced by 31.12.2014, RFCTLARR Act 2013 will apply U/s.24(1) of Act. In this case evidently award was passed by the Spl.LAO on 15.04.2021. In view of the same, order of the Arbitrator awarding benefits under RFCTLARR Act 2013 is legally permissible.

22. The contention raised by the petitioner/NHAI is that, enhancement is without any evidence. In view of the same court is bound to examine parameters to be considered to determine compensation.

23. The Hon'ble Supreme Court in the case of **(2022) 15 SCC 1-National Highways Authority of India Vs. Sri.P.Nagaraju @ Cheluvaiah & Anr.**, wherein it was held that:

“...In that light, the limited scope available under Act, 1996 to assail an award as provided under Section 34 of the said Act is also to be kept in view even in these appeals. while doing so, what cannot also be lost

sight of is the fact that the arbitration was not initiated based on an agreement entered into between the contracting parties under a contract but is under a statutory provision which provides for such arbitration in lieu of 'reference' under the regime for acquisition of land for public purpose. One of the parties to such arbitration proceedings would also be a land loser and the adjudication in the arbitration proceedings is not based on any definite terms of the contract providing for mutual obligations determinable under the contract but for determination of just compensation in respect of land which is compulsorily acquired for a public purpose.”

“ It is contended that the factors to determine the compensation payable to the land loser as provided in Section 3G(7)(a) of the NH Act can only be the basis. In that view, it is contended that the parameters contained in Section 28 of RFCTLARR Act 2013 cannot be taken into consideration.”

“When land is acquired from a citizen, Articles 300A and 31A of the Constitution will have to be borne in mind since the deprivation of property should be with authority of law, after being duly compensated. Such law should provide for adequately compensating the land loser keeping in view the market value. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired. In that light, if Section 28 of RFCTLARR Act 2013 is held not

applicable in view of Section 3J of NH Act, the same will be violative of Article 14 of the Constitution. In that circumstance, the observation in **Tarsem Singh** (Supra) that Section 3J of NH Act is unconstitutional to that extent though declared so while on the aspect of solatium and interest, it is held so on all aspects relating to determining of compensation. In any event, the extracted portion of the notification dated 28.8.2015 is explicit that the benefits available to the land owners under RFCTLARR Act is to be also available to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, among which NH Act is one. Hence all aspects contained in Section 26 to 28 of RFCTLARR Act for determination of compensation will be applicable notwithstanding Section 3J and 3G(7)(a) of NH Act.”

24. The Hon'ble Supreme Court in its decision reported in **(2017) 9 SCC 426 - Narendra and others Vs. State of Uttar Pradesh**, held that, the proper compensation has to be awarded to the land losers. It is further held that, while awarding compensation, it is to be kept in mind in the matter of compulsory acquisition of lands by government, villagers whose land get acquired are not willing parties. It is not their voluntary act, and are compelled to give land to state for public purpose. Consideration to be paid to them is also not of their choice. The Hon'ble Supreme Court further held that, duty is cast upon the Court to award fair compensation and fairness requires that all those similarly situate are treated similar.

25. The Hon'ble Supreme Court clearly laid down parameters to be considered by the Arbitrator while adjudicating the arbitration petition or application filed by the land loser in the above cases.

26. On careful examination the impugned order passed by the learned arbitrator, he directed petitioner/NHAI to pay compensation for the acquired land of 17.15 cents (694 sq.mtrs) as per commercially converted rate instead of Rs.65,966/- per cent as awarded by the Spl.LAO, as the said land is commercially converted land. The learned arbitrator has enhanced the compensation from Rs.65,966/- per cent to **commercially converted rates** for 17.15 cents of land in Sy.No.14/4. The said lands are converted for Commercial purpose as per the order of the Deputy Commissioner in No.12210 dated 23.09.2019. But while determining the compensation the 2nd respondent has fixed residentially converted rate and hence commercial converted rates was awarded.

27. Learned arbitrator taking into consideration of the lapse on the part of the Land Acquisition officer has directed the National Highway to pay compensation considering the land in Sy.No.14/4 measuring 694 sq.mtrs as commercially converted land. Learned arbitrator applied parameters provided under

Sec.3G(7) of National Highways Act while determining the compensation.

28. The arbitrator while passing the award has taken consideration the parameters viz., that property acquired situated adjacent to National Highway-169, property acquired is situated in Adduru village of Mangaluru Taluk, acquired land is commercially converted in nature etc. The learned arbitrator has taken into consideration location of the land, nature of the land acquired by the NHAI, severance of land from the remaining portion and also potential value of the land. He has assigned reasons for enhancement in point No.2 of the impugned order and also directed National Highway Authority to pay compensation applying the benefits admissible under the provisions of RFCTLARR Act. In view of the same, the order of the learned arbitrator is legally sustainable.

28. Another contention raised by NHAI is that proper opportunity has not been provided by the arbitrator to the petitioner/NHAI herein.

On careful examination of the impugned order, learned arbitrator has passed order after the issuance of notice to the National Highway Authority and the Spl.Land Acquisition Officer as per the notice dated 16.05.2024. It is evident that sufficient

opportunity has not been provided to the petitioners herein. As such impugned arbitral award is not liable to be set aside on that count.

29. The learned arbitrator after taking into consideration of the nature of the land has directed National Highway to pay compensation considering land as commercially converted rate for 694 Sq.Mtrs of land in Sy.No.14/4. As such the order passed by the learned arbitrator is legally sustainable and no prejudice has been occasioned to the petitioner herein-National highway. Petitioner/NHAI has not made out any established grounds to assail the award. The impugned award not suffers from patent illegality or against public policy. In the considered opinion of this court, the reasoning of the learned arbitrator not calls for interference by this court as no grounds under Sub Section 2 or 2-A of Section 34 of the Arbitration and Conciliation Act have been made by the NHAI. **In view of the same, impugned award is not liable to set aside on that count.**

30. Point No.3 in A.P.59/2025

The claimant/landloser has assailed the award contending that the learned arbitrator has not considered the averment in the petition that a portion of land is acquired and the remaining properties will become unable for any purpose. 40 mtrs adjacent to the National Highway is considered as undeveloped areas. Hence

the adjacent properties of the petitioner will become useless and therefore while considering the compensation these facts were not at all considered by the respondents. If the 40 mtrs of land adjacent to highway is treated as under developed area, then the Spl.LAO ought to have acquired the properties upto 40 mtrs and ought to have paid compensation.

31. Petitioner counsel has relied on a decision rendered by the Hon'ble HCK Bengaluru decided in **Writ Petition No.36314 of 2019 (LB-RES) PIL dated 25.08.2021** to argue that as per S. 7 & 9 of the Karnataka Highways Act, 1964 r/w. Circular dated 22.12.2005 of the State Govt, no construction can be put up within 40 meters from the center of the road/high way. Thereby, the land losers/owners are curtailed of their right to effectively use the land comprised in the 40 meters, but no compensation is paid for the 40 meters land.

32. It is pertinent to note in this context that, this rule cannot be squarely imported to the facts of the instant case to hold that, the land abutting highway upto 40 meters is also deemed to be acquired, and therefore, petitioner/land loser is to held entitled for that area also. In fact, in the case decided by the HCK, the Court directed the Chief Secretary to hold a fact finding enquiry about the person/s who had granted illegal permission for putting up construction in "no construction zone". Further, it noteworthy that

what is prohibited is putting up permanent construction etc., and not the usage of the land for easy ingress egress etc. to the land abutting the highway. The earmarked "no construction zone" appears to be predominantly for safety reasons, future road expansion, constructing service road etc. In any case, this Court is precluded from applying the findings of the Hon'ble HCK in the writ proceedings supra and set aside the award as patently illegal or arbitrary or to be an award that shocks the conscience of the Court.

33. Likewise, petitioner/land loser counsel has relied on another decision of the Hon'ble HCK Bengaluru in the case of **Shri Manohar Patel Vs. UOI decided in WP No. 10103/2020 (LA-RES) dated 19.07.2022** to contend that, damage if any sustained by the land loser while taking possession/acquisition of the land which also affects the earning of the land loser is to be considered under parameters contemplated u/s. 3G(7) of the NHAI Act and compensation is to be awarded thereof also.

34. Here, it is noteworthy that the rule of "no construction zone" cannot be equated to damage sustained by the land loser or cannot be deemed that it would always reduce the earning capacity of the land loser. On the other hand, any such grievance of alleged damage/loss of earning is to be examined on a case to case basis and cannot be generalized to hold that, land forming part of the set back area of 40 meters would always lead to loss of earning.

Therefore, both the decisions relied on by the petitioner/land loser do not completely justify the claim of enhancement of compensation on the ground of non-compliance of parameters U/s. 3G (7) of the NHAI Act, and are distinguishable to the facts of the instant case. Thereby, **petitioner/claimant** and **NHAI** have not made out any established grounds to assail the award. The impugned order does not suffer from patent illegality or cannot be said to be against public policy.

35. Further petitioner claimant and NHAI have not made out any established grounds to assail the award. The impugned order does not suffer from patent illegality or against public policy. Catena of decisions of the Hon'ble Apex Court on Sec.34 of the Act have now made it clear beyond any ambiguity that an award can be set aside U/Sec.34 of the Act by a District Court only when - (i) such an award is patently illegal on the face of it; (ii) the award was in contravention with the fundamental policy of Indian law; (iii) it is in conflict with the most basic notions of morality or justice; (iv) the award was induced or affected by fraud or corruption or was in violation of Sec.75 or Sec.81 of the Act and when the award shocks the conscience of the court.

36. Catena of decisions of the Hon'ble Apex Court on Sec.34 of the Act (pursuant to the decision of Associate Builders, PACL Terminals etc.,) have now made it clear beyond any

ambiguity that an award can be set aside U/Sec.34 of the Act by a District Court only when - (i) such an award is patently illegal on the face of it; (ii) the award was in contravention with the fundamental policy of Indian law; (iii) it is in conflict with the most basic notions of morality or justice; (iv) the award was induced or affected by fraud or corruption or was in violation of Sec.75 or Sec.81 of the Act and when the award shocks the conscience of the court.

a. In **(2015) 3 SCC 49 – Associate Builders v/s. Delhi Development Authority**, the Hon'ble Supreme Court observed that:

It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd., (2012) 1 SCC 594, this Court held:

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing

or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.

b. In the case of **Dyna Technologies Private Limited Vs. Crompton Greaves Limited (2019) 20 SCC 1**, the Hon'ble Supreme Court observed that:

24. There is no dispute that Sec.34 of the Arbitration Act limits a challenge to an award

only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Sec.34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Sec.34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Sec.34 of the Arbitration Act.

c. In the case of **MMTC Ltd. Vs. Vedanta Ltd. (2019) 4 SCC 163**, the Hon'ble Supreme Court observed that:

11. As far as section 34 is concerned, the position is well settled by now that the Court does not sit in

appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii), i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b) (ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA*, (2015) 3 SCC 49). Also see *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445; and *McDermott International v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181). It is relevant to note that after the 2015 amendments to

Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub section (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

12. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

d. In the case of **Consolidated Construction Consortium Limited Vs. Software Technology Parks of India – 2025 Supreme(SC) 721**, the Hon'ble Supreme Court observed that:

23. Scope of Sec.34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Sec.34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Sec.34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Sec.34 of the Act. The court exercising powers under Sec.34 has perforce to limit its jurisdiction within the four corners of Sec.34. It cannot travel beyond Sec.34. Thus, proceedings under Sec.34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Sec.34 of the 1996 Act or the terms of the agreement.

24. Therefore, the role of the court under Sec.34 of the 1996 Act is clearly demarcated. It is a

restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.

Thus, in the considered opinion of this court, the reasoning of the learned arbitrator does not call for interference by this court as no grounds under Sub Section 2 or 2-A of Section 34 of the Arbitration and Conciliation Act have been made out by the petitioners in both petitions. **Accordingly point No.3 in A.P.59/2025 and A.P.94/2025 are answered in the negative.**

37. **Point No.4:-** For the foregoing reasons on Points No.1 to 3, I proceed to pass the following:

ORDER

The arbitration petition filed by the claimant/land looser in A.P.No.59/2025 U/s. 34 of A&C Act r/w Order VII Rule 1 to 3 of CPC and the arbitration petition filed by the petitioner/NHAI in A.P.No.94/2025 U/s. 34(2) of A & C Act r/w Sec.3G(5) of National Highways Act 1956 are dismissed.

Consequently, the impugned Award in C.DIS.ARB(4)NH.LAQ.CR.10/2022-23 dated 11.03.2025 is hereby confirmed.

Parties to bear their own costs.

Office to draw decree accordingly.

Office to retain this original common judgment in the file of A.P.No.59/2025 and a copy of the same in A.P.No.94/2025.

Send back the arbitral records to the arbitrator along with certified copy of this judgment forthwith.

(Dictated to the Stenographer Grade-1 directly on computer, typed copy corrected and then pronounced by me in the open Court on this the 10th day of June, 2026).

(Vinay.D)

I Addl. District and Sessions Judge,
Mangaluru.