

Received On : 04/11/2023
Registered On : 01/11/2023
Decided On : 31/12/2025
Duration : YY-MM-DD
2 1 27
Exhibit : 67

COURT OF SECOND ADDITIONAL DISTRICT JUDGE,
PATAN AT RADHANPUR

CIVIL MISC. APPLICATION NO.150/2023

WITH

CIVIL MISC. APPLICATION NO.151/2023

WITH

CIVIL MISC. APPLICATION NO.152/2023

WITH

CIVIL MISC. APPLICATION NO.153/2023

WITH

CIVIL MISC. APPLICATION NO.154/2023

WITH

CIVIL MISC. APPLICATION NO.155/2023

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CIVIL MISC. APPLICATION NO.156/2023

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CIVIL MISC. APPLICATION NO.157/2023

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CIVIL MISC. APPLICATION NO.158/2023

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CIVIL MISC. APPLICATION NO.159/2023

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CIVIL MISC. APPLICATION NO.160/2023

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CIVIL MISC. APPLICATION NO.161/2023

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CIVIL MISC. APPLICATION NO.162/2023

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CIVIL MISC. APPLICATION NO.163/2023

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CIVIL MISC. APPLICATION NO.164/2023

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CIVIL MISC. APPLICATION NO.165/2023

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CIVIL MISC. APPLICATION NO.166/2023

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CIVIL MISC. APPLICATION NO.167/2023

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CIVIL MISC. APPLICATION NO.168/2023

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CIVIL MISC. APPLICATION NO.169/2023

WITH

CIVIL MISC. APPLICATION NO.170/2023

WITH

CIVIL MISC. APPLICATION NO.171/2023

WITH

CIVIL MISC. APPLICATION NO.172/2023

APPLICANTS:-

CIVIL MISC. APPLICATION NO.150/2023

1. Koli Dahyabhai Dharamshibhai, Age: 70 Years, Occu: Agriculture,
Resi at : Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.151/2023

1. Rabari Ratanbhai Savabhai, Age: 80 Years, Occu: Agriculture,
Resi at : Village Sinad, Tal: Radhanpur, District: Patan.

CIVIL MISC. APPLICATION NO.152/2023

1. Koli Madhabhai Karamshibhai, Age: 65 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.153/2023

1. Ayar Dalabhai Ratnabhai, Age: 55 Years, Occu: Agriculture,
Resi at : Village Dhokavada, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.154/2023

1. Koli Waghbhai Bhalabhai, Age: 85 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.155/2023

1. Koli Bajubhai Bhalabhai, Age: 65 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.156/2023

1. Koli Ranaji Lakhaji, Age: 70 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.157/2023

1. Koli Jetiben Devrajbhai, Age: 85 Years, Occu: Housewife,
2. Koli Popatbhai Devrajbhai, Age: 57 Years, Occu: Agriculture,
3. Koli Kesabhai Devrajbhai, Age: 48 Years, Occu: Agriculture,
4. Koli Manabhai Devrajbhai, Age: 39 Years, Occu: Agriculture,
5. Koli Babubhai Devrajbhai, Age: 35 Years, Occu: Agriculture,
6. Koli Shankuben Devrajbhai, Age: 32 Years, Occu: Housewife,
 Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.158/2023

1. Koli Jadiben Jelambhai, Age: 97 Years, Occu: Housewife,
2. Koli Mafabhai Jelambhai, Age: 68 Years, Occu: Agriculture,
3. Koli Devabhai Jelambhai, Age: 59 Years, Occu: Agriculture,
 Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.159/2023

1. Koli Ramjibhai Dharamshibhai, Age: 53 Years, Occu: Agriculture,
 Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.160/2023**Legal Heir of Deceased Koli Jesabhai Motibhai**

1. Koli Tejabhai Jesabhai, Age: 63 Years, Occu: Agriculture,
 Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.161/2023

1. Koli Devabhai Savsibhai, Age: 64 Years, Occu: Agriculture,
 Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.162/2023

1. Koli Devshibhai Jehabhai, Age: 80 Years, Occu: Agriculture,
2. Legal Heirs of Deceased Koli Haribhai Jehabhai
2.1 Legal Heirs of Deceased Koli Chandabhai Haribhai

2.1.1 Koli Madhiben Chandabhai,

Age: 60 Years, Occu: Agriculture,

2.1.2 Koli Maheshbhai Chandabhai

Age: 30 Years, Occu: Agriculture,

2.1.3 Koli Nitaben Chandabhai

Age: 35 Years, Occu: Agriculture,

2.2 Koli Amratbhai Haribhai, Age: 36 Years, Occu: Agriculture,**2.3 Koli Chamabhai Haribhai,** Age: 42 Years, Occu: Agriculture,**2.4 Koli Puriben Haribhai,** Age: 39 Years, Occu: Housewife,**3. Koli Ramabhai Jehabhai,** Age: 70 Years, Occu: Agriculture,**4. Legal Heirs of Deceased Koli Ajabhai Jehabhai****4.1 Koli Menaben Ajabhai,** Age: 70 Years, Occu: Housewife,**4.2 Koli Jivaben Ajabhai,** Age: 48 Years, Occu: Agriculture,**4.3 Koli Jagmalbhai Ajabhai,** Age: 35 Years, Occu: Agriculture,**4.4 Koli Danabhai Ajabhai,** Age: 31 Years, Occu: Agriculture,**4.5 Koli Jadiben Ajabhai,** Age: 27 Years, Occu: Agriculture,**5. Koli Tejabhai Jehabhai,** Age: 63 Years, Occu: Agriculture,**6. Koli Laxmiben Jehabhai,** Age: 66 Years, Occu: Housewife,**7. Koli Babiben Jehabhai,** Age: 60 Years, Occu: Housewife,

All Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.163/2023**1. Koli Menaben Ajabhai,** Age: 70 Years, Occu: Housewife,**2. Koli Jivaben Ajabhai,** Age: 48 Years, Occu: Housewife,**3. Koli Jagmalbhai Ajabhai,** Age: 35 Years, Occu: Agriculture,**4. Koli Danabhai Ajabhai,** Age: 31 Years, Occu: Agriculture,**5. Koli Jadiben Ajabhai,** Age: 27 Years, Occu: Housewife,

Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.164/2023**1. Koli Mumjibhai Vershibhai,** Age: 83 Years, Occu: Agriculture,**2. Koli Dadamben Vershibhai,** Age: 90 Years, Occu: Housewife,**3. Koli Talsiben Sagathaji,** Age: 60 Years, Occu: Housewife,**4. Koli Khengarji Sagathaji,** Age: 57 Years, Occu: Agriculture,**5. Koli Chamanji Sagathaji,** Age: 55 Years, Occu: Agriculture,

Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.165/2023**1. Koli Dahyabhai Dharamshibhai,** Age: 70 Years, Occu: Agriculture,

Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.166/2023

1. **Thakor Sonaji Valaji**, Age: 48 Years, Occu: Agriculture,
 2. **Thakor Gundaji Valaji**, Age: 45 Years, Occu: Agriculture ,
 3. **Thakor Sanuben Valaji**, Age: 39 Years, Occu: Housewife,
 4. **Thakor Balaji Valaji**, Age: 36 Years, Occu: Agriculture,
- Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.167/2023

1. **Koli Devshibhai Jehabhai**, Age: 80 Years, Occu: Agriculture,
 2. **Legal Heirs of Deceased Koli Haribhai Jehabhai**
 - 2.1 **Legal Heirs of Deceased Koli Chandabhai Haribhai**
 - 2.1.1 **Koli Madhiben Chandabhai**
Age: 60 Years, Occu: Agriculture,
 - 2.1.2 **Koli Maheshbhai Chandabhai**
Age: 30 Years, Occu: Agriculture,
 - 2.1.3 **Koli Nitaben Chandabhai**
Age: 35 Years, Occu: Agriculture,
 - 2.2 **Koli Amratbhai Haribhai**, Age: 36 Years, Occu: Agriculture,
 - 2.3 **Koli Chamabhai Haribhai**, Age: 42 Years, Occu: Agriculture,
 - 2.4 **Koli Puriben Haribhai**, Age: 39 Years, Occu: Housewife,
 3. **Koli Ramabhai Jehabhai**, Age: 70 Years, Occu: Agriculture,
 4. **Legal Heirs of Deceased Koli Ajabhai Jehabhai**,
 - 4.1 **Koli Menaben Ajabhai**, Age: 70 Years, Occu: Housewife,
 - 4.2 **Koli Jivaben Ajabhai**, Age: 48 Years, Occu: Agriculture,
 - 4.3 **Koli Jagmalbhai Ajabhai**, Age: 35 Years, Occu: Agriculture,
 - 4.4 **Koli Danabhai Ajabhai**, Age: 31 Years, Occu: Agriculture,
 - 4.5 **Koli Jadiben Ajabhai**, Age: 27 Years, Occu: Agriculture,
 5. **Koli Tejabhai Jehabhai**, Age: 63 Years, Occu: Agriculture,
 6. **Koli Laxmiben Jehabhai**, Age: 66 Years, Occu: Housewife,
 7. **Koli Babiben Jehabhai**, Age: 60 Years, Occu: Housewife,
- All Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.168/2023

1. **Koli Jadiben Jemalbai** , Age: 93 Years, Occu: Housewife,
2. **Legal Heirs of Deceased Koli Mansukhbhai Jemalbai**
 - 2.1 **Koli Shankuben Mansukhbhai**, Age: 60 Years, Occu: Housewife,
 - 2.2 **Koli Amratbhai Mansukhbhai**, Age: 42 Years, Occu: Agriculture,
 - 2.3 **Koli Lilaben Mansukhbhai**, Age: 35 Years, Occu: Housewife,
 - 2.4 **Koli Ganpatbhai Mansukhbhai**, Age: 27 Years, Occu: Agriculture,
 - 2.5 **Koli Madhiben Mansukhbhai**, Age: 24 Years, Occu: Housewife,
 - 2.6 **Koli Bharatbhai Mansukhbhai**, Age: 18 Years, Occu: Agriculture,

3. **Koli Mafabhai Jemalbhai**, Age: 68 Years, Occu: Agriculture,
4. **Koli Devabhai Jemalbhai**, Age: 59 Years, Occu: Agriculture,
5. **Legal Heirs of Deceased Koli Baluben Jemalbhai**
- 5.1 **Koli Prahladbhai Valabhai**, Age: 40 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.169/2023

1. **Thakor Sonaji Valaji**, Age: 48 Years, Occu: Agriculture,
2. **Thakor Gundaji Valaji**, Age: 45 Years, Occu: Agriculture ,
3. **Thakor Sanuben Valaji**, Age: 39 Years, Occu: Housewife,
4. **Thakor Balaji Valaji**, Age: 36 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.170/2023

1. **Koli Bhembhai Kalyanbhai**, Age: 60 Years, Occu: Agriculture,
2. **Koli Daluben Kalyanbhai**, Age: 62 Years, Occu: Housewife,
3. **Koli Shankuben Kalyanbhai**, Age: 58 Years, Occu: Housewife,
4. **Koli Champaben Kalyanbhai**, Age: 55 Years, Occu: Housewife,
5. **Koli Takhuben Bhembhai**, Age: 57 Years, Occu: Housewife,
6. **Koli Narsangbhai Bhembhai**, Age: 35 Years, Occu: Agriculture,
7. **Koli Balvantbhai Bhembhai**, Age: 28 Years, Occu: Agriculture,
8. **Koli Balabhai Bhembhai**, Age: 25 Years, Occu: Agriculture,
9. **Koli Bababhai Bhembhai**, Age: 23 Years, Occu: Agriculture,
10. **Koli Daniben Bhembhai**, Age: 37 Years, Occu: Housewife,
11. **Koli Gitaben Bhembhai**, Age: 30 Years, Occu: Housewife,
12. **Koli Lilaben Bhembhai**, Age: 26 Years, Occu: Housewife,
13. **Koli Bhartiben Bhembhai**, Age: 20 Years, Occu: Housewife,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.171/2023

1. **Koli Devabhai Savsibhai**, Age: 64 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

CIVIL MISC. APPLICATION NO.172/2023

1. **Legal Heir of Deceased Koli Dharamshibhai Motibhai**
Koli Ramjibhai Dharamshibhai, Age: 53 Years, Occu: Agriculture,
Resi at : Village Varnosari, Tal: Santalpur, District: Patan.

VERSUS**OPPONENTS :-**

1. **Project Director,**
National Highway Authority of India,
National Highway Office No. 204, 206, Second Floor,
S/9, Commercial Complex, Mount Abu Highway,
Bihari Baag, Palanpur, District : Banaskantha.
2. **Competent Authority & Additional Collector , Radhanpur,**
Office of Additional Collector, Radhanpur, District : Patan
3. **Patan Collector & Arbitrator,**
Collector Office, Patan,
District : Patan.

Subject :- Application u/s 34 of Arbitration & Conciliation Act, 1996 to set aside the order passed by the Arbitrator[Collector, Patan] on 26-06-2023.

APPEARANCE :-

Ld. Advocate for Applicants	: Mr.P.P.Sathvara
Ld. D.G.P. for the Opponent No. 1 and 3	: Mr.S.H.Thakker
Ld. Adv. for the Opponent No. 2	: Mr. A.V.Sumara

-:: JUDGMENT ::-

[1] The applicants of CMA NO. 150/23 to 172/23 have preferred application under section 34 of the Arbitration & Conciliation Act, 1996, on being aggrieved and dissatisfied with the order passed by the Arbitrator[Collector, Patan] on 24/06/2023 in their respective Reference Application. These Reference Applications before the Arbitrator [Collector, Patan] were preferred by the respective applicant against the Award passed by Competent Authority [Deputy Collector] for acquisition of agricultural land belonging to the applicants for construction of 4 lane National Highway 754k Greenfield Economic Corridor from Sanchor to Santalpur.

[2] The Ld Adv. for the applicant submitted an application at Exhibit-5 to group the matters from CMA 150/2023 to CMA 172/2023, accordingly this court, by passing an order below Exhibit-5, to group the CMA 150/2023 to CMA 172/2023, into one group and CMA 150/2023 was assigned as the main matter.

BRIEF FACTS OF THE CASE

[3] Land acquisition under the National Highways Act, 1956 [hereinafter referred as 'N.H.Act'] for the purpose of construction of a four-lane highway from Sanchor to Santalpur on National Highway No. 754K, from Kilometer 93.500 to Kilometer 129.636 was done by the Respondent No. 2, NHAI, consequently land acquisition for the part that was in Gujarat was done. Accordingly, land acquisition near village Varnosari, Taluka Santalpur, District Patan, was done by the Competent Authority, i.e Respondent No.2. [Deputy Collector, appointed vide Notification SO/2303(E), dated 05-06-2018, issued under section 3(a) of the N.H.Act]. Notification No. 4296(E), dated 04-09-2018, under Section 3A of the N.H.Act was published in the Times of India and vernacular newspaper. As per Section 3C of N.H.Act, all the parties who had raised objections, hearing of which took place on multiple dates and were adjudicated by the Competent Officer. Thereafter, as per Section 3D(1) of the N.H.Act, Notification No. 1544(E) dated 09-04-2019 were published in the Times of India and vernacular newspapers. Thus, on publication of these two Notification as per the Section 3D(1) the land mentioned therein vested absolutely with the Central Government without any encumbrances under Section 3D(2) of the N.H.Act.

[4] Thereafter, notices envisaged in the section 3(G)(3) were issued and all the claims of the interested person in the land were heard on multiple hearings. Competent Officer while determining the amount payable as compensation followed the provisions made under section 3(7)(a) to 3(7)(d). While determining market value of the land proposed to be acquired, prevailing norms and relevant factors such registered sale transaction of land recorded at the office of sub-registrar, location and situation of land, non-agricultural potential, urban-rural divide and limits and proximity to Highway and other such factors which materially influence market value, were duly taken into consideration. For awards declared on or after 01-01-2015 under the N.H.Act 1956, compensation in respect of the land acquired is required to be determined and paid in accordance with the First Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. After considering the prevailing rates of individual villages and registered sale deeds for the last three years and highest jantri rate, Rs.18 per sq.meter was fixed for granting of compensation. Compensation for trees, construction, 12% yearly increase in valuation of land, Solatium, factor of 2 [as it is rural land] was taken. Finally, the competent authority has passed an award for compensation as mentioned below :

(1) Award No. Jaminsampadan/Varnosari/Award/NH-754K/Case No. 1/2019 dated 31-12-2019;

(2) Award No. Jaminsampadan/Varnosari/Award/NH-754K/Case No. 4/2020 dated 17-06-2020 ; and

(3) Award No. Jaminsampadan/Varnosari/Award/NH-754K/Case No. 10/2020 dated 27-07-2020;

[5] Being aggrieved and dissatisfied with awards of the competent authority, all the applicants preferred an Reference Applications before the Collector, Patan, who was appointed as Arbitrator by the Transport and National Highway Ministry of Government of India, vide letter dated SRW/NN/37011/47/2003 PIC, dated 30-10-2003, which were rejected by the Arbitrator vide order date 24-06-2023. Being aggrieved and dissatisfied with the Award of the Arbitrator, applicants have preferred present applications.

[6] SUMMARY OF CASES

Sr.No.	CMA No.	Reference Application No.	R..S.No. (village-Varnosari)	Acquired Land (in Sq.Meters)
1	150/23	298/21	215	00.75.94
2	151/23	284/21	98	00.02.34
3	152/23	285/21	44	00.02.17
4	153/23	286/21	45	01.23.02
5	154/23	287/21	46	00.93.96
6	155/23	288/21	42	00.19.55
7	156/23	289/21	47	00.66.45
8	157/23	290/21	38	01.76.76
9	158/23	291/21	253	00.16.34
10	159/23	292/21	254	00.65.31
11	160/23	293/21	228	00.17.17
12	161/23	294/21	230	00.26.56
13	162/23	295/21	231	00.96.33
14	163/23	296/21	227	00.15.76
15	164/23	297/21	214	00.74.10

16	165/23	299/21	211	01.56.04
17	166/23	300/21	229	00.80.41
18	167/23	302/21	231	00.06.90
19	168/23	303/21	253	00.28.92
20	169/23	304/21	229	00.31.43
21	170/23	305/21	38	00.27.13
22	171/23	306/21	230	00.11.76
23	172/23	307/21	254	00.23.60

REASONS STATED FOR SETTING ASIDE AWARD OF ARBITRATOR

[7] Reasons stated for preferring application against the order passed by the Arbitrator in the respective Reference Case are mentioned below ;

[7.1] Award passed by the Arbitrator is illegal, erroneous and against the fundamental principles of the law and natural justice.

[7.2] The arbitrator has not considered and appreciated the documentary evidence that confirmed the award passed by the competent authority. Income from the fertile agricultural land acquired has not been taken into consideration.

[7.3] Development potential and area where the land is situated is not taken into consideration. Also, the division of the land by the intersecting Highway has not been taken into account.

[7.4] Inadequate solatium is fixed and the 12% interest for the increase in the valuation is against the provisions of the law. Increase in the Jantri Rates has not been taken into account. The fact that the Sale Deeds of the land are done below the market

price is not taken into consideration. Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has not been followed by the competent officer and the same is not considered by the Arbitrator. In nearby villages like Vauva, the highest Jantri rate taken is Rs. 70/- and in village Jamvada it is Rs.98/-, still the Jantri rate taken for village Varnosari is Rs.18/-, which is illegal.

[7.5] In the application various awards and the rates are cited which are situated nearby still higher rates are fixed then the agricultural land of village Varnosari.

[7.6] Respondent No. 3 has not considered the evidence presented on record and has not given any explanation in his order as to why such evidence is not accepted.

[7.7] As the Award being against the natural principles of justice, erroneous and illegal, it is prayed to be quashed and set-aside.

ORAL EVIDENCE

[8] Neither the any of the applicants or any of the respondents have tendered oral evidence.

DOCUMENTARY EVIDENCE OF APPLICANT

[9] Following Documentary Evidence is produced by the applicants ;

SR.NO.	PARTICULARS	EXHIBIT/MARK
1.	Copy of the award passed by the Competent Officer along with Jantri Rates. 31-12-2019	Mark 4/1

2.	Copy of the award passed by the Competent Officer along with Jantri Rates. 17-06-2020	Mark 4/2
3.	Copy of the award passed by the Competent Officer along with Jantri Rates. 27-07-2020	Mark 4/3
4.	Copy of the award passed by the Competent Officer in Compensation Case No. 1/2021 for village Vuava.	Mark 4/4
5.	Copy of the award passed by Competent Officer is acquisition of User Right for laying of Transmission Lines by Power Grid	Mark 4/5
6.	Copy of Award passed by the Collector, Patan regarding utilization of the land for 765 Kv Bhuj-Banaskantha transmission line	Mark 4/6
7.	Copy of the award passed by the Competent Officer in Compensation Case No. 8/2019 for village Bakutra.	Mark 4/7
8.	Copy of the award passed by the Competent Officer in Compensation Case No. 5/2020 for village Santalpur.	Mark 4/8
9.	Judgement passed in LAR No. 112/2011 by Principal Senior Civil Judge, Patan	Mark 4/9
10.	Judgement passed in LAR No. 294/2009 to 309/2009 by Principal Senior Civil Judge, Patan	Mark 4/10
11.	Award passed by the Competent Officer in Narmada Canal Scheme, Compensation Case No. 10/2007	Mark 4/11
12.	Amended Award passed by the Competent Officer in Narmada Canal Scheme for, Compensation Case No. 10/2007 vide Compensation Case No. 10/2008	Mark 4/12
13.	Copy of Sale Deed No. 2825/2010	Mark 4/13
14.	Copy of Sale Deed No. 683/2009	Mark 4/14

DOCUMENTARY EVIDENCE OF RESPONDENTS

[10] Respondents No. 1, 2 & 3 have not produced any documentary evidence.

ARGUMENTS OF APPLICANT

[11] The applicant has submitted written argument at Exhibit-62, wherein, mostly the averments of the applications are reiterated and further the applicant in the argument has quoted the ratio of the below mentioned judgments but the copy of the same has not been produced;

- (1) 2004 (8) S.C.C 577
- (2) 1999 (2) G.L.R. 1357
- (3) 2002 (4) G.L.R 3109
- (4) 2001 (2) G.L.H 583
- (5) 1998 (0) GLHEL-HC 211087
- (6) 2001 (2) G. L. H. 583
- (7) 2002 (0) GLHEL-HC 203523
- (8) 2004 (0) GLHEL-SC 11496

ARGUMENTS OF RESPONDENTS

[12] The Respondent No. 1 has submitted their written argument at Exhibit-65 & Respondent No. 2 & 3 have submitted their written argument at Exhibit-66, which has been duly taken into consideration.

POINTS FOR DETERMINATION

[13] Following point for determination arises for adjudication ;

- (1) Whether the Award passed by the Arbitrator [Collector,Patan] in Reference Case No.298, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300, 302, 303, 304, 305, 306 and 307 of 2021, on 24-06-2023 is required to be quashed and set aside ?
- (2) What Order ?

[14] My finding for the aforementioned Points of Determination are as under ;

- (1) In Negative
- (2) As per Final Order.

REASONS

[15] Applications are preferred under Section 34 of the A & C Act, 1996, and hence it is pertinent to refer this provision ;

Section 34 - Application for setting aside arbitral award.—

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—

(i) a party was under some incapacity,
or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force;
or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration :

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside;

or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the

parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;

or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.— 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.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal :

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not

thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

[16] On perusal of the section 34 of the A&C Act as well as the law laid down in the catena of judgements, the powers exercised by the Court u/s 34 are supervisory in nature and the Court cannot exercise powers as in appeal, cannot re-appreciate evidence on facts or law as well as ordinarily cannot modify the award. Unless and until the challenge against the award establishes the breach as enumerated in section 34, the arbitral award cannot be set aside. In the case of **Associate Builders versus Development Authority, (2015) 3 SCC 49**, the Hon'ble Apex Court held that the Court cannot correct mere errors of fact or law and that interference is justified only when the Award is perverse or patently illegal. In the case of **Ssangyong Engineering & Construction Co.Ltd. v. NHAI, (2019) 15 SCC 131**, Hon'ble Supreme Court again reminded that the Court does not act as a Court of appeal

and that interference is permitted only in cases where the Award shocks the conscience of the Court or goes against the fundamental principles of justice. In **Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. (2022) 1 SCC 131**, the Hon'ble Supreme Court reiterated that The Supreme Court reiterated that "patent illegality" must be an illegality that goes to the root of the matter and should not be a minor or trivial error. The Court emphasized that it cannot reappreciate evidence or interfere with an award simply because another reasonable interpretation of the contract is possible. Similarly in the case of **UHL Power Company Ltd. v. State of Himachal Pradesh (2022) 4 SCC 116** reinforced the limited scope of judicial review and held that a court hearing a Section 34 application does not sit as a court of appeal and an existence of an alternative view on facts or contract cannot set aside the arbitral award.

[17] An arbitral award may be set aside under section 34(2)(a) if the applicant proves that ;

- Incapacity of a party at the time of the arbitration agreement.
- Invalid arbitration agreement in the eyes of law chosen by the parties or the law in force in India.
- Lack of proper notice / inability to present case, such as no proper notice of appointment of arbitrator or of proceedings, or a real denial of opportunity to present the case (violation of *audi alteram partem*).
- Award deals with disputes beyond the reference, i.e., decisions on matters not contemplated by or not falling within the terms of submission; in such case only the offending part may be set aside if severable
- Improper composition or procedure, where the composition of the

tribunal or the arbitral procedure was not in accordance with the parties' agreement or with the Act, and such deviation affects the legitimacy of the process.

[18] An arbitral award of the arbitrator may be set aside under section 34(2)(b) if ;

- Subject-matter is not arbitrable,
- Award is in conflict with the public policy of India, which, as structured in *Associate Builders* (supra) and subsequent cases, includes where the award is:

- ◆ Contrary to the fundamental policy of Indian law (e.g., complete disregard of judicial approach, decisions based on no evidence, or ignoring vital evidence in a way that offends rule-of-law notions).
- ◆ Contrary to the interest of India.
- ◆ Contrary to justice or morality, in the sense that it shocks the conscience of the court.

[19] An arbitral award of the arbitrator may be set aside under section 34(2)(b) if ;

- Patent illegality on the face of the award, but:
 - ◆ The illegality must go to the root of the matter; trivial errors do not suffice.
 - ◆ It does not permit the court to re-appreciate evidence or interfere for mere erroneous application of law, so long as a reasonable view is taken.

[20] An arbitral award cannot be set aside on errors of fact, errors of law even if another plausible view exists and re-assessment of quantum or re-balancing equities simply because the court would have decided differently.

[21] The main ground to set aside the award of the arbitrator is (1) appointment of arbitrator (2) Inadequate compensation (3) breach of natural principles of laws.

[22] Appointment of the Collector as arbitrator has been raised in the applications and it is averred that the no consent of the applicants was taken at the time of the appointment of the Collector as Arbitrator and neither the applicants had agreed upon to appoint the Collector as Arbitrator. But no such objection has been taken earlier during the initiation of the arbitral proceedings or during the arbitral proceedings. It is for the first time that the dispute with regards to the appointment of the arbitrator and jurisdiction is being raised in the present applications. It would be relevant to refer to Section 3G(5) of the N.H.Act, which provides that the appointment of arbitrator is to be made by the Central Government. The Hon'ble Supreme Court in the case of **National Highways Authority of India v. Sayedabad Tea Company Ltd. and Ors., (2019) SCC OnLine SC 1102** has held that the National Highways Act, 1956, being a special law, has an overriding effect on the general law of arbitration and dismissed Section 11 application for appointment of the arbitrator. Hence, contention with respect to the appointment of the arbitrator is not tenable.

[23] Ground of the inadequate compensation being granted by the Competent Authority and grounds for the inadequacy were raised before the arbitrator against the compensation granted by the Competent Authority. While determining the market value of the acquired land, following aspects has been taken into consideration :

(i) the average price of the top 50% of sale transactions reflecting the highest consideration amounts during the preceding three years in respect of lands situated in the village Varnosari; or

(ii) the market value determined as per the Jantri rates and the Jantri rates are as per the Jantri (ASR-2011 FINAL) notified under the Resolution dated 18/04/2011 of the Revenue Department.

After considering all the aforesaid circumstances, the market value of the non-irrigated land under acquisition situated at village Varnosari, Taluka Santalpur, has been fixed in the Award at Rs. 18/- per sq. meter.

[24] In case where there were structures standing on the land under acquisition, a detailed valuation report has been prepared by a Government-approved valuer through the acquiring body and duly certified by the Executive Engineer, Roads and Buildings Department (State), Patan, and submitted accordingly.

[25] As there were trees on the lands to be acquired, the compensation for the falling of the trees is determined, as has been stated in the arbitrator's award, in accordance with the Circular dated 02/01/1993 issued by the Revenue Department, Government of Gujarat, bearing Circular No. MQ/2278/4945/5, which were finalized by a Committee headed under the Chairmanship of the Additional Chief Secretary, Revenue Department.

[26] In accordance with Section 30(3) and Section 69(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, an additional amount at the rate of 12% per annum on the market value of the land for the period commencing from the date of publication of the notification under Section 3-A till the date of the Award has been sanctioned. As the acquired land is situated in a rural area, considering the said fact, the market value of the acquired land has been multiplied by a factor of 2(two), and the compensation amount has been determined accordingly.

[27] Further, under section 30(1) and Section 69(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, 100% solatium on the total compensation amount has been included in the Award by the Competent Authority.

[28] The award is challenged that in other land acquisitions made in the nearby villages or in the acquisition of the land for laying Transmission Line, the rates fixed are on a higher side and these aspects are not considered in the award. These submissions are not tenable as the Competent Officer has proceeded as per villages and adjoining land, accordingly the last three years sale deeds and Jantri rates the rates are fixed. Also, there are different laws for the compensation of laying the Transmission Lines and Pipe Lines. The applicant has not produced any bills of sale of crops or any other documents to show the fertility of the agricultural lands.

[29] On considering these aspects it is not open for the Court to interfere, as in the section 2A it is provided 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.

[30] During the acquisition the Competent Authority had issued notices envisaged as per section 3(G)(3) of the N.H.Act, to all the claims of the interested person in the land. Upon perusal of the order of the Competent Authority it transpires that multiple hearings were done for the objections raised during determination of the compensation. Further, it is the applicants who have preferred the Reference Applications and they were heard by the arbitrator extensively. Documentary evidence which is produced before this court was also produced before the Arbitrator. Thus, applicants have been given ample opportunity before the Competent Authority and the Arbitrator.

[31] The Ld. Adv. for the applicant has relied upon below mentioned citations ;

- (1) 2004 (8) S.C.C 577
- (2) 1999 (2) G.L.R. 1357
- (3) 2002 (4) G.L.R 3109
- (4) 2001 (2) G.L.H 583
- (5) 1998 (0) GLHEL-HC 211087
- (6) 2001 (2) G. L. H. 583
- (7) 2002 (0) GLHEL-HC 203523
- (8) 2004 (0) GLHEL-SC 11496

I have carefully gone through these citations but they are not helpful to the applicant as the factual matrix differs and on ground for patent illegality or fundamental breach of policy is made out in the award of the arbitrator.

[32] Perusing the award, it transpires that there is no illegality or perversity in passing the award by the Arbitrator and the Competent Authority had after considering the situation of land, sale deeds of three years, Jantri price had rightly passed the award. As per the aforesaid discussion and settled position of law, I do not deem it fit to interfere with the award passed by the Arbitrator, as it was passed after hearing the parties and appreciating documentary evidence produced by both the parties. Hence, Issue No.1 is answered in negative and below-mentioned order is passed under Issue No. 2.

-:: FINAL ORDER ::-

- [1]** The present CMA's from CMA 150/2023 to CMA 172/2023, hereby stand dismissed.
- [2]** No order as to costs
- [3]** R&P be remitted back forthwith.
- [4]** Original Order be kept in CMA No. 150/2023 and Rojkam be done in other CMA's from 151/2023 to 172/2023 stating that the Original Order is kept in CMA NO. 150/2023, to avoid paper wastage.

Signed and Pronounced in the open Court today, on this 31st day of December, 2025

Date : 31.12.2025
Place : Radhanpur

Rajkumar Ramsinh Chaudhary
2nd Additional District Judge
Patan at Radhanpur
Judge Code : 01512