

KATK010010452025



**IN THE COURT OF THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE AT TUMAKURU**

Dated this the 19th day of June 2026

Present : Smt. N.Narasamma B.A.L., LL.B.,
II Addl. District & Sessions Judge,
Tumakuru.

Com. A.P.No.12/2025

Appellant: Mohammed Hussain Dead
by Lrs Pyare Jan
W/o Late Mohammed
Hussain,
A/a 76 years,
R/at Sannappanapalya,
Hirehalli post,
Urdigere Hobli,
Tumakuru Taluk and District.

(By Sri. KN., advocate)

versus

Respondents: 1. The Deputy Commissioner,
and Hon'ble Arbitrator,

Tumakuru District,
Tumakuru- 572101.

2. The project Director,
National Highways Authority of
India, NH-48, Bengaluru.

3.The Special Land Acquisition
Officer And Competent
Authority, NH-4,
Tumakuru -Nelamangala,
No.678/3, Neerubavi
Kempanna Layout,Hebbala,
Bengaluru.

(R.1by The ADGP.,
R.2 and 3 by Sri.TRY., Advocate)

J U D G M E N T

The petitioner has filed this petition u/Sec.34(2) of Arbitration and Conciliation Act 1996 for setting aside the award dated 13.11.2024 in LAQ/ARB/48:CR/4/2024 passed by the 1st respondent authority and to remand the matter for fresh consideration.

2. The petition averments in brief is that, the property in khata No.39 property No. 152500902100800057 measuring East-West 16.154 meters, North-South 13.716 meters in total 221/57 sq. meters and constructed building of 97.55 sq. meters situated at Hirehalli village, Hirehalli Gramapanchayath, Urdigere hobli, Tumakuru Taluk is the family property of the appellant and the said property was in the name of appellant's husband Mohammed Hussain. Out of the said property the respondent No.2 & 3 have acquired 90 sq. meters of land and building situated and awarded meager compensation of Rs.4,17,810/- and the husband of appellant has received the award amount under protest. While passing the award the respondent No.3 not considered that the property is situated within the grama thana of Sannappana palya and the khata of the said property comes within the village of Hirehalli and respondent No.3 has awarded Rs.1,413/- per sq. meter to the property. But the respondent No.3 has awarded Rs.2,153/- per sq. meter for the other properties acquired

in the same village and the respondent No.3 has demolished entire building while forming the road. And has considered only 90 sq meters. And the respondent No.3 has passed the award and not issued the award amount to the appellants husband as per the property demolished by them and they have not considered the averments of petition filed by the petitioner and respondent No.1 dismissed the petition without enhancing the compensation. On these grounds the appellant prayed to allow the petition.

3. After admission of the petition, after service of notice, the respondents have appeared and filed their objections, wherein respondent No.1 contended that the petitioner is not maintainable and the appellant has failed to produce the convincing documents to justify the enhancement or to interfere with the well reasoned arbitral award and the respondent No.1 conducted fair and impartial arbitral proceedings in compliance with the provisions of arbitration and conciliation Act 1996 and

National High Ways Act 1956. On these grounds respondent No.1 has prayed to dismiss the petition.

4. The respondent No.2 & 3 have contended that the scope of Sec. 34(2) of the A & C Act is very limited and in such proceedings the courts can only either set aside the arbitral award established on the grounds under Sec. 34(2) or confirm the same and the petition is a futile attempt on the part of petitioner to seek enhancement of compensation which is outside the scope of the said section. And to make unlawful gains at the costs and expenses of public exchequer and the petition is barred by limitation. Among other lands, grama thana khata No.39 to an extent of 90 sq meters situated at the Hirehalli village, Urdigere hobli were acquired as per final notification. And the respondent No.3 fixed the compensation to grama thana khata No.39 for Rs.4,17,810/- including benefits as per the Act i.e., additional market value and also solatium 100% and the same was paid to the petitioner and the petition is filed

after lapse of 5 years from the date of award passed by 3rd respondent i.e., on 31.07.2019. On these grounds respondent No.2 & 3 have prayed to dismiss the petition.

5. Arbitral records are secured.

6. I have perused the petition, objection and proceedings on the file of learned arbitrator.

7. Heard arguments of learned counsel for petitioner and respondents and perused the written arguments submitted by both parties.

8. The following points arise for my consideration:

1. Whether the petitioner has made out any specified grounds as stated under Sec.34(2) of A and C Act to set aside the impugned award dated 13.11.2024 in LAQ/ARB/48/CR:4/2024 passed by the 3rd respondent authority and to remand the matter to the 3rd respondent for fresh consideration?

2. What order?

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

Point No.1 : In the **Negative.**

Point No.2 : As per final order
for the following:

REASONS

10. Point No.1:- The petitioner alleged that the impugned award passed by the learned arbitrator by overlooking the provisions of law under Sec.3G(7) of N.H.Act, RFCTLARR Act, and therefore same needs to be set aside and in the alternative to remand the matter to the 3rd respondent for fresh disposal. Before proceeding further it is necessary to look into the provisions of law under Sec.3G(7) of National Highways Act which gives as below.

Sec.7; The competent authority or the arbitrator while determining the amount under sub. Sec.(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 publications of the notification under Sec.3A;

(b) The damage if any sustained by the person interest 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 interest 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 in complete to change his residence or place of business, the reasonable expenses if any incidental to such change.

11. Thus, on plain reading of the above provision it embodies the manner in which the compensation has to be determined. Clause (a) of Sub.Section 7 lead on that the market value of the land on the date of

publication of notification under Sec.3A has to be considered by the learned arbitrator as well as the SLAO/CA. It is not in dispute when the application is filed before the arbitrator for arbitration, he has to follow the provisions of the A and C act to resolve the dispute. It may be noted that Sec.28(2) of the A and C Act placed on that, only if the parties agrees the equity, good conscience etc., are to be considered by the arbitrator while resolving the dispute. Otherwise, he has to follow what has been agreed between the parties. In the case on hand, there is no such agreement between the parties and the acquisition is one sided and forcefully trust upon the land owners. Therefore, it is the equity, good conscience which has to be considered by the arbitrator. Added to this, arbitrator being a quasi- judicial authority, all principles which are applicable to the courts regarding equity and fairness in conducting proceedings are applicable and thereby same is to be considered by him. In other words the arbitrator is empowered to consider all such legal principles which are prevalent for the civil

court. Therefore, the strict provisions of following the contract between the parties do not arise.

12. Before delve upon the grounds urged by the petitioner, it is useful to know the grounds enshrined under Sec.34 of A and C Act. For better appreciation I would like to reproduce the provisions here under;

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 furnishes proof 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 appointment of an arbitrator or of Arbitral proceedings or otherwise unable to present his case;

(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 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 dispute is not capable of settlement by arbitration under the law forthcoming 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-

a) the making of the award was induced or affected by fraud or corruption or was in violation of Sec. 75 or Sec 81; or

b) it is in contravention with the fundamental policy of India law ; or

c) 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 India law shall not entail a review on the merits of the dispute.

2(A) 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 grounds of an erroneous application of the law or by re-appreciation of evidence.

The aforesaid mandate of law is time and again upheld by the Hon'ble Apex Court in umpteen number of cases. In order to better understanding the scope of ambit of Sec.34 it is useful to mention the following authorities.

13. The Hon'ble Supreme Court of India very recently in case of **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd.** LL 2021 SC 432 by referring its earlier decisions including the decision in the case of **Associate Builders v/s Delhi Development Authority reported in 2015 3 SCC 49** has succinctly reaffirmed what is meant by public policy and how the court exercise jurisdiction under Section 34 of the A and C Act,1996.

“24.This court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well

established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the awards needs intervention and there after, dubbing the award to be vitiated by either perversity or patent illegality, apart from other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavors made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this court would become a dead letter if arbitral awards are set aside by categorizing them as perverse or

patently illegal without appreciating the contours of the said expressions.

25. Patent illegality should be legality which goes to the root of the matter. In other words, every error of law committed by the arbitral tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorical as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2 (A) on

the ground of patent illegality is when the arbitrator takes a view is not even a possible one, or interprets a clause in the contract in such a manner which no fair minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'."

14. The Hon'ble Apex Court in the case of **Project Director, NHA, Vs. M. Hakeem and another, reported in 2021 (9) SCC 1** has held at para 48 of the judgment that,

“ Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for parliament to amend the aforesaid provision in the light of the experience of the Courts in the working of the Arbitration Act, 1996, and

bring it in line with other legislations the world over”.

15. In the latest decision of our own High Court through the Division Bench in case of **Union of India Vs. M/s.Warsaw Engineers and Ors vide COM AP No.25/2021 (DB)** disposed on 17th April 2021. Wherein their Lordships have reiterated the scope and ambit of Section 34 of A & C Act by relying upon latest decision of the Hon'ble Apex Court. At para 7 of the judgment it has been held that:

“7.We have given careful consideration to the submissions. As far as the scope of interference in a petition under Section 34 of the said Act of 1996 is concerned, the law is well settled. As far as the approach and scope of interference is concerned, we may make a reference to the decision of the Apex

Court in the case of DYNA TECHNOLOGIES PRIVATE LIMITED VS. CROMPTON GREAVES LIMITED (2019) 209 SCC 1 in paragraphs 24 and 25, the Apex Court held thus:

24. There is no dispute that Section 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. Section 34 is different in its approach

and cannot be equated with a normal appellate jurisdiction. The mandate under Section 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 Section 34 of the Arbitration Act."

16. Thus, as per the principles laid down by the Hon'ble Apex Court coupled with the above provisions of law, now it is no more resintigra that, **firstly**, this court is not sit as court of appeal to re-appreciate the evidence on record and to find out is there any scope for different conclusion or findings unless it comes under section 34(2) (a) & (b) of the A & C Act. **Secondly**, the party who filed an application under Section 34 of the A & C Act, must specify any one of the grounds, as set out under sub section 34(2) (a) & (b) of the A & C Act. **Thirdly**, an award should be set aside only on the said specified grounds and not on any other grounds. Thus, any application filed without specifying the said grounds is

not maintainable and sustainable under Section 34 of A & C Act.

17. By keeping in mind the aforesaid well settled principles and position of law, I have meticulously verified the averments pleaded in the application filed under section 34(2) of A & C Act. The petitioner has contended several grounds as urged in case regular appeal. But none of the grounds urged in the petition are comes under the purview of the specified grounds enshrined U/s.34(2)(a)(b) of A & C Act.

18. Added to this, it is pertinent to note that, the quantity and quality of evidence and the other aspects considered by the learned Arbitrator are also not amenable to the jurisdiction of this court, when a challenge is laid under Section 34(2) of the A & C Act. If the award is perverse, capricious and touches the conscience of the Court, then only this Court can interfere in the same. Nevertheless, an astute examination of the pleadings, the documents on record

coupled with the impugned award, the arbitrator has considered all the facts and the question of law and the relevant provisions of arbitration and conciliation Act has rightly dismissed the petition of the appellants. If it is so, this court never find any such infirmities which would either comes under the grounds set out under section 34(2)(a)&(b) of A&C Act or touches the conscious of this court. Consequently, the impugned award requires to be confirmed and the application filed by the petitioner is required to be dismissed. Accordingly, **Point No.1** is answered in the **Negative**.

19. **Point No.2:-** In view of my findings on Point No.1, I proceed to pass the following:

ORDER

The Commercial Arbitration Petition filed by the petitioner u/Sec.34(2) of Arbitration and Conciliation Act 1996 is hereby Dismissed.

Parties to bear their own cost.

Office to draw decree accordingly.

Send the copy of this judgment and decree along with records to the Arbitrator for the needful.

(Dictated to the Stenographer, directly on computer, corrected and then pronounced by me in the open Court on this the 19th day of June 2026).

(N.Narasamma)

II Addl. District and Sessions Judge,
Tumakuru.