

MHLA010010052020	Presented on : 06-01-2020
	Registered on : 25-06-2020
	Decided on : 18-06-2026
	Duration : YY MM DD
	06 06 12

IN THE COURT OF DISTRICT JUDGE -2, LATUR

(Presided over by R.B.Bhagwat)

Arbitration Case No. 11/2020

Judgment Exh. No.22.

Dagadu Vishwnath Chavan died
L.R. Gojarbai Dagadu Chavan,
Age :- 65 years, Occu. :- Household/Agri.,
R/o. Ujani, Tq. Ausa, Dist. Latur

... Applicant

Vs.

1) The Competent Authority and
Sub-Divisional Officer, Ausa-Renapur,
at Latur

2) The Project Director,
Bhartiya Rashtriya Rajmarg
Pradhikaran Pariyojana Karyanwanyan
EKAE, Nanded.

... Respondents

Advocate for Applicant : Shri.D.M.Birajdar
Advocate for the Respondent No.1 : Shri. S.V. Deshpande
Advocate for the Respondent No.2 : Shri.S.B.Ambekar

J U D G M E N T**(Delivered on 18-06-2026)**

Present application is preferred by Gojarbai Dagadu Chavan, the legal representative of deceased applicant Dagadu Vishwnath Chavan, under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity and convenience hereinafter referred as "Arbitration Act") of the National Highways Act, 1956 for setting aside the award passed by The Collector in Arbitration Case No.2018 / Arbitrator / NHAI / UJANI/CR-59 on 23.08.2019.

The case of applicant in nutshell is as under :-

2. The applicant was owner of the Land bearing Survey No.146 of village Ujani, Tq. Ausa, Dist. Latur adm.1700 Sq. Meters which was acquired for public purpose for widening of National Highway No.361. The Government of India has approved and declared by a Preliminary Notification for acquisition under Section 3 A (1) of the National Highways Act, 1956.

3. The Competent Authority for Land Acquisition (for the sake of brevity hereinafter referred to as "the CALA") - The Respondent no.1 in present application, passed award on 03.06.2017 and 15.09.2017 behind the back of applicant without holding proper inquiry. Possession of her land to the extent of 1700 sq. meter was taken by the Government. The compensation awarded at the rate of Rs.1,000/- per sq. meter is inadequate.

4. According to applicant, the respondent no.1 cannot pass second award in this fashion. The second award dated 15.09.2017 by which lesser compensation amount has been calculated, is an illegal award. The respondent no.1 has no legal authority to reduce the compensation amount by passing a second award. The said second award was challenged before the arbitrator, i.e. Collector, Latur but he did not consider this legal aspect that the respondent no.1 has no power or authority to alter or cancel the first award and to pass a second award. Findings recorded by Arbitrator in the impugned award dtd. 23.08.2019 is illegal, erroneous and perverse. It is against the public policy of India and hence, is liable to be quashed and set aside.

5. Further according to applicant, the respondent no.1 and the arbitrator has not properly considered the evidence available on record. The sale instances filed on record have not been properly considered. The situation of land, the commercial potential it had and that various businesses are running near the said land has not been considered by the respondent no.1 and the arbitrator. Belting system has been applied illegally to calculate the compensation amount which has reduced the compensation amount. Hence, it is prayed that the application be allowed.

6. The respondent no.1 appeared in this petition through DGP. He filed pursis Exh-17 stating therein that, the

award passed by the Competent Authority be considered as say to main petition.

7. The respondent no.2 appeared in this petition through advocate. He filed his reply vide Exh.10. In the reply the ownership of applicant over field block no.146 admeasuring 1700 Sq. meter situated at Village Ujani, Tq. Ausa, Dist. Latur is not disputed. It is also admitted that respondent no.1 passed award dated 03.06.2017 and modified it as per award dated 15.09.2017. It is also admitted that applicant preferred appeal against the award dated 15.09.2017. The said appeal was partly allowed and market rate of acquired land was confirmed at Rs.1000/- per Sq. meter. Remaining contents of the petition have been denied.

8. According to respondent no.2, in application under Section 34 of the Arbitration Act there is limited scope. Evidence cannot be re-appreciated in such applications. Present application is devoid of any merit. The respondent no.1 has duly considered the provisions of Section 26 to 30 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act). The application of slab system by the arbitrator is correct and legal. The award passed by the arbitrator is strictly in accordance with the provisions of law. No illegality has been committed in passing the award dated 15.09.2017 by the respondent no.1 and also no illegality has been committed by

the arbitrator in rejecting the claim of applicant. The grounds raised by the applicant in this appeal are baseless. The respondent no.1 has duly followed all the principles of natural justice. The applicant has failed to establish any of the grounds as mentioned in Section 34 of the Arbitration and Conciliation Act. Hence, this application is liable to be dismissed with costs.

9. The advocate for applicant Written Notes of argument Exh.21 filed on record. The advocate for respondent no.2 submitted that the Written Argument and Citations filed in Arbitration Case No.03/2020 be considered as argument in present application. On the basis of arguments of applicant and respondent no.2, following points arise for my determination to which I have recorded my findings as under ;

Sr. No.	POINTS	FINDINGS
1.	Whether the Second Award dated 15/09/2017 passed by respondent no.1/CALA is erroneous and illegal ?	Affirmative
2.	Whether the Award dated 23/08/2019 passed by Arbitrator is in conflict with the public policy of India and fundamental policy of Indian Law ?	Affirmative
3.	Whether the Award passed by the Arbitrator on 23/08/2019 needs interference by this Court ?	Affirmative
4.	What Order ?	As per final order

REASONS

As to point nos.1 to 3

10. Point nos.1 to 3 are connected with each other, hence taken up for discussion together.

11. The Hon'ble Supreme Court of India in case of **Civil Appeal No.5139 of 2009 (arising out of SLP (c) No.16281 of 2009), Fiza Developers & Inter-Trade Vs. AMCI (I) Pvt. Ltd. & Anr., decided on 27 July, 2008**, has been pleased to observe in para Nos. 8 and 9 are as under :-

Scope of proceedings under section 34 of the Act -

8. "Sections 34 of the Act deals with applications for setting aside arbitral awards. Sub-section (1) provides that 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 (3). Relevant portion of sub-section (2) of Section 34 is extracted below :

"(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 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 decision 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".

9. The scheme and provisions of the Act disclose two significant aspects relating to Courts vis-a-vis arbitration. The first is that there should be **minimal interference by courts** in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to Court, requiring promptness in disposal.

Section 5 of the Act provides that -

notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I of the Act, no judicial authority shall intervene except where so provided in the Act. Section 34 of the Act makes it clear that an Arbitral award can be set aside on the grounds enumerated in sub-section (2) of Section 34 and on no other

ground".

12. As per authority of **Hon'ble Apex Court in the case of Associate Builders Vs. Delhi Development Authority, in Civil Appeal No.10531 of 2014 dated 25/11/2014** and in **Renusagar Power Co. Ltd. Vs. General Electric Co. reported in 1994 Supp. (1) SCC 644**, it has been held that, " the Award can be set aside if it is contrary to : a) fundamental policy of Indian law ; b) the interest of India; or c) justice or morality or d) in addition, if it is patently illegal. Illegality is of trivial nature, it cannot be held that Award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such Award is opposed to public policy and is required to be adjudged void. " In the light of the law laid down by the Hon'ble Supreme Court, now it is to be ascertained whether the Award passed by the learned respondent no.1/ Arbitrator patently illegal and against the public policy of India.

13. In view of the ratios in the above cited authorities it is clear that, this Court cannot re-appreciate the facts and the evidence led before the Ld. Arbitrator. This Court is not sitting in appeal against the impugned order of arbitrator. The said order can be cancelled only if the applicant could satisfy any of the grounds as contemplated under Section 34 (2).

14. The main issue involved in this application is whether the second award / modified award dated 15.09.2017

passed by respondent no.1 reducing the compensation amount granted by him as per the award dated 03.06.2017 is illegal and erroneous.

15. On perusal of the provisions of National Highway Authority Act, 1956 and the National Highway Rules, 1957 it reveals that, there are no provisions or rules which empower the competent authority to review or modify its own award. It is a settled position of law that unless the statute or rules permit, a competent authority cannot review his own order. In absence of express provision in that regard, the act of a competent authority reviewing / modifying his own order / award would be per-se illegal and such order cannot sustain in the eyes of law.

16. The Hon'ble Bombay High Court in the case of **Bhupendrasingh Vs. The Competent Authority for National Highway No.6 and the Deputy Collector (Gen.), Land Acquisition (Gen.), Dhule Taluka and Dist. Dhule and others** reported in 2020 (2) BCR 296 has been pleased to hold as follows :

(a) The 'Competent Authority' as appointed under Sec. 3(a) of the NH Act, 1956, has no power to review its award or correct any clerical or arithmetical mistake therein under the provisions of the NH Act, 1956.

(b) The powers u/s.33 of the Act of 2013, are not available to the 'Competent Authority' appointed under the NH

1956 Act, 1956 for making any corrections of clerical or arithmetical nature in the award as passed by it.

(c) The 'Competent Authority' is not a 'Court', but is a quasi-judicial authority for the purpose of Sec.3-C of the NH Act, 1956, in the matter of hearing and deciding the objections as received u/s. 3-C (1).

17. The Hon'ble Madhya Pradesh High Court while considering similar type of issue in the matter of **"Smt.Indrakala Agarwal and others Vs. State of Madhya Pradesh and others"** reported in **2021 AIR CC 1582** has been pleased to observe ; "that unless the provision of law i.e. the statute provides for the power of review, an award once passed in itself becomes final. The position of Law also gets well settled on the basis of the aforesaid judicial pronouncements that the power of review is not an inherent power, it must be conferred by law either specifically or by necessary implication. A review is always considered to be a creature of statute and the power of review cannot be entertained in the absence of a provision thereof."

18. The Hon'ble Allahabad High Court in the case of **"Ravindra Kumar Singh Vs. Union of India"** reported in **2019 SCC Online All 3589** held as under :

30. We find unbroken line of authority to the effect that power of review is not an inherent power. It needs to be conferred by the statute by express or specific provision. In

absence of any such power the order simply becomes without jurisdiction.

31. The legal position in this regard is much too well settled to require any reiteration. We may in this regard gainfully refer to the decision of the Supreme Court in *Patel Chunibhai Dajibha V. Narayanrao Khanderao Jambekar*.

32. The Act does not empower the Collector to review an order passed by him under Section 76-A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkari's order. The subsequent order dated February 17, 1959 reopening the matter was illegal, ultravires and without jurisdiction. The High Court ought to have quashed the order of the Collector dated February 17, 1959 on this ground.

33. The said judgment has been consistently followed by the Supreme Court, in *Kalabharati Advertising v. Hemant Vimalnath Narichania* the Supreme Court has made the following observation :

"Review in absence of statutory provisions

It is settled legal proposition that unless the statute/ rules so permit, the review application is not maintainable in case of judicial / quasi judicial orders. In the absence of any provision in the Act granting an express power of review, it is

manifest that a review could not be made and the order in review, if passed, is ultravires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar and Harbhajan Singh v. Karam Singh.)

19. The Hon'ble High Court of Bombay, Bench at Aurangabad in 1) Writ Petition No.1883 of 2018, 1884 of 2018 and 1885 of 2018 & Writ Petition No.6481 of 2018 Yasminbegum w/o. Bakshulla Khan and others Vs. The State of Maharashtra decided on 08.11.2019 reported in 2020 (2) BCR 292 : 2020 (1) AIR Bom.R 376

2) Writ Petition No.9848 of 2023 Dindayal Pandurang Samundrajoshi and others Versus The State of Maharashtra through the Secretary and others decided on 21.08.2023

3) Writ Petition No.1653/2022 (Gunwant Hanmant Darekar Vs. The State of Maharashtra) and other Writ petitions held that the second award passed by the competent authority under The National Highway Act is illegal and has been set aside.

20. On perusal of the ratio of the authorities as referred in para nos.16 to 19 it is clear that, the competent authority under the National Highway Act has no power to review or modify his own order. In view of this settled legal position and the observations in the authorities cited in para nos.16 to 19 the second award dated 15.09.2017 after passing the first award

dated 03.06.2017 would be illegal. Hence, the second award dated 15.09.2017 cannot sustain.

21. On perusal of the impugned award passed by arbitrator, it reveals that while answering issue no.2 the Arbitrator has tried to justify the second award dated 15.09.2017 passed by respondent no.1 by giving reasons that it is a modified version of the award dated 03.06.2017. The said finding given by the arbitrator is not legal in view of the ratio of the authorities cited in para nos.16 to 19 and the reasons given in para no.20 supra.

22. The other issues raised in this application regarding non-consideration of factors such as commercial potential of the acquired land, businesses in its proximity and other relevant factors by the respondent no.1 and the arbitrator. Also issue of non-consideration of sale instances and valuation report filed by the valuer has not been considered. Further that, belting of the acquired land has been done illegally. But, the advocate for the applicant has not cited any authority in support his contention that the said issues raised fall within the scope of section 34 of the Arbitration and Conciliation Act and this Court can modify the impugned award. Section 34 does not permit consideration of these issues in present application as this Court is not sitting in appeal against the impugned award passed by the arbitrator. Re-appreciation of evidence is not permissible in applications under Section 34 of the Arbitration and Conciliation Act.

23. The Hon'ble Apex Court in the case of **Gayatri Balasamy Vs. M/s. ISG Novasoft Technologies Limited arising out of SLP No.15336-15337 of 2021** has examined the scope of Section 34 of the Arbitration and Conciliation Act and the powers to modify an arbitral award. As per the said authority the Court may, by order, modify or correct an award - a) where it appears that a part of the award is upon a matter not a referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred ; or b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision. But as per authority of the **Hon'ble Apex Court in the case of Project Director, National Highway No.45E and 220 National Highway Authority of India Vs. M. Hakeem and anr. (2021) 9 SCC 1**, cited by advocate for respondent no.2, it has been held that the Courts in the appellate hierarchy do not have the power to modify the arbitrator award under Section 34 of the Arbitration and Conciliation Act. The ratio laid down in the case of **Project Director National Highways** is a decision of a five judge bench of the Hon'ble Supreme Court and so will have to be followed. From the ratio laid down in the said authority the prayer of applicant for modification of the award cannot be entertained.

24. In view of the ratio of the authority of Hon'ble Apex Court as discussed in para no.23 supra, the authority of Hon'ble

Apex Court in the case of **C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and another Reported in 2009 AIR SCW 2184**, in the case of **Sharadamma Vs. Special Land Acquisition Officer and another Reported in 2007 AIR SCW 119** and the case of **Mahesh Dattatray Thirthkar Vs. State of Maharashtra Reported in 2009 ALL SCR 1335** are of no help to the applicant as it is not within the scope of Section 34 of Arbitration and Conciliation Act to allow a Court to alter or modify the award of arbitrator.

25. In view of the reasons and the citations as discussed in para nos.10 to para no.24, I am of a considered opinion that the passing of second award by respondent no.1 on 15.09.2017 is erroneous and illegal and so the impugned award passed by arbitrator on 23.08.2019 justifying the second award is illegal and is against the fundamental policy of law. On that count the second award dated 15.09.2017 passed by respondent No.1 and the impugned order dated 23.08.2019 passed by the arbitrator is liable to be set aside and the first award dated 03.06.2017 passed by respondent no.1 deserves to be maintained. I therefore, answer my findings to point nos.1 to 3 in affirmative.

As to Point No.4

26. In view of my findings to point nos.1 to 3, I pass the following order :

ORDER

1. The application stands partly allowed. The award

passed by Arbitrator dated 23.08.2019 is set aside.

2. It is hereby declared that the respondent no.1 i.e. Competent Authority was not empowered to pass second award on 15/09/2017 after passing the first Award on 03/06/2017. As such, the Award dated 15/09/2017 being without jurisdiction, bad in law, illegal, is set aside.
3. It is held that the applicant is entitled for the compensation and the benefits as per the original Award dated 03/06/2017 passed by respondent no.1.

(Dictated and pronounced in open Court).

Date : 18/06/2026

Sd/-
(R. B. Bhagwat)
District Judge -2,
Latur.