

MHLA010034342021



Received on : 08/11/2021  
Registered on : 08/11/2021  
Decided on : 02/05/2026  
Duration : YY MM DD  
04 05 24

**IN THE COURT OF ADHOC DISTRICT JUDGE-2, LATUR**  
**(PRESIDED OVER BY P.P.KESTIKAR)**

**Arbitration Case No.359/2021**

**Exh.31**

National Highways Authority of India,  
Project Implementation Unit-Nanded,  
Office Address at-Bharadwaj,  
Venkatadri Nagar, Near Ayodhya  
Nagari, Malegaon Road, Taroda  
Khurd, Nanded 431605,  
Through : Project Director,  
NHAI PIU-Nanded.

**...Applicant**

**VERSUS**

1. The Competent Authority for Land Acquisition,  
and Sub-Divisional Officer,  
Ausa-Renapur District-Latur.
2. Kamlakar Ghanshyam Mainerkar(died),  
Through his L.R's.
  - 2-1) Alka Kamalakarrao Mainerkar  
Age:- 78 Yrs. Occu.:- H.H.,  
R/o.Mitra Nagar, Latur.
  - 2-2) Ajay Kamalakarrao Mainerkar  
Age:- 57 Yrs.. Occu.:- Medical Practitioner,  
R/o.Mitra Nagar, Latur.

- 2-3) Girish Kamalakarrrao Mainerkar  
Age:- 55 Yrs.. Occu.: - Medical Practitioner,  
R/o. Mitra Nagar, Latur.
- 2-4) Sadhana Ramnath Barade,  
Age-78 Yrs. Occu.: - H.H.  
R/o. Mitra Nagar,Latur.
- 3) Ajay Kamalakarrrao Mainerkar  
Age-57 Yrs. Occu.: - Medical Practitioner,  
R/o. Mitra Nagar, Latur. ...Respondents.

---

**Appearances:**

Ld. Advocate for Applicant : Shri P. S. Akkangire  
Ld. D.G.P,for the Respondent No.1 : Shri S.V. Deshpande.  
Ld. Advocate for Respondent No.2-1 to 2-4 and 3  
: Shri B. V. Mitkari

---

**JUDGMENT**

**(Delivered on 02/05/2026)**

1] The present application is preferred by the National Highways Authority of India under section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity and convenience hereinafter referred as "Arbitration Act") R/W. Section 3 G of the National Highways Act, 1956 for setting aside the award passed by the Additional Collector and Arbitrator at Latur in Arbitration Case No.2020/Arbitrator/NHAI/Ausa-2/CR-769 dated 30/06/2021.

2] The background of the case is as under :-

A] The National Highways Authority of India is constituted

by the National Highways Authority of India Act, 1988 (for the sake of brevity hereinafter referred to as “the NHAI Act”) and is entrusted with the tasks of development of National Highways.

B] The applicant was entrusted with the work of widening of National Highway No.361. The main function of the applicant is construction, widening, and maintenance of the National Highway all over the Country. The applicant was entrusted with the work of widening of National Highway No.361 vide Notification dated 31/05/2016 under section 3 A(1) of the National Highways Act,1956, published in news papers of Gat No.185 of village Ausa.

C] The property bearing Gat No.185 admeasuring 1749 sq. meters of village Ausa, Dist. Latur was required for public purpose of 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.

D) The Competent Authority for Land Acquisition (for the sake of brevity hereinafter referred to as “the CALA”) determined the amount of compensation as per sub-section (1), (2), (3) & (4) of Section 3 G of the National Highways Act,1956, after giving public notice to the general public in daily Newspaper intimated that the claimants/land owners to appear before the CALA along with the relevant record substantiating their right/interest over the land acquired. Accordingly, inquiry was conducted for determination of compensation after giving individual notices to the land

owners/claimants.

E) The CALA for land acquisition declared its award No.2016/Land Acquisition/NH-361/CR-01 on 12.06.2018 and awarded compensation of Rs.2648/- per square meter to Respondent No.2-Land owner/Loser.

F) Being aggrieved by the compensation amount determined by the CALA, the applicant filed application under section 3 G(5) of the National Highways Act before the Additional District Collector, AUSA-Renapur at Latur, who is the Arbitrator, for setting aside the award of CALA dated 12.06.2018.

G) The Arbitrator, after hearing both the sides passed an award on 30/06/2021 and determined the market rate of Rs.2550/- per square meter for the acquired land against the market rate determined by the CALA.

H) Being aggrieved and dissatisfied with the said award passed by the Arbitrator, the applicant has preferred this application under Section 34 of The Arbitration and Conciliation Act, 1996, (for the sake of brevity hereinafter referred to as "the Arbitration Act"), for setting aside the award dated 30/06/2021 passed by the Arbitrator bearing No.2020/Arbitrator/NHAI/AUSA-2/CR-769, on following grounds.

i) The award of the Arbitrator is not in accordance with the provisions of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "RFCTLARR Act, 2013") and provisions of

National Highways Act.

(ii) The Arbitrator has failed to appreciate the fact that the acquired lands are from village AUSA are in two parts.

(a) The lands within the jurisdiction of Nagar Parishad,

(b) The lands out of jurisdiction of Nagar Parishad,

(iii) The Arbitrator divided the agricultural lands in Three parts as A, B & C.

(iv) The Arbitrator erred in holding that the land under acquisition is having non-agricultural potential.

(v) The Award of the Arbitrator is not in consonance with the provisions of the law. Hence, the Award is against the public policy in India, and therefore, it is liable to be set aside.

(vi) The Arbitrator failed to follow the mandatory provisions of Section 26 of the RFCTLARR Act, 2013 that the sale deeds of only similar type of the lands should be considered.

(vii) As per Ready Reckoner, rates of the acquired lands are as per following table.

<b>Sr.No</b>	<b>Acquired Land Group</b>	<b>Rate as per Ready Reckoner</b>
1	6.1	580
2	9.1	1290
3	9.2	1540
4	9.4	990
5	11.2	700

But the CALA has granted Rs.2648/- per Sq.mts and Arbitrator has

granted Rs.2550/- per Sq.mts. rate. Both the rates granted by CALA and Arbitrator are excessive.

(viii) The Arbitrator has erred in granting the 30% compensation deducted for re-use of the material by the CALA. No justification for granting 30% for re-use of material.

ix) Thus, the award passed by the Arbitrator is prima facie against the mandatory provisions of the law.

(x) The CALA has wrongly calculated the additional component amount @ 12% p.a. from the date of Notification vide No.1745(A) dated 12.05.2016. Though the land in question in this case acquired under subsequent Notification vide No.1768 (A) dated 01.06.2017. Therefore, the CALA has excessively calculated and awarded additional component (interest @ 12 % p.a.) for total 383 days, which is not at all admissible. Thus, it is patent illegality on the face of record. Hence, Arbitration Award is liable to be set aside.

3] Respondent No.1 filed a pursis at **Exh.16** contending that the award passed by the competent authority is, itself, their ground of objection to the present application.

4] Respondent No.2-1 to 2-4 and 3 have filed say at **Exh.27** and contested the application by denying all the averments in the application and submitted that the rates granted by CALA and the arbitrator are less. The respondent by filing counter claim before the Arbitrator has claimed rate of Rs.10,000/- per Sq. meters but the arbitrator has granted Rs.2550/- per sq. Meter. Therefore, the

Award of arbitrator resulted into meager compensation and even below the award of CALA. The applicant has wrongly alleged that the award under the challenge is in conflict with the public policy.

5] Heard all the parties.

6] All the parties submitted as per their pleadings and also filed written arguments on record. Applicant/NHAI filed written argument at **Exh.29** reiterating the contents of the application under section 34 of the Arbitration Act.

7] Upon hearing the submissions of all the parties and upon perusal of the record, following points arise for my determination and I have recorded my findings against them for the reasons given below

<u>SR.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the applicant has made out sufficient grounds to set aside the award passed by the Arbitrator in case NO/ 2020 /Arbitration/ NHAI/Ausa-2/CR-769?	<b>Negative</b>
2.	What order ?	<b>As per final order</b>

### REASONS

#### As to Point No.1:-

8] Before considering the submissions advanced by the parties in support and against the award passed by the arbitrator let's first considered the scope of application filed under Section 34 of the Arbitration and conciliation Act. As well as the scope and power of this Court regarding the modification of the Award.

9] The Hon'ble Supreme Court of India in case of **Gayatri Balasamy Vs. M/S. ISG Novasoft Technologies Limited, 2025 INSC 605** has led down the law regarding the scope of interference of the Courts while exercising Section 34 of the Arbitration and Conciliation Act and held that "*Courts have limited power to modify an arbitral award. When the award is severable, the valid portion can be separated from the invalid part without affecting the other.*" Accordingly, while considering the present application, the scope of interference of this Court is limited.

10] In view of this settled position of law now, it is to be seen whether the Ld. Advocate of Applicant has sufficiently shown his case within the scope of Section 34 of the Arbitration and Conciliation Act.

11] It is fairly submitted by Ld. Advocate of applicant that the applicant is challenging the Award of arbitral tribunal as per Section 34(b) (ii) of the Arbitration and Conciliation Act, 1996. Accordingly, the applicant has challenged the award on the ground that it is "in conflict with the public policy of India". To claim the award being against "public policy" the applicant has taken following grounds-

(a) The acquired land is agricultural land and the Ld. Arbitrator has held the said land is having non-agricultural potentiality and has granted excess compensation than the rate prescribed in Ready Recknor.

(b) Interest rate imposed by the Ld. Arbitrator is not as per

law amounting patent illegality on the face of the record.

(c) The rate fixed by the CALA and Ld. Arbitrator are excess which is against public policy.

12] The Hon'ble Supreme Court of India has laid down the law interpreting the term 'Public policy of India' in following cases-

**1. Renusagar Power Co. Ltd vs General Electric Co., AIR 1994 SC 860,**

In this case it is held that the expression "public policy" in the context of foreign award means against the "fundamental policy of Indian law" and against the "interest of India". This decision is applicable in context to foreign award but to know what is the law regarding the term "public policy" it is useful.

**2. Oil & Natural Gas Corporation Ltd Vs Saw Pipes Ltd, AIR 2003 SC 2629.**

In this case the Hon'ble Apex court added the ground of "patent illegality" in order to set aside an award under Section 34 (b) (ii) of Arbitration and Conciliation Act.

**3. Oil & Natural Gas Corpn. Ltd. Vs Western Geco International Ltd., (2014) 9 SCC 263.**

In this case the Hon'ble Apex Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The ground added are-

- A. Justice,
- B. Morality and

C. Patent illegality.

**4. Associate Builders vs Delhi Development Authority, 2015 (3) SCC 49.**

In this case the Hon'ble Apex Court divided the term public policy of India into three heads.

1. Fundamental Policy of Indian Law including judicial approach, fairness, reasonableness.
2. Interest of India concerned with affecting national interest and sovereignty and security.
3. Justice and morality.

In this case the Hon'ble Apex Court applied the Wednesbury principle of reasonableness which is applicable to administrative law. This decision emphasizes minimal judicial intervention in the case of arbitration.

**5. Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (NHAI) AIR 2019 S.C. 5041.**

In this case the Hon'ble Apex Court elaborately discussed the previous cases and decision holding the field and concluded that, "the balance is generally in favour of the policy of enforcing arbitral award and only tilts in favour of the countervailing public policy where the violation of that policy would 'shock the conscience' or would be contrary to the "forum's most basic notion of morality and justice".

13] In view of above decisions to arrive at a conclusion that the award of arbitral tribunal is against the "public policy", it is

necessary to scrutinize the evidence which came before the arbitrator.

14] The applicant claims that the arbitrator has wrongly considered that that the acquired lands are having non agricultural potential and some lands are abutting the National High way No.361, those lands are in non agricultural use.

15] As against this, it is say of the Respondent No.2 that her land is being used as Non-Agricultural land but the arbitrator awarded meagre compensation.

16] Considering submissions of both the applicant and respondents, Ld. Arbitrator had framed Issue No.1 regarding the Non-Agricultural land.

17] On the point of non-agricultural potentiality, the Ld. Arbitrator has divided the lands of AUSA village which were acquired for National Highway No.361 in Three Groups, which are as under :-

**Group A** - The acquiring lands for the National Highway No.361 in S.No.168 which are situated in the Municipal Limits of AUSA and included in Development Plan.

**Group B**- The lands which are situated in the periphery of approx. 200 meters from the boundary of Municipal Limits and the approved Development Plan of AUSA from Patel Chowk of AUSA up to the lands from S.No.98. The acquiring lands for the National Highway No.361 from S.No. 193, 192, 184, 185, 218, 166, 97, 98,165, 171,130 excluding the acquiring lands in S.No.168 which

are situated in the periphery of approx. 200 meters from the boundary of Municipal Limits and approved Development plan of Ausa.

**Group C** - The acquiring land for the National Highway No.361 in S.No.104, 105, 113, 114, 115, 116 far away from Municipal Limits of Ausa.

18] The Arbitrator in his award has observed that, as per the said groups, the land Gat No.185 falls in Group-B. He has also further observed that “the lands under the acquisition by the National Highway Authority are having the Non-agricultural potential and although in some cases, no prior NA permission is obtained, but it is ascertained that these lands are abutting the National Highway No.361 and most of these lands are in Non-agricultural use. Hence, they are considered to be the lands in use for Non-agricultural purpose with or without the prior NA permission under Section 44 or 45 of the Maharashtra Land Revenue Code 1966 and this issue is mainly related with deciding the market value of the land and its compensation”. Accordingly, the said issue is decided as partly affirmative. These observations seem to be correct.

19] Further, the third ground submitted by NHAI that the Ld. Arbitrator has imposed interest upon the said compensation from the date of Notification on 12.05.2016 though the land in question was acquired under subsequent Notification on 01.06.2017. It is also ground of the NHAI that the Arbitrator has not framed Issue

on this point which is patent illegality on the face of record.

20] However, it appears from the Award of the Ld. Arbitrator that he has framed Issue No.9 regarding the same.

21] As per Section 3(H)(5) of the National Highway Act, 1956, runs as under :- Section 3(H)(5): “Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof”.

22] In this regard, it is necessary to see when the Notification came to be published. As per contentions made by the applicant itself in Exh.1, it appears that notification No. S.O. 1745(A) dated 12/05/2016 published in Local Marathi and English News papers on 31/05/2016. The subsequent Notification No.1524(A) dated 11/05/2017 published in Local Marathi and English News papers on 02/06/2017.

23] Now the discussion made by the Arbitrator in Point No.9 is to be seen. It is as :- “the NHAI during the process of hearing brought into the notice of the Arbitrator that these lands are yet not been handed over to the NHAI”. In view of this submission, the Ld. Arbitrator has pleased to observe as “this order will be applicable if and only the lands are acquired by the NHAI”.

24] In view of this observation, in operative part, the applicant and respondent No.1/CALA were directed to pay an

interest @ 9% p.a. on the compensation amount determined on 12/06/2018 till the date of amount deposited as per Section 3 H(5) of the National Highways Act, 1956. Thus, there is no patent illegality appearing on the face of record.

25] Lastly, the Ld. Advocate of Applicant has submitted that the award passed by the CALA for fixing rate of Rs.2648/- per square meter and rate fixed by the Arbitrator at Rs.2550/- per square meter are different but they have fixed rate extremely on higher side. The Arbitrator has not taken into consideration the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. There are various parameters in Sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for determining the rate of the acquired land such as proximity of acquired land, type of land.

26] Thus, it is the say of the NHAI that the market value fixed by the CALA and Ld. Arbitrator is higher. Therefore, it is to be seen in the light of Section 26 of the RFCTLARR Act, 2013, whether the determination of market value by the Arbitrator is proper or not.

27] The Ld. Arbitrator has considered the sale deeds from January-2013 to January-2016 for obtaining the market price of the lands. After considering the 955 sale deeds and the 501 highest sale deeds as well as considering the fact that the lands

acquired in Group-B are situated in the periphery of approximately 200 meters from the boundary of Municipal limits and approved development plan of AUSA, the arbitrator has awarded rate of Rs.2550/- per sq. meters.

28] Thus, in view of the guidelines given in Section 26(1) of the Compensation Act, the rate from the average sale deed is fixed at Rs.2550/- per square meter as the market rate for Group- "B" land, in which Gat No.185 falls.

29] Considering this method adopted by the Ld. Arbitrator and considering the sale deeds taken into consideration by him, submission of NHA that the rate fixed by the Arbitrator is excess, is not acceptable.

30] In fact, the Arbitrator has properly considered the evidence and sale deeds and has properly assessed the rate of Rs.2550/- per square meter decided by the CALA.

31] Thus, the applicant has failed to show that award of the Ld. Arbitrator is against the public policy and suffering from patent illegality on the face of the record. Hence, I do not find any merit in application under section 34 of the Arbitration Act for setting aside the award. Hence, I answer Point No.1 in the Negative.

**POINT NO.2 :-**

32] For the reasons stated herein-above and the findings recorded above, the application is liable to be dismissed with costs.

33] In view of the above discussion, I pass the following

order.

**ORDER**

1. The application is dismissed with costs
2. The award dated 30/06/2021 passed in File No.2020/Arbitrator/NHAI/Ausa-2/C.R.769 by Ld. Arbitrator is hereby maintained.
3. The stay application Exh.5 is hereby disposed off accordingly.

Date : 02/05/2026

(P. P. Kestikar)  
Adhoc District Judge-2  
Latur