

MHJG040029432022



Exh.30

Presented on : 17.06.2022

Registered on : 28.06.2022

Decided on : 07.08.2026

Duration : Y M D
04 01 21

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
JALGAON, DIST: JALGAON.**

(Presided over by R.N. Joshi)

CIVIL MISCELLANEOUS APPLICATION NO.335 OF 2022

The Project Director,
National Highways Authority of India,
PIU-Jalgaon, R/o. Gat No.53, Plot No.17,
Bhagirath Colony, near Shiv Colony Stop,
near State Bank of India, NH-6,
Jalgaon-425 001.

..Applicant

V E R S U S

- 1) Premchand Dhana Barhate (dead)
Through his legal heirs
Dhyaneshwar Premchand Barhate,
Age-Major, Occu. Agriculturist,
R/o. Fekari, Tal. Bhusawal,
Dist. Jalgaon.
- 2) The Competent Authority of Land
Acquisition & S.D.M., Bhusawal,
Dist. Jalgaon.

- 3) The Arbitrator & Collector,
Jalgaon,
Collector Office, Tal. & Dist. Jalgaon. **..Respondents**

Shri V.T. Sakolkar : Advocate for Applicant
Shri Y.A. Mahajan : Advocate for Respondent No.1
Smt. B.J. Khadse : A.G.P. for respondent No.2

J U D G M E N T

(Delivered on this 7th day of August, 2026)

1) By the present application, applicant, National Highways Authority of India challenged Arbitral Award dated 23.03.2022 in Arbitration Case No.1356/2019, passed under Section 3 (G) (5) of the National Highways Act, 1956. This is in respect of Gat No.42 of village Nimbhora Budruk, Tal. Bhusawal, Dist. Jalgaon, owned by the respondent No.1/land loser, was notified for compulsory acquisition of acquired area being 197 square meter. Competent Authority of Land Acquisition declared Award on 15.07.2013 through S.R.No.06/2011, declaring the market value of the acquired land at the rate of Rs.550/- per square meter excluding the compensation in respect of other things. The land loser being aggrieved by the said Award passed by Competent Authority, filed application before learned Arbitrator under the provisions of National Highways Act, 1956, challenging the award of the Competent Authority, claiming the market value to the tune of Rs.20,000/- per square meter, for the land under acquisition. The learned Arbitrator, after considering case of both sides, was pleased to hold the market value of the acquired land as on the date of 3(A) Notification to be Rs.2,108/- per square meter, after deducting the

amount already paid in earlier award, enhanced compensation was granted for acquired land at the rate of Rs.1,558/- per square meter. Learned Arbitrator also granted 10% on enhanced compensation by way of easementary rights i.e. Rs.155/- per square meter. The learned Arbitrator also granted loss due to severing of property and loss to the acquiring property total 10% of the market value i.e. Rs.210/- per square meter under Section 3 (G) (7) (b) (c) of National Highways Act, 1956. Accordingly, damages were granted for non-agricultural land at the rate of Rs.2,108/- per square meter. In view of such order, the National Highway Authority preferred the present application challenging the award.

2) Respondents No.2 and 3, resisted the application by filing say at Exh.10 and denied all the averments made therein. It is contended that learned Arbitrator has followed the mandatory procedure prescribed under the Act, while passing the Award, taking into consideration all the sale transactions placed on record, reviewing all the facts and circumstances and after scrutinizing the record finally determined possible rates for the acquired land. According to respondents, the applicant has filed frivolous application with malafide intention and ulterior motive, which is nothing but abuse of process of law. Respondents No.2 and 3, accordingly, prayed for dismissal of the application.

3) Respondent No.1 resisted the application by filing say at Exh.25 and denied the contentions made therein. It is contended that the acquired land is situated at village Nimbhora Bk, which is 3 kms.

away from Bhusawal, surrounded by Deepnagar Thermal Power Station, Varangaon Ordnance Factory, having non-agricultural and commercial potentiality, as there are Hotels, Dhabas, Business Units, Petrol Pumps, Garrages, Show Rooms, Complex etc. situated on both sides of National Highway. It is further contended that learned Arbitrator has determined the market value of the acquired land relying on the substantive evidence produced before him, without committing breach of any legal provisions. It is next contended that the sale deed taken into consideration by Arbitrator is more reliable as it is of the same village and registered by Co-operative Society. According to respondent No.1, the lands acquired in village Nimbhora are adjacent to National Highway and most of them are classified as non-agricultural and it is under use of Industrial, Commercial, residential colony and market. According to respondent No.1, earlier the applicant had accepted the rates determined by Arbitrator for the lands situated in village Nimbhora and had also paid the compensation, however, in order to mislead the Court, the applicant has raised objection about the instant Award. It is also contended that the applicant could not prove the rate for immovable property before the Competent Authority, on the contrary, respondent No.1/land loser had produced the Valuation Report of private valuer and proved the same. It is contended that considering the fact that due widening and increase in the height of road and partly acquisition of land of respondent No.1/land loser, he has suffered loss, therefore, compensation towards easementary rights is awarded to him. It is further contended that Arbitrator has rightly awarded interest @ 9%

p.a. as earlier also in many cases, the same interest is awarded and the same was accepted by applicant. According to respondent No.1, the learned Arbitrator has rightly awarded compensation towards future development, taking into consideration the quality, location and size of the land and development around it. Respondent No.1, accordingly, prayed for dismissal of the application.

4) Learned Advocate for applicant filed written notes of arguments, vide Exh.29, whereas learned Advocate for respondent No.1 has filed written notes of arguments, vide Exh.26. I have heard, learned, A.G.P. Smt. B.J. Khadse for respondents No.2 and 3 and also heard learned Advocate Shri V.T. Sakolkar for applicant, and learned Advocate Shri Pushkar Patil for respondent No.1, apart from their written arguments. Having regard to the respective submissions of the parties, following points arise for my determination and I record my findings thereon for the reasons to follow:-

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the impugned Award, passed by the learned Arbitrator, is legal, proper and correct ?	In Affirmative.
2.	Whether there is need to quash and set aside the Award passed by the learned Arbitrator ?	In Negative.
3.	Whether the impugned Award warrants any interference ?	In Negative.
4.	What order ?	As per final order.

- R E A S O N S -

5) **As to Points No.1 to 3 :-**

It is submitted by learned Advocate for applicant that the learned Arbitrator without applying judicial mind, wrongly decided the Arbitration Application and awarded enhanced exorbitant compensation to respondent No.1/land loser, which is totally contradictory to the provisions of NHA Act, 1956 and Land Acquisition Act, 1894. Learned Arbitrator wrongly relied upon Sale Deed No.3039/2006 for determination of market value of the acquired land, which is sale deed of small piece/plot of land. It is further submitted that aforesaid sale deed is before five years of 3 (A) Notification, therefore, the same is not applicable on the point of proximity and as per the observations noted down by Hon'ble Supreme Court in **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Pune**. It is further submitted that learned Arbitrator has not considered all the sale deeds produced by applicant and wrongly determined the market value of the acquired land.

6) On the aspect of assets, it is submitted that Competent Authority had rightly determined the market value of assets on the basis of reports submitted by concerned departments. It is also submitted that as per 7/12 extract, the acquired land was not useful for cultivation and there were no any commercial activity or residential houses. According to learned Advocate the act of learned Arbitrator is totally contradictory to the mandatory provisions of Act and decisions

of Hon'ble Apex Court. Learned Advocate, accordingly, prayed to allow the application and set aside the Award.

7) On the other hand, learned advocate Shri. Pushkar Patil, for respondent No.1, submitted that acquired land is situated at village Nimbhora Bk, which is 3 kms. away from Bhusawal, surrounded by Deepnagar Thermal Power Station, Varangaon Ordnance Factory, having non-agricultural and commercial potentiality, as there are Hotels, Dhabas, Business Units, Petrol Pumps, Garrages, Show Rooms, Complex etc. situated on both sides of National Highway. It is further submitted that learned Arbitrator has determined the market value of the acquired land relying on the substantive evidence produced before him, without committing breach of any legal provisions. It is next submitted that the sale deed taken into consideration by Arbitrator is more reliable as it is of the same village and registered by Co-operative Society. According to respondent No.1, the lands acquired in village Nimbhora are adjacent to National Highway and most of them are classified as non-agricultural and it is under use of Industrial, Commercial, residential colony and market. It is also submitted that the applicant could not prove the rate for immovable property before the Competent Authority, on the contrary, respondent No.1/land loser had produced the Valuation Report of private valuer and proved the same and considering the fact that due widening and increase in the height of road and partly acquisition of land of respondent No.1/land loser, he has suffered loss, therefore, compensation towards easementary rights is awarded to him. According to respondent No.1, the learned Arbitrator has rightly

awarded compensation towards future development, taking into consideration the quality, location and size of the land and development around it. Respondent No.1, accordingly, prayed for dismissal of the application.

8) Learned Advocate for respondents No.2 and 3 submitted that learned Arbitrator has followed the mandatory procedure prescribed under the Act, while passing the Award, taking into consideration all the sale transactions placed on record, reviewing all the facts and circumstances and after scrutinizing the record finally determined possible rates for the acquired land. According to respondents, the applicant has filed frivolous application with malafide intention and ulterior motive, which is nothing but abuse of process of law. Respondents No.2 and 3, accordingly, prayed for dismissal of the application.

9) Prior to dealing with the rival submissions of the adverse parties, it would be appropriate to have a look at the law, governing the file, particularly “Section 34” of The Arbitration and Conciliation Act.

(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) of Sec.34 of The Arbitration and Conciliation Act. It says as under:-

*(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; 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 in conflict with a provision of this Part from which was 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.

10) Through the catena of decisions, it is well settled that the merits of an arbitral Award can be looked only in case, the Award is in conflict with the public policy of India. Thus, in view of the aforesaid legal principles, at the very outset, it may be mentioned that the jurisdiction of the Court to interfere with an Award of an

Arbitrator, is very limited. Normally, it is not expected from the Court to re-appreciate the evidence and go into the question of credibility of the witnesses and assessment of the evidence. It is not permissible to the Court to review the Arbitrator's conclusion and findings, if recorded adhering to the principles of natural justice and equity.

11) The main grievance of the applicant, in the case-in-hand, is that the impugned arbitral Award is in conflict with the public policy of India. According to it, learned Arbitrator has failed to appreciate properly the sale instances produced before him and reasons also were not properly noted.

12) It is submitted on behalf of respondent No.1/land loser that the learned Arbitrator has correctly granted compensation, considering the reasons given and considering the Judgment in the case of **Gayatri Balasamy Vs. M/s. ISG Novasoft Technologies Ltd. [2025 INSC 548]**. The jurisdiction under Section 34 (4) of The Arbitration and Conciliation Act is a very limited, where in the Court cannot sit into appeal on the conclusion arrived by the learned Arbitrator, on the point of market value, etc., particularly when the reasons are appealing on all the three counts. Firstly, the sale instance there is one sale instance prior to the date of notification in Sale Deed No.3399/2011 at the rate of Rs.13,469/- per square meter, another Sale Deed No.3660/2011 dated 14.07.2011 at the rate of Rs.595/- per square meter as market value for any land under acquisition and the respondent who is applicant before Arbitrator produced Sale Deed No.3039/2006 dated 27.06.2006 of land Gat No.55/1, Plot No.3 at the

rate of Rs.2,342/- per square meter. The present applicant who was respondent before Arbitrator denied the above sale instance on the ground that they were on higher side and sale deeds of similar type of land are available in the areas. However, the present applicant/NHAI before the learned Arbitrator has not given any specific reason as to why this sale deeds cannot be treated as comparable sale exemplars. The arbitrator further considered that the above sale of date 27.06.2006 which was before the date of Notification under Section 3(A) of the Act. Village Nimbhora is adjacent to Fekari on the opposite side of the highway. Merely because highway proceeds between two villages, the rates on one side of the highway cannot be different than the another side of the highway merely due to change of name of the village or being included in another village. Thirdly, learned arbitrator considered the report of A.D.T.P. Jalgaon dated 25.06.2015, which is mentioned in the Award passed by Competent Authority, which shows that villages Fekari and Nimbhora Bk. are included in development plan of Bhusawal town. He further observed that the lands of village Nimbhora Bk. are also from the same vicinity as that of village Fekari. After reconsidering the sale deed No.3039/2006, which was executed on 27.06.2006 i.e. almost 5 years prior to that of 3(A) Notification that too at the rate of Rs.2,342/- per square metre. It is further reasoned that in view of above, the lands in the vicinity of village Nimbhora Bk. had huge non-agricultural potential from long time. Further, the learned Arbitrator considered the decision in the matter of **Ashrafi & Others Vs. State of Haryana & Others** [AIR 2013 SC 3654] of Hon'ble Apex Court and held that

"while determining the market value of land, the Court must be satisfied that the land under exemplar is a similar land." After taking into consideration the geographical location of Fekari and Nimbhora Bk. villages and development of the surrounding area, learned Arbitrator considered Sale Deed No.3039/2006 of Nimbhora Bk. dated 27.06.2006 at the rate of Rs.2,342/- per square meter, which can be treated as a comparable sale exemplar and thereafter he held that it shall form the basis of determination of market value of the acquired property, but with proper deduction for size, location, time and distance. Thereafter the learned Arbitrator considered the Sale Deed No.3039/2006 for plot area of 626.75 square meter and consideration was Rs.14,67,850/- of which rate per square meter came to Rs.2,342/-. The date of Notification under 3 (A) of the Act is 11.11.2011. Therefore, by considering the observations of Hon'ble Supreme Court in the matter of **Radha Mudaliyar Vs. Special Tahsildar (Land Acquisition) TNH Board [AIR 2011 SC 54 Civil Appeal No.5616/2014 dated 08.10.2010]**, the annual increase in the market value @ 10% was granted considering reasonable for compensating difference in time. Learned Arbitrator has also considered the issue of difference in size of land which was dealt with in the Judgment in the matter of **Mehrawal Khewaji Trust (Regd) Vs. State of Punjab [2012 AIR SC 2721]**, wherein it is held in Para No.17 as under :

"17. The value of sale of small pieces of land can be taken into consideration for determining the value of large tract of land but with a rider that the Court while taking such instances into consideration has to make a reasonable deduction keeping in

view of the other attendant circumstances".

13) The another Judgment, which was relied upon by the applicant before this Court, is **Administrator General of West Bengal Vs. Collector, Varanasi [(1988) 2 SCC 150]**, where it is held that :

"Where large tracts of land are required to be valued, valuation in transactions with regard to small plots is not to be taken as a real basis for determining the compensation of large tracts of land. It follows that, where market value of large tract of land is determined on the basis of sale transactions for smaller property, appropriate deduction has to be made."

14) Therefore, he went on for a deduction of 20%, considering the distance from the acquired property and for size of land, a deduction of 20% is concluded and finally in Para No.6 calculated as under :

The market value as per sale exemplar	Rs.2,342/-- per sq.mtr.
Add - annual increase @ 10% for 5 years	Rs.1,171/- per sq.mtr.
Market value as per comparable sale exemplar on the date of notification.	Rs.3,513/- per sq.mtr.
Less - deduction for distance @ 20% of Rs. 3,513/-	Rs. 703/- per sq.mtr.
Less - deduction for size @ 20% of Rs. 3,513/-	Rs. 703/- per sq.mtr.
Market value of the acquired property as on the date of 3-A notification	Rs.2,108/- per sq.mtr.
Amount already paid in CALA's award	Rs. 550/- per sq.mtr.
Enhanced compensation	Rs.1,558/- per sq. mtr.

15) The aforesaid calculations are made for the acquired land and accordingly the respondent before arbitrator who is the applicant before this Court, was directed to pay the compensation at the rate of Rs.1,558/- per square meter for acquired land.

16) It is vehemently argued by learned Advocate for applicant Shri Sakolkar that this is patent illegality on the ground that learned Arbitrator has considered the highest amount per square meter of a place which was at a distance of 7 km away and that one stray instance of sale exemplar is considered. This is against the public policy and therefore it has to be corrected by invoking jurisdiction under section 34 (4) of The Arbitration and Conciliation Act. This submission is lucrative at the first instance, however, just a bit deeper consideration, reveals that this submission is nothing but smokescreen and faded away by simply looking a bit deeper into the issue, for the reason that, learned Arbitrator has considered not only one sale exemplar, but three sale instances. Objection was that one of the sale instance is in respect of house property constructed upon, but no evidence was led by the present applicant before the Arbitrator. Therefore, the consideration and calculation on this point cannot be accepted to be illegal. Furthermore, learned advocate for applicant placed reliance on the Judgment in the matter of **V. Hanumantha Reddy (Dead) by Lrs Vs. The Land Acquisition Officer and others in Civil Appeal No. 7678-7683 of 1997, decided on 17.12.2003**. The learned Arbitrator has considered latest Judgments of the year 2013 and 2011, which are reflected in his order also a Judgment of the year 2012 was considered. The learned Advocate for applicant/NHAI

emphasised on the last line of Paragraph No.7 of the Judgment (cited supra) in which it is observed as under :

"In the present case the undisputed facts on record would show that the acquired land with National Highway No.7 is intervened by a petrol bunk and the premises of the State Bank of India. There are also houses, shops and hotels on the north, south and west of the acquired land. The acquired land is also about 100 yards away from the National Highway No.7. No doubt, the acquired land may be having high potential value, but that itself per se cannot be claimed to be developed. Lots of developmental activities are to be undertaken like laying of roads, sewerage facility, water supply, etc. so that the land would be made fit for construction of houses for the needy people, which would require enormous amount of expenditure."

Therefore, Hon'ble Supreme Court did not find any infirmity in the order of the Hon'ble High Court warranting interference. The appeal of the private party was dismissed in favour of the Land Acquisition Officer. In this case, however, on factual grounds, this Judgment cannot be applied to the facts of the present case, for the reason that in the present case the acquired land is already shown in the development plan of town. The sale instance is considered by assigning proper reasons by the Arbitrator which are reflected in the order of the Arbitrator which are speaking and on the basis of the principles enunciated by none else than Hon'ble Supreme Court declaring the Law of Land which are properly considered by the Arbitrator. Even the deductions are considered by the Arbitrator in his award, therefore, on this count, this award cannot be interfered with.

17) He further submitted that the 10% acceleration per year cannot be considered, firstly for the point that the principle itself is not

applicable in the acquisitions by National Highway and secondly that already the sale instance considered is of a very high value. Both the submissions cannot stand scrutiny. Firstly, for the reason that the 10% increase is granted on the basis of Judgment in the matter of **Radha Mudaliyar Vs. Special Tahsildar (Land Acquisition)** reported in **AIR 2011 SC 54**. Secondly, the contention that the sale instance itself is considered at a very higher side is already rejected in view of the reasons here-in-before, therefore, on this count also the Award cannot be interfered with.

18) Learned Advocate for applicant further raised issue that easement cannot be granted, particularly in case of widening of the highway. Upon query made, he fairly conceded that the question of easement is pending before Hon'ble Supreme Court and under a reference. Further, he fairly conceded to the fact that the last Judgment on the point of easementary component has been granted. If this is so, he further conceded on the point that Article 141 of the Constitution of India, by way of law of precedent, the last Judgment which is under reference, will not lose its binding effect, unless and until it is turned down and clearly reference is answered by the Hon'ble Supreme Court. In that view of the matter, the last Judgment would be binding on this Court also. Therefore, on this count also, the submission of the advocate cannot be accepted and is rejected.

19) Another submission on the point of interest, as raised in the application, however, this part is already decided by Hon'ble Supreme Court and it is held that as in the general Acquisition Act, the

interest component of 9% for the first year and 15% for the year thereafter till actual realisation of the amount as granted in general Act is also applicable in the National Highways Authorities compulsory acquisitions. Furthermore, on the enhanced amount, also, interest is granted by the Hon'ble Supreme Court in the Judgment of **National Highways Authority of India Vs. Tarsem Singh and Others 2026 INSC 291**, decided on 25.03.2026 . However, on that point, it is for the respondent No.1 to apply before proper forum as it is a statutory benefit and that point was kept open and available as a statutory benefit. This Court would not interfere or intervene into that aspect of the matter in the appeal, particularly filed by the National Highway Authorities when there is no application/appeal filed against the award by the respondent/land loser. Hence, land loser is free to apply before proper forum. I do not find any reason to hold that order is against the public policy as mentioned in the celebrated Judgment cited before opening of the reasons.

20) Therefore, having considered the legal prepositions, as noted above, it is clear that the learned Arbitrator has elaborately discussed the evidence and passed the impugned Award in accordance with the well settled principles of law. No case is made out by the applicant to interfere with the impugned Award under Sec.34(2) of The Arbitration and Conciliation Act, 1996. Hence, I record my findings to Points No.1 to 3 accordingly. Hence, I proceed to pass following order :-

ORDER

a) Application stands dismissed.

- b) In the peculiar facts and circumstances of the case, parties to bear their own cost.
- b) Civil Miscellaneous Application No.335 of 2022 stands disposed of accordingly.

Date : 07.08.2026

(R.N. Joshi)
**Principal District Judge,
Jalgaon.**