

KABG010027662023



**IN THE COURT OF PRL. DISTRICT JUDGE, BELAGAVI,
AT : BELAGAVI.**

Dated this the 1st day of April, March 2024

PRESENT

Smt. L. Vijayalakshmi Devi, B.Sc. LL.M.
Principal District and Sessions Judge,
Belagavi

ARBITRATION PETITION No.44/2023

PETITIONERS:

- 01 Shri. Allabhaksh S/o Appalal Sanadi,
(Deceased by his LRs)
- 1A. Shri. Mohammad Hanikph S/o Appalal
Sanadi, Age: 75 years, Occ: Agriculture,
R/o Ganesh Galli, Ranakunde village,
Tq: Belagavi.
(By Shri. P.V. Sambaragi, Advocate)

-Versus-

RESPONDENT:

The Deputy General Manager (Tech)
& Project Director,
National High Way Authority of India
Project Implementation Unit
2nd Cross, Sattur Colony,
Vidyagiri, Dharwad.
(By Shri. S.F.Angadi, Advocate)

JUDGMENT

The petitioners have filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 with a prayer to grant statutory benefits of 30% solatium, 12% additional market value and 15% interest on the enhanced compensation of Rs.1064/- per square meter awarded by the Arbitrator under common award No.ARC/LAQ/ARB(NHAI)/C.R.01 to 13+49, 14, 15+22, 16+41, 17 to 21, 23 to 30, 32, 33+38, 34 to 37, 39, 40, 42 to 48/Bastawad-01 dated 17.12.2022. The petitioners are the claimants before the Arbitrator in No. ARC/LAQ/ARB(NHAI)/C.R.47.

The brief factual scenario of the case is as under :

2. The petitioners are the owners of agricultural land bearing R.S.No.57P situated at Bastawad village in Belagavi Taluka out of which 420 Sq. meters was acquired by respondent as per the preliminary notification dated 10.07.2001 and final notification dated 17.05.2002 for widening of existing NH-4 road to 4/6 lane from 282 Kms to 515 Kms and compensation of Rs.35.60 per square meter was awarded.

3. Petitioners being aggrieved, filed Arbitration Petition No. ARC/LAQ/ARB(NHAI)/C.R.47 before the Arbitrator, Land Acquisition (NHAI) and the Additional Regional Commissioner (ADMIN), Regional Commissioner Office, Belagavi Division, Belagavi for enhancement of compensation. After hearing both the parties, learned Arbitrator concluded that, compensation awarded was under lower side and ordered to enhance the compensation to Rs.1064/- per square meter from Rs.35.60 per square meter with interest at 9% per annum from the date of possession and passed the above common award.

4. Grievance of the petitioners is that, as per the decision of Hon'ble Apex Court in (2019) 9 Supreme Court Cases 304, Section 3J of NHAI Act, 1956 was struck down as unconstitutional and it was held that lands acquired under NHAI Act, 1956 are also entitled for statutory benefits under Section 23 and 28 of Land Acquisition Act, 1894 and the decision was applicable to all the Arbitrations pending as on 28.03.2008. Even then, arbitrator did not award statutory benefits as sought above and thus failed to obey ratio laid down in the above decision. Hence, prayed to allow the petition.

5. In response to notice, respondent appeared through his counsel and filed objections resisting the petition.

6. Respondent in his objections contends that, this petition is barred by limitation under Section 34(3) of Arbitration and Conciliation Act, 1996 and there are no sufficient grounds for condonation of delay. In fact, the claim application filed by the petitioner before the learned Arbitrator under Section 3G(5) of the NHAI Act, 1956 itself was barred by limitation. The award by CALA/AC was passed in the year 2004 and the claim application was filed after lapse of limitation period. As such, it was hit by Article 137 of Limitation Act. Further, the petitioners have not complied with Section 34(5) of the Act before filing this petition. The petition is not in the form prescribed by Rule 4 of High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001 as the Arbitrator has not been made party to the proceedings. As regards applicability of the decision of Hon'ble Apex Court relied by the petitioners, respondent contends that in fact said decision is modified subsequently in Civil Appeal

No.7086/2019 in the case of NHAI Vs. Tehal Singh and others wherein Hon'ble Apex Court deleted Section 23(1A) appeared in the Judgement dated 19.09.2019 in paragraph No.41. Therefore, as per the said Judgement 12% additional market value cannot be awarded. Respondent further contends that NHAI Act, 1956 lays down procedure for fixation of market value of acquired land under Section 3G(7) of the Act and the compensation amount so fixed shall carry 9% interest as per Section 3H(5) of the Act and said Act is still in force. The compensation awarded by the respondent is reasonable and proper as per the procedure prescribed. It needs no revision by the Arbitrator. Thus, the petitioners have not made out any ground to interfere with the award under Section 34 of the Act. Hence, prayed to dismiss the petition.

7. I have heard the arguments by both the sides.

8. Points that arise for consideration are as follows:

1. Whether the petitioners have made out any of the grounds enumerated under Section 34(2) or 34(2A) of the Arbitration and Conciliation Act, 1996 to set aside

the impugned award?

2. What Order?

9. My findings on the above points are as under:

Point No.1 : In the affirmative

Point No.2 : As per final order

for the following:

REASONS

Point No.1:

10. The petitioners have assailed the award dated 17.12.2022 passed by the Arbitrator on a solitary ground that arbitrator ought to have awarded statutory benefits contemplated under Section 23 and 28 of the Land Acquisition Act, 1894 on the enhanced compensation of Rs.1064/- per square meter in addition to interest at the rate of 9% per annum under the NHAI Act, 1956. In support of this contention they have placed reliance on the decision of the Hon'ble Apex Court in the case of ***Union of India and another Vs. Tarsem Singh and others***¹. In para No.41 of the said Judgement Hon'ble Apex Court held as below:

“.....We therefore declare that the

¹ (2019) 9 SCC 304

provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional....”

11. As against this, respondent has contended that, the above said judgement is subsequently modified in Civil Appeal No.7086/2019 **National Highway Authority of India and another Vs. Tehal Singh and others** as below:

“Sh. Shyam Divan, learned senior counsel appearing on behalf of the applicants(s), seeks a clarification of our Judgment dated 19.09.2019 in two aspects. First, he points out that in Paragraph 41 of our Judgment, we have included Section 23(1A) as well, when Section 23(1A) was not present before any authority or the Court on the facts of these cases.

He has also shown us the Judgment and Order dated 28.03.2008 passed by the High Court of Punjab and Haryana in Civil Writ

Petition No.11461 of 2005 to buttress this submission.

Since this plea is correct, we delete the expression “(1A) and” occurring in Paragraph 41 for the reason given above...”

12. Thus from the above extracts, it is apparent that the above decision excludes applicability of Section 23(1A) of the Land Acquisition Act i.e. the land loser will not be entitled for additional market value at 12%. However, they will be entitled for benefits under Section 23(2) and 28 of Land Acquisition Act, 1894. Therefore, the petitioners were entitled for statutory benefits under Section 23(2) and 28 of Land Acquisition Act, 1894 viz., solatium at 30% and interest at 15% though the lands were acquired under the provisions of NHAI Act, 1956.

13. As apparent from page No.8 para 11(b) of the impugned award learned counsel for the petitioners had specifically taken up contention before the Arbitrator that land loser is entitled for statutory benefits in view of the above decision. Even then learned Arbitrator has passed the award without granting statutory benefits as prayed for. It is needless to say, under Article 141 of Constitution of

India, decision of the Hon'ble Supreme Court shall be regarded as law of the land and is binding on all the courts in the country. Thus, impugned award is ***against the fundamental public policy of India*** which provides for compliance with statutes and judicial precedents. Therefore, it warrants exercise of supervisory jurisdiction by this court under Section 34(2) of the Act.

14. This court in exercise of its supervisory jurisdiction cannot modify the impugned award by granting statutory benefits as prayed by the petitioners. Even this court has no jurisdiction to remand the matter to the Arbitrator in view of the decision of Hon'ble High Court in MFA No.102655/2015(AA) dated 24.01.2018. Therefore, this court can only set aside the impugned award and the parties would be at liberty to approach the Arbitrator for passing fresh award by complying with decision of Hon'ble Apex Court in the case of ***Union of India and another Vs. Tarsem Singh and others***² subject to modification of the same in the case of ***NHAI and another Vs. Tehal Singh and others***³

² (2019) 9 SCC 304

³ Civil Appeal No.7086/2019 by Order dtd.04.08.2021

15. For the above reasons, this court is of the considered opinion that, the petitioners have made out ground to set aside the impugned award. Accordingly, point No.1 is answered in the affirmative.

Point No.2:

16. In view of the discussion held on point No.1, the petition deserves to be allowed by condoning the delay. Hence, I proceed to pass the following :

ORDER

Petition filed under Section 34 (2) of Arbitration and Conciliation Act, 1996 is hereby allowed.

The award passed by the Arbitrator under award No. ARC/LAQ/ARB(NHAI)/C.R.01 to 13+49, 14, 15+22, 16+41, 17 to 21, 23 to 30, 32, 33+38, 34 to 37, 39, 40, 42 to 48/Bastawad-01 dated 17.12.2022 is hereby set aside.

No order as to costs.

(Directly dictated to the Stenographer Grade-III on computer, corrected and pronounced by me in the open Court on this the 1st day of April, 2024)

(L. Vijayalakshmi Devi)
Prl.District Judge, Belagavi.