

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-II,
KASARAGOD**

Present:- Smt.Priya.K, Additional District Judge-II, Kasaragod
Wednesday the 13th day of November, 2024 /22nd Karthika, 1946

O.P (Arbitration) No.64 OF 2023
(Arbitration and Conciliation Act)

Between:-

Project Director,
National Highway Authority of India,
Kannur, Kerala

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Petitioner

And

1. Special Deputy Collector,
Land Acquisition (National Highway)
Kasaragod.
2. The District Collector, (Arbitrator),
Kasaragod.
3. Edakkavil Beefathima,
aged about 64 years,
W/o. Muhammed Kunhi,
Thanuja Manzil,
Near Nehru College, Padannakkad,
Kasaragod District - 671314.

}

Respondents

Petition filed under section 34 of the Arbitration and conciliation act 1996 to set aside the award dated 09.07.2021 in LAC 569/Kanhangad Village passed by 1st Respondent and to set aside arbitral award dated 29.03.2023 in Case No.NH/ARBT/KSD/345/2022 & LAC 569/Kanhangad passed by the 2nd respondent.

Petition presented on : 29.07.2023
Court fee paid : ₹ 400/-
K.L.B.F. : ₹ 100/-

This petition coming on 11th day of November, 2024 for final hearing before me in the presence of Sri.A.Radhakrishnan and Sri.E.C.Kuriakose, Advocates for the petitioner; of Sri.Chandramohan.G., Addl. Government Pleader for the 1st and 2nd Respondents; of Sri.Manikandhan.K, Advocate for the 3rd respondent; and having stood over to this day for consideration the court passed the following:

ORDER

This petition is filed u/s.34 of the Arbitration and Conciliation Act, 1996 for setting aside the Arbitration Award dated 29.03.2023 in case No.NH/ARBT/KSD/345/2022 on the file of the Arbitrator NHAI (District Collector, Kasaragod) in LAC.No.569/Kanhangad dated 09.07.2021 on the file of the Special Deputy Collector, LA (NH), Kasaragod.

2. **The petition averments are as follows:-** The petitioner is the Project Director of National Highway Authority of India. An extent of 3.40 Sq.Metre of land in the possession of respondent No.3 comprised in R.S.No.536/5 (after survey 536/9) in Kanhangad Village was acquired for widening the existing National Highway 66, as per the provisions of the National Highways Act, 1956 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Special Deputy Collector (Land Acquisition herein after CALA) vide LAC.No.569/Kanhangad dated 09.07.2021 passed an Award of compensation in favour of respondent

No.3 for a total amount of ₹2,20,288/-. The land is valued at ₹6,760/- per square metre. CALA verified the registered documents of similarly situated lands, executed during the period of three years preceding the date of Sec.3A notification of National Highways Act for arriving at the said rate for valuation of the land. Challenging the order, the petitioner filed an Arbitration petition before the Statutory Arbitrator who is the District Collector, Kasaragod alleging the rate fixed for the land was exorbitant and the CALA did not comply with the principles of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 while arriving at the market value of the land acquired. The Arbitrator disposed the petition by virtue of Award dated 29.03.2023 rejecting the contentions of the petitioner.

3. The grounds of setting aside the Award as per the petition are; the Award passed by the Arbitrator is illegal and there is an error apparent on the face of record. One of the sale deeds that was considered to arrive at the average sale price for computing compensation is disproportionate to the rest of the documents/sale deeds considered for arriving at the average market value. The document No.3324/2012 should have been discarded as it was not indicative of actual prevailing market value. The price does not indicate or reflect the prevailing market value. The documents relied upon by the

Arbitrator were also considered by the predecessor in similar cases and the Arbitrator agreed to the contentions raised by the petitioner. Arbitrator discarded the fact that sale consideration in the document No.3324/2012 was disproportionate to all other documents available on record. The competent authority verified the sale deeds immediately preceding 3 years of date of publication of 3A notification of S.R.O, Kasaragod and seven transactions were found suitable for determining the rate of land under acquisition. Out of those documents, documents which had the land value on higher side is taken and worked out at ₹6,760/- per Sq.Metre. The principles and criteria adopted for computation of compensation by ignoring the document which is considerably on the higher side than the rest of the documents relating to similarly situating lands. The document containing or reflecting low consideration than the rest of the documents or similarly situated documents is also rejected while computing compensation payable. As per Sec.3G(7) of the National Highways Act 1956 r/w Sec. 29 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for determination of the amount by the competent authority or the Arbitrator shall take into consideration of Sec.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. The documents verified were having land value of ₹12,346/-, ₹5,250/-, ₹4,938/-, ₹3,000/-, ₹2,500/-, ₹2,500/- and ₹2,100/-per Sq.Metre. The land value of the first document ie., ₹12,346/- is an odd one and should have been avoided for ascertaining the actual prevailing value of the land. For arriving the value of the land, CALA had taken average of higher side documents. The value of the land reflecting first document is disproportionately higher than all other documents. CALA had relied upon the sale deeds disproportionately on higher side and took a procedure not laid down by Sec.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and National Highways Act, 1956. The land under acquisition was valued exorbitantly higher than the real value resulting in huge loss to the exchequer. Hence, the compensation awarded by first respondent in LAC.No.569/Kanhangad and Award passed by the second respondent in Case No.NH/ARBT/KSD/345/2022 dated 29.03.2023 are liable to be set aside.

5. Respondent Nos.1 to 3 entered into appearance. Additional Government Pleader filed memo of appearance for respondent Nos.1 and 2. Respondent No.3 filed Vakalath. Respondent Nos.2 and 3 hadn't filed any counter.

6. Respondent No.1 entered into appearance and filed counter denying all averments in the petition and contended that the Arbitrator rightly held that the rate fixed and Award amount determined is absolutely correct. CALA hadn't found any reason to discard the document No.3324/2022 as per the allegation. Arbitrator correctly fixed the rate of ₹6,760/- per Sq.Metre in this case. Rate of land value fixed by the CALA is confirmed by the Arbitrator is strictly in accordance with the provisions contained U/s.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The respondent prayed for dismissal of the petition, with cost.

7. Heard both side.

8. The point for consideration is;

Whether the Arbitration Award No.NH/ARBT/KSD/345/2022 dated 29.03.2023 passed by the Arbitrator is liable to be set aside as per Sec.34 of the Arbitration and Conciliation Act ?

9. **The point:-** The Learned counsel for the petitioner argued that respondent No.1, the competent authority U/s.3A of National Highways Authority Act of India acquired 3.40 Sq.metre of land in Kanhangad Village. A gazette notification was published U/s.3A of National Highways Act, 1956. After hearing the objections, U/s.3C of National Highways Act decision was taken on 09.07.2021. After complying the procedure, compensation was

awarded by respondent No.1. The petitioner challenged the order passed by first respondent and filed a petition before the statutory arbitrator who is none other than the District Collector, Kasaragod which was numbered as NH/ARBT/KSD/345/2022. The statutory arbitrator after giving notice to the parties and hearing them passed an Award as per Order No.NH/ARBT/KSD/345/2022 in LAC/569/Kanhangad confirming the compensation awarded by respondent No.1. He submitted that while passing the Award respondent No.1, the competent authority considered documents of the similar type of lands. The documents verified there were having land value of ₹12,346/-, ₹5,250/-, ₹4,938/-, ₹3,000/-, ₹2,500/-, ₹2,500/- and ₹2,100/- per Sq.Metre. The land value of in first document i.e., ₹12,346/- is an odd one and should have been avoided for ascertaining the actual prevailing value of the land. The documents of higher side was taken and took an average of them which is against the procedure laid down U/s.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He also submitted that the documents of higher valuation were taken into consideration and average of it was taken to arrive at the compensation amount. He also submitted that the aforesaid Award is illegal and there is error apparent on the face of record. There is ground to set aside the Arbitration Award passed in this case.

10. Learned Additional Government Pleader appearing for respondent No.1 and 2 submitted that after considering all documents of similar and similarly situated lands, the competent authority had determined the compensation amount rightly U/s.3G of National Highways Act.

11. Learned counsel for respondent No.3 submitted that even if the petitioner says that a document in which exorbitant value was shown was taken into consideration, no documents or no evidence is produced by the petitioner before the Arbitrator showing the same. He also submitted that, the petitioner had no case that the document No.3324/2012 is executed fraudulently. It is a registered document. The statutory Arbitrator himself inspected the property mentioned in the document and found that the land mentioned in the document is similar in nature, lie and commercial importance and there is no strong reason to avoid the document.

12. On hearing both side and on perusal of case records it is found that there is no dispute regarding the fact that 3.40 Sq.Metre of land was acquired by respondent No.1, the competent authority in this case. It is also admitted that an amount of ₹2,20,288/- was awarded as compensation to the title holder by the competent authority. The dispute in this case is that the compensation amount awarded by the competent authority is exorbitant so that the petitioner approached statutory arbitrator U/s.3G (5) of the National Highways Act. The

District Collector who is the Arbitrator in this case had already passed an order after giving notice to the parties and after hearing the parties rejecting the petition filed by the petitioner herein, challenging the Award passed by first respondent. Challenging the same order, this petition was filed by the petitioner who is the Project Officer and who was a party in the proceedings before the competent authority.

13. The question in this case is, whether the court has to interfere with the order passed by the Statutory Arbitrator under the National Highways Act on the ground that the rejection of the claim of the petitioner stating that the Award passed by the competent authority was too exorbitant.

14. The first point to be considered is, whether there is any ground to set aside the Award passed by the Arbitrator U/s.34 of the Arbitration and Conciliation Act.

15. The main contention raised by the Learned Counsel for the petitioner is that, the Arbitrator fixed the market value of the acquired land by considering the value of the land having higher price. In one of such document, the value shown is exorbitant, it has to be avoided from fixing the land value.

16. As per the National Highways Act, 1956, Sec.3G(7) the Competent Authority or the Arbitrator while determining the amount under sub-section (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 publication of the notification under section 3A;
- b) the damage, if any, sustained by the person interested 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 interested 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 is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

17. How the market value can be determined is not mentioned in the National Highways Act. For determining the market value of the land Sec.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, has to be looked into since it came into force on 01.01.2014 and the Act was made applicable to the acquisitions under National Highways Act, 1956 by virtue of notification/order issued under the provisions of 2013 Act. In exercise of powers conferred by sub section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the Central Government had issued the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties)

Order 2015, in which, the aforesaid difficulties were removed namely,

- 1) (1) this order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order 2015.
(2) it shall come into force with effect from 1st day of September 2015.
- 2) The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, relating to the determination of compensation in accordance with the first schedule, rehabilitation and resettlement in accordance with the second schedule and infrastructure amenities in accordance with the third schedule shall apply to all cases of land acquisition under the enactments specified in the 4th schedule to the said Act.

18. In the fourth schedule of the same Act, National Highways Act, 1956 is mentioned.

19. As per Sec.26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the market value can be calculated;

- a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899), for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated;or
- b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area;or,

- c) Consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, which ever is higher.

In explanation (1); the average sale price referred by clause (b) shall determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made. Explanation (2); for determining the average sale price referred to in explanation (1) One-half of the total number of sale deeds or agreements to sell in which the highest sale price has been mentioned shall be taken into account.

20. Here, as per the Arbitration Award of the Statutory Arbitrator, it was held that he had inspected the land involved in document No.3324/2012 along with other lands. He was convinced that the land is similar in nature, lie and commercial importance. The Arbitrator hadn't found any reason to avoid that document. The average of the documents with higher value were taken by the competent authority and the amount of ₹6,760/- per Square Metre was fixed by the competent authority. The Arbitrator on personal inspection found that the land pertaining to document No.3324/2012 is of similar nature in lie and commercial importance. So, that this document was included in determining the market value. Even if the petitioner says that such a document has to be

avoided in determining the market value of the acquired land, there is no basis in that contention.

21. Then a question arises, whether the court can interfere in the arbitration award in an easy manner.

22. Five grounds were stated for setting aside Arbitral Award as held by the Hon'ble Supreme Court of India in *Re:interplay between arbitration agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899 v.v (2023 KHC 1028)*. In the same citation it was held that Section 34 of the Arbitration and Conciliation Act deals with applications for setting aside arbitral awards. Section 34 (2) provides that an arbitral award may be set aside by the court only if the party making the application establishes, on the basis of the record of the arbitral tribunal, any of the following five grounds:

- i. a party was under some incapacity;or
- ii. the arbitration agreement is not valid under the law to which the parties have subject it or, falling any indication thereon, under the law for the time being in force, or
- iii. the party making an application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his cases;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 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 compensation 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 part I from which the parties cannot derogate, or, failing such agreement, was not in accordance with part I. Moreover, the court can set aside an arbitral award if it 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.

23. Even if the petitioner had a case that the Arbitral Award is in conflict with the public policy of India and it is in contravention with the fundamental policy of Indian Law, it is found that the Arbitrator had affirmed the legal aspect in computing the market value of the property as per section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and he hadn't exceeded his powers. Here it is found that there is no ground to proceed u/s.34 of the Arbitration and Conciliation Act and to set aside the award passed by the Arbitrator. The petitioner failed to made out a single ground upon which his prayer can be

considered so as to set aside the Award of the Arbitrator. So, the petition is only liable to be dismissed. Hence point is found against the petitioner.

In the result,

- (a) The petition stands dismissed.
- (b) Considering the nature and circumstances of the case there is no order as to cost.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 13th day of November, 2024).

Sd/-
**ADDITIONAL DISTRICT JUDGE-II,
KASARAGOD**

APPENDIX OF EVIDENCE

-Nil -

Sd/-
**ADDITIONAL DISTRICT JUDGE-II,
KASARAGOD**

//True Copy//

SHERISTADAR

Typed by : Jyothi.P
Compared by: Unnikrishnan

Copy of order in
OP.No. 64/2023
Dated: 13.11.2024