



Shivakrupa Nivas, Vivekanand Nagar,  
2<sup>nd</sup> cross, Vidyagiri,  
Near Excellent NEET Academy,  
Dharwad - 580004

3. The Arbitrator,  
National Highways Authority and  
Deputy Commissioner, Belagavi.

(Resp No.1 and 2 by Sri S.S. Meti, Advocate)

(Resp No.3 by District Government Pleader)

### **J U D G M E N T**

This petition is filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 (in short '**Arbitration Act**') challenging the award dated 06.06.2023 passed by the Respondent No.3.

2. **The case of the petitioner, as made out in the petition, is as follows:**

The petitioner is the owner of land bearing RS No.36/1 of Halkarni village. An area measuring 4080 square meters in the said survey number was acquired by the respondent No.1 for benefit of respondent No.2 under the National Highways Act (in short, **Highways Act**) by issuing the Preliminary Notification dated 04.05.2011 and Final Notification dated 27.08.2011. The Special LAO has passed an award dated 18.03.2017 and fixed the market

value of the acquired land at the rate of Rs.319/- per square meters. As the market value determined by the Special LAO is unreasonable, the petitioner has filed application under Section 3G(5) of the Highways Act before the respondent No.3 for enhancement of the compensation. The respondent No.3 has enhanced the market value of the acquired land at the rate of Rs.500/- per square meter, vide award dated 06.06.2023. The petitioner filed this petition challenging the impugned award on following grounds:

#### **GROUND OF CHALLENGE**

1. The petitioner has produced the sale deed dated 17-08-2010 pertaining to G.P.C No. 130/14 measuring 2400 Square feet of Halakarni village, which was sold for a consideration of Rs. 2,50,000/- Said rate works out at Rs. 1120/- Per square meters. The land sold in the Sale Deed and the acquired land are adjacent to each other and similar in all qualities. The Arbitrator has not considered the Sale Deed produced by the Petitioner. The awarding of the compensation @ Rs. 500/- per

square meters is imaginary and without any rational basis.

2. That, the acquired land situates within the village Panchayat limits of Halakarni. The Arbitrator ought to have considered the acquired land as the N.A land for fixing the market value. The Arbitrator has not considered the ruling cited by the Petitioner reported in i) Bhagat Ram Vs The State of Panjab and ors. AIR 1981 P&H at Page 163 ii) Executive Engineer Karnataka Housing Board Vs. Land Acquisition Officer, Gadag (Civil Appeal Nos. 51-52/2011 in SLP No. 27805/2008) decided on 04-01-2011. In the said ruling, it is held that, when the acquired land comes within urban limits, it should be considered as having N.A. Potential land. The land acquired in this case comes within village Panchayat limits and it should be treated as N.A Potentiality land.
3. That, the Arbitrator overlooked the fact that, the Halakarni village is very near to the Belagavi City and is surrounded by highly development area with industrial and commercial establishments.

4. That, the Arbitrator come to the conclusion that the acquired land has N.A. potentiality and has accepted the compensation awarded by the LAO @ 897/- Per square meters for N.A. lands. The Arbitrator erred in granting only Rs. 500/- per square meters to the acquired land having N.A. potentiality.
5. The Arbitrator has failed to consider that the acquired land is adjacent to NH-4A and is suitable for commercial use. This omission on the part of the Arbitrator has resulted in causing grave injustice to the petitioner.
6. That the Arbitrator has not given any reason much less valid and acceptable one, for fixing the market value @ Rs.500/- per square meters.
7. That, the Arbitrator has not properly read and understood the evidence and documents on record produced by the petitioner, which resulted in causing injustice to the petitioner.
8. Even otherwise the award passed by the Arbitrator is perverse, patently illegal and against the established law.

9. The Arbitrator has illegally denied the benefits for which the petitioner is entitled under the C.V.C. guidelines. The acquired land situated adjacent to the National Highway 4A. The petitioner has produced the copy of C.V.C guidelines issued by the government of Karnataka. As per the C.V.C. guidelines the petitioner is entitled for 50% over and above of the market value determined.

3. In response to the notice, the respondent No.1 to 3 appeared before this court through their respective counsel and filed objections. The respondents No.1 and 2, in their objections, contended that the petition is not maintainable in law or on facts. According to the respondent No.1 and 2, petition is not maintainable for non compliance of Section 34(5) of the Arbitration Act and there are no grounds for interfering with the impugned award, as the scope of interference with the award of the Arbitrator under Section 34 of the Arbitration Act is limited. The respondent No.1 and 2 further contended that, by following all the procedures, they have acquired the land belong to the petitioner and the Special LAO has determined the market value at the rate of

Rs.319/- per square meter. The respondents further contended that the Sole Arbitrator has enhanced the same at the rate of Rs.500/- per square meter and there are no grounds to say that it is illegal. On all these grounds, respondent No.1 and 2 prayed for dismissal of the petition with costs.

4. The respondent No.3 filed separate objections and contended that the petition is not maintainable in law or facts. It is submitted by Respondent No.3 that the petitioners have not complied Section 34(5) of the Arbitration Act, and without complying the mandatory provisions, petition is not maintainable. It is also contended that this petition is filed after the lapse of statutory period and delay in filing the petition is not explained. On all these grounds, respondent No.3 prayed for dismissal of the petition with costs.

5. I have heard the arguments of both the parties and perused the materials on record.

6. The points that arise for my consideration are:

- 1. Whether the impugned award passed by the Sole Arbitrator is perverse,**

**against the public policy and suffers from patent illegality and liable to be interfered by this court?**

**2. What Order?**

7. My answer for the above points are in the following, because of my below discussed reasons:

Point No.1: **IN THE NEGATIVE**

Point No.2: **AS PER THE FINAL ORDER**

**REASONS**

8. **Point No.1:** The petitioners have approached this court with a petition under Section 34 of the Arbitration Act, challenging the award passed by the respondent No.3, who is the Sole Arbitrator appointed under the Highways Act. The grievance of the petitioners is that the Sole Arbitrator has not determined the market value of the acquired land properly and not considered the materials produced before him and casually approached the matter by enhancing the market value of the acquired land from Rs.319/- per square meter to Rs.500/- per square meter.

**TECHNICAL OBJECTIONS REGARDING MAINTAINABILITY OF THE PETITION:**

9. The respondents have raised some technical objections in disputing the maintainability of this petition in challenging the award passed under the Arbitration Act. One of the objections is about delay in filing the petition. Another objection is about filing this petition without issuing notice as required under Sec. 34(5) of the Arbitration Act.

10. Regarding the period of limitation in filing the petition under Section 34 of the Arbitration Act, it is necessary to refer to Section 34(3) of the Arbitration Act and proviso to the same, which runs as follows:

***(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:***

***Provided that, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.***

11. As per the above provision, an application to set aside the award under Section 34 of Arbitration Act shall be made within

03 months from the date of service of award on the petitioner. The proviso to Section 34(3) of the Arbitration Act says that, if the court is satisfied that the petitioner was prevented by sufficient cause from making the application within the period of 03 months, it may entertain the application within a further period of 30 days, but not thereafter. So, the maximum period within which a petition for setting aside the arbitral award can be filed is 120 days.

12. In the case on hand, impugned award was passed on 06.06.2023, whereas, the present petition is filed before this court on 31.07.2023. So, this petition is filed within 90 days of passing the impugned award. Therefore, this petition is filed well within the period of limitation. There is no substance in the objections of the respondents in disputing this petition on the ground of delay.

13. Another ground upon which the respondents disputed the maintainability of this petition is, non-compliance of Section 34(5) of the Arbitration Act and non issuance of notice before filing the petition. It is true that, as per Section 34(5) of the Arbitration Act, before filing the petition under Section 34 of the Arbitration Act challenging the award, a notice has to be issued.

14. In the case on hand, petitioner has issued a notice dated 31.07.2023, through their counsel, to the respondents. The petitioners have produced the copy of the legal notice dated 31.07.2023 and postal receipts for having sent the said legal notice by registered posts. It is specifically referred in the said notice that, it is issued under Sec. 34(5) of the Arbitration Act. There by, this mandatory requirement has also been due complied by the petitioners. Under such circumstances, this petition cannot be said to be bad and not maintainable for non issuance of the notice before filing the petition.

**SCOPE OF INTERFERENCE BY THE CIVIL COURT UNDER  
Sec. 34 OF THE ARBITRATION ACT:**

15. Before proceeding to consider the grounds assigned by the petitioner in disputing the correctness of the impugned award, it is necessary to consider the scope and ambit of the petition filed under Section 34 of the Arbitration Act. The plain and meaningful reading of Section 34 of the Arbitration Act, makes it very clear that, this court can set aside the arbitral award only on the grounds, which are set out under Section 34(2) of the

Arbitration Act. The jurisdiction of a Civil Court under Section 34 of the Arbitration Act is a supervisory jurisdiction and not an appellate jurisdiction over the arbitral award, as held by the Hon'ble Supreme Court in a decision reported in **AIR 2011 Supreme Court 2477 (J.G. Engineering Private Limited Vs. Union of India)**.

16. So, this court cannot sit like an appellate court to decide the legality and correctness of the award, which has been challenged. This court also cannot re-appreciate the evidence like a First Appellate Court, which a First Appellate Court does, while considering the legality of the trial court judgment. In the absence of any grounds under Section 34(2) of the Arbitration Act, it is not possible to re-examine the facts to find out as to whether a different decision can be arrived at or not.

17. It was held by the Hon'ble Supreme Court in a decision reported in **AIR 2012 Supreme Court 1866 (P.R. Shaw, Shares and Stock Brokers Private Limited Vs. B.H.H. Securities Private Limited)** that the ground to set aside the arbitral award is exhaustive. However, none of these grounds permit a review on

the merits of the decision rendered by an Arbitrator. The burden of proof rests on the party raising the objections for setting aside the order.

18. The Hon'ble Supreme Court, in a decision reported in **AIR 2015 Supreme Court 620 (Associate Builders Vs. D.D.A)**, held that the jurisdiction of the Civil Court under Section 34 of the Arbitration Act is limited. The Civil Court cannot act as a court of appeal or subject the award to a review on merits. It must not re-assess the material placed before the Arbitrator and it can neither correct the errors of the Arbitrator nor can it remand the matter back to the Arbitrator for fresh adjudication.

19. It was held in another decision reported in **2016(11) Supreme Court Cases 181 (International I.N.C Vs. Burn Standard Company Limited)** that the Civil Court can neither correct the award nor it can remand the matter and it can only set aside the award, leaving the parties free to begin the arbitration again if so, desired.

20. An irregularity, which can vitiate the award is, if it is perverse, which could be covered under the head 'patent illegality'. If the Arbitrator ignores substantial law in force in India and passes an award, which could cause miscarriage of justice, it would liable to be set aside under Section 34(2)(b)(2) of the Arbitration Act. The Hon'ble Supreme Court in **AIR 2001 Supreme Court 386 (Gaya Din vs Hanuman Prasad)** has interpreted expression 'perverse' and held that the findings, which are not supported by the evidence on record or against the law or suffers from procedural irregularity, can be called as a perverse.

21. Any order made in conscious departure of pleadings and law is a perverse order, as held in a decision reported in **1976(2) Karnataka Law Journal 254 (M.S. Narayanagowda Vs. Girijamma)**. If a decision is arrived, but no evidence or the evidence relied on is thoroughly unreliable and no reasonable person would act upon it, then the order would be perverse. If there is some evidence on record, which is acceptable and could be reliable and, a conclusion is arrived at, then it would not be treated as perverse and findings would not be interfered with.

22. Keeping in mind all these well established principles held in the above referred decisions, I have to consider the facts of this case and the award passed by the respondent No.3 and the grounds set up by the petitioners to challenge the award.

23. It is an undisputed fact that the respondents No.1 has started an acquisition proceedings for acquiring the land for formation of 6 lane National Highway. The Preliminary Notification in this regard was made on 04.05.2011 and Final Notification was made on 27.08.2011. 4080 square meters of land in RS No.36/1 belonging to the petitioner was acquired for the said project. Being aggrieved by the determination of the market value at the rate of Rs.319/- per square meter, petitioner approached the respondent No.3 for enhancement of the compensation. The respondent No.3 has enhanced the compensation at the rate of Rs.500/- per square meter. By alleging that the said determination is on the lower side, the petitioner has filed this petition.

24. If I draw my attention to the impugned award, the learned Arbitrator has accepted the claim of the petitioner about Special LAO determining the market value on the lower side.

However, Sole Arbitrator has not accepted the petitioner's claim to determine the compensation on the basis of a sale deed of the same village and also by considering the acquired land as having non agriculture potentiality. The Sole Arbitrator has considered the market value of the non-agriculture land at the rate of Rs.897/- per square meter. On the basis of the sale statistics and in respect of agriculture land, it was determined at the rate of Rs.500/- per square meter.

25. The petitioner has relied upon a sale deed dated 17.08.2010, wherein property in the same village was sold for Rs.1,120/- per square meter, to impress that the market value of the acquired land has to be determined at the rate of Rs.1,120/- per square meter. The learned Sole Arbitrator has rightly rejected the said claim of the petitioner. Because, the market value of the acquired land cannot be determined on the basis of the solitary sale deed.

26. Admittedly, the acquired land is an agricultural land on the date of acquisition, as it was not converted into non agricultural land. Merely because it is situated nearby the National

Highway or comes within the Panchayat limits and nearby to Khanapur or Belagavi City, it cannot be said that it is having non agricultural potentiality, so as to determine the market value by considering the same as non agricultural land. Even this aspect was also raised before the Sole Arbitrator and he has rightly rejected the same. Of course, the Special LAO has determined the market value of the acquired land in respect of other properties by considering the nature of the land. But same cannot be applied to this case. Considering all these aspects, the learned Sole Arbitrator has rightly determined the market value of the acquired land at the rate of Rs.500/- per square meter. I found no reason to say that the said findings of the Sole Arbitrator patently illegal or against the public policy, so as to cause interference by this court.

27. The Hon'ble Supreme Court in a recent Constitution Bench decision reported in **2025 INSC 605 (Gayathri Balaswamy Vs. M/s. I.S.G. Novasoft Technologies Limited)**, laid down the law regarding the scope of interference by the Civil Court under Section 34 of the petition and grounds when the interference can be made. The Hon'ble Supreme Court, by 4:1 majority, has held

that the limited power of interference under Section 34 of the Arbitration Act, may be exercised when the award is severable, by severing invalid portion from the valid portion. According to the Hon'ble Supreme Court, interference can also permissible for correcting any clerical, computable or typographical error, which appears erroneous on the face of the record. There is also limited scope for interference to modify post award interest under some circumstances. Further, it was held that with great care and caution, an interference can be made by exercising powers under Article 142 of the Constitution.

28. None of those grounds for interference, as held by the Hon'ble Supreme Court in the above referred Constitution Bench Judgment, has been made out in the present case for the interference and intervention of this court with the impugned award.

29. As I said earlier, scope of this petition is very limited. This court cannot sit as an appellate court to consider the impugned award as a judgment of the trial court. This court also cannot act as a referral court under the Land Acquisition Act to

simply enhance the compensation, by considering any of the methods, which are followed for determining the market value of the acquired land. This court, either has to allow the petition or dismiss the same. This court is not empowered even to modify the award and enhance the compensation, as it is outside the scope and purview of the petition filed under Section 34 of the Arbitration Act. Considering all these aspects, I found no reason to say that, impugned award suffers from patent illegality in order to interfere and intervene by this court. No grounds, as set out under Sec.34 of the Arbitration Act and laid down in above referred decision, are made out for the interference of this court with the impugned award. Therefore, I answer point No.1 **in the Negative.**

30. **Point No.2:-** In view of my findings on the above point, petition is liable to be dismissed. Accordingly, I proceed to pass the following:

**ORDER**

**The petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 is dismissed.**

**I direct both the parties to bear their  
respective costs.**

(Dictated to the Stenographer Grade-III, after transcription, computerized and print out taken by him, corrected, signed and then pronounced by me in the Open Court, on this **07<sup>th</sup> day of March 2026**)

**(Manjunath Nayak),  
Prl. District & Sessions Judge,  
BELAGAVI.**