



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPEAL NO. 14 OF 2016

NHAI PIU Aurangabad
Since the branch is transferred to Dhule
Through :-
National Highways Authority of India,
Project Implementation Unit,
Dhule, Represented by its :
Project Director
Plot no. 10/2 & 11, Mansaram Nagar,
Near Circuit House Sakri Road,
Dhule - 434002

...Appellant.

VERSUS

1. Kerman Sam Amroliwala
At Post - Pimpri Sekam,
Tal. Bhusawal, Dist. Jalgaon.
2. The Additional Div. Commissioner
& Arbitrator, Nashik.

...Respondents.

...

**WITH
ARBITRATION APPEAL NO. 4 OF 2024**

Kerman Sam Amroliwala
Age 60 yrs., Occu. Farmer and
Businessman, Naju Mansion,
Yawal Road, Bhusawal - 425201,
District - Jalgaon.

...Appellant.

VERSUS

1. The Competent Authority (Land Acquisition),
National Highway No. 6 and
Sub-divisional Officer, Bhusawal
Division, Bhusawal - 425201,
District - Jalgaon.
2. National Highway Authority of India,
Project Implementation Unit, Aurangabad
B-23, Near Kamgar Chowk,
N-3, CIDCO, Aurangabad - 431003.

...Respondents.

...

Mr. D.S. Manorkar, Advocate for appellant in Arb. Appeal No. 14/16.

Mr. A.B. Kale, Advocate for the appellant in Arb Appeal No. 4/2024 and for respondent No. 1 in Arb. Appeal No. 14/16.

Mr. R.D. Sanap, Advocate for respondent No. 2.

Mr. D.S. Manorkar, Advocate for respondent No. 2.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 16.03.2026

JUDGMENT :-

1. In Arbitration Appeal No. 14/2016, filed under section 37 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as 'the Act' for short) the appellant (competent authority) – National Highways Authority of India (NHAI) has challenged the common judgment and order dated 13.4.2016 in Civil M.A. No. 57/2015 and Civil M.A. No. 68/2015 filed under section 34 of the Act passed by the Principal District Judge, Jalgaon whereby the applications filed by the applicants are dismissed. In Arbitration Appeal No. 4/2024, the above common judgment and award is challenged by the original claimant/owner of the land.

2. Facts giving rise to filing of the appeals are summarised as under :-

NHAI has acquired the land of the claimant from Gat No. 213 situated at village Pimpri Sekam, Taluka Bhusawal, District Jalgaon for expansion of highway. Claimant was running a business of petrol pump on the adjacent and acquired land. Land from the frontal side of the above property admeasuring 2542 Sq. Mtrs. was acquired by the competent authority. The competent authority under section 3-G(1) of the National Highways Act, 1956 has determined the compensation of the acquired land by order No. LAQ/SR/8/2011. For acquired property of the claimant, competent authority has awarded Rs. 15,12,498/- as compensation at the rate of Rs.595/- per Sq. Mtr., Rs. 1,51,250/- for constructed area, Rs.1,50,510/- for water tank,

Rs. 3722/- for forest trees and Rs. 1,51,249/- as easementary rights at the rate of 10% on the land value. Total compensation awarded to the claimant was Rs. 19,69,229/-.

3. Being aggrieved by the compensation, the claimant has filed an application under section 3-G(5) of the National Highways Act for determination of compensation before the Arbitrator and claimed enhanced compensation at the rate of 20,000/- per Sq. Mtr. for both constructed area and land. The Arbitrator by award dated 12.2.2015 and corrigendum order dated 17.3.2015 enhanced the compensation amount to Rs.1190/- per Sq. Mtr. against Rs.595/- granted by the competent authority. The Arbitrator further directed payment of amount at the rate of 10% of the compensation for land as statutory easementary rights on the enhanced compensation and Rs.1,10,000/- for loss of business and further directed interest on the enhanced compensation at the rate of 9% from the date of notification under section 3-D to the date of actual payment.

4. Being aggrieved by the award dated 12.2.2015 and corrigendum order dated 17.3.2015 of the Arbitrator under section 3G(5), the claimant as well as the NHAI has filed independent applications under section 34 of of the Arbitration and Conciliation Act challenging the said award before the District Court. By the common judgment and order dated 13.4.2016, the learned District Judge has dismissed both the applications under section 34 filed by the claimant as well as the NHAI against which the present appeals under section 37 of the Act are filed by the claimant as well as NHAI.

SUBMISSIONS OF NHAI

5. The learned counsel for NHAI has made following submissions :-

(a) There is absolutely no evidence on record before the arbitral tribunal

to increase the price of the land from Rs. 595/- per Sq. Mtr. to Rs. 1190/- per Sq. Mtr. and the enhancement is without any reasons.

(b) While computing 10% loss of earning, it was necessary for the claimant to produce account statements of prior income and later income after section 3(A) notification. In the instant case, the claimant has only produced account statement of prior to section 3(A) notification and as such, there could have been no computation of loss of income and granting of 10% of loss of income is erroneous.

(c) 10% of loss of income for easementary right granted is also erroneous. Once ownership is taken over of the land by giving purchase price, there cannot be separate computation for easementary right and compensation for easementary right is only to be given to the person who has a right of easement on acquired land and easementary right is subsumed once ownership price is granted to the claimant for acquired land.

SUBMISSION OF CLAIMANT

6. The learned counsel for the claimant has made following submissions :-

(a) While responding to the submission of NHAI, the claimant submits that 10% loss towards loss of income and towards loss of easementary right are given by the competent authority and the price of the land is increased by the arbitrator and accordingly corresponding increases are made in compensation towards loss of earning and easementary rights. There is basis for the same in the award of competent authority itself and that it cannot be set aside under section 34 and similarly under section 37 of the Arbitration and Conciliation Act at the instance of the NHAI authority where they had failed to invoke provision of section 3 (G)(3) of the National

Highways Authority Act.

(b) Compensation granted by the arbitrator from Rs. 595/- to Rs.1190/- itself is inadequate compensation. The competent authority dealt with the land as if it is N.A. potential land, however, the land was already used for commercial purpose i.e. for running petrol pump. Increase has been made only to Rs.1190, however, increase is not made on the basis of commercial land which is utilized for commercial purpose. Notwithstanding the land was used for commercial purpose the claimant has been granted less compensation.

7. Considered the rival submissions and perused the record. Relevant provisions of the Arbitration and Conciliation Act dealing with the provisions under sections 35 and 37 to interfere with the arbitration award are quoted below.

Section 5 of the Arbitration and Conciliation Act reads as follows :-

“5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

Section 34 of the Arbitration and Conciliation Act reads as follows-

“34. Application for setting aside arbitral award.— (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) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal 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:

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 composition 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 this Part from which 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.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

Section 37 of the Arbitration and Conciliation Act reads as follows-

“**37. Appealable orders.**—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders and from no others to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

- (a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

7A. The Supreme Court in the case of **PSA Sical Terminals Private Limited Vs. Board of Trustees of V.O. Chidambaranar Port Trust Tuticorn and Anr.** reported in (2023) 15 SCC 781 has observed that it is a settled legal

position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

7B. The Hon'ble Supreme Court in **PSA Sical Terminals Private Limited** (supra) has further observed that a decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

7C. To appreciate the test of perversity, the Hon'ble Supreme Court in **PSA Sical Terminals Private Limited** (supra) in para 42 has further held as under :-

“42. To understand the test of perversity, it will also be appropriate to refer to paragraph 31 and 32 from the judgment of this Court in *Associate Builders* (supra), which read thus:

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- (iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In *Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [1992 Supp (2) SCC 312], it was held:

"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In *Kuldeep Singh v. Commr. of Police* (1999) 2 SCC 10, it was held:

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

7D. The Hon'ble Supreme Court at para 14 in the case of **MMTC Limited Vs. Vendanta Limited reported in (2019) 4 SCC 163** has further observed that as far as interference with an order made under Section 34, as per

Section 37, is concerned, it cannot be disputed that such interference under Section 37, cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

8. Having noticed the law as regards the power of the Court to interfere with the arbitral award under section 34 and 37 of the Arbitration and Conciliation Act this court comes to the conclusion that in the instant case, the competent authority had granted compensation considering that the acquired land had N.A. potential. However, the acquired land was already being used for commercial purpose and thus the arbitrator has enhanced the compensation for the acquired land. Further due to expansion of the road, divider is placed on the road leading to loss of business from the traffic of opposite side of road. The competent authority as well as arbitrator has fixed the loss of income of 10% which is reasonable and based on the material produced on record and that this Court in exercise of powers under section 37 cannot interfere with the same as it cannot be said that it is against the public policy of India nor it can be said that there is patent illegality. The NHAI never challenged the CALA award granting 10% for business loss. So also 10% of loss of income is granted for loss of easementary right granted by CALA and the arbitrator. It is to be seen that frontal part of the property of the claimant is acquired for expansion of

highway and balance land is with the claimant, who is still running the existing petrol pump. The petrol pump has obviously suffered on account of loss of certain frontal space. In the judgment of **Union of India & Anr. Vs. Tarsem Singh & Ors. reported in 2019 AIR (SC) 4689** cited supra at para 36 the Hon'ble Supreme Court has held as under :-

"36. Section 3G(2) makes it clear that rights of user and rights in the nature of easement being valuable property rights, compensation must be payable therefor. It is obvious that there is no double payment to the owner on this score as the owner and/or any other person has to prove that a right in the nature of an easement has also been taken away. Obviously, the right of user being subsumed in acquisition of ownership, the owner cannot get a double benefit on this score. The right of user is, therefore, referable only to persons other than the owner, who may have tenancy rights, and other rights of license on land which is acquired under the [National Highways Act.](#)"

9. Thus in the case of **Tarsem Singh** (supra), it is held that easementary right is subsumed in ownership right and that once ownership is taken over by acquisition, there cannot be separate compensation for easementary right. However, in the instant case, this court finds that frontal part of the land of the claimant is acquired and remaining part of the claimant's land is affected as he runs the business of petrol pump. Thus, the claimant being also the adjacent land holder where he runs his petrol pump has suffered the loss of easementary right. Thus, granting 10% of loss of easementary right does not travel beyond the law as laid in the case of **Tarsem Singh** supra.

CONCLUSION

10. Considering the discussion made above, the appeal filed by the NHA bearing Arbitration Appeal No. 14/2016 is dismissed. As regards appeal filed by the claimant bearing Arbitration Appeal No. 4/2024 is concerned, the arbitrator has awarded compensation from Rs.595/- per Sq. Mtr. to

Rs.1190/- per Sq. Mtr. considering that CALA had granted compensation to land as holding N.A. potential whereas the Collector has enhanced the amount considering that the land was already used for commercial purpose. Consequent to the income of land price there is corresponding increase of component of loss of profit and easementary right as the same are computed on percentage basis of land consumption. The acquired land is in village Pimpri Sekam and the sale instance of Rs11,951/- per Sq. Mtr. produced by the claimant is from Taluka Bhusawal. The Collector has rightly not relied on the sale instance produced by the claimant. The sale instance is of small developed plot (municipal area) situated in sanctioned town planning scheme of Bhusawal, whereas acquired land is situated in rural area of the acquired land is also large as compared to sale transaction. However, directions are thus only issued to the extent of granting solatium as provided in the judgment of **Tarsem Singh** supra and the matter is remanded to the arbitrator only to the extent of grant of statutory benefits as discussed in the judgment of **Tarsem Singh** supra. The arbitrator to compute the same within four months after hearing the parties on production of this order. Arbitration Appeal No. 14/2016 of NHA is dismissed. Arbitration Appeal No. 4 of 2024 of claimant is disposed with above direction.

[ARUN R. PEDNEKER, J.]

ssc/