

IN THE COURT OF THE ARBITRATOR
GOA-KARNATAKA BOARDER - KUNDAPUR SECTION OF NH-66 (FORMERLY NH-17) AND
DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

No. RB/LAQ/NH/CR-10/2016-17



Between

Ismail Khazi S/o Mohiddin Basha Khazi
R/o Usman Nagar, Venkatapur
Taluk Bhatkal, Uttara Kannada District.

.... Applicant

V/s

1. Special Land Acquisition Officer and Competent Authority
National Highway Authority of India 66(17)
Shri. Hariprasad Building, Royalkeri, Ambedkar Road Honnavar
2. Project Director, National Highway Authority of India,
Project Implementation Unit, Door No. 3-29,
Bethel, Tharethota Near Pumpwell, Mangalore-575005
(Represented through Advocate Sri. R. S. Prabhu, &
A.M. Shirwadkar and M. V Kini & Co)

.... Respondents

Preamble:

Application filed u/s 3G (5) of The National Highways Act 1956 (48 of 1956) against the award dated 24-12-2014 passed by the Competent Authority and Special Land Acquisition Officer National Highways Authority of India, Honnavar in respect of 100 Sq. Mtrs in Sy no. 138/1 of Venkatapur village in Bhatkal Taluka. Notices were issued to both parties.

The brief facts of the case are as follows:

The Central Government has appointed the Deputy Commissioner Uttara Kannada, Karwar as Arbitrator u/s 3G(5) of National Highways Act 1956 (48 of 1956) as per the order no. NHAI/11013/LA/KNT/Appointment of Arbitrator dated 22-7-2011 for Uttara Kannada district.

That the Project Director NHAI, Dharwad has submitted proposal for issue of 3A notification for acquisition of land for the purpose of laning of National Highway-66 (formerly NH-17) and the same was approved by the Central Government by issuing 3A (1) notification no. 2463(E) dated 13-10-2012. The said notification was published in 2 daily news papers that is Vijaya Karnataka & Deccan Herald on 4-1-2013. The Central Government declared its intention to acquire 100 Sq. Mtrs land in Sy no. 138/1 of Venkatapur Bhatkal taluka belonging to the applicant. The notices were issued to the interested persons/land owners and enquiry was conducted on 24-08-2013 & 11-09-2013. Final notification u/s 3D (1) & (2) of The National Highways Act 1956 was issued in its Special Gazette notification no. S.O.3078E dated 9-10-2013 and the same was published in 2 daily news papers that is Vijaya Karnataka & Deccan Herald dated 20-12-2013. The award was passed on 24-12-2014 and the same was notified to the applicants on 15-10-2015 and total compensation of Rs. 6,67,677/- after deducting TDS was disbursed to the applicants on 21-10-2015 and thereafter possession was taken.

Being highly aggrieved by the order of the R1, the applicant filed application under section 3G(5) of National Highways Act 1956 (48 of 1956) for the Arbitration, stating that



the award amount paid by the R1 is too low and requested for enhancement of the compensation for the land acquired. The applicant contended that the acquired lands was consisting of structure. The applicant has further contended that respondent No. 1 has passed the award without considering all these material facts and also actual market value of Rs. 15 to 20 lakhs per gunta. Hence the applicant sought for enhancing the compensation by taking into account the actual market value of the land.

The Advocate for the Respondent filed statement of objection as hereunder:

1. The allegation that the compensation awarded by CALA is too low is not correct. On the other hand the CALA has awarded compensation on the basis of the market value as on the date of 3A notification. The CALA has taken into consideration the sale deeds statistics and guidance value furnished by the concerned Sub-Registrar Bhatkal. As per guidelines value communicated by Sub-Registrar, Bhatkal and as approved by CVC Bangalore, the market value was fixed at the rate of Rs. 3000/- per Sq. mtrs on both sides of NH of Venkatapur Village. The lands acquired are adjacent to NH and there is non agricultural activity on the acquired land and many residential and commercial buildings have come up on both sides of the road. Therefore, it was decided that the acquired lands may be considered as equivalent to non-agricultural lands and accordingly the compensation was fixed on the guidelines value issued by Sub-Registrar Bhatkal and approved by CVC Bangalore at the rate of Rs. 3000/- Sq. mtrs, which is reasonable. The compensation was awarded to the structure on the basis of the valuation made by approved valuers of PWDSSR Government of Karnataka. The award is dated 24-12-2014. The acquisition is under the provisions of National Highway Act 1956. The provisions of RFCTLARR Act 2013 are not applicable. Therefore the applicant is not entitled for solatium, interest and other benefits. Hence prayed for dismissal of the application.

Heard Arguments on both side.

On perusal of the lower court records in detail it is noticed that the acquisition of land was very essential for building (widening/4/6 laning etc) maintenance and management of National Highway-66 (formerly NH-17) in Uttara Kannada District.

Land Acquisition Process dates:

3A (1) Notification no. 2463 (E) Date	13-10-2012
3D (1) & (2) Notification No. S.O. 3078 E Date	09-10-2013
3G Award Date	24-12-2014
3G Award notice Date	14-7-2015
Voucher Date	21-10-2015

The details of the compensation awarded by R1 are as hereunder:

Village	Sy.No.	Extent in Sq.mtrs	Sl. No.	Compensation Amount (Rs.)	Income Tax Deducted @ 10% (Rs.)	Net Payable (Rs.)
Venktapura	138/1	100			741863*10/100	
	Land Value			300000		
	Structure Value			441863		
	Business Loss			Nil		
	Sub-total			741863		
	Horticulture value			Nil		
	Forest Value			Nil		
	Grand Total			741863	74186	667677

As per Section 3G (a) of the National Highways Act 1956 the market value of the acquired land should be fixed on the basis of the market value of the land as on the date of publication of notification u/s. 3A of the Act. The date of publication of section 3A notification is 13-10-2012. On perusal of the records it is seen that while fixing the compensation RI has taken into account the guidance value provided by Sub-Registrar Bhatkal and approved by the CVC Bangalore at Rs. 3000/- per Sq. mtrs. which appears to be reasonable. He has also taken into account the structure while awarding compensation. The compensation was awarded to the structure on the basis of the valuation made by approved valuers of PWDSSR Government of Karnataka. The documents produced by the applicant do not outweigh the evidentiary value to be attached to the procedure adopted by RI. The applicant has not proved that the market value of the acquired land was more than Rs. 15 to 20 lakhs per gunta. Therefore there are no material on record to grant enhanced compensation.

The lands are acquired under provisions of National Highway Act 1956. The award is dated 24-12-2014. The Division Bench of Hon'ble High Court of Karnataka Dharwad Bench, in the order dated 11-04-2017 in the writ appeals in between Gangadhar Nagesh Bhat & others V/s The Union of India & others, has relied on Section 12 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement (RFCTLARR)(Amendment) Ordinance, 2015, and held that wherever award is passed on or after 01-01-2015 in respect of the land acquired under the provisions of National Highway Act 1956, the compensation should be awarded in accordance with the schedule to the Act of 1913. Whereas in the case on hand the award is dated 24-12-2014 which is prior to 01-01-2015. Therefore the applicant is not entitled for solatium, interest and other benefits. Even if we presume that the new Land acquisition act is applicable and calculate the payable amount it comes out Rs 1,76,576/- including solatium and interest with the land price fixed as per ~~valuation~~ valuation i.e. market value and guidance value whichever is higher. Whereas Rs. 6,67,677/- has been already paid to petitioner which is much higher than compensation calculated even as per new Act.

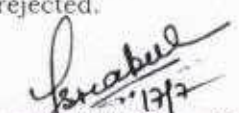
Hence after a careful scrutiny of the entire material on records, I am of the opinion that the applicants are not entitled for enhanced compensation and consequently I proceed following order.

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Date: 17-7-2018

Order

The application for enhancement is rejected.


Arbitrator (NH 66 earlier NH-17)
Deputy Commissioner,
Uttar Kannada, Karwar.

Copy to:-

1. Advocate Sri R. S. Prabhu, & A.M. Shirwadkar and M. V Kini & Co. advocates Bangalore for information.
2. Special Land Acquisition Officer and Competent Authority National Highway Authority of India 66(17) Shri. Hariprasad Building, Royalkeri, Ambedkar Road Honnavar-581334 for information with lower court records page no. 1 to 97.
3. Project Director, National Highway Authority of India, Project Implementation Unit, Door No. 3-29, Bethel, Tharethota Near Pumpwell, Mangalore-575005 for information.