

**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-15/2016-17



Between

Smt. Gouri Kom Lokesh Shetty
R/o Mavinakatte, Bengre-2 Village
Bhatkal Taluka, Uttara Kannada District.
(Represented through Advocate Sri. Simon L D'souza & Shri V.A Todurkar)

.... 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 08-12-2014 passed by the Competent Authority and Special Land Acquisition Officer National Highways Authority of India, Honnavar in respect of 227 Sq. Mtrs of land in Sy no. 574/7 of Bengre 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 04-01-2013. The Central Government declared its intention to acquire 227 sq mtr of land in Sy no. 574/7 of Bengre village in 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 08-12-2014 and the same was notified to the applicant on 06-05-2015 and total compensation of Rs. 8,18,216/- after deducting TDS was disbursed to the applicant on 14-05-2015 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 R1 is too low and requested for enhancement of the

compensation for the land acquired. The applicant has contended that the acquired land was consisting of structure, 3 yielding compound wall, coconut trees, 1 big mango trees, 2 aracanut trees, 5 fruit trees and other 2 bearing fruit plants. 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 the land. According to them the actual market value is much more then the value fixed by respondent No.1. They have also contended that they are entitled for 100% solatium and interest under the ordinance of the central Government dated 01-01-2015. Hence the applicants have sought for enchancing 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. The applicant is not entitled for compensation as per RFCTLARR Act 2013. On the other hand while fixing the compensation CALA in his award has clearly stated that the guidance value provided by Sub-Registrar Bhatkal and approved by the CVC Bangalore at Rs. 700/- per Sq. mtrs appears to be reasonable. CALA has also taken into account the existence of many commercial establishments, residential houses alongside the National Highway on account of which there is no agricultural activity being undertaken. He has also taken into account the structure, horticulture trees and forest trees 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. So also while awarding compensation to horticulture/forest trees the CALA has relied on the valuation made by approved valuers of horticulture department Government of Karnataka. The award is dated 08-12-2014. 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 and interest. Hence prayed for dismissal of the application.

Heard Arguments on both sides.

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	08-12-2014
3G Award notice Date	06-05-2015
Voucher Date	14-05-2015

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.)
Bengre	574/7	227			$791320 \times 10 / 100$	
	Land Value			158900	79132	818216
	Structure Value			632420		
	Business Loss			Nil		
	Sub-total			791320		
	Horticulture value			106028		
	Forest Value			Nil		
	Grand Total			897348	79132	818216

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 R1 has taken into account the guidance value provided by Sub-Registrar Bhatkal and approved by the CVC Bangalore at Rs. 700/- per Sq. mtrs. which appears to be reasonable. He has also taken into account the structure and horticulture trees 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. So also while awarding compensation to horticulture trees the CALA has relied on the valuation made by approved valuers of horticulture department Government of Karnataka. Therefore there are no material on record to grant enhanced compensation.

Further it is clearly seen that Rs. 1,06,028/- (horticulture) has been paid for 03-coconut, 01-Mango, 02-Arecanut, 05-Jackfruit, 1 Perala, and 01-Seetaphal trees. Hence no additional amount is payable for trees.

The lands are acquired under provisions of National Highway Act 1956. The award is dated 08-12-2014. 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 08-12-2014 which is prior to 01-01-2015. Therefore the applicant is not entitled for solatium, interest and other benefits.

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: 19-7-2018

Order

The application for enhancement is rejected.



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

Copy to:-

1. Advocate Sri. Simon L D'souza & Shri V.A Todurkar, 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 84.
3. Project Director, National Highway Authority of India, Project Implementation Unit, Door No. 3-29, Bethel, Tharethota Near Pumpwell, Mangalore-575005 for information.