

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-4/2016-17



Between

Manjunath Durgappa Naik
R/o Kaikini Village Bhatkal Taluka
Uttara Kannada District
(Represented through Advocate Sri. M. T Naik)

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 11-11-2014 passed by the Competent Authority and Special Land Acquisition Officer National Highways Authority of India, Honnavar in respect of 233 Sq. Mtrs land in Sy no. 501/1 of Kaikini 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. NHA/11013/LA/KNT/Appointment of Arbitrator-dated 22-7-2011 for Uttara Kannada district.

That the Project Director NHA, 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 233 sq mtr of land in Sy no. 501/1 of Kaikini 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 11-11-2014 and the same was notified to the applicants on 06-05-2015 and total compensation of Rs. 3,20,451/- after deducting TDS was disbursed to the applicant 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 contended that the acquired lands were consisting of stone wall compound worth Rs. 2,00,000/-, steel gate and pillar worth Rs.

60,000/-, several fruit bearing trees worth Rs. 5,00,000/-, shop worth Rs. 4,00,000. They have further contended that the actual market value of the acquired land was more than Rs. 30,00,000/- at the rate of Rs. 6,00,000/- per gunta. According to him the compensation was awarded without considering all these relevant facts and hence the applicant has sought for enhanced compensation.

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 while fixing the compensation CALA in his award has clearly stated that the guidance value provided by Sub-Registrar Bhatkal and approved by CVC Bangalore at Rs. 270/- per Sq.mtrs appears to be too low. He has also taken into account that there is no agricultural activity being carried out along side of National Highway and also that many commercial establishments have come up nearby. Further, in the adjacent villages i.e. Mavalli and Bengre situated on either side of Kaikini village the prevailing rate was Rs. 700/- per Sq.mtrs. Taking all these factors into account CALA has decided to fix average of these villages and has arrived at the rate of Rs. 500/- per Sq. mtrs for Kaikini Village. Therefore the CALA is justified in awarding compensation of Rs. 3,20,451/- after deducting TDS. 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 the CALA has relied on the valuation made by approved valuers of horticulture department Government of Karnataka. He has also awarded taken into consideration the business loss. Therefore the CALA is justified in awarding compensation of Rs. 3,20,451/-. There are no provisions in the National Highways Act for payment of interest, solatium and other benefits to the applicant. The provisions of land Acquisition Act are not applicable for the acquisition made under the National Highways Act. Therefore the CALA is justified in awarding compensation of Rs. 3,20,451/- and hence prayed for the 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	11-11-2014
3G Award notice Date	19-01-2015
Voucher Date	Nil

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

Village	Sy.No.	Extent in Sq.mtrs	1. No.	Compensation Amount (Rs.)	Income Tax Deducted @ 10% (Rs.)	Net Payable (Rs.)
Kaikini	501/1	233			277457*10/100	
	Land Value			116500	27746	320451
	Structure Value			152349		
	Business Loss			8608		
	Sub-total			277457		
	Horticulture value			70740		
	Forest Value			Nil		
	Grand Total			348197	27746	320451

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 section 3A notification is 13-10-2012. On perusal of the records it is seen that CALA in his award has clearly stated that the guidance value provided by Sub-Registrar Bhatkal and approved by CVC Bangalore at Rs. 700/- per sq. mtrs was taken into account while fixing the market value. He has also taken into account that there is no agricultural activity being carried out along side of National Highway and also that many commercial establishments have come up nearby. 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 documents produced by the applicant do not outweigh the evidentiary value to the attached to the procedure adopted by CALA. Therefore the CALA has not committed any error while fixing market value of the land.

Further the claim for market valuation of land at Rs. 15,00,000/- cannot be accepted since it is not accompanied by any supporting documentation. The claim on trees has already been addressed since Rs. 59, 274/- (horticulture) Rs. 33,350/- (forest) has been paid as per award.

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 11-11-2014 which is prior to 01-01-2015. Therefore the applicants are not entitled for solatium and other benefits.

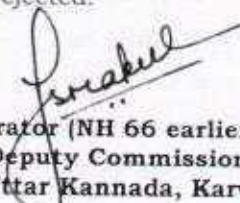
Hence after a careful scrutiny of the entire material on records, I am of the opinion that the applicants are not entitled for enhanced compensation and consequently I proceed following order.

No.RB/LAQ/NH-66/ARB/CR-4/2016-17

Date: 20-7-2018

Order

The application for enhancement is rejected.


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

Copy to:-

1. Advocate Sri. M. T Naik , 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 194.
3. Project Director, National Highway Authority of India, Project Implementation Unit, Door No. 3-29, Bethel, Tharethota Near Pumpwell, Mangalore-575005 for information.