

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-32/2016-1



Between

1. Sri. Nagesh Subray Bhandari
R/o Devagiri, Dharehwara,
Kumta Taluka
Uttara Kannada District

.... Applicant

V/s

1. The Project Director,
National Highway Authority of India,
Project Implementation Unit,
#House No. 7-35/10(4)
Bishop Compound, Near Pumpwell, Velencia,
Shree Mahalingeshwara Temple Road,
Kankanady, Mangalore-575 002.
2. The Authorized Officer/
Assistant Commissioner and
Special Land Acquisition Officer,
For National Highway No. 66,
Kumta, Taluk: Kumta,
Uttara Kannada District.

(Represented by Advocate Sri. S. N. Shetty & Sri. N. R. Nayak)

..... Respondents

Preamble:

Application filed u/s 3G (5) of The National Highways Act 1956 (48 of 1956) against the award dated 20-10-2015 passed by the Competent Authority/Assistant Commissioner Kumta in respect of 42 Sq.mtrs of land in Sy no. 43/1 of Devagiri village in Kumta 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 Uttar 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. S023(E) dated 02-01-2013. The said notification was published in 2 daily news papers that is Vijaya Karnataka & Deccan Herald on 27-02-2013. The Central Government declared its intention to acquire 42 sq mtr of land, in Sy no. 43/1 of Devagiri village in Kumta taluka belonging to the applicant. The notices were issued to the interested parties U/s 3C (1) and (2) of the National Highways Act 1956 and enquiry was conducted on 01-10-2013. Final notification u/s 3D (1) & (2) of The National Highways Act 1956 was issued in Special Gazette notification no. S.O.3886 (E) dated 27-12-2013. The award was passed on 20-10-2015 and the same was notified to the applicant on 31-03-2016 and total compensation of Rs. 25,81,992/- after deducting TDS was disbursed to the applicant on 04-04-2016 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 acquired land. The applicant has contended that the respondent No. 1 has fixed Rs. 395/- per Sq.mtrs without any basis. The actual market value is more than Rs. 731 per Sq.mtrs. The award has been passed without considering all these facts and therefore prayed for enhanced compensation on the basis of actual market value.

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

1. The Competent Authority and Assistant Commissioner Kumta fixed the market value as on the date of the publication of Section 3A (1) notification of the Act and awarded adequate compensation inclusive of solatium at 100% and additional compensation at 12% p.a. which is very much justified under law. Moreover, the guidance value promulgated by the State Government is much less for the acquired land. The acquired land of the applicant is classified either as garden, wet, dry or non agricultural land. However, the compensation was awarded by adopting the rates of commercial lands so as to bring uniformity and to do social justice to the land losers. Hence the compensation fixed by Respondent No. 1 is very fair, proper and correct under law and there are no valid grounds to enhance the same. 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	20-10-2015
3G Award notice Date	10-2-2016
Voucher Date	04-04-2016

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.)
Devagiri (Dhareshwara)	43/1	42			3227490*20/100	
	Land Value (Market Value X Factor)			20916		
	Structure Value			1349629		
	Business Loss			14659		
	Solatium @ 100%			1385204		
	Interest @ 12%			457082		
	Sub-total			3227490		
	Horticulture Value			Nil		
	Forest Value			Nil		
	Solatium @ 100%			Nil		
	Grand Total			3227490	645498	2581992

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 02-01-2013. On perusal of the records it is seen that R1 has fixed the market value as hereunder.

	Per Acre (Rs)	Per Gunta (Rs)	Per Sq.Mtr (Rs)
As per Stamp Act 1899 for wet land (Sec 26(1) (a))	2,60,000/-	6,500/-	64/-
As per Average of 50% of sale deeds (Sec 26(1) (b))	13,45,455/-	33,636/-	332/-
Rate adopted by CALA	13,45,455/-	33,636/-	332/-

The above method adopted by R1 in fixing the market value appears to be correct. The documents produced by the applicant do not outweigh the evidentiary value of the method adopted by R1. Compensation is also awarded to the structure and Business loss. Since the award is dated 20-10-2015, R1 has proceeded under the provisions of RFCTLARR Act 2013 and awarded 100% solatium as well as 12% interest in accordance with law. In this regard 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. Accordingly the award being dated 20-10-2015, R1 is justified in awarding 100% solatium as well as 12% interest. Thus there is no error committed by R1 in fixing the market value of the acquired land.

The claim of petitioner to consider valuation based on KMT-1-01614-2016-17 deed cannot be accepted since the deed was registered on 16-01-2017 much after the 3A notification dated 02-01-2013.

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

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Date:21-07-2018

Order

The application for enhancement is rejected.

[Signature]
Arbitrator (NH 66 earlier NH-17)
Deputy Commissioner,
Uttar Kannada, Karwar



Copy to:-

1. Advocate Sri. S. N. Shetty & Sri. N. R. Nayak for information.
2. The Competent Authority and Special Land Acquisition Officer Kumta, Assistant Commissioner Office Kumta for information with lower court records page no.11 to 134
3. Project Director, National Highway Authority of India, Project Implementation Unit, Door No. 3-29, Bethel, Tharethota Near Pumpwell, Mangalore-575005 for information.