

**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-5/2016-17



Between

1. Smt Sharda Manju Kelsi
R/o. Jagatebial, Venkatapur Tq: Bhatkal.

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 Sy no. 32/A1A2B 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 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 808 sq mtrs of land in Sy no. 32/A1A2B in Venkatapur village in Bhatkal taluka belonging to Smt Sharada Kom Kelsi UFM. The notices were issued to the interested persons/land owners and enquiry was conducted on 24-08-2013 and 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 26-9-2015 and total compensation of Rs. 33,67,118/- after deducting TDS was disbursed to the applicants on 28-9-2015 and thereafter possession was taken.

Being highly aggrieved by the order of the RI, the applicant Smt Sharada Manju Kelsi filed an application under section 3G(5) of National Highways Act 1956 (48 of 1956) for the Arbitration, stating that the award amount paid by the RI is too low and requested for

enhancement of the compensation for the land acquired. The applicant contended that the acquired lands were consisting of horticulture crops such as fifteen coconut trees, twelve arecanut trees, three mango trees, three jackfruit trees, two chikku trees, one tamarind tree, medicine plants, flower plants, irrigation pipe line, compound wall etc.

Applicant Smt. Sharadha Manju Kelsi has submitted written argument to consider the following facts and requested for enhancement of the compensation.

| SL NO. | Compensation Particulars | Amount |
|--------|---------------------------------|--------------------|
| 1 | Building Structure | 5,00,000/- |
| 2 | Plants, Medicines | 3,30,106/- |
| 3 | Irrigation pipe land | 50,000/- |
| 4 | Business loss | 36,00,000/- |
| 5 | Enhancement of the compensation | 80,00,000/- |
| | Total Enhanced compensation | 1,24,70,106 |

But while acquiring the land R1 the Competent Authority and Special Land Acquisition Officer NHAI, Honnayar has not considered the said relevant facts while awarding compensation. The applicants are illiterates and agriculture labours. They are not aware of these facts. Hence they have requested for enhancement of the compensation for the acquired lands as per present market value of Rs. 15 to 20 lakhs per gunta.

The Advocate for the Respondent argued that

1. While fixing the compensation, CALA in his award has observed that no agricultural activities were being carried out in the land acquired on either side of National Highway and many residential/commercial buildings exists in both sides of the highways and these lands have lost their agricultural characteristics and therefore the guidance value provided by Sub registrar Bhatkal and approved by CVC Bangalore at Rs. 3000/- per sq.mtr for Venkatapur village is reasonable as could be seen in the following table.

| Compensation Particular | Sy no. | Sq. mts and Particular of lost | Total Amount (In Rs.) |
|---------------------------|----------|--------------------------------|-----------------------|
| Land | 32/A1A2B | 808 Sq. Mtrs | 24,24,000/- |
| Structure | | | 8,84,104/- |
| Business Loss | | | 60,021/- |
| Horticulture/Forest Trees | | | 3,35,816/- |
| Total | | | 37,03,931/- |
| TDS | | | 3,36,813/- |
| Net Payable | | | 33,67,118/- |

The applicants have not produced any documents in support of their claim for enhanced compensation of Rs. 20 lakhs per gunta.

The CALA has awarded compensation for Horticulture/Forest trees existed in the acquired land on the basis of the valuation carried out by the approved valuers of Horticulture Department Government of Karnataka by taking into consideration various aspects. The provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act 2013 (RFCTLARR 2013) are not applicable to the lands acquired under the provisions of The National Highways Act 1956 as the lands were acquired prior to 1-1-2015.

The applicants are not entitled for Solatium and other additional benefits under the provisions of Land Acquisition Act 1894 as the lands are acquired under National Highways Act 1956 were there is no such provision.

The valuation is determent as on the date of 3A notification as contemplated under section 3G of the Act.

The applicants are not entitled for enhanced market value and hence prayed for dismissal of the petition.

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 | 14-07-2015 |
| Voucher Date | 28-09-2015 |

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.) |
|-------------|--------------------|-------------------|---------|---------------------------|---------------------------------|-------------------|
| Venkata pur | 32/A1A2B | 808 | | | 3368125*10/100 | |
| | Land Value | | | 2424000 | | |
| | Structure Value | | | 884104 | | |
| | Business Loss | | | 60021 | | |
| | Sub-total | | | 3368125 | | |
| | Horticulture value | | | 330106 | | |
| | Forest Value | | | 5700 | | |
| | Grand Total | | | 3,03,931 | 3,36,813 | 33,67,118 |

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 section 3A notification is 13-10-2012. The market value in this case is found fixed as per guidelines value communicated by Sub-Registrar Bhatkal and as approved by CVC Bangalore at Rs. 3000/- per sq mtrs on both sides of National Highway of Venkatapur Village as on the date of Section 3A (1) notification. The applicants however contended that the present market value is Rs. 15 to 20 lakhs per gunta. But as per law, present market value cannot be taken into consideration in fixing the market value under the Act. Further, the Applicant has not produced any documents to justify her claim at the said rate of Rs. 15 to 20 lakhs per gunta.

The applicant has contended that there were pipelines, medicinal and flower plants and that the respondents have not taken into consideration these relevant facts while fixing the market value. But on perusal of the award it is seen that Rs. 3,30,106/- + 5700 is awarded for horticulture/forest trees. The applicant has not produced any documents to show that as on the date of publication Section 3A notification there existed pipeline, flower plants and medicinal plants of substantial nature. Therefore applicant is not entitled for

any compensation to the medicine plants, flower plants, irrigation pipe etc as claimed by her.

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 passed on 24-12-2014 i.e. prior to 01-01-2015. Therefore the applicant is not entitled for solatium and other benefits. Even if we presume that the new Land acquisition act is applicable and calculate the payable amount it comes out Rs.14,26,734/- including solatium and interest with the land price fixed as per ~~sub~~ ~~register~~ valuation i.e. market value and guidance value whichever is higher. Whereas Rs.33,67,118/- 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 applicants are not entitled for enhance compensation. Hence, I proceed with the following order.

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Date: 17 -7-2018

Order

The application for enhancement is rejected.



Senakul
17/7/18
Arbitrator (NH 66 earlier NH-17)
Deputy Commissioner,
Uttara 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 141.
3. Project Director, National Highway Authority of India, Project Implementation Unit, Door No. 3-29, Bethel, Tharethota Near Pumpwell, Mangalore-575005 for information.