

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-16/2016-17



Between

Sri. Marian Santyag D'Souza
R/o Puravarga Village Bhatkal Taluka
Uttara Kannada District.
(Represented through Advocate Sri. Simon D'souza & 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 24-09-2015 passed by the Competent Authority and Special Land Acquisition Officer National Highways Authority of India, Honnavar in respect of 406 Sq. Mtrs of land in Sy no. 68A2/ Plot No. 11 of Puravarga 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. S.O.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 406 sq mtr of land in Sy no. 68A2 Plot No. 11 of Puravarga 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 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 24-09-2015 and the same was notified to the applicant on 02-03-2016 and total compensation of Rs. 44,39,893/- after deducting TDS was disbursed to the applicant on 02-03-2016 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 acquired land was consisting of R.C.C. building with first floor and various fruit bearing trees, forest trees. But R1 has not considered these relevant facts while awarding compensation and he has also not taken into account the actual market value of the land as well as structures and trees and hence prayed for enhanced compensation at four times more than the award amount.

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

1. The applicant has not proved that the market value of the acquired land was much more than the value fixed by R1. 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. 188/- per Sq. mtrs. for dry land and Rs. 121/- per Sq.ft. for wet land was taken into account while fixing the market value to the land. 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/forest trees the CALA has relied on the valuation made by approved valuers of horticulture department Government of Karnataka. Since the award is dated 24-09-2015 the CALA has proceeded under the provisions of RFCTLARR Act 2013 and awarded 100% solatium as well as 12% interest in accordance with law and 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	24-09-2015
3G Award notice Date	21-11-2015
Voucher Date	02-03-2016

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.)
Puravarga	68A2/Plot No. 11	406			4581315*10 100	
	Land Value (Market Value X Factor)			73689		
	Structure Value			1876655		
	Business Loss			Nil		
	Solatium @ 100%			1950344		
	Interest @ 12%			680627		
	Sub-total			4581315		
	Horticulture Value			121925		
	Forest Value			36430		
	Solatium @ 100%			158355		
	Grand Total			4898025	458132	4439893

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. 188/- per Sq. mtrs. for dry land and Rs. 121/- per Sq.ft. for wet land. The compensation was awarded to the structure on the basis of the valuation made by approved valuers of PWSSR Government of Karnataka. So also while awarding compensation to horticulture trees/Forest trees the CALA has relied on the valuation made by approved valuers of horticulture department Government of Karnataka. Since the award is dated 24-09-2015 the CALA 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 24-09-2015 the CALA is justified in awarding 100% solatium as well as 12% interest. Thus there is no error committed by CALA in fixing the market value of the acquired land including the structure and horticulture trees/Forest trees.

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.

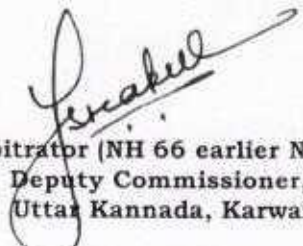
No.RB/LAQ/NH-66/ARB/CR-16/2016-17

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. Simon 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 134.
3. Project Director, National Highway Authority of India, Project Implementation Unit, Door No. 3-29, Bethel, Tharethota Near Pumpwell, Mangalore-575005 for information.