



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

ARBITRATION APPEAL NO. 26 OF 2025

Ku. Laxmibai D/o Harbhagwan Popali, Aged
about 49 years, Occ. Household, R/o Near
City Post Officer, Itwari, Nagpur

... Appellant

// VERSUS //

1. Government of India, Ministry of Road Transport and Highways, Parliament House, New Delhi
2. National Highways Authority of India, Project Implementation Unit, Nagpur through its Project Director, Plot No. 159, Ambazari Hill Top, Ram Nagar, Nagpur 440 033
3. Land Acquisition Officer General and Competent Authority for acquisition of land for National Highway, Collector Office, Nagpur
4. Additional Commissioner, Nagpur Division, Nagpur and the Arbitrator under Section 3-G(5) of the National Highways Act, 1956, Commissioner Office, Nagpur

... Respondents

Shri S.S.Sitani, Advocate for the appellant.
Shri S.S.Hulke, AGP for the respondent no.1/State.
Shri A.A.Kathane, Advocate for the respondent no.2.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 8th December, 2025
Pronounced on : 12th December, 2025

JUDGMENT

Heard.

2. **ADMIT.**

3. The present appeal is preferred against the judgment and order dated 17.01.2025 passed by the learned District and Sessions Judge, Nagpur in Civil Misc. Application No. 885 of 2018, whereby the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act, 1996”) for setting aside the award passed by the learned Additional Commissioner, Nagpur under Section 3-G(5) of the National Highways Act, 1956 in Arbitration Case No. 02/ARB/2015-16, Mouza Kapsi (Khurd), came to be dismissed. Under the said arbitral award dated 18.08.2018, the proceedings for enhancement of compensation in Land Acquisition Case No. 11/A/65/2013-2014 (Mouza Kapsi (Khurd)) dated 29.12.2014 were partly allowed.

4. The facts, in brief, are that the appellant is the owner of Plot No. 53 admeasuring 5637.50 sq. ft. in a layout carved out by Gruh Laxmi Housing Agency in Khasra No. 113 situated at Mouza Kapsi (Khurd),

Tahsil and District Nagpur. The said plot was acquired by respondent No. 2 for the Four-Lane Project at Nagpur. After acquisition, an award was passed in Land Acquisition Case No. 11/A-65/2013-14 dated 29.12.2014, determining compensation payable to the appellant at Rs. 5,23,720/-. Being aggrieved by the quantum of compensation, the appellant preferred arbitration proceedings under Section 3-G(5) of the National Highways Act, 1956 seeking enhancement. The learned Arbitrator partly allowed the claim by award dated 18.08.2018. It is the appellant's grievance that in the case of another landowner, namely Smt. Dhanlaxmi Kochar, whose land was also acquired for the same project, the Arbitrator by award dated 12.10.2017 passed in Arbitration Case no. 05/ARB/ 2015-16, determined compensation at Rs. 9,900/- per sq. meter, whereas the appellant has been awarded only Rs. 3,900/- per sq. meter. On this premise, the appellant filed an application under Section 34 of the Act, 1996, seeking parity of rate.

5. Learned counsel for the appellant submits that the learned Arbitrator erred in failing to consider that all landowners whose lands were acquired for the same project are entitled to compensation at the same rate. It is submitted that the learned Arbitrator ought to have

granted the appellant the rate of Rs. 9,900/- per sq. meter as awarded to Smt. Dhanalaxmi Kochar. The impugned arbitral award dated 18.08.2018 and the judgment dated 17.01.2025 affirming the same are, therefore, liable to be set aside. It is further contended that the differential treatment accorded to the appellant amounts to discrimination and is contrary to the fundamental policy of Indian law. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Tarsem Singh*, wherein Section 3-J of the National Highways Act was declared unconstitutional, and it was observed that the benefits under the Land Acquisition Act should extend to landowners. In support of his submissions, learned counsel for the appellant has relied also on the following decisions:

- i. *Project Director, National Highway Authority of India & Anr. vs. The Additional Commissioner, Nagpur & Ors.*, Arbitration Appeal No. 32 of 2019, decided on 12.04.2022;
- ii. *Inox Air Products Private Limited vs. Air Liquide North India Private Limited*, 2023 SCC OnLine Del 1778;
- iii. *Project Director, National Highways No. 45E & 220, National Highways Authority of India vs. M. Hakeem & Anr.*, (2021) 9 SCC 1.

6. Learned counsel for respondent No. 2 supports the judgment and order dated 17.01.2025 passed by the learned District Judge, Nagpur under Section 34(1) of the Act, 1996, dismissing the appellant's application and upholding the arbitral award dated 18.08.2018. It is submitted that no interference is warranted in the present appeal.

7. It is contended that although the appellant now seeks compensation at the rate of Rs. 9,900/- per sq. meter, he had never pleaded such a claim in his statement of claim before the Arbitrator. On the contrary, the appellant's claim under Section 3-G(5) of the National Highways Act was for determination of compensation at Rs. 2,700/- per sq. meter, and the Arbitrator enhanced it to Rs. 3,900/- per sq. meter. It is further submitted that though the appellant filed a pursis before the Arbitrator on 16.03.2018 relying upon the award in Arbitration Case No. 5/ARB/2015-16, the appellant neither amended his claim nor properly placed material on record to support parity with the rate granted therein. The said earlier award pertained to land situated between two highways, a factor noted by the Arbitrator, and cannot automatically be applied to the appellant's case.

8. Learned counsel for the respondent no.2 further submits that in view of section 23 of the Act 1996, the party has a right to amend his claim and also rely on additional documents. The purport of section 23 is such that the opposite party gets an opportunity to counter the amended claim. Thus, section 23 mandates procedure which is not followed by the appellant.

9. Learned counsel for respondent No. 2 further submits that the learned District Judge has rightly exercised the limited jurisdiction available under Section 34 of the Act, 1996. Relying on the decision of the Hon'ble Supreme Court in *Project Director, NHAI vs. M. Hakeem*, (2021) 9 SCC 1, it is urged that a Court exercising powers under Section 34 cannot modify an arbitral award nor remand the matter. It is contended that nothing in Section 34 warrants grant of the reliefs sought by the appellant. Reliance is also placed on the decision of the Hon'ble Supreme Court in *Gayatri Balasamy vs. ISG Novasoft Technologies Ltd.*, Civil Appeal Nos. ____ of 2025, 2025 INSC 605 (arising out of SLP (C) Nos. 15336-15337 of 2021).

10. The learned Assistant Government Pleader appearing for respondent no.1 adopted the arguments advanced by the learned counsel for respondent no.2.

11. Upon hearing the learned counsel for the parties and upon perusal of the record, the following points arise for determination in this appeal:

(i) Whether the appellant is entitled to claim parity of compensation at the rate of Rs. 9,900/- per sq. meter, as allegedly granted to another landowner, despite not having pleaded such a claim before the learned Arbitrator ?

(ii) Whether the arbitral award suffers from patent illegality or violates the fundamental policy of Indian law on account of alleged award of a lower rate of compensation to the appellant?

(iii) Whether the learned District Judge, Nagpur, failed to exercise jurisdiction vested under Section 34 of the Arbitration and Conciliation Act, 1996 in refusing to interfere with the award?

(iv) Whether the impugned arbitral award dated 18.08.2018 warrants interference on any of the grounds available under Section 34(2) of the Act, 1996?

12. With respect to Point No. (i), it is evident from the record that the appellant, in his statement of claim before the learned Arbitrator, had specifically sought determination of compensation at the rate of Rs. 2,700/- per sq. meter. At no stage did the appellant amend his pleadings or adduce evidence seeking parity with the compensation allegedly granted to Smt. Dhanlaxmi Kochar at the rate of Rs. 9,900/- per sq. meter. A mere filing of a pursis referring to another award cannot substitute pleadings nor can it compel the Arbitrator to determine compensation beyond the scope of the claim, more specifically when mandate of section 23 of the Act of 1996, is not followed. Under well-settled principles of arbitration, the Tribunal is bound by the pleadings, and a claim not pleaded cannot be granted. Therefore, the appellant cannot raise, for the first time in appellate proceedings, a claim that was neither pleaded nor proved before the arbitrator.

13. Point No. (ii), the grievance of the appellant alleging discrimination is without substance. The learned Arbitrator has recorded

a clear finding that the land owned by to Smt. Dhanlaxmi Kochar was situated between two highways and was therefore commercially more valuable. In contrast, the appellant failed to place any evidence to establish that his land enjoyed similar locational advantages. The Arbitrator, after evaluating the material placed before him, enhanced the appellant's compensation from Rs. 2,700/- per sq. meter to Rs. 3,900/- per sq. meter. The differentiation made by the Arbitrator is reasoned and cannot be termed arbitrary or violative of the fundamental policy of Indian law. No patent illegality is demonstrated.

14. Turning to Point No. (iii), the learned District Judge, while exercising jurisdiction under Section 34 of the Act of 1996, has rightly held that the scope of interference is extremely limited. As held by the Hon'ble Supreme Court in *Gayatri Balasamy and Project Director, NHAI v. M. Hakeem, (supra)*, a court exercising power under Section 34 and Courts' in appellate hierarchy do not have the power to modify an arbitral award, nor can it re-appreciate evidence or act as an appellate forum. The learned District Judge examined the award only for patent illegality, jurisdictional error, and violation of natural justice, all of which were

rightly held to be absent. The dismissal of the appellant's Section 34 application is therefore legally sustainable.

15. With respect to Point No. (iv), this Court finds that the arbitral award does not suffer from any infirmity contemplated under Section 34(2) of the Act, 1996. The award is speaking, reasoned, and based on the evidence placed before the Arbitrator. There is no material to show that the Arbitrator ignored relevant evidence, considered irrelevant factors, or acted perversely. The appellant's attempt to rely on a separate arbitral award, without placing proper pleadings or evidence, cannot constitute a ground for setting aside the award under Section 34.

16. In the light of the findings recorded herein above, it becomes apparent that the entire foundation of the appellant's grievance rests on a claim for parity of compensation, which was never raised before the learned Arbitrator. Arbitration proceedings are governed by the principle that the Tribunal can adjudicate only upon the claims placed before it under section 23 of the Act of 1996. The appellant sought compensation at the rate of Rs. 2,700/- per sq. meter, and it was only after the learned Arbitrator awarded Rs. 3,900/- per sq. meter that the appellant attempted to rely upon compensation granted to another landowner. Such an

approach cannot be countenanced in law, for it would not only enlarge the scope of the original claim but would also defeat the discipline of pleadings inherent in arbitration proceedings. Consequently, the appellant's newly raised claim for compensation at Rs. 9,900/- per sq. meter cannot be entertained.

17. It is further clear that the learned Arbitrator did not proceed arbitrarily or unreasonably while determining compensation. The distinction drawn between the land of the appellant and that of Smt. Dhanalaxmi Kochar is founded upon a rational and evidence-based assessment of the locational advantages available to the latter's land. The differentiation is neither discriminatory nor violative of the fundamental policy of Indian law. The Arbitrator's award demonstrates application of mind, adequate reasoning, and reliance on material placed before him. No perversity or patent illegality, as required under Section 34(2A) of the Act, 1996, is made out.

18. Equally, the judgment and order dated 17.01.2025 passed by the learned District Judge, Nagpur, does not suffer from any jurisdictional infirmity. The Court below has correctly appreciated the limited and narrow scope of interference available under Section 34. It is well settled

through authoritative pronouncements, including *Gayatri Balasamy & Project Director, NHAI v. M. Hakeem*, that a Court exercising powers under Section 34 of the Act of 1996, cannot modify an award, cannot re-evaluate evidence, and cannot act as if adjudicating an appeal. The learned District Judge remained within the parameters prescribed by law and rightly refused to supplant the Arbitrator's conclusions with his own.

19. Thus, when viewed from any perspective; whether on the touchstone of pleadings, evidence, statutory limitations, or binding precedent, the appellant has failed to establish any ground warranting interference with the arbitral award. The attempt made in appeal is essentially an endeavour to seek re-appreciation of evidence and to obtain a higher quantum of compensation without having laid any foundational claim for the same before the Arbitrator. Such an exercise falls squarely outside the scope of appellate scrutiny in proceedings arising under Section 34 or Section 37 of the Act, 1996.

20. For all the foregoing reasons, this Court finds no merit in the appeal. The arbitral award dated 18.08.2018, as well as the judgment and dated 17.01.2025 passed by the learned District and Sessions Judge,

Nagpur, do not call for any interference. The Arbitration Appeal therefore stands dismissed.

[NIVEDITA P. MEHTA, J.]