

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Arb P No.25/2025

ABDUL MAJID MATTOO

...PETITIONERS/APPELLANT(S)

Through: - Mr. Hakim Suhail Ishtiyag, Advocate.

Vs.

NATIONAL HIGHWAY AUTHORITY OF INDIA & ORS.

...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA.
Mr. Adil Asmi, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER(ORAL)

1) This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") for setting aside the arbitral award dated 10.06.2025 passed by the learned Arbitrator/Divisional Commissioner, Kashmir, in a petition filed by the petitioner for enhancement of compensation on account of acquisition of his land by respondent Nos. 1 and 2 under the National Highways Act, 1956.

2) The petitioner has assailed the award on the following grounds:

- I. That the learned Arbitrator has passed the award without affording an opportunity of hearing to the petitioner to substantiate his case;

II. That the impugned award suffers from non-application of mind as the petitioner had filed an application for amendment of claim on 11.04.2025, whereas the impugned award does not take note of any such application filed by the petitioner;

III. That the award impugned is hit by Section 34(2)(b)(ii) of the Act, being in conflict with the policy of India, as the same has been passed without providing an opportunity to lead evidence to the petitioner.

3) Respondent Nos. 1 and 2 have filed their response stating therein that the petitioner's land comprising Survey Nos. 1066 and 1067 in Village Rakh-i-Shilwat was acquired and as per the record, the land is recorded as orchard, i.e. agricultural land and not commercial land. It is further stated that the valuation of the structures was carried out by PWD (R&B) Department, Sumbal, as per the valuation Schedule, 2018, which, at the relevant point of time, was the most recent schedule uniformly applied across the Union Territory of J&K. The Deputy Commissioner, Bandipora, assessed the compensation after due process and awarded the same in favour of the petitioner in terms of award dated 21.10.2023.

4) It is further stated that during the course of proceedings, the learned Arbitrator directed the Deputy Commissioner,

Bandipora, as the competent authority for land acquisition, to constitute a team and re-evaluate the structures standing over the land. Accordingly, the same was done and a report was submitted before the learned Arbitrator. During arbitral proceedings, the petitioner filed an application seeking amendment of the claim petition, thereby relying upon fresh assessment from the R&B Department, but without filing the actual amended claim petition. Learned Arbitrator, after considering all the materials including the fresh R&B report, partially enhanced the compensation for the structure and also held that access from highway shall be ensured by NHAI during demolition and reconstruction of the weighbridge so as to avoid any disruption to the operations of the godown currently leased to Food Corporation of India, but expressly rejected the petitioner's claim for revaluation on the ground that the land continues to be recorded as an agricultural/orchard in revenue records. It is stated that the Court while hearing the petition under Section 34 of the Act does not sit as an appellate Court over the arbitration award and the evidence cannot be re-appreciated.

5) Mr. Hakeem Suhail Ishtiaq, learned counsel appearing for the petitioner, has argued that the petitioner had filed an application for amendment of the claim petition wherein some more claims were made by the petitioner, but the learned

Arbitrator did not take note of the said application and without affording any opportunity of hearing to the petitioner passed the award impugned. He has further argued that, in fact, no proceedings were conducted by the learned Arbitrator after issuance of notice dated 24.04.2025 and straightway award was passed.

6) *Per contra*, Mr. Laway, learned GA, has submitted that the learned Arbitrator has taken note of the amendment application and has, in fact, rejected the claim of the petitioner in part. He further submitted that in the award it is recorded that hearing in the petition was conducted.

7) Mr. Adil Asmi, learned counsel for the respondent, has submitted that there is no legal infirmity in the award in terms of Section 34 of the Act which warrants indulgence by this Court.

8) Heard and perused the record.

9) The petitioner filed a petition for grant of compensation in terms of Section 3G(5) of the National Highways Act, 1956, seeking enhancement of compensation and the following claims were made by the petitioner:

SUMMARY OF CLAIM STATEMENT		
Claim No.	Description of Claim	Amount (in Rs)
1.	Enhancement of compensation payable for the land acquired	Rs. 14,56,377/- for the land acquired and Rs. 61,14,345/- for the structures, besides the

	from un-irrigated horticulture to commercial category	solatium under Section 30(1) and amount equivalent to 12% of the market rate from the date of issuance of notification under Section 4 till passing of award or taking of possession under Section 30(3) of the Act of 2013 followed by the multiplier of (4) which is much higher than what has been awarded by the Competent Authority.
2.	Enhancement of compensation payable for the structures.	61,14,345/-
3.	Cost of arbitration	10,00,000/-
4.	Interest	@16%

10) The claim was objected to by respondent No.3. During the pendency of the petition, the petitioner filed an application seeking amendment of the claims. However, only last page of the said application and the affidavit are available in the record received from the learned Arbitrator. In the application seeking amendment of the claims, the petitioner had raised some more claims, in addition to the claims already made before the learned Arbitrator. Further, the notice dated 22.04.2025 reveals that the amendment application was received by the Arbitrator, and in terms of the aforesaid notice, Executive Engineer, PWD (R&B) Division, Sumbal, was directed to furnish reply to the same by or before 26.04.2025. Thereafter, in terms of another notice dated 24.04.2025, the non-applicant, i.e. National Highways Authority of India, was directed to remain present before the Court on 28.04.2025.

11) The record shows that the learned Arbitrator maintained no minutes of the proceedings. Moreover, while the impugned

award rejected part of the petitioner's claim set out in the amendment application, it was passed without affording an opportunity of being heard to the petitioner.

12) It is clearly established that the impugned award was passed in complete violation of the principles of natural justice. The Hon'ble Supreme Court of India in ***OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417***, has observed as under:

“56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

- (a) violation of the principles of natural justice;
- (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
- (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(b)(ii)”.

13) Consequently, an award passed in violation of the principles of natural justice, specifically without hearing the parties, cannot sustained and is liable to be set aside.

14) In view of above, the present petition is allowed and the award passed by the learned Arbitrator is set aside and the matter is remitted to the Arbitrator to decide the petition preferred by the petitioner afresh after affording due opportunity of hearing to all the contesting parties. Needless

to say that this Court has not examined the merits of the respective claims of the parties and has set aside the award solely on the ground of violation of principles of natural justice. This Court is sanguine that the learned Arbitrator shall conclude the proceedings within the time limit prescribed under the law.

15) A copy of this order be sent to the learned Arbitrator for information and compliance.

(Rajnish Oswal)
Judge

SRINAGAR

29.09.2026

“Bhat Altaf-Szegy”

Whether the **Order** is speaking: **YES**
Whether the **Order** is reportable: **YES**

