



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

ARBITRATION APPEAL NO. 5 OF 2024

1. Paras Jawarilal Raka (G.P.A. Holder)
Age-55 years, Occ : Farmer,
2. Prafulla Bansilal Chordiya
Age- 70 years, Occ : Farmer,
3. Rajesh Prafullakumar Chordiya
Age-45 years, Occ : Farmer,

Appl. Nos.2 and 3 R/o 8, Manglam,
Jai Nagar, Jalgaon.

4. Chandrashekhar Jawarilal Raka
Age - 46 years, Occ : Farmer,

Appli. No.1 & 4 R/o 180, Navi Peth,
Jalgaon.
Appli No.1 GPA holder for himself &
Appli No.2 to 4.

..APPELLANTS

-VERSUS-

1. The Competent Authority (Land Acquisition),
National Highway No.6 and Special Land
Acquisition Officer, Jalgaon
Address :- Collector Office, Jalgaon.
2. National Highway Authority of India,
Project Implementation Unit Dhule
Survey No.10/2, Plot No.11,
Mansaram Nagar, Near Circuit House,
Sakri Road, Dhule.

..RESPONDENTS

WITH

ARBITRATION APPEAL NO. 6 OF 2024

1. Sanjay Bhaulal Chaudhari
Age-51 years, Occ : Farmer,
GPA holder for himself & for
Applicant No.2a to 2f and
legal heir of Appli no.2.

2. Bhaulal Kautik Chaudhari (Died)
Through Lrs.
- 2a. Padmabai Bhaulal Chaudhari
Age- 87 years, Occ : Nil,
- 2b. Gokul Bhaulal Chaudhari
Age-65 years, Occ : Farmer,
- 2c. Indu Suresh Chaudhari
Age-58 years, Occ : Housewife,
- 2d. Arun Bhaulal Chaudhari
Age-58 years, Occ : Farmer,
- 2e. Rekha Manohar Chaudhari
Age-54 years, Occ : Farmer,
- 2f. Kishor Bhaulal Chaudhari
Age-48 years, Occ : Farmer,
- 2g. Rashi Shashikant Chaudhari
Age-45 years, Occ : Housewife,
Appli No.1, 2a, 2c, 2f R/o 308,
Joshi Peth, Jalgaon.
Appli No.2d, 2e R/o Kolhe Nagar,
Jalgaon.
Appli No.2b R/o Khote Nagar,
Jalgaon.
Appli No.2g R/o Warora,
Tq. & Dist. Chandrapur.

..APPELLANTS

-VERSUS-

1. The Competent Authority (Land Acquisition),
National Highway No.6 and Special Land
Acquisition Officer, Jalgaon
Address :- Collector Office, Jalgaon.
2. National Highway Authority of India,
Project Implementation Unit Dhule
Survey No.10/2, Plot No.11,
Mansaram Nagar, Near Circuit House,
Sakri Road, Dhule.

..RESPONDENTS

...
Advocate for appellants : Mr. M.R. Malpani
Advocate for Respondent No.2 : Mr. D.S. Manorkar
AGP for respondent/State : Mr. R.D. Raut
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CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 07.07.2025

PRONOUNCED ON : 14.07.2025

JUDGMENT :

1. The present appeals are filed under Section 37 of the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as “A and C Act”). The appellants in both the appeals will be referred as “land owners” and respondents will be referred as “NHAI”.

2. The lands of the appellants in both the appeals came to be acquired by NHAI under the National Highways Act, 1956 (Hereinafter referred to as “NH Act”). The amount of compensation granted by the Land Acquisition Officer was not acceptable to the land owners and therefore, they took resort to arbitration seeking enhancement of compensation as contemplated under Section 3-G(5) of the NH Act. Vide award dated 16th October, 2017, the sole arbitrator granted enhancement in the amount of compensation. As regards the statutory benefits, the learned arbitrator held that both the parties will abide by the decision of the Hon’ble Supreme Court in SLP(Civil)

No.15104/2024 pending before the Hon'ble Supreme Court of India.

3. Dissatisfied with the amount of compensation awarded, the land owners preferred two separate applications under Section 34 of the A and C Act seeking enhancement in amount of compensation. Both these applications came to be dismissed by the learned Principal District Judge vide judgment and order dated 15th March, 2022. Aggrieved by the dismissal of Section 34 applications, the present appeals have been filed under Section 37 of the A and C Act.

4. Although, the enhancement in amount of market value determined by the arbitrator was sought in Section 34 proceedings, the learned counsel for the appellants has stated that the claim in the present appeals is restricted only to the statutory benefits payable to the land owners as per the Land Acquisition Act (Hereinafter referred to as "LA Act"). The grounds in memorandum of appeals are also with respect to statutory benefits payable as per the LA Act.

5. In this regard, it needs to be mentioned that Section 3-J of the NH Act provided that the provision of LA Act, 1894 will not be applicable to acquisition under NH Act. However, Section 3-J of the NH Act was declared as unconstitutional by the Hon'ble Supreme Court in

the matter of *Union of India and another Vs. Tarsem Singh and others* reported in *(2019) 9 SCC 304*. This judgment was delivered on 19.09.2019.

6. Since the only contention in the present appeals pertains to grant of statutory benefits, the relevant clause in the operative order of the award passed by the learned arbitrator is reproduced hereinbelow for ready reference :-

"(6) Both the parties shall abide by and execute the ratio of the decision of the Hon'ble Supreme Court in SLA (Civil) 15104/2014, as and when it is finally decided in respect of claim of statutory benefits under the Land Acquisition Act, 1894."

7. The aforesaid clause makes reference to SLP (Civil) No.15104/2014, which was disposed of by the Hon'ble Supreme Court, vide order dated 21.07.2016. It appears from perusal of the said order that the High Court had granted solatium to the land owners in addition to the compensation payable for the lands acquired under the provisions of NH Act. The Union of India had challenged the said judgment before the Hon'ble Supreme Court. However, during the course of hearing, a statement was made by the learned Solicitor General of India that solatium in terms of the order passed by the High

Court would be paid to the land owners. In view of the above statement, the SLP was disposed of with directions to pay the amount of solatium to the land owners along with interest thereon.

8. Although, SLP was disposed of on 21.07.2016, it appears that the parties were not aware about the same and the learned arbitrator was, therefore, not apprised about the said order dated 21.07.2016. In view of the aforesaid, the arbitrator has directed that the parties will be bound by outcome of the said SLP.

9. As stated above, the Hon'ble Supreme Court has declared Section 3-J of the NH Act as unconstitutional in the matter of **Tarsem Singh** (supra). The Hon'ble Supreme Court has issued following declaration in para 52 of the order :-

"52. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional."

10. In view of clear exposition of law by the Hon'ble Supreme

Court, there is no doubt with respect to entitlement of the appellants to receive solatium and interest payable under Sections 23(1-A) and (2) and Section 28 of the LA Act. Clause (6) of the award, as stated above, directs that the parties will be bound by adjudication of SLP (Civil) No.15140/2014, where directions were issued for payment of solatium. In the said matter, directions are not issued for payment of interest as per Sections 23 and 28 of the LA Act.

11. The issue that falls for consideration in the present appeals is that whether the relief of statutory benefits could be awarded by the learned District Judge while entertaining the application under Section 34 and/or by this Court while entertaining the appeal under Section 37 of the A and C Act.

12. In this context, it will be profitable to refer to a division bench judgment of this Court in the matter of ***Rishabhkumar Babulal Jejani Vs. Secretary to the Government of India and others*** reported in ***2022 (1) B.C.R. 659***. The judgment is delivered in an appeal filed under Section 37 of the A and C Act. The land owners had prayed for grant of solatium and interest in view of the judgment of the Hon'ble Supreme Court in the matter of ***Tarsem Singh (supra)***. The Division Bench has taken note of the judgment of the Hon'ble Supreme Court

whereby Section 3-J of the NH Act was held to be unconstitutional and the land owners were declared to be entitled to solatium and interest under Sections 23(1-A), 23(2) and 28 of the LA Act.

13. Having noticed the said judgment, the Division Bench posed a question to itself, as to whether the statutory benefits which were not granted by the arbitrator could be granted in an appeal under Section 37 of the A and C Act and further as to whether granting such amount would amount to modification of the award. In the judgment of the Hon'ble Supreme Court in the matter of ***Project Director, National Highways No.45 E and 220 National Highways Authority of India Vs. M. Hakeem*** reported in ***2021 AIR (SC) 3471***, wherein the award passed by the arbitrator under the NH Act cannot be modified in a proceeding under Sections 34 and 37 of the A and C Act was noticed and in the light of the aforesaid judgment, it is held that the award passed by the arbitrator can either be confirmed or struck down in a proceeding under Section 34 and/or appeal under Section 37 of the A and C Act and that the courts exercising jurisdiction under Sections 34 and 37 of the A and C Act do not have jurisdiction to modify the award. In the light of above, it is held in paragraph 39 of the judgment as under :-

"39. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in

*Kinnari Mullick (supra). Also, in **Dakshin Haryana Bilji Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd.**, 2021 SCC OnLine SC 157, a recent judgment of this Court also followed **McDermott(supra)** stating that there is no power to modify an arbitral award under Section 34 as follows:-*

(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.

Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award."

14. The said judgment in the matter of **Rishabhkumar (supra)** is recently followed by a learned Single Judge (Civil Appellate Jurisdiction) in judgment dated 09.06.2025 in Arbitration Appeal (Stamp) No.22121/2023 and other connected appeals. The conclusions are drawn by the learned Single Judge following the judgment in the matter of **Rishabhkumar (supra) and M. Hakeem (supra)** by holding that although, the statutory benefits are payable to land owners in view of the judgment in the matter of **Tarsem Singh (supra)**, the same cannot be awarded by a court exercising jurisdiction either under

Section 34 and Section 37 of the A and C Act if the arbitrator has not awarded the same.

15. It will be pertinent to mention here that a Division Bench of this Court (civil appellate jurisdiction), vide its ***judgment dated 09.05.2025 passed in Writ Petition No.9608/2023*** and other connected petitions has directed NHAI to pay land owners statutory benefits of solatium and interest in terms of the judgment of the Hon'ble Supreme Court in the matter of ***Tarsem Singh (supra)***. While issuing the said mandamus objection pertaining to alternate remedy of taking recourse to Section 34 came to be rejected. The Division Bench has taken into consideration the judgment in the matter of ***Rishabhkumar (supra)*** to hold that the relief of statutory benefits cannot be granted by Court under Section 34 or 37 of the A and C Act. Relevant observations in the judgment are as under:-

"9. There is no point in relegating the Petitioners to the remedy under Section 37 of the Arbitration Act, when the relief they claim cannot be granted under such proceedings.

*10. If we were to relegate the Petitioners to the remedy of Section 37, the Appeal Court, being bound by the decision in ***Rishabhkumar (supra)***, would have no option but to dismiss such appeals by declining to modify the arbitral award. This would be futile. Such a*

remedy can hardly be called an efficacious one. Accordingly, we reject the unfortunate contention that these Petitions should not be entertained because the Petitioners have an alternative remedy under Section 37 of the said Act."

16. It will also be appropriate to refer to paragraph 13 of the judgment, where the Division Bench has recorded that NHAI did not have any objection regarding entitlement of the land owners to receive solatium and interest in terms of the judgment in the matter of ***Tarsem Singh (supra)***, the relevant portion whereof reads as under :-

"13. In all these matters, as noted earlier, there is no dispute about the Petitioners being entitled to the benefits of the solatium and interest under the decision of the Hon'ble Supreme Court in ***Tarsem Singh (Supra)***."

17. It will be pertinent to mention that the petitioners/land owners in the said matters had initially filed objection under Section 34 of the A and C Act raising grievance with respect to non-payment of solatium and interest in terms of ***Tarsem Singh (supra)***. The learned District Judge held that the land owners were entitled to receive solatium and interest as per ***Tarsem Singh (supra)***, however, the learned District Judge expressed inability to pass judgment for payment of the said amount in view of the judgment in the matter of

Rishabhkumar (supra). In view of the aforesaid the said petitions came to be filed seeking a writ of mandamus for payment of statutory dues.

18. Likewise vide ***judgment dated 08.04.2025 passed in Writ Petition No.11932/2019*** (civil appellate jurisdiction) and other connected matters, directions were issued for payment of solatium and interest for land acquired under the NH Act in a petition filed under Article 226 of the Constitution of India.

19. In view of the aforesaid, the entitlement of the appellants to receive solatium and interest for their lands cannot be disputed, however, at the same time, it will not be permissible for this Court to modify the award in order to direct payment of statutory benefits to the appellants since the same will amount to modification of award, which is beyond the scope of jurisdiction of this Court while entertaining appeal under Section 37 of the A and C Act.

20. As noted above, arbitral tribunal vide clause (6) of the operative order in the award has held that both the parties shall abide by the decision in SLP (Civil) No.15105/2024. However, in the said matter, on a statement made on behalf of the Union of India, directions are issued for payment of solatium, however, directions are not issued

for payment of interest. The appellants are also entitled for payment of interest in addition to solatium. NHAI has not challenged the award passed by the arbitrator. NHAI is, therefore, directed to deposit the amount of solatium payable to both the land owners along with interest with this Court on or before 31st August, 2025. As regards the interest, the appellants are at liberty to avail of appropriate remedy with respect to the same.

21. In view of the above, the appeals are disposed of with no orders as to costs.

22. Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI]
JUDGE

sga/