



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

ARBITRATION APPEAL NO. 34 OF 2024

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| <p>1. Project Director,
National Highways Authority of India
Ministry of Road Transport &
Highway Project Implementation Unit,
Nagpur-2 office at Bunglow No.2,
Shubhankar Apartment, Plot No. 159,
Ambazari Hill Top, Ram Nagar,
Nagpur 440 033</p> <p>2. Secretary to Government of India,
Ministry of Road Transport and
Highway Department of Road,
Transport and Highway, Bhawan No.1,
Parliament Street, New Delhi.</p> | <p>... <u>Appellants/</u>
Original Applicants u/s
34 of Arbitration and
Conciliation Act, 1996</p> |
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// VERSUS //

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| <p>1. The Additional Commissioner, Nagpur
and Arbitrator under the National
Highways Act, 1956. Having office at
Old Secretariat Building, Civil Lines,
Nagpur-440 001.</p> <p>2. Deputy Collector/The Land
Acquisition Officer, General, Nagpur
and Competent Authority for
acquisition of land for National
Highway No. 69, Collector Building,
Civil Lines, Dist. Nagpur</p> <p>3. Urmila Suryakant Thakur,
Aged : 47 years, Occ.: Service,
All R/o. Tilak Nagar, Thakur
Apartment, Dist. Nagpur 440 010</p> | <p>... <u>Respondents/</u>
Original Non-Applicants
u/s 34 of Arbitration and
Conciliation Act, 1996</p> |
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Shri Anish A. Kathane, Advocate for the appellants/original applicants.
Shri S.S.Hulke, AGP for the respondent nos. 1 and 2/State.
Shri N.A.Jachak, Advocate for respondent No.3/original non-applicant.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 15th October, 2025.
Pronounced on : 3rd November, 2025.

JUDGMENT

Heard. **Admit.**

2. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is preferred against the order dated 20th September 2023 in Arbitration Case No. 152/2022 passed by the learned District Judge-10, Nagpur, whereby the order dated 23rd November, 2021 passed by Respondent no. 1-Arbitrator, condoning the delay in filing the application under Section 3(G)(5) of the National Highways Act, 1956 preferred by Respondent no.3, came to be upheld.

3. The Appellants submit that Appellants no. 1 is the Project Director, National Highways Authority of India, conducting activities under the provisions of the National Highways Act, 1956. Vide Gazette Notification issued for the purpose of building, maintenance, management and operation on the stretch of NH-7 relating to Village

Khumari, Tahsil Ramtek, District Nagpur, land was declared for acquisition. Respondent no. 2 was declared as the Competent Authority for land acquisition.

4. It is stated that Respondent no. 2 followed all parameters required in law and passed an initial award dated 12th February 2009. The land acquired was from Survey No. 193/1(A) and Survey No. 193/2B, admeasuring 0.2862 H.R. Thereafter, a revised award was passed on 16th October 2014, dividing the land and awarding compensation in the names of the landowners, namely, Jainarayan Bholenath Mishra and Shyamsundar Bholenath Mishra, for Survey No. 193/2B, for total land of 0.0862 H.R. The said land is the subject matter of the present dispute.

5. It is the case of the Appellants that Respondent no. 3, whose name never appeared either in the award passed by the Competent Authority or in the revised award, without any locus, filed an application under Section 3(G)(5) of the Act of 1956 before Respondent no. 1 for enhancement of compensation payable to the original landowners. This application came to be registered as Arbitration Case No. 149/ARB/2019–20.

6. The Appellants further contend that there was an inordinate delay of 10 years, 8 months and 20 days in filing the said application after passing of the original award dated 12th February, 2009 and the revised award dated 16th October, 2014. Therefore, Respondent no. 3 moved an application for condonation of delay.

7. The said application was vehemently opposed by the Appellants, specifically on the ground that Respondent no. 3 has no title over the acquired land. Her name never appeared in any of the revenue records. Respondent no. 3 relied on a sale deed dated 9th February, 2016, executed by the subsequent purchasers of the original owners in her favour. It is the case of the Appellants that the said sale deed was executed subsequent to Section 3-A Notification dated 15th March, 2005 under the Act of 1956. Therefore, the sale being post-notification, Respondent no. 3 was not entitled to file any application for enhancement of compensation before Respondent no. 1 – learned Arbitrator.

8. Respondent no. 1, the Learned Arbitrator, decided the application filed by Respondent no. 3 vide order dated 23rd November,

2021 allowing the application for condonation of delay in filing the application under Section 3(G)(5) of the Act of 1956.

9. The order dated 23rd November, 2021 came to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 vide Arbitration Application No. 152/2022 before the learned District Judge-10, Nagpur. Respondent no. 3 filed her reply to the said application on 30th August, 2022. After hearing both sides, the learned District Judge-10, Nagpur, vide order dated 20th September, 2023, rejected the application filed by the Appellants, thereby upholding the order of condonation of delay passed by Respondent no. 1 - learned Arbitrator.

10. It is this order dated 20th September, 2023, passed by the learned District Judge-10, Nagpur, in Arbitration Case No. 152/2022, which is challenged in the present appeal.

11. This Court, vide order dated 16th April 2024, issued notice to the Respondents for final disposal. On the submission of the Appellants that Respondent no. 1 was proceeding with the matter despite there being a delay of 11 years, 8 months and 20 days in filing the application under

Section 3(G)(5) of the Act of 1956, proceedings before Respondent no. 1 were stayed. The said interim relief came to be continued thereafter.

12. The Respondents appeared in the matter and Respondent no. 3 vehemently supported the orders passed by both the learned Arbitrator and the learned District Judge-10, Nagpur.

13. I have heard learned counsel Shri A.A. Kathane for the Appellants, learned AGP for Respondent no's. 1 and 2 and learned counsel Shri N.A. Jachak for Respondent no. 3.

14. To strengthen his submissions, counsel for Appellants Shri Kathane relied on the following judgments:

- i. *Pathapati Subba Reddy v. Special Deputy Collector (LA), (2024) 12 SCC 336,*
- ii. *Huchanagouda v. Assistant Commissioner & LAO, (2020) 19 SCC 236,*
- iii. *Ninagappa v. LAO, (2020) 19 SCC 599,*
- iv. *Executive Engineer & Ors. v. Gokul Kanungo, 2022 SCC OnLine SC 1336,*

- v. *Dheeraj Singh v. State of Haryana & Ors., (2014) 14 SCC 127,*
- vi. *Imrat Lal & Ors. v. Land Acquisition Collector & Ors., (2014) 14 SCC 133.*

SUBMISSIONS ON BEHALF OF APPELLANTS:

15. It is specifically argued that Respondent no. 3 has no title over the acquired land. In fact, the award passed by the Competent Authority clearly depicts the names of Jaynarayan Mishra and Shyamsundar Mishra as landowners. Even in the revised award dated 16th October, 2014, the name of Respondent no. 3 is not reflected. Hence, it is argued that, Respondent no. 3 does not fall within the category of “either of the parties” as contemplated under Section 3(G)(5) of the Act of 1956 and therefore, has no locus standi to seek enhancement of compensation.

16. It is further contended that the sale deed dated 9th February, 2016 was executed subsequent to the Section 3-A Notification dated 15th March, 2005 and hence cannot confer any right upon Respondent no. 3 to seek enhancement. The reasons assigned for condonation of delay are vague, unjustified and unsupported by evidence. The plea that Respondent no. 3 came to know about the acquisition only on 7th

November, 2019 is argued to be false and untenable. The original landowners were well aware of the acquisition and the awards passed.

17. It is also argued that all transactions relating to the acquired land post Section 3-A Notification are void. The predecessors in title of Respondent no. 3 were aware of the acquisition, and hence, the subsequent transfer of land in favour of Respondent no. 3 cannot be recognized. Therefore, it is submitted that the order condoning delay passed by the learned Arbitrator and confirmed by the learned District Judge-10, Nagpur, is legally infirm.

18. To substantiate its claims, the appellants have relied on several authorities as mentioned supra. On the basis of authorities, it is contented that when a case is presented in the Court beyond limitation, sufficient cause which means an adequate and enough reason, preventing the party to approach the Court within limitation, must be shown. In case it is found that the party is negligent, or for want of *bona fide* on his part, in the facts and circumstances of the case or found to have not acted diligently or remain inactive, there cannot be justified ground to condone the delay.

19. Reliance placed by learned counsel for Appellants on *Huchanagouda* (supra) relates to claim of interest for the period of delay. Similar is the authority reported in *Ninagappa* (supra) viz., on the ground of seeking parity and for claim of fair and just compensation as has been awarded to other land owners. The authority cited in *Gokul* (supra) is pointed out to contend that the interest was not awarded for a period of delay in taking out proceedings for enhancement. Further reliance on *Dheeraj Singh* (supra) is also on the issue of grant of interest during the period of delay. As regards authority cited in *Imrat Lal & Ors.* (supra) is concerned, the Hon'ble Apex Court, in substance, has ruled to take a lenient view for condonation of delay in the matters pertaining to land acquisition.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1 & 2:

20. The learned Assistant Government Pleader on behalf of Respondent Nos. 1 & 2 supported the order passed by Respondent no.1 and upholding of the same by the learned District Judge-10, Nagpur. It is argued that in the facts and circumstances of the case, the delay is rightly condoned and therefore the order deserves to be maintained.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3:

21. Per contra, Shri N.A. Jachak, learned counsel appearing for Respondent No. 3, invited the Court's attention to the application seeking condonation of delay, particularly to paragraphs 2 and 3 thereof, wherein the reasons for the delay have been set out. The said paragraphs are reproduced herein below:

2. It is submitted that for the first time the applicant came to know about the acquisition of land and passing of the award only on 3/5/2019. It is submitted that the predecessor in title of the land was also not aware about the acquisition and the award so passed. It is further submitted that the predecessor in title of the land in question was not served with any notice by the non-applicants whatsoever, in respect of the acquisition of land or possession thereof.

3. It is further submitted that as stated supra, the award in question was not communicated or served to the applicant or her predecessor in title prior to 7/11/2019. It is submitted that the payment of compensation was paid on 8/11/2019 and the applicant have acknowledge the payment under protest and applied for certified copy of the award which have been supplied to the applicant on 21/11/2019. It is therefore submitted that the application for arbitration is submitted within limitation. As an abundant precaution, the applicant craves leave of this Hon'ble authority to move present application for condonation of delay, if any, to avoid any complication in the proceedings.

22. It is the case of Respondent no. 3 that she gained knowledge of the acquisition and passing of the award only on 7th November, 2019.

Neither she nor her predecessors in title were ever served with notice of acquisition or award. The award was never communicated to them prior to 7th November, 2019. Compensation was paid on 8th November, 2019 which was received by her under protest and a certified copy of the award was obtained on 21st November, 2019. The application for enhancement, along with a delay condonation plea, was filed immediately thereafter as a matter of abundant caution.

23. It is therefore contended that the delay was reasonably and satisfactorily explained and the Respondent no.1 - learned Arbitrator rightly adopted a liberal approach consistent with facts and settled principles in land acquisition cases.

FINDINGS:

24. I have perused the order of condonation of delay dated 23rd November, 2021 passed by Respondent no. 1 in Arbitration Case No. 149/ARB/2019–20 and the impugned judgment and order dated 20th September, 2023 passed by the learned District Judge-10, Nagpur in Arbitration Application No. 152/2022. I have also gone through the awards regarding acquisition of land.

25. The Respondent no.1 - learned Arbitrator has rightly observed that Respondent no. 3 received payment of compensation pursuant to notice dated 7th November, 2019, and the application for enhancement was filed on 25th November, 2019. Considering that the award was never communicated to Respondent no. 3 or her predecessors prior to that date, and applying Article 137 of the Limitation Act, 1963, the application was held to be within limitation. The Respondent no.1 also relied upon various decisions of the Hon'ble Supreme Court and High Courts emphasizing a liberal approach in condonation of delay in land acquisition cases.

26. The learned District Judge-10, Nagpur, upon independent consideration, found that no documentary evidence was produced by the Appellants to show that Respondent no. 3 or her predecessors were ever served with the notice or informed about the passing of award. The Court rightly held that the date of knowledge was 7th November, 2019, and therefore, the application filed thereafter was within the permissible period.

27. It was further rightly held that there was no dispute regarding the acquisition under Section 3(D) of the Act of 1956, and that Respondent no. 3 had stepped into the shoes of the original owners without any contest. The learned Court also observed that the impugned order does not fall under clauses (a) or (b) of sub-section (2) of Section 37 of the Arbitration and Conciliation Act, 1996, and hence, the appeal is not maintainable.

28. As regards, authority cited by the learned Counsel for Appellants in *Pathapati Reddy* (supra), the same would not come to the rescue of Appellants in the present facts and circumstances of the case. In fact, the Hon'ble Apex Court observes in paragraph 13 and 14 as under :

“13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense.”

So also, in *Imrat Lal* (supra) the Hon'ble Apex Court held in para 11 as under:

“11. We can take judicial notice of the fact that the villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half-baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the court should adopt a liberal approach and either grant time to the party to file a better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.”

29. This makes it clear that in the facts and circumstances of the present case, liberal approach can be adopted and is rightly adopted by the Respondent no.1 and the learned Court below. There appears no infirmity with the order passed either by Respondent no.1 or vide impugned judgment and order. In fact, it needs to be reiterated that it is a settled position of law that in the matters of land acquisition mostly the land owners are illiterate not having sufficient means and/or knowledge of the

acquisition proceedings. While Respondent no.3 is a subsequent purchaser, it has not come on record that notice of acquisition or passing of award has ever been served on her or her predecessor in title. Moreover, what cannot be lost sight of is the fact that in November 2019, she is called upon to receive compensation. Also, she has acted diligently in applying for certified copies of the awards and subsequently in taking out proceedings for enhancement immediately after receipt of certified copies. As regards quantum of compensation and merits pertaining thereto are concerned, it will certainly be open for parties to pursue the matter on merits. At this stage, therefore, vis-à-vis the issue of delay, condonation thereof is based on cogent and plausible reasoning.

CONCLUSION:

30. I am, therefore, of the considered opinion that Respondent no. 3 received knowledge of acquisition and passing of awards only on 7th November, 2019, and accepted compensation under protest on 8th November, 2019. The Appellants have failed to demonstrate that any prior notice of acquisition or passing of awards was served upon Respondent no. 3 or her predecessors. Hence, the reasoning adopted by

both the learned Arbitrator and the learned District Judge-10, Nagpur, vide impugned judgment and order, is proper and calls for no interference.

31. Accordingly, the appeal challenging the judgment and order dated 20th September, 2023 passed by the learned District Judge-10, Nagpur, in Arbitration Case No. 152/2022, is hereby dismissed.

No order as to costs.

[NIVEDITA P. MEHTA, J.]