



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

ARBITRATION APPEAL NO.62/2025

Bebitai Dinkar Garje
Age 66 yrs. Occu. Agriculturist
R/o Old I.U.D.P. Colony, Pusad
Naka, Washim, Tq. And Dist. Washim

... **APPELLANT**

...**VERSUS**...

1. National Highways Authority of India Project Implementation Unit- Washim through its office In-charge National Highway Authority of India now office at Amravati being shifted from Washim
Present Address: Shop No.4, Block No. A-3 Dreamland Business park, Borgoan Dharmale, Amravati-444603 Maharashtra.
2. The Sub-Divisional Officer, Washim & Competent Authority land Acquisition
Office of Sub-Divisional Officer Civil Lines Tq. and Dist. Washim, Maharashtra -444505
3. The Appointed Arbitrator and Additional Collector, Washim
Under the National Highways Act, having its office at administrative building Collector Office, Washim Tq. Dist. Washim-444505

...**RESPONDENTS**

Shri A.R. Deshpande, Advocate a/w Shri S.D. Pundkar, Advocate for appellant
Shri Mayur Gadhia, Advocate h/f Shri A.U. Niyogi, Advocate for respondent
No.1
Shri M.A. Kadu, AGP for respondent No.2/State

CORAM : PRAVIN S. PATIL, J.

DATED : 29.01.2026

ORAL JUDGMENT

. Heard. By consent of the parties, this matter is taken for final disposal at admission stage.

2. The appellant herein challenged the judgment and order dated 14.01.2025 passed by learned Principal District Judge, Washim, in Civil M.A. No.347/2022 to the extent of setting aside the entire award passed by the Arbitrator, and further prays to continue the execution proceeding pending before the Executing Court.

3. In brief, the submission of the appellant in the present appeal is as under:

The appellant is the owner of land bearing Gat No. 55 of village Jambhrun Navaji, District Washim. Under the project of the

National Highway Authority for construction of a new bypass road of the National Highway No.161 to Washim city, the Notification under Section 3(A) of the National Highway Act, 1956 (in short “the Act of 1956”) was issued by the National Highway Authority. In the said project, the land owned by the present appellant came to be acquired. In the said proceedings, vide award dated 08.03.2019, the respondent No.2 has awarded the compensation of Rs.40,37,353/- under Section 3(G)(1) of the Act of 1956 to the appellant.

4. The appellant, being dissatisfied, due to inadequate determination of compensation, filed application under Section 3(G)(5) of the Act of 1956, with a prayer for enhancement of compensation and claimed damages under Section 3(G)(7)(b)(c) of the Act of 1956 as entire land was divided into two parts and thereby entire lay-out was affected.

5. The Arbitrator/Additional Collector by his Arbitral award dated 25.05.2022, partly allowed the application. Respondent No.3 held that appellant is entitled for compensation at the rate of Rs.1740/- per sq.mtrs. including the road, amenity and

open plot area. Respondent No.3 in his award did not discuss about entitlement of additional compensation/damages, which was specifically claimed by appellant.

6. The appellant as well as respondent No.1 preferred independent applications under Section 34 of the Arbitration and Conciliation Act, 1996 before the Principal District Judge, Washim. The application filed by the National Highway Authority of India was registered as Civil M.A. No.369/2022 and the application filed by the present appellant before the Principal District Judge, Washim, under Section 34 of the Arbitration and Conciliation Act, 1996, was registered as Civil M.A. No.347/2022.

7. The respondent No.1 in his application challenged the award dated 25.05.2022 passed by learned Arbitrator in Arbitration Case No.422/2019 in favour of appellant. The present appellant in his application has prayed for enhancement in the compensation, at the rate of Rs.4304/- per sq.mtrs. to the acquired land and additional compensation under Section 3(G)(7)(b)(c) of the Act of 1956.

8. It is pertinent to note that both the appellant and respondent No.1 contested their respective applications before the Principal District Judge, Washim. The present appellant during the pendency of the proceeding bearing Civil M.A. No.347/2022 has withdrawn his claim for enhancement of compensation by filing the pursis vide Exhibit 15. As such, the present appellant has restricted his claim only towards additional compensation as per the provisions of the Act of 1956.

9. Learned Principal District Judge, Washim by its judgment and order dated 14.01.2025 decided Civil M.A.No.347/2022. The perusal of the judgment particularly the part of reasoning, it is clearly recorded in paragraph Nos. 18 and 19 is as under:

“18. On perusal of disputed award, it is observed that the ld. Arbitrator is not given reasoning for rejection of the said prayer of applicant, which is patent illegality, due to which requires the award suffer from patent and illegality and required to be set aside. Hence, the Court answered point No.1 in the affirmative.

19. As the Court concluded that the impugned award suffer from patent illegality, as the non-applicant No.3 not given reason for rejection of prayer of applicant about compensation for open space, then it would be just and proper to set aside the impugned award with

liberty to the parties to take the appropriate steps. As the applicant attempted to satisfy his grievance by preferring present application, then both parties required to bear their own costs.”

10. From perusal of this specific finding recorded by learned Principal District Judge, it is expected that the matter should have been remanded back to reconsider the issue of entitlement of appellant towards additional compensation under the provisions of the Act of 1956. But, surprisingly, though the application was allowed, the learned District Judge by the impugned judgment has quashed and set aside the entire judgment passed by the Arbitrator in Arbitration Case No. LA / NH-161/ Jambhrun Nawaji / Washim/422 /2018–19 dated 25.05.2022.

11. In the circumstances, it is the submission of the present appellant, if the learned District Judge reached to the conclusion that the Arbitrator has failed to consider the prayer of additional compensation to the appellant under the provisions of the Act of 1956, by any stretch of imagination, it was not expected to dismiss the entire arbitration award, because of this illegal order, now appellant is not remained entitle to receive the enhance amount awarded by respondent No.3. It is also pointed out that he has

restricted his claim only towards additional compensation, but now because of impugned order, he caused loss at both ends.

12. It is also pointed out that Civil M.A. No.369/2022 preferred by respondent No.1 National Highway Authority of India, against same award of Arbitrator was dismissed by learned District Judge, Washim by its judgment dated 14.01.2025, holding that there is no error committed by the Arbitrator, while awarding enhancement in compensation to the appellant. As such, in two appeals, contrary orders are passed by learned District Judge in the matter.

13. Learned Counsel for respondents has strongly opposed the present appeal. According to him, once the arbitral award is found to be patently illegal, no modification can be made in it. Consequently, the relief claimed by the appellant can never be granted in proceedings under Section 34 or 37 of the Arbitration and Conciliation Act, 1996 to him. As such, considering the settled principle of law that the arbitral award cannot be modified, the learned District Judge has rightly passed the order and, therefore, there is no need of any interference of this Court in the matter.

14. After hearing both the parties in the matter and going through the provisions of law and the case laws, which are pointed out in the matter, it is revealed that the Hon'ble Supreme Court of India in the case of ***Gayatri Balasamy Vs. ISG Novasoft Technologies Limited, reported in (2025) 7 SCC 1***, has held that under Section 34 of the Arbitration and Conciliation Act, 1996, if the court deems it appropriate, it may allow the Arbitral Tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. The Section 34 (4) provides a second opportunity for a party to seek recourse through arbitral channel. It is further held Section 34 (4) derived from the Model Law, is discretionary in nature. This is evident from the use of the word "may" in the provision. As such, Court can invoke this power when it identifies a defect in the award that could lead to its setting aside. It will be relevant to reproduce paragraph Nos. 56 and 58 of the said judgment as under:

“56. As elucidated above, if a fog of uncertainty obscures the exercise of modification powers, the courts must not modify the award. Instead, they should avail their remedial power and remand the award to the Tribunal under Section 34(4). Under the sub-section, either party- whether the one challenging the award

under Section 34 or the one defending against such a challenge-may request the Court to adjourn the proceedings for a specified period. If the court deems it appropriate, it may grant such an adjournment, allowing the Arbitral Tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. Thus, Section 34(4) provides a second opportunity for a party to seek recourse through arbitral channel.

58. Section 34(4), derived from the Model Law, is discretionary in nature. This is evident from the use of the word "may" in the provision. The Court may invoke this power when it identifies a defect in the award that could lead to its setting aside. In such cases, the Court may seek to prevent this outcome by granting the Arbitral Tribunal an opportunity to rectify the defect."

15. It is also pointed out by the respondents that earlier it was a view of the Hon'ble Supreme Court that Court cannot exercise the power of remand suo motu in the absence of a written request by one of the parties. So also, under section 34 (1), once it has been decided, the Court becomes *functus officio* and cannot thereafter remand the matter to the Arbitral Tribunal. However, as the Hon'ble Supreme Court in case of ***Gayatri Balasamy (supra)*** has clarified this aspect. Now there remains no doubt that under Section 34, a second opportunity can be given to parties to seek recourse through arbitral channel.

16. In light of this legal position, in the present matter as it is already pointed out that the learned District Judge has recorded finding that arbitral award is illegal to the extent of not considering the prayer of the appellant to pay the additional compensation under the provisions under Section 3 (G)(7)(b)(c) of the Act of 1956, in my opinion, the learned District Judge, Washim ought to have exercised the powers under Section 34 (4) of the Arbitration and Conciliation Act in the matter. Hence, considering the law clarified by the Hon'ble Supreme Court in case of *Gayatri Balasamy (supra)*, the impugned judgment and order needs modification in the matter.

17. It is further pertinent to note that in the application filed by respondent No.1 bearing Civil M.A. No.369/2022, it is held that arbitration award is just and proper and accordingly, dismissed their application. In the case of applicant bearing Civil M.A. No.347/2022 filed by appellant, contrary to the decision in Civil M.A. No.369/2022, set aside the entire award. Hence, prima facie, learned District Judge committed the manifest error, hence, indulgence of this Court is necessary in the matter. Accordingly, I proceed to pass the following order:

ORDER

- i) The appeal is partly allowed.
- ii) The impugned judgment and order passed by learned Principal District Judge, Washim, is quashed and set aside to the extent of the award dated 25.05.2022 passed by respondent No.3 in Arbitration Case No. LA / NH-161/ Jambhrun Nawaji / Washim/422 /2018–19.
- iii) Award dated 25.05.2022 passed by respondent No.3 in Arbitration Case No.LA / NH-161/ Jambhrun Nawaji / Washim/422 /2018–19 is hereby restored.
- iv) The proceedings bearing Civil M.A. No.347/2022 is remanded back to the Principal District Judge, Washim, with direction to reconsider the issue of entitlement of the appellant for additional compensation under Section 3(G)(7)(b)(c) of the National Highway Act,1956 in light of provisions of the Arbitration and Conciliation Act, 1996.

18. The appeal stands disposed of. No order as to the costs.

(PRAVIN S. PATIL, J.)

Later on: At the time of passing this order, learned Counsel appearing for respondents requested to grant stay to this order for two weeks. However, as this Court remanded back the matter to the District Court, I do not find any substance for such request. Hence prayer is rejected.

(PRAVIN S. PATIL, J.)

R.S. Sahare