

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

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DATED THIS THE 28TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

WRIT PETITION No.100591/2021 (GM ST/RN)

BETWEEN:

- 1 . SMT. SHALINI W/O VIJAY LATTHE
AGE: 78 YEARS, OCC: HOUSEHOLD,
R/O MANGALWARPETH, TILAKWADI,
BELAGAVI 590 006.
- 2 . NITIN VIJAY LATTHE
AGE: 56 YEARS, OCC: BUSINESS,
R/O MANGALWARPETH, TILAKWADI,
BELAGAVI 590 006.

...PETITIONERS

(BY SRI. S C JAINAR, ADVOCATE)

AND:

- 1 . NATIONAL HIGHWAY AUTHORITY OF INDIA
BY ITS MANAGER (TECH) AND
COMPETENT AUTHORITY FOR LAND ACQUISITION,
PROJECT IMPLEMENTATION UNIT,
VIDYAGIRI, DHARWAD 580 004.
- 2 . THE GENERAL MANAGER (TECHNICAL)
AND COMPETENT AUTHORITY AND
PROJECT DIRECTOR, NHAI,
PROJECT IMPLEMENTATION UNIT,
VIDYAGIRI, DHARWAD 580 004.
3. THE UNION OF INDIA
REPRESENTED BY INCOME TAX DEPT.,

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4. THE STATE OF KARNATAKA
REP. BY SECRETARY
DEPARTMENT OF STAMPS & REGISTRATION
BENGALURU.

...RESPONDENTS

(BYSRI. SAGAR LADDAMATH AND SRI. B. P. MATHAPATI,
ADVOCATES FOR R1 &R2;
SRI. M. B. KANAVI, ADVOCATE FOR R3;
NOTICE NOT ORDERED TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD.22.12.2020 PASSED BY THE HON'BLE PRL. DIST JUDGE, DHARWAD UNDER ANNEXURE-J, IN RESPECT OF THE STAMP DUTY TO PAY AS PER ARTICLE 11 OF KARNATAKA STAMP ACT.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for the following reliefs:
 - a. *Issue a writ in the nature of certiorari quashing the impugned order dated 22.12.2020 passed by the Hon'ble Principal District Judge, Dharwad in EP No.302/2015 vide Annexure-J, in respect of the Stamp duty to pay as per Article 11 of the Karnataka Stamp Act.*
 - b. *Pass any other order as this Hon'ble Court deems fit on the facts and circumstances of the case.*
2. The grievance of the petitioners is that, the petitioners are the decree holders and owners of the land bearing survey No.604 measuring 05 acres 05

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guntas, under which an extent of 10,220 sqmtr was taken possession for construction of flyover by the National Highways Authorities of India (NHAI). The competent Authority had passed an award as regards the lands acquired. However, being dissatisfied by the said award, the petitioners submitted a reference for arbitration on 31.10.2012, in terms of Section 3-G(5) of the National Highway Act, 1956 (hereinafter for brevity referred to as **NHA**), seeking for enhancement of compensation.

3. The Arbitrator has thereafter passed an award, awarding compensation of ₹4,186/- per sq.mtr along with interest at 9% p.a. The respondent had made payment of part of the award and the balance of amount of the compensation not having been paid, the claimants/Decree Holders have filed Execution Petition No.302/2015 before the Principal District Judge, Dharwad, which was objected to by the respondent – NHAI.

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4. In the said execution proceedings, an objection was raised that the award passed by the Arbitrator not having been stamped in terms of Article 11 of the Karnataka Stamps Act, 1957 (hereinafter for brevity referred to as the **KSA**), the same could not be considered for initiating and prosecuting execution proceedings.
5. The Executing Court vide the impugned order dated 22.12.2020 at Annexure-J was of the opinion that the award passed by the Arbitrator is required to be stamped. The petitioner not having stamped the said document, the decree-holder was called upon to pay the requisite stamp duty on the award within a period of one month from the date of the order. Apart therefrom, the Executing Court directed the NHAII the judgment debtor to pay interest on the compensation awarded from the date of taking possession of the property, i.e., from the year 2002.

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6. It is this order that is challenged by the petitioners only insofar as the direction by the Executing Court to make payment of requisite stamp duty on the award passed by the Arbitrator, by contending that the same is not an arbitral award in terms of Article 11 of the KSA.
7. Sri. S. C. Jainar, learned counsel for the petitioners submits that the award, which has been passed is as regards compensation for land acquired in the land acquisition proceedings initiated for and on behalf of the NHA. It is only on account of compensation awarded being on the lower side that, in terms of Section 3-G(5) of NHA, the petitioner was constrained to approach the statutory Arbitrator, in terms of statutory arbitration contemplated under the Act, which is not a private arbitration where the petitioners could be said to have consented for appointment of arbitrator and as such, though the provision of Arbitration and Conciliation Act 1996 (hereinafter for brevity referred to as the A&C Act)

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are made applicable to arbitration under Section 3-G of the NHA, the compensation awarded would not be an award in terms of Article 11 of the KSA, requiring it to be stamped and as such, the arbitration award in essence is an award of compensation, which is in discharge of the sovereign powers of the State and as such, he submits that the finding of the Executing Court that stamp duty ought to be paid in terms of Article 11 of the KSA, is misconceived.

8. Per contra, Sri. Sagar Ladda, learned counsel, who appears for NHA I submits that, since an Arbitral award is sought to be enforced in the execution proceedings without the stamping made thereon, the same is inchoate insofar as it could not have brought in for execution without stamping. He further submits that the Executing Court ought to have impounded the document and levied penalty thereon, instead of just directing the decree-holder to make payment of requisite stamp duty and in this regard, he submits that the NHA I has filed another petition in

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W.P.No.104799/2021. He therefore submits that the order of the Executing Court is not required to be interfered with as regards the direction to stamp the award and this court ought to allow WP No. 104799/2021.

9. Sri. M. B. Kanavi, learned CGSC appearing for the Union of India submits that he has no submissions to make in this regard, since the matter is between the petitioners and NHAI.
10. Heard Sri. S. C. Jainar, learned counsel for the petitioner, Sri. Sagar Laddamath, learned counsel for NHAI, Sri. M. B. Kanavi, learned CGSC for the Union of India and perused papers.
11. The point that would arise for determination in the present matter is:-

"Whether the award rendered by the Arbitrator in terms of Section 3-G of the National Highways Act, 1956, would be an arbitral award in terms of Article 11 of the Karnataka Stamp Act, 1957, requiring it to be stamped in terms of the said Article?"

12. The National Highways Act, 1956 is a special enactment, whereunder certain highways have been declared as National Highways and by virtue of various amendments in the year 1987, a special methodology has been provided for acquisition of land and determination of compensation. Section 3G of the said Act reads as under:

Section 3G in The National Highways Act, 1956

3G. Determination of amount payable as compensation.—

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten percent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

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(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

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13. A perusal of the same indicates that the competent authority, defined under Section 2(a) of NHA, being a person or authority authorized on behalf of the Central Government by notification in the official gazette, shall determine the compensation amount to be paid for acquisition of land for and on behalf of the NHAI. In the event of either of the parties not being acceptable to the amount determined by the competent authority, i.e., if the NHAI were to feel that the amount awarded is on the higher end or if the land loser is of the opinion that the amount awarded is on the lower end, either of the parties could submit the said matter for determination by an Arbitrator to be appointed by the Central Government.

14. Section 2 (1)(a) of the A & C Act defines 'Arbitration' as under:

(a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

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Section 2(1)(b) of the A & C Act defines 'Arbitration Agreement' as under:

(b) "arbitration agreement" means an agreement referred to in section 7

Section 2(1)(c) of the A & C Act defines 'Arbitration Agreement' as under:

(c) "arbitral award" includes an interim award;

Section 7 of the A & C Act deals with Arbitration agreement, which reads as under:

7. Arbitration agreement. —

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an

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arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

15. The pre-condition for an arbitration proceedings to be conducted is that, there must be an arbitration agreement. A perusal of Section 7 indicates that, the agreement is required to be entered into by the parties to submit to arbitration certain disputes, which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not.
16. In the present case, there is no legal relationship between the NHA and the land-loser except that under the NHA, the land of the land-loser is sought to be acquired. If not, for the said acquisition of land, there would have been no interaction between the land-loser and the NHA.
17. In terms of Section 3G(6) of the NHA, the A&C Act, 1996 is made applicable to every arbitration under the NHA. Section 3G(7) of NHA provides for various

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factors, which could be taken into consideration by the Arbitrator while awarding the compensation amount.

18. The above methodology under Section 3G(5) (6) and (7) of the NHA has been provided in order to facilitate faster acquisition proceedings and faster determination of compensation. In the absence of Section 3G of NHA what was applicable earlier was the determination of compensation in terms of the Land Acquisition Act. Thus, in effect the NHA being a special enactment, Section 3G of the said Act provides for a special procedure for determination of compensation.
19. It is also to be noted that the Arbitrator in terms of Section 3G(5) of NHA is an authority, who is appointed by the Central Government, in which the petitioners have no role to play and no choice to exercise.

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20. Suffice it to say, that the methodology of determination of compensation by the special method has been statutorily mandated in all the acquisition proceedings for or on behalf of the NHAI. In effect, the Arbitrator, who is appointed by the Central Government is discharging a duty as regards determination of compensation as regards the land, which has been acquired by exercise of powers of eminent domain. If not for the said acquisition, the said Arbitrator would have had no role to play.
21. It is only on account of Section 3-G of the NHA that arbitration is provided for in a statutory manner. There is no agreement in terms of Section 7(1) of the A & C Act between the land-loser and NHAI to submit to any arbitration. Even Section 7(5) of the A & C Act is not applicable since there is no contract entered into between the land-loser and NHAI where any reference to a document containing an arbitration clause and/or Section 3-G of the NHA is in existence. Thus it is only on account of the statute that the land-

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loser is compelled to resort to the process of arbitration, the land-loser not having consented to any arbitration proceedings, the question of land-loser consenting to the requirement of stamping of an arbitral award by being knowledgeable about requirement of stamping does not at all arise. More so, when in pursuance of Section 30(z)(e) of the KSA in the case of the award under Article 11 of the KSA, it is the awardee, who is required to make payment in the stamp duty.

22. The state cannot take away the compensation awarded to the land-loser by imposing a duty to make payment of stamp duty on the said award, which is an additional burden on the land-loser to obtain just compensation on account of loss of his land. It is also clear from the fact that, while calculating the compensation payable, there is no calculation of the value of the stamp duty payable on the award made. The requirement to make payment of stamp duty on the award would amount to

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reduction of just compensation, which is not permissible.

23. In view of the above, though there is an arbitration proceedings and though the A&C Act, is made applicable to the said arbitration proceedings, I am of the considered opinion that the award of compensation rendered by the said Arbitrator would not come within the purview and ambit of Article 11 of the Karnataka Stamps Act, 1957, which deals with an arbitral award and the stamping thereon.
24. Just because the award is rendered by the Arbitrator under Section 3G of the NHA would not suffice more so since this award of compensation by the Arbitrator would have had to be rendered by the Land Acquisition Officer under the Land Acquisition Act or any other similarly situate enactment. Such an award rendered by the Land Acquisition Officer under the Land Acquisition Act or any other similarly situate

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enactment is not amenable to payment of any stamp duty.

25. I am of the considered view that the award rendered by an Arbitrator in terms of Section 3G(5) of the NHA cannot be treated as an Award under Article 11 of the KSA as to make it amenable for payment of Stamp duty by a land loser on an award for compensation which the state or the union is bound to award for acquisition of land by exercise of powers of eminent domain, which in turn is an exercise of sovereign powers.
26. Looked at from any angle, the levy of stamp duty on an award of compensation passed on account of acquisition of land, in my considered opinion, would be highly unconscionable. The land-loser in order to obtain compensation as regards the land acquired by the State cannot be made to pay premium on the award to be statutorily rendered by calling it stamp duty or otherwise.

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27. The object and ambit of Article 11 of the KSA is different and cannot be made to apply to an award of compensation under Section 3G(5) of the NHA, which is a statutory arbitration imposed upon a land loser without his consent.
28. ***I answer the point raised by holding that an award of compensation rendered by the Arbitrator in terms of Section 3-G of the National Highways Act, 1956, is not an arbitral award in terms of Article 11 of the Karnataka Stamp Act, 1957, requiring it to be stamped in terms of the said Article. It is hereby declared that no stamp duty is liable to be paid on an award for compensation made under Section 3 (G) the NHA.***
29. In view of the above, I am of the considered opinion that the Executing Court did not look into all these aspects and has mechanically applied Article 11 of the KSA, to hold that even the compensation award

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rendered under Section 3G(5) of the NHA would be amenable to stamp duty under Article 11, on the ground that it does not make any difference between different kinds of award.

30. In the above circumstance, I pass the following order:

ORDER

- i. The Writ Petition is ***allowed***.
- ii. The impugned order dated 22.12.2020 passed by the Principal District Judge, Dharwad, in Execution Petition No.302/2015 insofar as direction to the land-loser/decreed holder to pay the requisite stamp duty on the award passed by the Arbitrator under Section 3G(5) of the National Highways Act, 1956, within a period of one month from the date of order, is set aside.

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- iii. The award is directed to be acted upon and enforced without the requirement of making payment of any stamp duty.
- iv. It is made clear that this Court has only dealt with applicability or otherwise of the stamp duty on an award of compensation under Section 3G(5) of the National Highways Act, 1957 and has not dealt with any other issues in dispute between the parties as regards the compensation amount or interest or otherwise, which shall be dealt with by the Executing Court on merits, in accordance with law.

**Sd/-
JUDGE**

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