IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

MISCELLANEOUS FIRST APPEAL NO.7579 OF 2024 (AA)

BETWEEN:

1. SMT. GANGAMMA
W/O LATE RAJASHEKARAIAH
AGED ABOUT 73 YEARS
RESIDING AT EDENAHALLI
KASABA HOBLI, TIPTUR TALUK
TUMKUR DISTRICT-572 102

2. SHRI. KUMARAIAH
S/O LATE MARIYAPPA
SINCE DECEASED ON 09.11.2024
REPRESENTED BY HIS LEGAL HEIRS

2(A). SMT. SHARADHAMMA
MAJOR
RESIDING AT EDENAHALLI
KASABA HOBLI, TIPTUR TALUK
TUMKUR DISTRICT-572 102

2(B). SHRI. MANJUNATH
MAJOR
RESIDING AT EDENAHALLI
KASABA HOBLI, TIPTUR TALUK
TUMKUR DISTRICT-572 102

2(C). SHRI MOHAN K
MAJOR
RESIDING AT EDENAHALLI

KASABA HOBLI, TIPTUR TALUK
TUMKUR DISTRICT-572 102

[APPELLANT NOS.2(A TO C) ARE IMPLEADE
AS PER ORDER DATED 28.04.2025]

...APPELLANTS

(BY SMT. MAITHREYI KRISHNAN, ADVOCATE)

AND:

1. NATIONAL HIGHWAYS AUTHORITY OF INDIA
PROJECT IMPLEMENTATION UNIT
TUMAKURU, HAVING OFFICE AT
SRI RAKSHE, 80FT ROAD
MAHALAKSHMI NAGAR
NEAR KRISHNA COLLEGE
BATAWADI, TUMKUR-572 103
REPRESENTED BY ITS PROJECT DIRECTOR

2. THE SPECIAL LAND ACQUISITON
AND COMPETENT AUTHORITY,
(TUMKUR-SHIVAMOGA SEC OF NH-206)
HAVING OFFICE AT
BETTASHREE COMPLEX
ABOVE RENUKA SUPER BAZAAR
1ST FLOOR, 60 FEET ROAD
SAPTHAGIRI EXTENSION
TUMKUR-572 102
REPRESENTED BY THE
SPECIAL LAND ACQUISITION OFFICER

3. THE ARBITRATOR AND DEPUTY COMMISSIONER
TUMKUR DISTRICT
(TUMKUR-SHIVAMOGA SEC OF NH -206)
OFFICE OF THE DEPUTY COMMISSIONER
MINI VIDHANA SOUDHA
TUMKUR-572 101

...RESPONDENTS

(BY SMT. SHILPA GHANSHYAMBHAI SHAH, ADVOCATE FOR R1 & R2;
SRI. BYREGOWDA N AGA FOR R3)

THIS MFA IS FILED U/S.37(1)(c) OF THE ARBITRATION AND CONCILIATION ACT, 1996, AGAINST THE JUDGMENT DT.23.08.2024 PASSED IN A.S.NO.10004/2024 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMKUR, (SITTING IN TIPTUR), ALLOWING THE ARBITRATION SUIT FILED U/S.34(2) OF THE ARBITRATION AND CONCILIATION ACT, 1996.

THIS MFA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

The appellants are before this Court raising a challenge to the judgment and order dated 23.08.2024 passed in A.S.No.10004/2024 by V Addl. District and Sessions Judge, Tumkur (Sitting in Tiptur), whereby the District Court allowed the petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act' for short) and set aside the award dated 25.01.2023 in No.LAQ:ARB:206:CR/230/2020 passed by the Deputy Commissioner and Arbitrator, Tumkur District.

2. The brief background of the dispute which reached this Court through the present appeal is that the lands measuring to an extent of 304 square meters in Survey No.88/1 and an extent of 10,117 square meters in Survey No.88/2 of Ramashettihalli Village, Tiptur Taluk, Tumkur District, were notified for acquisition through the Preliminary Notification dated 19.01.2018 for the purpose of widening/construction of four lane road between Tumkur-Shivamogga Section from 66.540 Kms to 119.790 Kms of National Highway No.206. The Special Land Acquisition Officer and the Competent Authority-Respondent No.2 herein passed the award under Section 3(G)(5) of the National Highways Act, 1956, on 13.11.2018 determining the market value of the land acquired at Ramashettihalli Village in a sum of Rs.1,58,220/- per acre. The award discloses that the sale instances from 2015-16 to 2017-18 have been taken into consideration and highest of the value shown in two of the sale deeds registered on 07.06.2017 and 01.08.2017 were considered by averaging the value shown in both the sale

deeds. Accordingly, the market value of Rs.1,58,220/- was arrived at. The award further discloses that as per the Guidance Value Notification of the year 2017 issued by the Senior Sub-Registrar, Tiptur Taluk, the guidance value of the lands at Ramashettihalli Village was Rs.1,29,000/- per acre.

3. Being dissatisfied with the market value determined by respondent No.2- SLAO, the appellants/land owners approached the Deputy Commissioner/Arbitrator-respondent No.3 herein under Section 3(G)(5) of the National Highways Act, 1956, seeking re-determination of the compensation. The main ground on which the appellants/land owners had sought for re-determination of compensation was on the basis of the award passed by the SLAO in respect of Edenahalli Village, Tiptur Taluk, Kasaba Hobli, in a sum of Rs.43,000/- per gunta which is the adjacent village. In support of the same, the appellants/land owners have produced the copy of the award dated 18.12.2019 in respect of the lands acquired at Edenahalli Village,

whereby the market value of the lands acquired at Edenahalli Village was determined at Rs.17,33,166 /-.

4. The claim petition of the appellants was opposed by the NHAI contending that in order to establish that the land belongs to the appellants has more value than the market value determined by the SLAO, no supporting documents are produced and the award passed by the SLAO is strictly in accordance with the provisions of the RFCTLARR Act, 2013 (hereinafter referred to as "2013, Act" for short). Therefore, the claimants are not entitled for enhancement of compensation.

5. The learned Arbitrator upon conducting the spot inspection of the subject land along with the SLAO, Tahsildar and Surveyor was of the opinion that there is a need to re-determine the market value. The Deputy Commissioner/Arbitrator came to the conclusion that the villages i.e., Ramashettihalli and Edenahalli are on the left and right hand side of NH-206 and both the villages are abutting the National Highway. It is also the opinion of the Arbitrator that since there is substantial difference in

the value of the lands situated in the two villages, uniform rate shall be fixed as provided under the provisions of 2013, Act. The Deputy Commissioner also noticed that the main carriageway is passing through lands of Edenahalli Village and the service road of the same National Highway is passing through lands of Ramashettihalli Village and therefore, determination of market value of the lands at Ramashettihalli village is lesser and unscientific, therefore, passed an order dated 25.01.2023 fixing the market value at Rs.43,329/- per gunta.

6. Being aggrieved by the re-determination of compensation by the Deputy Commissioner/Arbitrator, the NHAI had approached the District Court by filing a petition under Section 34(2) of the Act for setting aside the award dated 25.01.2023. Though, several grounds were urged in support of the petition, the substance of the attack on the arbitral award are as follows:-

(i) The market value is determined by the learned Arbitrator without considering the value of the land as on the date of publication of Preliminary Notification. The only

circumstances which the learned Arbitrator has taken note of is the proximity of the land situated at Ramashettihalli Village and Edenahalli Village, which has no relevance for the purpose of determination of market value.

(ii) There was no reason for the learned Arbitrator to come to a different conclusion than that of the award of the SLAO, since, the SLAO has taken note of the guidance value, so also the sale instances of preceding 3 years in respect of both the villages, therefore determination of the market value at Rs.43,329/- in respect of Ramashettihalli Village is contrary to the provisions of National Highways Act and RFCTLARR Act.

(iii) The award in respect of Ramashettihalli Village was passed on 13.11.2018. However, the award in respect of Edenahalli Village was passed on 18.12.2019. Therefore, there was no occasion for the SLAO to take note of the market value determined in respect of Edenahalli which is dated 18.12.2019.

(iv) There cannot be any challenge to the Guidance Value Notification. If at all, the appellants/land owners were aggrieved by the Guidance Value Notification, it was open for them to challenge the same by approaching CVC.

(v) The reliance placed by the learned Arbitrator on the so called spot inspection conducted by him along with the SLAO, Tahsildar and Surveyor is outside the jurisdiction of the learned Arbitrator in as much as no notice of such spot inspection was ever issued to the NHAI and no formal report was placed on record. On account of which, the NHAI had no opportunity to respond to the alleged spot inspection. Thus, it is a clear violation of principles of natural justice.

(vi) The Edenahalli Village is situated just 1 kilometer away from the limits of Tiptur Town, but Ramashettihalli Village is situated 3.2 kilometers away from the municipal limits of Tiptur Town and therefore, there is possibility of considerable difference of the guidance value and the sale exemplars between two

villages and therefore, there cannot be an uniform guidance value between the two villages.

7. Before the District Court, the appellants/land owners have filed cross-objections contending that the actual value of their land should have been at Rs.428.27 per square meters and therefore, the award of the learned Arbitrator requires interference. It was further contended that by virtue of the acquisition, their land has been divided into two parts which cannot be enjoyed conveniently and the said aspect ought to have been considered by fixing the market value in terms of Section 26 of the RFCTLARR Act.

8. The NHAI has opposed the cross-objection on the ground that the same is not maintainable. If at all, the appellants/land owners were aggrieved by the award of the learned Arbitrator, it was open for them to prefer a separate and independent petition under Section 34(2) of the Act. It is also the contention that the District Court while considering the petition filed under Section 34(2) of the Act cannot modify the award nor remand the matter to

respondent No.3 for fresh consideration. In support of the said contention, the NHAI has relied upon several judgments. However, the latest judgment on the point was the decision in the case of ***National Highways Authority of India v. M. Hakeem and Another***[1]***.***

9. Upon consideration of the rival contentions of the NHAI and the appellants/land owners, the District Court has passed an order on 23.08.2024 allowing the petition and set aside the arbitral award dated 25.01.2023 passed by the Deputy Commissioner/Arbitrator. The said order is under challenge in the present appeal.

10. We have heard the learned counsel for the appellants and the learned counsel for the respondents.

11. It is the submission of the learned counsel for the appellants that:

(i) The grounds under Section 34(2)(b)(ii) did not exist to set aside the arbitral award. The learned Arbitrator has taken note of the proximity of the villages in

[1] (2021) 9 SCC 1

Edenahalli and Ramashettihalli and came to a just conclusion that in respect of the lands situated on either side of the highway in two different villages cannot have different market value with the difference of 10 times.

(ii) It is the contention that the lands situated at both the aforesaid villages was acquired under the very same Preliminary Notification, however, the finding of the District Court that the lands were acquired under different Notifications is a patent error.

(iii) When there is a huge difference in the market value between two adjacent villages, the fixing of uniform rate is the law. Failing to do so result in gross discrimination in granting compensation to the same set of land owners, of course, in different villages. The reliance placed on the sale deeds of the year 2015-16 to 2017-18 by the SLAO is untenable in as much as the guidance value as on the date of the Preliminary Notification ought to be the guiding factor in terms of Section 26 of the RFCTLARR Act. The finding of the District Court that the reliance placed on the spot inspection of the land is

untenable is concerned, it is submitted that the spot inspection was conducted in the presence of SLAO and Surveyor and the SLAO is the representative of NHAI and therefore, no fault can be found in the decision of the learned Arbitrator to rely upon the spot inspection conducted before passing the award.

(iv) The reason assigned by the District Court is that the Edenahalli Village is at the distance of 1 Km away from the municipal limits and Ramashettihalli Village is at the distance of 3.2 Kms away from the municipal limits is totally unacceptable, because the lands at Edenahalli and Ramashettihalli were acquired by the NHAI are on either side of the National Highway and therefore, the distance of the villages has no relevance to ascertain the proximity of the lands acquired in both the villages. It is not the gramatana of both the villages are relevant for the present consideration, it is the location of the lands notified and acquired which are relevant.

12. Learned counsel for respondent No.1-NHAI contended that there is no illegality in the order passed by

the District Court in setting aside the award of the learned Arbitrator in as much as while passing the award in respect of the land situated in both the villages, the SLAO has considered the Guidance Value Notification, so also the sale exemplars of preceding 3 years of the Preliminary Notification. Therefore, there was no occasion for the learned Arbitrator to come to a different conclusion and rely upon the award passed in respect of Edenahalli Village. In as much as the award passed in respect of Edenahalli Village is subsequent to the award passed in respect of Ramashettihalli Village. Therefore, there was no occasion for the SLAO to take note of the market value determined in respect of Ramashettihalli Village. Learned counsel has reiterated the grounds urged by NHAI before the District Court in the petition filed under Section 34 and seeks to justify the order passed by the District Court.

13. On hearing the learned counsel for the respective parties and on perusal of the award passed by the SLAO, the award passed by the learned Arbitrator, so also the order passed by the District Court while

considering the petition filed under Section 34(2) of the Act, the points that arise for our consideration are:

(i) *Whether the learned Arbitrator/Deputy Commissioner was justified in re-determining the compensation only relying upon the award passed in respect of Edenahalli village?*

(ii) *Whether the District Court was justified in setting aside the arbitral award?*

14. At this stage it is necessary to examine whether the arbitral award could have been set aside under any of the grounds enumerated under any of the grounds enumerated in section 34 of the Arbitration and Conciliation Act without giving any finding as to under which of the provisions of Section 34 the award passed by the learned Arbitrator required to be set aside.

15. As noticed above, the date of Preliminary Notification of both the villages referred to supra is one and the same. However, the award passed in respect of the lands situated at both the villages is different. The award of the SLAO discloses the guidance value of both the villages as on the date of Preliminary Notification is

Rs.1,29,000/- for Ramashettihalli village and Rs.5,82,000/- in respect of Edenahalli Village.

16. The award passed by the SLAO in respect of Edenahalli Village discloses that the guidance value of the lands abutting NH-206 was Rs.8,80,000/- per acre and that, having regard to the average sales statistics for the relevant period, the market value was determined at Rs.17,33,166/- per acre. In respect of Ramashettihalli Village, the SLAO recorded the guidance value as Rs.1,29,000/- per acre. However, while determining the market value of the acquired lands in Ramashettihalli Village, the SLAO relied upon the sale exemplars dated 07.06.2017 and 01.08.2017 and arrived at a market value of Rs.1,58,220/- per acre by taking the average of the values reflected in the said transactions. Thus, although the guidance value of Ramashettihalli Village was recorded in the award, the extent to which it was considered in arriving at the final market value is not evident from the reasoning contained therein. The substantial disparity between the market values determined for the two

villages, therefore, assumes significance, particularly in the light of the location of the acquired lands and their proximity to NH-206.

17. When it is demonstrated that the lands of Edenahalli and Ramashettihalli Villages are abutting the existing national highway and one is utilized for main carriageway and another is utilized for service road, the difference of market value at 10 times is only unacceptable.

18. We have also noticed that the District Court has given a finding that Edenahalli village is at the distance of 1 km from the municipal limits of Tiptur Taluk. However, Ramashettihalli Village is at the distance of 3.2 kms away from the municipal limits and therefore, there is huge difference of the value of the land between two villages. We are unable to accept the said finding because the relevant consideration is not the distance of the Gramathana/villages in the present case, it is the location of the lands of both the villages which is relevant. The lands of both the villages are on either side of the existing

National Highway, which is sought to be widened by acquiring the lands of both the villages, in all probability, the distance between both the lands may not be more than 100 meters.

19. The learned Arbitrator, before passing the award, has conducted the spot inspection in the presence of the SLAO, Tahsildar and the Surveyor and found that the lands of Ramashettihalli and Edenahalli are on either side of the existing national highway. For ready reference and better understanding, the learned Arbitrator has furnished a diagram of the existing national highway and the location of the lands of Ramashettihalli and Edenahalli in his award itself. The said diagram was neither disputed before the District Court nor before this Court by the NHAI. Neither the SLAO nor the District Court have noticed nor considered the said aspect. It was the Arbitrator who has visited the lands in question and came to the conclusion that the lands of Edenahalli and Ramashettihalli are adjacent to each other therefore, same

compensation is to be awarded in respect of lands of Ramashettihalli.

20. We find considerable force in the submission of the learned counsel for the appellants/land owners that the adjacent lands or villages possessing similar potential, advantages must be compensated equitably unless distinctions are clearly and substantially justified. In support of the said contention, she has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Krishna Kumar Vs. State of Haryana and Others***[2]***.*** The following paragraph of the aforesaid judgment is very much relevant for consideration of the present case, which reads as follows:

> *"14. It is trite law that adjacent lands or villages possessing similar potential and advantages must be compensated equitably, unless distinctions are clearly and substantially justified. In this context, this Court in Land Acquisition Officer v. Karigowda, aptly encapsulated the legal position regarding compensation for adjacent villages:*
>
> *"75. It is a settled principle of law that lands of adjacent villages can be made the basis for determining the fair market value of the acquired land. This principle of law is qualified by clear dictum of this Court itself*

[2] 2025 SCC Online SC 1043

that whenever direct evidence i.e. instances of the same villages are available, then it is most desirable that the court should consider that evidence. But where such evidence is not available court can safely rely upon the sales statistics of adjoining lands provided the instances are comparable and the potentiality and location of the land is somewhat similar. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for such determination. Once it is shown that situation and potential of the land in two different villages are the same then they could be awarded similar compensation or such other compensation as would be just and fair.

77. In this regard we may also make a reference to the judgment of this Court in Kanwar Singh *v.* Union of India *[(1998) 8 SCC 136 : AIR 1999 SC 317 : JT (1998) 7 SC 397] where sale instances of the adjacent villages were taken into consideration for the purpose of determining the fair market value of the land in question and their comparability, potential and acquisition for the same purpose was hardly in dispute. It was not only permissible but even more practical for the courts to take into consideration the sale statistics of the adjacent villages for determining the fair market value of the acquired land."*

18. The sole apparent justification for this differentiation appears to be the existence of distinct sale deeds for Kukrola and Fazalwas. In Karigowda (supra), this Court recognized that sale exemplars from adjacent villages may only be relied upon in the absence of direct evidence. However, in our considered view, a rigid adherence to this principle is unwarranted in the present case. We say so for the following reasons:

a) A fundamental principle in land acquisition jurisprudence is that lands with similar locational and developmental potential must be compensated equitably unless clear,

objective distinctions justify otherwise. Neither the LAC nor the Reference Court in this case have returned any specific finding that the potential or advantages of the acquired lands in the two villages differ significantly. No cogent evidence or expert report has been placed on record to justify the lower compensation awarded to Kukrola or the higher rate granted to Fazalwas. The 'leading judgments' instead provide no factual basis to support this artificial classification between the two sets of landowners. In such an evidentiary vacuum, the High Court ought not to have relied solely on differing sale deeds to assign vastly disparate compensation rates. Arbitrary differentiation in compensation, based on superficial considerations, necessarily violates settled constitutional principles of fairness and equality.

b) The High Court should have refrained from proceeding on the basis of a singular sale deed to award widely divergent compensation between the two villages. In the absence of corroborative evidence—such as multiple comparable sale transactions, expert valuation reports, or any factual finding indicating a genuine difference in market potential—the use of an isolated transaction to justify such a disparity is per se erroneous. Without further evidence to establish that the lands in Kukrola differ in their developmental potential from those in Fazalwas, the differential compensation lacks a sound logical foundation and cannot be sustained.

c) Moreover, a glaring inconsistency arises in the present case : while lands abutting NH-8 within a depth of 5 acres have been awarded markedly different rates of compensation, lands situated beyond this depth have been treated uniformly. What is particularly problematic is that the most homogeneous and comparable category—namely, the lands adjacent to NH-8—have been assessed disparately, whereas the more heterogeneous lands farther from the highway, which ostensibly vary significantly in terms of

location and developmental potential, have been treated alike. Such an approach not only appears incongruous but also contrary to the principles of equality and fairness that must govern the exercise of determining compensation under the 1894 Act. Consistency, therefore, demands the application of a uniform standard across both villages Kukrola and Fazalwas. This is especially true when we consider their relative distances from the National Capital Region, with Kukrola being closer thereto.

d) In any case, we must caution against an excessively positivist approach in matters of land acquisition. It is well understood that the very exercise of assessing compensation is antithetical to rigid formalism. Compensation cannot be assessed in a mechanical or formulaic manner but must be guided by considerations of equality, equity, and justice.

20. Consequently, we find no justification for the disparity in compensation for lands from both villages situated in the inner belt. The High Court itself has offered no factual finding to support the conclusion that lands abutting NH-8 in Kukrola must be valued differently from those in Fazalwas. Accordingly, we hold that the differential compensation is unsustainable and must be set aside. The quantum of compensation across both villages should remain at par.
D.2. Issue No. 2 : Ascertaining the quantum of compensation for the acquired lands"

21. Learned counsel for the appellants/land owners has also placed reliance on the judgment in the case of ***National Highways Authority of India Vs. P.Nagaraju***

Alias Cheluvaiah and Another[3]***.*** The relevant paragraphs of the said judgment are as follows:

> *"52. Be that as it may, in our opinion the mere provision as contemplated under Section 3-G(5) of the NH Act providing for either of the parties to assail the determination made by SLAO by itself does not provide a better status to the award passed by SLAO. Even the award passed by SLAO under the provisions of the NH Act would still continue to remain as an offer of compensation by the acquiring authority to the landloser and the materials relied on by SLAO even if discussed in detail does not provide the status of a judicially considered order so as to interfere with the same only if error is pointed out. It is not necessary to critically examine the award made by SLAO before considering enhancement. Notwithstanding the documents relied upon by SLAO it would still be open for the learned arbitrator to rely upon any additional material that may be brought before the learned arbitrator not necessarily to point out an error in the consideration made by SLAO but such material could be considered despite the consideration made by SLAO if such material aids in deciding just and fair compensation.*
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> *53. Though, as contended by the learned Additional Solicitor General it is seen that in Tarsem Singh [Union of India v. Tarsem Singh, (2019) 9 SCC 304 : (2019) 4 SCC (Civ) 364] it is held that there is a regime change and the stage to offer an amount by way of compensation is removed, it only means that the process of award notice, etc. from Sections 9 to 15-A, before possession under Section 16 of the LA Act is removed, which only alters the procedure and enables immediate vesting of the land with the acquiring authority but does not take away the character of SLAO award from being an offer of compensation. Hence, in the present case, though SLAO has taken note of*

[3] (2022) 15 SCC 1

the guideline dated 7-11-2014 it would be open for the learned arbitrator to take note of any other evidence that would be more relevant than the said guideline to redetermine the compensation in terms of the parameters under Sections 26 and 28 of the RFCTLARR Act, 2013.

71. As stated above, if there is evidence brought on record in the manner known to law with opportunity to the opposite side, it certainly would be open for the learned arbitrator to adopt the said value. However, from the pleading in the claim petition and from the portion extracted from the award which is the only basis for the ultimate order made by the learned arbitrator, it would indicate that the NHAI did not have sufficient opportunity before the learned arbitrator to controvert the material sought to be relied upon by the learned arbitrator nor has the learned arbitrator indicated sufficient reasons which to that extent would indicate patent illegality in the award passed by the learned arbitrator being contrary to Sections 28(2) and 31(3) of the 1996 Act.

72. That being the fact situation and also the position of law being clear that it would not be open for the Court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter to the learned arbitrator in terms of Section 34(4) to keep in view these aspects of the matter and even if the Notification dated 28-3-2016 relied upon is justified since we have indicated that the same could be relied upon, the further aspects with regard to the appropriate market value fixed under the said notification for the lands which is the subject-matter of the acquisition or comparable lands is to be made based on appropriate evidence available before it and on assigning reasons for the conclusion to be reached by the learned arbitrator. In that regard, all contentions of the parties are left open to be put forth before the learned arbitrator."

22. Learned counsel for the appellants has vehemently contended that the Court while considering the validity of the award passed by the Land Acquisition Officer, cannot place reliance on the documents/material relied upon by the SLAO for passing of the award unless the said material was placed before the Court for consideration. In support of the said contention, learned counsel has placed reliance on the judgment in the case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another.***[4] The relevant paragraphs read as under:

> *"4. The following factors must be etched on the mental screen:*
>
> *(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court.*
>
> *(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised*

[4] (1988) 3 SCC 751

by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

(3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) XXXX
(5) XXXX
(6) XXXX
(7) XXXX
(8) XXXX
(9) XXXX
(10) XXXX
(11) XXXX
(12) XXXX
(13) XXXX
(14) XXXX

23. Though the aforesaid judgment is rendered under the provisions of Land Acquisition Act 1894 and the powers of the reference Court is different as that of the powers of District Court under section 34 of the Arbitration and Conciliation Act 1996 R/W the provisions of Arbitration and Conciliation Act 1996, the proposition that the *court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court* is a

guiding principle which can be applied to the proceedings before the Arbitrator/Deputy Commissioner under the provisions of NHAI Act, but not before the Court in a proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

24. In the light of the rival submissions, the material available on record and the principles laid down in the judgments referred to supra, we find that the arbitral award and the judgment of the District Court cannot be sustained for the reasons recorded herein below. The learned Arbitrator noticed the substantial disparity between the compensation determined for the lands in Edenahalli and Ramashettihalli villages and relied upon the location and proximity of the acquired lands while determining compensation. The District Court, however, set aside the arbitral award, inter alia, having regard to the difference in the distance of the two villages from the municipal limits of Tiptur. In our considered opinion, the relevant consideration is not merely the distance of the respective village settlements from the municipal limits,

but the location, potentiality and advantages of the acquired lands themselves. At the same time, the determination of compensation must rest on relevant material and cogent reasons, with due opportunity to the parties to address such material. The substantial disparity in compensation, coupled with the circumstances noticed by the learned Arbitrator, warrants reconsideration of the determination of market value in accordance with law. However, having regard to the limitations governing the exercise of jurisdiction under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, this Court cannot substitute its own assessment of compensation for that of the competent adjudicatory forum merely because a different valuation appears equitable.

25. Hence, we are of the considered opinion that the award of the learned Arbitrator and the order of the District Court under Section 34 are liable to be set at naught and the ground of patent illegality as noticed supra and the parties to be left for initiation of fresh proceedings under Section 3(G)(5) of the National Highways Act, 1956.

In view of the limitations on the powers of the Courts under section 34 and 37 of the Act as explained by the Hon'ble Supreme Court in the case of ***National Highways Authority of India Vs. M.Hakeem and Another*** reported in ***(2021) 9 SCC 1***, so also the judgment of the Hon'ble Supreme Court in the case of ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.,*** reported in ***(2025) 7 SCC 1***, this Court cannot consider another valuation to be more appropriate which would result in modification of the impugned Award and orders.

26. In the result:

(i) The Miscellaneous First Appeal is ***allowed***.

(ii) The award dated 25.01.2023 passed in No.LAQ:ARB:206:CR/230/2020 by the Deputy Commissioner and Arbitrator, Tumkur District and the judgment and order dated 23.08.2024 passed in A.S.No.10004/2024 by V Addl. District and Sessions Judge, Tumkur (Sitting at Tiptur) are set aside.

(iii) The appellants/land owners may pursue such remedy as may be available to them in accordance with Section 3G(5) of the National Highways Act 1956 R/w Section 43(4) of the Arbitration and Conciliation Act, 1996.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

PB