

(2026) 03 KL CK 0760
In the High Court Of Kerala
Case No : Arbitration Appeal No. 31 Of 2025

Project Director

APPELLANT

Vs

M T Ahammed Ali

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37
National Highways Act, 1956 — Section 3G(5)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 26(1), 94

Citation : (2026) 03 KL CK 0760

Hon'ble Judges : Soumen Sen, CJ; Syam Kumar V.M., J

Bench : Division Bench

Advocate : Mathews K.Philip, P.Sathisan, Shibu B.S, Razak M., Biju P.Paul, Alvin Jewel S.S., Vidhya T.U., Abhirami.S, Antija James, Leena Varghese, Dijil P.S., V. Tekchand

Final Decision : Dismissed

Judgement

Soumen Sen, CJ

1. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act, 1996') arising out of an order passed by the learned Additional District Judge-II, Kasaragod, in an application filed under Section 34 of the Act, in which, the Award dated 17.01.2025 in Arbitration Application No. NH/ARBT/KSD/401/2021 and LAC 254/ Chengala was under challenge.

2. The genesis of the dispute is the acquisition of the land with building for the development of National Highway-66 in Kasaragod District. Consequent upon the decision to acquire the said property, a petition was filed under Section 3G(5) of the National Highways Act, 1956 and the determination of compensation by the Special Deputy Collector, Land Acquisition (NH), Kasaragod, who also is the Competent Authority, was challenged before the Court of Arbitrator and District Collector, Kasaragod, under the Act, 1996.

3. The Competent Authority determined the compensation at ₹ 27,55,654/-, in which, the value of the structure was determined at ₹ 5,66,219/- and the market value of the bare land was determined at ₹ 4,97,330/-. The total compensation amount was determined at ₹ 28,23,600/-. The salvage value was deducted at the rate of 6% of the structural value plus 6% of the solatium. This was challenged before the Arbitrator under Section 3G(5) of the National Highways Act, 1956.

4. The principal ground of challenge appears to be that the land value fixed was inadequate and does not represent the actual prevailing market value. The acquired land is situated in a high potential area and on account of the acquisition, the utility of the remaining land is reduced considerably. Access to the highway line would be lost resulting in the property being landlocked. The Award holder claimed compensation of ₹ 10 lakhs for the injurious affection. The petitioner also questioned the deduction of the salvage value, being a sum of ₹ 67,946/- as not maintainable. As the competent authority is free to remove the structure, full compensation without deducting salvage value has to be paid under the Statute. The front portion of the house, including three pillars and the whole courtyard, falls in the acquired land. Therefore, the remaining portion of the residential house would be unworthy for use. Hence, the whole house has to be valued and compensated with all statutory benefits.

5. In the counter affidavit, the Competent Authority of Land Acquisition (CALA) has contended that the salvage value was deducted as per the directions and guidelines of the Ministry of Road Transport and Highways (MoRTH)/NHAI. All the structures have been taken into consideration and the value of the same was fixed in accordance with law. The rate of land was fixed after verifying the actual position and lie of the land and also by following the provisions contained in Section 26(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, RFCTLARR Act 2013) and all genuine transactions during the relevant period were taken into consideration without any omission. The CALA further contended that out of six documents considered, three documents were discounted for the reason that the land involved in those documents were not similar to the lands under acquisition. From the remaining three documents, two documents having highest land value and land in A Block were considered for taking the average. Thus, CALA arrived at a rate of ₹ 3033/m². The Arbitrator had recorded the following observation of the CALA in the Award, which form the basis of determining the land value:

"There are no suitable documents to count for fixing the rate of the lands included in 'B' block which are in the areas of Bevinja & Star Nagar. The rates in respect of those lands shown in the list of fair land value are meager and not indicating the real land value of those lands as on the date of 3A notification. Therefore the same cannot be adopted. Under the circumstances the undersigned is of the opinion that the justice can be met if the rate of these lands is fixed by giving a reduction of 20% to the rate of 3033/- which works out

to be Rs.2426/-. The CALA therefore fix the rate of the lands included in block B at Rs.2426/-. The acquired land in this LAC falls in 'B' block."

6. The CALA has contended that Section 94 of the RFCTLARR Act, 2013 provides for determining the compensation for acquisition of part of the house or building. It has denied that any compensation is payable for the remaining portion of the land as they are user free. In the Arbitration proceedings, the PWD Roads Section, Nileshtar, was directed to file a report with regard to the correct portion of the residential building. The extract of the said report as would appear from the Award is taken note of:

"The corner portion of the residential building and major portion of the Courtyard are along the alignment of NH widening. As a major portion of the Courtyard and part of the building is affected it is better to take the whole valuation of the building. Otherwise it may badly affect the inhabitants."

7. Subsequently, on 11.06.2024, the Executive Engineer, PWD (Buildings), Kasaragod, was requested to file and submit full valuation of the building on the consideration that if the contention of the petitioner is found to be genuine, then such valuation could be relied upon for the purpose of determination of compensation. In response thereof, on 23.07.2024 the Executive Engineer, PWD (Buildings), Kasaragod, submitted a valuation report, prepared on the basis of plinth area of the building. Based on the said valuation report, Project Director, NHAI, in a communication dated 09.08.2024 requested the Special Tahsildar LA, (NH) Kasaragod, to conduct a joint inspection of acquired land in LAC 254/Chengala and to point out the Right of Way (ROW)/boundary as per Sub Division records prepared for the acquired land. Based on the aforesaid request of Project Director, NHAI, on 13.08.2024, an order was passed for conducting a joint inspection by CALA, NHAI and Tahsildar, Kasaragod and submit a report. A joint inspection was held on 09.09.2024. Based on the facts revealed from the joint inspection, Project Director, NHAI filed an objection to the valuation report dated 23.07.2024 by letter dated 19.09.2024. The objections are summarized in the Award, which are reproduced below:

"1."Building outside ROW except one pillar of sitout portion.

2. No structural portion of building is required to be demolished for development of NH 66.

3. The final road level is approximate at same level as that of present road level. Therefore, the access/utility to building is not at all affected.

4. NHAI is having objection in considering plinth area valuation for structures outside NH ROW.

5. Plinth area rates are adopted for valuation of structures that has been

acquired for NH 66 widening so as to expedite structural valuation process. As the building is outside ROW, it is requested for detailed valuation of structure instead of plinth area valuation.

6. If arbitrator is in opinion to provide compensation to any affected portion of building, then it is requested to value the building outside NH ROW as per detailed valuation.

7. As Executive Engineer in its letter ref.No.EEBL- DVOKSD/617/2023-DB1-PWD dated 23.07.2024 has informed about less time for detailed valuation of structure. In this context, NHAI through its valuation agency will facilitate PWD for detailed valuation of structures which may be vetted by PWD before submission to arbitrator.

8. Further it is requested for deliberation on applicability of 100% solatium on buildings falling outside ROW.

9. The above facts are humbly submitted appraisal of arbitrator before arriving at any judicious decision. However, the building is falling outside ROW and necessary access can be developed to that building and the owner can freely enjoy the possession of said building".

8. Followed by joint inspection, the Special Deputy Collector, LA (NH), Kasaragod, submitted his report on 17.10.2024 and the relevant portion of the said report, as recorded in the Award, is stated below:

"Based on the inspection of the house of the property owner, Shri. M. T. Ahmed Ali, S/o M. T. Abdul Rahiman Haji, Bevinja, Thekkil Ferry P.O., Kasaragod, the Executive Engineer, Public Works Department, Buildings Division, Kasaragod, has reported that according to the alignment marked and shown by NHAI authorities, the entire front courtyard and one front pillar of the building fall within the limits of the proposed highway; therefore, although the building could be partially retained by considering the next load-bearing wall, the structural shocks caused to the building during demolition are likely to create practical difficulties in making the building habitable.

The Project Director, NHAI, Kannur, opined that upon completion of the National Highway construction, the level is likely to rise approximately one meter from the current level, that only a small portion of the house falls within the alignment. If further portions of the house were to fall within the alignment, it would be appropriate to conduct the valuation as per a Detailed Valuation. It is submitted for your information and further action that the Project Director has proposed implementation of 100% solatium for the building structure located outside the alignment"

9. Subsequent to this, another report was filed by the Tahsildar, Kasaragod on

12.11.2024. The relevant portion of the report is reproduced hereunder:

"According to the site shown by Shri. M. T. Ahmed Ali, the markings made by NHAI's proposed highway limits covers the entire front courtyard of building numbered LAC/254/Chengala, including one front pillar and one portion of the bedrooms on ground floor and first floor. Furthermore, as marked by NHAI authorities, the highway passes at a height of one meter from the sit-out floor of the house. Consequently, it may become impossible to enter the house. If the existing electric posts are shifted to the side of the highway upon completion of the National Highway works, a potential danger is observed for the partially retained building. In the above circumstances, it is hereby reported that partial retention is likely to render it uninhabitable."

10. The aforesaid extract was also considered by the Arbitrator in the impugned Award. The Project Director objected to the said report in his letter dated 07.12.2024 stating that the said report of the Tahsildar, Kasaragod, is prepared based on the markings pointed out by the petitioner (Award holder)/ building owners and it is not based on the facts. On the consideration of the aforesaid objections and reports filed by the parties, the Arbitrator arrived at the following findings:

i. The land value fixed by the CALA does not reflect the actual value prevailing in the locality. There is no contrary evidence to dislodge the land value fixed by CALA. No relevant documents have been omitted by the CALA in arriving at the land value. In this regard, the observation of the Arbitrator in dealing with the objections regarding the fixing of land value are reproduced below:

"No relevant documents are seen omitted. Out of the above 6 documents CALA discounted 3 documents as lands involved in those documents are not similar to the land acquired. Average of two documents is Rs.3033/m². As above lands are A Block category and land acquired is B Block category CALA fixed the value of land acquired by giving a reduction of 20 percent of the rate arrived i.e., 3033/. This is worked out to Rs.2426/m². From this I am convinced that CALA, while fixing the land value, has put an earnest effort to arrive at a fair and reasonable rate. Petitioner's contention that prevailing market value is Rs.19768/m² does not seem to be correct as he has not produced any piece of evidence to substantiate this. Fair value of the land involved here is less than the rate fixed herein by CALA. As such CALA was right in arriving at the correct value of the land. Therefore, contention No.1 is decided against the petitioner as it is devoid of merit."

ii. The contention that the value and utility of the remaining land is reduced considerably on account of the acquisition, is disproved.

iii. With regard to the salvage value it was found that CALA deducted salvage value as per guidelines issued by MoRTH/NHAI in this regard and hence does not

call for an interference.

iv. Insofar as the claim of the petitioner (Award holder) for the acquisition of full house is concerned, after considering all the objections, and the material on record the Arbitrator was of the considered opinion that the objection raised by the respondent No.1 (the present appellant)/NHAI is not having valid materials to discard the findings in the report submitted by PWD, CALA and Tahsildar, Kasaragod. The following are the observations of the Arbitrator in this regard:

"Objection against plinth area valuation raised by respondent No.1 herein does not seem to be factual as he has not furnished on what ground he insists detailed valuation. It is pertinent to note that at present valuation is being made by the approved agency on plinth area basis. Respondent No.1 herein has not specifically mentioned the reason for taking a reverse attitude in case of the petitioner herein. There is no justification in valuing the building that falls within the alignment and out of the alignment by using different methods. In both cases a uniform method has to be adopted without any discrimination. From the above it is clear that petitioner is eligible to get compensation for the residential house in full based on the valuation made by the Executive Engineer, PWD (Buildings), Section, Kasaragod as per his letter No. Ref.No.EEBLDVOKSD/617/2023-DB1-PWD dated 23.07.2024. Under the above circumstances it is hereby ordered that Respondent No. 1 and 2 will pay an amount of Rs.1,26,87,707/- (Rupees one crore twenty six lakhs eighty seven thousand seven hundred and seven only) being the compensation for the residential house that rendered useless due to acquisition of land for the development of NH – 66. As 100 percent solatium is a component that is fixed by statutory provisions of the RFCTLARR Act, 2003 this arbitrator cannot deny this benefit to the petitioner merely based on a request made by respondent No.1 herein. Therefore, the petitioner will be paid solatium @ 100 percent of the total value of the residential building."

v. The claim for 12 percent increase on the solatium amount was rejected in absence of any provision in the Act.

11. This Award was challenged before the Additional District Judge-II, Kasaragod, in an application under Section 34 of the Act, 1996. The learned Judge upheld the Award discussing all the relevant facts, as emanated from the Award, and has relied upon the decision in Sudheer Kumar V.V. v. National Highways Authority of India 2024 KHC 259, in which, it was held as under:

"How a landowner suffers because of part acquisition is something that can be visualised. If a small extent of land with a portion of the building remains after acquisition, there is no possibility for the owner to repair the construction and make it habitable since the Panchayat and Municipal Laws will not permit the grant of any such permission for reconstruction, particularly since the property is abutting the National Highway. Even if a construction is to be made, it can only be done after providing for the necessary setback, which again means the area

that is lost as a setback has become unusable because of the acquisition. Even if carrying out repairs and reconstruction is permitted, it would necessarily mean expending a lot out of the compensation which has been received for the property which has been notified and acquired. The end result is that a person is left with a small extent of land with a broken structure, where he has no choice, but to demolish the existing structure and retain the land as land without making any construction. The land only falls waste, and it is no solace to say that the land is abutting the National Highway since, as far COURT as the person who loses it is concerned, it is worthless. Such losses can be compensated only if there is a compulsion to acquire such lands. Such compulsion also forms part of the resettlement and rehabilitation. Even the 1894 Act was mindful of such situations when it gave an option to the landowner to express his desire to the acquisition of the entire area. Such loss is damage that is suffered because of the acquisition of a part of the holding and resulting from the severance of the acquired portion from the un acquired portion. It would be preposterous to state that a right that was available in a Statute that was enacted in 1894 is no longer available, despite the fact that there has been a sea change in the concept of eminent domain and compensation, with the coming into force of the 2013 Act."

12. Although the learned Judge has not elaborately discussed the Award in the manner in which we have done, it appears that in paragraph 11 of the said order, the learned Judge has summarized the facts. For better understanding, the said paragraph is reproduced below:

"11. On hearing both side and on perusal of case records, it is found that, as per the petition filed by the first respondent herein against the Award passed by the competent authority, an enquiry was conducted by the Arbitrator/District Collector, Kasaragod in which the petitioner in this case was given an opportunity to contest the case. As per the Arbitration Award dated 17.01.2025 which is under challenge in this matter, it is revealed that, a joint inspection was conducted in this matter based on the request of the petitioner herein by CALA, NHA and Tahsildar, Kasaragod. As per the report of the joint inspection, the Arbitrator found that when a part of residential building was demolished, there should be practical difficulty for continuing it as residence. Moreover, it was also reported that after the construction of the National Highway it will be 1 metre higher level from the present level and a small part of the house would. come within the alignment. A report was called from the Tahsildar by the Arbitrator in which the Arbitrator found that due to the acquisition of land for the Highway, the Highway will pass 1 metre height from the level of sit out of the house so that there will be an impediment for the entrance to the house. Moreover, there was a chance of danger to the remaining portion of the building which cannot be used for residential purpose. As per the order of the Arbitrator, it is also found that the petitioner herein hadn't adduced any evidence in support of his contentions. Considering all the facts and circumstances, the Arbitrator found

that the residential building of the petitioner was seriously affected even though a portion of the residential building was acquired for the purpose of expansion of National Highway.”

13. In the conspectus of the aforesaid facts, the quality of the challenge under Section 37 of the Act, 1996 has to be assessed. It is a trite law that the power exercised by the Appellate Court under Section 37 of the Act, 1996 is more restricted than the wide power exercised by the Court in deciding the application for setting aside of the Award under Section 34 of the Act, 1996.

14. In *Konkan Railway Corpn. Ltd. v. Chenab Bridge Project Undertaking* (2023) 9 SCC 85 a three-Judge Bench of the Hon’ble Supreme Court, in paragraph 18, stated thus:

“18. ... Scope of interference by a court in an appeal under Section 37 of the Act in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.”

(emphasis supplied)

The aforesaid view has been reiterated in paragraph 26 in *Bombay Slum Redevelopment Corpn.(P)Ltd. v. Samir Narain Bhojwani* (2024) 7 SCC 218. It was held thus:

“26. The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 court possesses with the same constraints.”

(emphasis supplied)

15. The view, which has been adopted by the Arbitrator, is based on evidentiary material, which was relevant to the decision.

16. In the case of *Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others* AIR 2024 SC 4856, it was held by the Hon’ble Supreme Court that Section 37 of the Act provides for a forum of appeal, inter alia, against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act. It is equally well settled

that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

17. The Award can be interfered only on the limited grounds as envisaged under the Act, 1996. Moreover, when the view taken by the Arbitrator is a possible view, the Court in deciding an application for setting aside the award shall not interfere with such a view or substitute such view with its own view. Once the interpretation given by the arbitrators are backed by logic and are reasonable, the same is required to be upheld as held in *MMTC Ltd.v. Vedanta Ltd.* (2019) 4 SCC 163 at para 14 and *UHL Power Co. Ltd. v. State of H.P.* (2022) 4 SCC 116 at paras 18 and 22.

18. The jurisdiction of the Court under Section 37 of the Act, 1996, as clarified in *MMTCLtd. case (supra)* and reiterated in *Konkan Railway Corpn. Ltd. case (supra)* is akin to the jurisdiction of the Court under Section 34 of the Act. The scope of interference by a Court in an appeal under Section 37 of the Act, 1996, in examining an order setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. [See *Konkan Railway Corpn. Ltd. case (supra)*].

19. In *Somdatt Builders–NCC–NEC (JV) v. NHAI* 2025 SCC OnLine SC 170, the Hon'ble Supreme Court in referring to *Larsen Air Conditioning and Refrigeration Co. v. Union of India* (2023) 15 SCC 472 and *Reliance Infrastructure Ltd.v.State of Goa* (2024) 1 SCC 479, has observed as under:

"It is necessary to remind the courts that a great deal of restraint is required to be shown while examining the validity of an arbitral award when such an award has been upheld, wholly or substantially, under Section 34 of the 1996 Act. Section 37 of the 1996 Act grants narrower scope to the appellate court to review the findings in an arbitral award if it has been upheld or substantially upheld under Section 34. Frequent interference with arbitral awards would defeat the very purpose of the 1996 Act."

(emphasis supplied)

The aforesaid view has been reiterated in a fairly recent decision in *C & C Constructions Ltd. v. IRCON International Ltd.* (2025) 4 SCC 234, in which it has been stated that, "in appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34". (emphasis supplied). The views expressed by the Arbitrator have been accepted by learned Additional District Judge, Kasaragod, and therefore, the court under Section 37 would be extremely

chary and circumspect in scrutinising the award.

20. The object of the Act, 1996 is a minimum intervention by the Court in interfering with an Award and unless the grounds mentioned under Section 34 of the Act is fulfilled, the Court should be extremely reluctant to interfere with the Award. The elaborate discussion made by the Arbitrator would show that the Arbitrator has considered, analysed and relied upon the materials, namely, the independent reports from the PWD officials, who are experts on the subject, and the joint inspection report prepared by the Tahsildar along with the NHAI. Independent report from the Tahsildar was also considered where-from it was found that partial acquisition of the residential house will make it unstable, useless and unusable and the Award holder and his family members would not be in a position to lead a comfortable and safe life in the remaining portion of the house.

21. It would thus appear that the finding was arrived at on an appreciation of the materials on record, which, interalia, include the report by PWD, CALA and Tahsildar, Kasaragod. The objection to such reports was also considered by the Arbitrator while dealing with contention No.4 regarding the claim of the award holder for the acquisition of full house.

22. Unless the said Award is manifestly perverse, arbitrary, based on no evidence and passed in violation of the principles of natural justice, the Court will be extremely reluctant to interfere with the Award. The appellate power exercised by the Court under Section 37 of the Act, 1996 is not that of an Appellate Authority and much importance has to be attached to the Award which, in the instant case, was passed by an authority who is conversant with the nature of the dispute required to be adjudicated under Section 3G(5) of the National Highways Act, 1956.

23. On such consideration, we do not find any reason to interfere with the Award. The Appeal stands dismissed. However, there shall be no order as to costs.