
(2025) 06 BOM CK 0098

In the Bombay High Court

Case No : Arbitration Appeal (ST) Nos. 22121, 22126, 22128 OF 2023, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 Of 2024

**Sumanbai Shantaram Bachchav Arbitrator & Additional Commissioner
National Highway Authority Of India & Ors.**

Date of Decision : 09-06-2025

Acts Referred:

Land Acquisition Act, 1894 — Section 23(2)
Arbitration and Conciliation Act, 1996 — Section 34, 37
National Highways Act, 1956 — Section 3G, 3G(1), 3G(5), 3J

Citation : (2025) 06 BOM CK 0098

Hon'ble Judges : Somasekhar Sundaresan, J

Bench : Single Bench

Advocate : Vivek M. Punjabi, Priyansh R. Jain, Siddhi Kothari, Sagar Ladda, Vaibhav Shaha, Sambhaji Kharatmol, Suhas Urgunde

Final Decision : Disposed Of

Judgement

Somasekhar Sundaresan, J.

Context and Factual Background:

1. This is a bunch of thirty Petitions filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") that challenge a judgement dated May 4, 2023 ("Impugned Judgement") passed by the Learned District Court, Nashik. This judgement would dispose of all these Petitions, each of which relates to land acquisition for the same National Highway project.

2. The land parcels acquired in these cases are situated in Mouje Wake and Saundane, Taluka Malegaon, District Nashik. They were notified for compulsory acquisition for purposes of four-laning the National Highway No.3. The compensation declared by the Competent Authority in 2008 (collectively, the "Original Award") was in the range of Rs. 95 to Rs. 154 per square metre. Since there are multiple matters, to avoid any conflict of dates, no dates are being attributed to instruments prior to the common Impugned Judgement.

3. The Petitioners were aggrieved by the computation of compensation. They believed that the compensation as computed did not factor in the true value discernible from actual transactions that took place in the region and that it wrongly relied on the Ready Reckoner rates that were merely stipulations of benchmark for assessment of stamp duty. The dispute moved to arbitration under Section 3G(5) of the National Highways Act, 1956 ("Highways Act").

4. The Learned Arbitral Tribunal found fault with the Original Award on merits, assessed the evidence relating to the manner of computation of the compensation, reviewed commensurate land transactions, and adjudicated the compensation payable at significantly higher values per square metre (collectively, "Arbitral Award").

5. Neither the Original Award nor the Arbitral Award considered or granted the solatium referred to in Section 23(2) of the Land Acquisition Act, 1894 ("Acquisition Act"). The law as it stood at all times material to Original Award and the Arbitral Award was that pursuant to Section 3J of the Highways Act (introduced in 1997), nothing contained in the Acquisition Act would apply to the computation of the compensation.

Impugned Judgement:

6. The Arbitral Award was challenged under Section 34 of the Arbitration Act, and this led to the passing of the Impugned Judgement, repelling the challenge. By then (May 4, 2023), the Supreme Court had struck down Section 3J of the Highways Act as being unconstitutional in the case of Tarsem Singh 'Union of India & Anr. Vs Tarsem Singh & Ors. – (2019) 9 SCC 304' (September 19, 2019). The Supreme Court explicitly held that acquisitions between 1997 and 2015 would be treated as if Section 3J of the Highways Act did not exist. In other words, for all land acquisitions for this period under the Highways Act, the provisions of the Acquisition Act would apply, in just the same way they did prior to 1997.

7. The challenge before the Learned District Court under Section 34 of the Arbitration Act was mounted on the premise that the Arbitral Award was erroneous and perverse in the assessment of evidence in computing the compensation amount. However, by the time the Section 34 Petition was heard, the contentions by the Appellants expanded to the premise that the solatium due under the Acquisition Act would now be payable and that the Arbitral Award must be further enhanced by the solatium amount.

8. The Impugned Judgement dismissed the challenge in its entirety. The Impugned Judgement indeed noticed that even the National Highways Authority of India ("NHAI") had conceded that solatium would be payable. However, the Impugned Judgement holds that the Learned Arbitral Tribunal is the best judge of the evidence and the computation of compensation does not call for interference. The Impugned Judgement also holds that as a Section 34 Court, the Learned District Court did not have any power to modify the Arbitral Award to grant the

solatium.

Contentions of the Petitioners:

9. Mr. Vivek Punjabi, Learned Counsel for all the Petitioners would strongly contend that in the peculiar factual position obtaining in the matter, this Court would have the powers to correct the error in the Impugned Judgement – the error of judgement being in not adding the solatium despite the NHAI having agreed that the solatium amount was indeed payable. He would submit that Tarsem Singh had unequivocally declared the law that solatium payable under Section 23(2) of the Acquisition Act would clearly be payable for land acquisition under the Highways Act too. Mr. Punjabi would submit that the Impugned Judgment is wrong in holding that Hakeem 'NHAH Vs M. Hakeem & Anr. – (2021) 9 SCC 1' (disables correcting an arbitral award passed under Section 3G of the Highways Act to include solatium as NHAI, is willing to pay it. He would contend that Hakeem never intended to rule that rectification of denial of a statutory benefit would be prohibited.

Matrix of Legal Provisions:

10. Against this background, a brief outline of the matrix of legal provisions would be appropriate. This has to be coupled with a review of the march of the law in the inter-play between the statutory obligation to pay solatium to land-losers under the Acquisition Act; the interpretation of the Highways Act; and the implications of such inter-play for arbitral awards under the Arbitration Act.

Highways Act:

11. First, it is noteworthy that until 1997, compensation payable for land acquisition for purposes of national highways was covered by the Acquisition Act. Certain amendments to the Highways Act were effected in 1997 to provide for a summary acquisition process, including insertion of Section 3J to completely exclude the application of the Acquisition Act.

12. Under Section 3G(1) of the Highways Act, compensation payable for land acquisition for a national highway is to be determined by the "competent authority". If the amount of compensation so determined is not acceptable, the compensation is to be determined by the arbitrator to be appointed under Section 3G(5) of the Highways Act.

13. Section 3J of the Highways Act provided as follows:

Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.

[Emphasis Supplied]

Tarsem Singh:

14. In Tarsem Singh, which was decided on September 19, 2019, the Supreme Court explicitly held that since the Highways Act was amended in 1997 to

introduce Section 3J, and that provision was being struck down as unconstitutional, all acquisitions under the Highways Act that took place after the introduction of Section 3J would also be covered by the Acquisition Act. Consequently, it was explicitly provided that in all such acquisitions, solatium would indeed be payable under Section 23(2) of the Acquisition Act.

15. Paragraph 52 of Tarsem Singh is explicit in its terms, and bears reproduction:-

"52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed."

[Emphasis Supplied]

Acquisition Act:

16. That brings us to Section 23(2) of the Acquisition Act, which provides for enhancement of compensation payable for any compulsory land acquisition, by way of solatium. The provision reads as follows:

In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

[Emphasis Supplied]

17. Since land acquisition is compulsory extraction of title of the land-losers, the Acquisition Act provides for an additional payment under the aforesaid provision. This is the consideration payable for the removal of free will from the transaction of land acquisition, since the acquisition is not a transaction between a willing buyer and a willing seller. Since there was no choice in the matter for the land-loser, the solatium is a statutory enhancement to the compensation.

Tarsem Singh; Hakeem; and Rishabhkumar:

18. As seen above, consequent to the declaration of the law in Tarsem Singh, solatium became payable for land acquisition under the Highways Act. Solatium under Section 23(2) of the Acquisition Act was explicitly declared to be payable in respect of all acquisitions under the Highways Act between 1997 and the introduction of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Acquisition Act").

19. The law declared in Tarsem Singh, and the judgement in Hakeem were analysed by a Learned Division Bench of this Court in Rishabhkumar 'A bunch of petitions under Section 37 of the Arbitration Act – reported in Rishabhkumar Vs Secretary to the Government of India, Ministry of Road Transport and Highways – 2021 SCC OnLine Bom 456'. It was explicitly held that grant of solatium, a genuine statutory entitlement of the land-loser owing to Section 23(2) of the Acquisition Act after the ruling in Tarsem Singh, is a matter for which appropriate proceedings may be validly initiated in law – however, the Section 34 Court and the Section 37 Court were not the appropriate forums for doing so. It was explicitly held that Section 34 Court which allowed payment of solatium in that case, had effectively modified the arbitral award, which was impermissible.

20. This proposition is based on the specifically-legislated binary scope of judicial interference envisaged under Section 34 (and thereby also under Section 37) of the Arbitration Act. An award has to be assessed not on the merits of its contents as would be done in an appellate review but on the limited grounds available under Section 34 of the Arbitration Act.

21. Mr. Punjabi would strongly contend that it is wrong to hold that Hakeem is dispositive of the question since in Tarsem Singh, Section 3J of the Highways Act was struck down, unequivocally holding that solatium is payable under Section 23(2) of the Acquisition Act even for land acquisitions under the Highways Act. Therefore, when one interprets Hakeem as holding that correcting an arbitral award passed pursuant to arbitration under Section 3G of the Highways Act constituted an impermissible modification, it could have never intended correcting the erroneous denial of statutory benefit as being a modification.

22. Towards this end, he would commend for acceptance, the approach adopted by a Learned Single Judge of this Court in Sarjuprasad 'Sarjuprasad s/o sangmlal Gupta vs. National Highways Authority of India & Ors. – 2022 (1) Mh.L.J 290', whereby in appeal under Section 37, against a judgement made under Section 34 of the Arbitration Act, the Learned Single Judge did not interfere with the Section 34 Court's direction to pay solatium.

23. I am unable to agree. Indeed, Mr. Punjabi is right in pointing out that even the NHAI has acknowledged that solatium is payable. The process for doing so is not through the jurisdiction under Section 34 of the Act. I am duty-bound to abide by the ruling of the Learned Division Bench in Rishabhkumar, which has also been passed after Sarjuprasad. In fact, Rishabhkumar has noticed

Sarjuprasad and has not adopted that approach. On the contrary, it has held that the Section 34 Court did not have the power to effect the enhancement of compensation by way of solatium.

24. I am in respectful agreement with the reasoning in Rishabhkumar. The Section 34 jurisdiction is not one in which this entitlement (indeed a valid and legal entitlement) can be executed. That apart, in sharp contrast with these two cases, in the instant case, there is no incumbent direction to pay solatium that forms part of the Impugned Judgement. What is sought here is a declaration that the Section 34 Court was wrong in not adopting the approach adopted in Sarjuprasad. The Learned District Court, Nashik could not have adopted such an approach since the issue had been squarely dealt with in Rishabhkumar.

25. It is also noteworthy that the law declared in Rishabhkumar about the lack of power for the Section 34 Court to modify arbitral awards, is consistent with the law now declared in Gayatri Balasamy 'Gayatri Balasamy Vs. ISG Novasoft Technologies Ltd. – 2025 SCC OnLine SC 986 / 2025 INSC 605' by a five-judge Constitution Bench of the Supreme Court.

26. It would also be seen from the Original Award and the Arbitral Award, that each was rendered when Section 3J of the Highways Act was validly in existence on the statute book i.e. when nothing contained in the Acquisition Act applied to computing compensation under the Highways Act. Therefore, the challenge to the Original Award (in 2008) in the arbitration under Section 3G of the Highways Act, had not been on the basis that solatium was applicable, but was wrongly denied. The Arbitral Award (made in 2019 but before Tarsem Singh) did not had no reason to consider the facet of solatium. Tarsem Singh declared the law later (on September 19, 2019) and effaced Section 3J of the Highways Act, thereby explicitly entitling land-losers to solatium in all land acquisition matters initiated under the Highways Act after Section 3J was introduced and before the 2013 Acquisition Act was made applicable to acquisition for highways.

27. Therefore, both the Original Award and the Arbitral Award did not even have the issue of solatium within the frame of reference. Had solatium been in the frame of reference when these awards were passed, it would have been possible to consider whether these awards were in conflict with a fundamental policy of Indian law – the obligation to pay solatium to land-losers whose lands were compulsorily acquired. That not being the case, since Tarsem Singh declared the entitlement of these land-losers as a matter of law well after the Arbitral Award was passed, the specific question to be answered is whether the Section 34 Court, or this Court (under Section 37 of the Arbitration Act) could at all be the forum for directing the grant of solatium (indeed a statutory entitlement), without such a direction constituting a modification of the Arbitral Award.

28. In this regard too, the decision of the Learned Division Bench in Rishabhkumar is explicit in its terms about the scope of power of the Section 34 Court and thereby the Section 37 Court. The following extracts are noteworthy:-

"64. In view of the law laid down in *Narayan Das Jain (supra)* it is clear that on determination of market value of the acquired land, the statutory payments contemplated by the Act of 1894 have to be mandatorily granted. The question however is when such statutory amounts do not form part of the award, can the same be granted in exercise of jurisdiction under Section 34 or Section 37 of the Act of 1996 on the premise that these amounts are statutorily payable to the landowner under the Act of 1894. We find that in the light of the clear dictum of the Hon'ble Supreme Court in *M. Hakeem (supra)*, an award cannot be modified under Section 34 of the Act of 1996 even if the Court intends to do something which according to the justice of the case is required to be done. The entitlement of the landowner to such statutory amounts consequent upon provisions of Section 3-J being struck down would be undisputable but when these statutory amounts do not form part of the award, in our view it would be impermissible to grant the same since that would result in modifying the award as passed. Recognition of the entitlement to statutory amounts flowing consequent upon determination of market value would not permit modification of an award already passed so as to grant additional statutory relief in proceedings under Section 34 or Section 37 of the Act of 1996. That, in our view is the purport of the following observations of the Hon'ble Supreme Court in paragraph 46 of the decision in *M. Hakeem (supra)*:—

"46.quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Laxmanrekha and doing what, according to the justice of a case, ought to be done."

65. Additionally, what is not permissible to be done under Section 34 of the Act of 1996 cannot be done under Section 37 of the Act of 1996. The Hon'ble Supreme Court in *M.M.T.C. Limited v. Vedanta Limited [(2019) 4 SCC 163]* has in clear terms held that interference under Section 37 cannot travel beyond the restrictions laid down under Section 34 of the Act of 1996. The Court must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. The jurisdiction in appeal under Section 37 is limited to what has been conferred under Section 34 of the Act of 1996 has been clarified in *K. Sugumar (supra)*.

66. We therefore find that it would be impermissible for the Court in exercise of jurisdiction under Section 37 of the Act of 1996 to award any statutory amount to which the landowner would be entitled consequent upon striking down of Section 3-J of the Act of 1956 if such amount has not been granted under the award. Granting such statutory amount flowing from the determination of compensation if requiring modification of the award would not be permissible in exercise of jurisdiction under Section 34 or Section 37 of the Act of 1996. Such amount would have to be claimed by invoking appropriate jurisdiction in that regard. Hence, for these reasons the prayer made in Civil Application (CAM) No. 22 of 2021 cannot be granted."

[Emphasis Supplied]

29. The Learned Division Bench has held that the entitlement to solatium is indisputable, but since it did not form part of the frame of reference in the arbitral award, executing such entitlement in exercise of the jurisdiction under Section 37 of the Arbitration Act would not be permissible. Therefore, the judgement impugned in Rishabhkumar, which had modified the arbitral award in order to pay solatium came to be set aside.

30. Indeed, the Petitioners are indisputably entitled to solatium based on the law declared in Tarsem Singh. However, in the inter-play with the Arbitration Act, this is not the forum in which such payment can be directed, without falling foul of the scope of jurisdiction being exercised by this Court. It must also be remembered that Tarsem Singh primarily considered the challenge to the constitutional validity of Section 3J of the Highways Act, and held it to be unconstitutional. It is noteworthy that even in that very judgement, all the appeals from proceedings under Section 34 read with Section 37 of the Arbitration Act had been dismissed on the basis of the scope of review provided for in these provisions of the Arbitration Act.

31. Therefore, while the Petitioners are truly entitled to the solatium, and the NHAI too has submitted to the Learned District Court that the Petitioners are entitled to solatium as is seen in Paragraph 14 of the Impugned Judgement), this forum does not enable modification of the Arbitral Award.

32. It is now trite law that the Section 34 Court may either set aside or uphold an arbitral award but cannot go about modifying arbitral awards to remedy errors in the award. This is foundationally based on the principle that the judicial review under Section 34 of the Arbitration Act is not a full appellate review but a review within the framework of the narrow confines of Section 34 of the Arbitration Act. Gayatri Balasamy too makes it clear that the powers under Section 34 read with Section 37, if sought to be exercised to modify an arbitral award, could only be used to sever and excise any invalid portions of the arbitral award or to correct any clerical, computational or typographical errors or in relation to post-award interest. In the instant case, as stated above, the issue of solatium was not even in the frame of reference in the arbitration. Therefore, it could not even have found its way into a severable and invalid part of the Arbitral Award.

33. Therefore, although the computation of solatium is purely a percentage calculation on the respective awarded amounts, since it was not even part of the legal framework when the Arbitral Award was passed, it would not constitute a computational error forming part of the Arbitral Award for it to be rectified.

34. In these circumstances, the Impugned Judgement cannot be interfered with, within the framework of the Arbitration Act. Needless to say, as indicated in Rishabhkumar, these Petitioners too are indisputably entitled to solatium.

An Endnote:

35. In view of the clear statutory position obtaining from Tarsem Singh and

indeed Rishabhkumar, and indeed, NHAI's own admitted position in the Section 34 proceedings, NHAI could have resolved this dispute outside the scope of these Petitions by providing the admitted and acknowledged entitlement of the land-losers to solatium under Section 23(2) of the Acquisition Act. The Petitioners have sought to bring a quietus to the issue of the compensation as computed and upheld. In pursuing these Petitions, they have only pressed the issue of solatium.

36. NHAI could still consider resolving the issue outside the scope of these proceedings to put an end to wasteful expenditure of public resources in litigation, instead of waiting for the Petitioners to potentially approach the Supreme Court to invoke Article 142 in view of the law declared in Gayatri Balasamy or by filing such other new proceedings as advised, seventeen years after losing their lands. Expensive litigation to simply get what is admittedly due to the land-losers is not appropriate.

Summary of Findings:

37. For ease of reference, my conclusions are summarised thus:

A) Solatium is indeed payable on compensation computed under the Highways Act for land acquisition after 1997 and before 2015 in view of the law declared in Tarsem Singh;

B) The acquisition covered in these proceedings having been effected in 2008, solatium is indeed payable on the compensation amount due to the Petitioners;

C) The Learned Arbitral Tribunal has examined all available evidence on the computation of the compensation amount payable and has returned a finding on the compensation payable, significantly enhancing the amount awarded in the Original Award. The challenge to this element of the Arbitral Award has failed before the Learned District Court, and no fault can be found with that facet of the Arbitral Award or the Impugned Judgement – indeed, in this Court, the Petitioners have only pressed their contentions on the facet of solatium;

D) The Learned Arbitral Tribunal cannot be said to have erred in not granting the solatium so payable – the facet of solatium was not even in the frame of reference of the Learned Arbitral Tribunal since at all times relevant to the arbitration, Section 3J was validly in existence on the statute book;

E) Had the Original Award been passed after Tarsem Singh, and had it rejected the grant of solatium, there would have been a case to argue that the Arbitral Award was in conflict with the fundamental policy of Indian law governing land acquisition for national highways and the payment of solatium on the compensation payable, in view of the law declared by the Supreme Court. However, that is not the case – the Original Award and every arbitral award constituting the Arbitral Award except one (in ARA 26 of 2024) was passed before Tarsem Singh;

F) The Impugned Judgement could not have granted something that was not in the factual or legal matrix on which the Arbitral Award had been passed since that would have amounted to impermissible modification of the Arbitral Award;

G) This Court, being the Section 37 Court, too cannot go outside the frame of reference in its jurisdiction which is an appellate jurisdiction over the Section 34 Court's decisions. Any step to do so would constitute writing a new component into the Arbitral Award i.e. a modification by way of new insertions into the Arbitral Award;

H) The Petitioners are free to seek enforcement of their statutory entitlement to solatium in such manner as advised; and

I) It is hoped the NHAI will resolve the issue of its obligation to pay solatium to the land-loser Petitioners without further wasteful expenditure of public resources in more litigation. The only reason the NHAI is not being directed to pay the solatium in these proceedings, is the inherent limitation of jurisdiction of this Court under Section 37 of the Arbitration Act.

38. Therefore, with the aforesaid findings and observations, the Impugned Judgement is not interfered with and these Petitions are disposed of. In the peculiar circumstances of the case, there shall be no order as to costs.

39. In view of the dismissal of these Petitions attendant Interim Applications pending, if any, stand disposed of.

40. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.