



W.P.(MD)Nos.11952 & 12002 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)Nos.11952 & 12002 of 2020

Michael Mathura Sing ... Petitioner in W.P.(MD)No.11952/2020

Nirmala Valeri Winston ...Petitioner is W.P.(MD)No.12002/ 2020

Vs.

- 1.The Arbitrator under the National Highways Act,
The District Collector, Kanyakumari District,
Collectorate, Nagercoil.
- 2.The Competent Authority and the Special District
Revenue Officer,
(Land Acquisition -National Highways),
Observatory Street, Opp.to Collectorate,
K.P.Road, Nagercoil-629 001.
- 3.The National Highways Authority of India, (Beneficiary)
Represented by the Project Director,
National Highways Authority of India,
Tirunelveli, now at Golden Nagar,
K.P.Road, Nagercoil.

...Respondents in both petitions

COMMON PRAYER : Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the proceedings of the first respondent in Na.Ka.No.O.Mu.U. 2/42533/17, dated 21.10.2017 and quash the same and consequently direct the first respondent to consider the representation of the petitioners dated



14.03.2018; 11.12.2018, 26.07.2019 and 08.08.2019, respectively and take arbitration proceedings on the arbitration applications filed by the petitioners dated 19.10.2017 and 17.10.2017, respectively under the Arbitration and Conciliation Act, 1996 and pass the arbitral award within such time that may be directed this Court.

In both petitions:

For Petitioner	: Mr.M.Azeem
For R1 & R2	: Mr.A.K.Manikkam Special Government Pleader
For R3	: Mr.Su.Srinivasan

COMMON ORDER

These Writ Petitions have been filed challenging the proceedings of the first respondent in Na.Ka.O.Mu.Uu.2/42533/17 dated 21.10.2017 in both petitions and for a consequential direction to the first respondent to consider the representations made by the petitioners and to proceed further with the arbitration proceedings and pass award within the time frame fixed by this Court.

2.The case of the petitioners is that their lands were acquired by the National Highways Authority of India under the National Highways Act, 1956 (hereinafter referred to as 'the Act' for the sake of brevity). The second respondent, who is the competent authority passed an award and the details of the said award are provided hereunder:



S.No.	Writ Petition	Details of the award	Amount fixed
1.	W.P.(MD)No.11952 of 2020	No.2/2014-2/Roc.J4/07/2010 dated 03.06.2015	Rs.76,124/-
2.	W.P.(MD)No.12002 of 2020	No.2/2014/Roc.No.J4/07/2010 dated 23.06.2014	Rs.33,060/-

3.The petitioners were aggrieved by the compensation amount fixed by the competent authority and hence, they filed applications under Section 3(G)(5) of the Act before the first respondent seeking for enhancement/redetermination of the same.

4.The first respondent/Arbitrator passed an award on 18.09.2016 insofar as W.P.(MD)No.11952 of 2020 and on 14.08.2016 insofar as W.P.(MD)No.12002 of 2020 is concerned and in both cases, the following was the award that was passed:

“Hence, I declare that in order to provide appropriate compensation to the land owners, based on present guideline value after considering valuable sources of above fact and the intensive care on the livelihoods of deprived land owners, and it an arbitral award.”

5.The further case of the petitioner insofar as W.P.(MD)No.11952 of 2020 is concerned is that, the second respondent through proceedings dated



14.11.2016 determined the compensation amount at Rs.395.40 per sq.meter and thereby, total compensation was fixed at Rs.3,80,572.50/- and for the petitioner insofar as W.P.(MD)No.12002 of 2020 is concerned, the second respondent through proceedings dated Nil.10.2016 fixed the compensation amount at Rs.395.40 per sq.meter and determined the total compensation at Rs.1,65,277.20/-.

6.The petitioners were not satisfied with the compensation that was fixed by the competent authority and therefore, they filed applications before the first respondent on 19.10.2017 and 17.10.2017, respectively. The first respondent on receipt of the same passed the impugned proceedings dated 21.10.2017. For proper appreciation, the proceedings of the first respondent is extracted hereunder:

“பார்வையில் காணும் பொருள் தொடர்பாக வரப்பெற்ற மனுவின் நகலானது தகுந்த நடவடிக்கை மேற்கொள்ளும் பொருட்டு இத்துடன் இணைத்து அனுப்பப்படுகிறது. இது தொடர்பாக நடவடிக்கை மேற்கொண்டு நடவடிக்கை விபரத்தினை மனுதாரருக்கு தெரிவித்துவிட்டு இவ்வலுவலகத்திற்கு விபரம் தெரிவிக்குமாறு கேட்டுக்கொள்கிறேன்.”

7.Aggrieved by the same, these writ petitions have been filed before this Court.



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8. Heard the learned counsel for the petitioner, learned Special Government Pleader for the first and second respondents and the learned counsel for the third respondent in both writ petitions.

9. The main ground that was urged by the learned counsel for the petitioners is that the petitioners had filed arbitration applications before the first respondent, against the compensation that was determined by the competent authority and that the first respondent instead of dealing with the same on merits, had chosen to remand the matter back to the file of the competent authority and therefore, according to the petitioners, the first respondent failed to exercise his jurisdiction and adjudicate upon the applications filed by the petitioners. In view of the same, the learned counsel for the petitioners urged this Court to quash the impugned proceedings dated 21.10.2017 and to remand the matter back to the file of the first respondent with a direction to conduct arbitration proceedings, adjudicate the claim made by the petitioners and to pass award within the time stipulated by this Court.

10. Per contra, the learned Special Government appearing on behalf of the respondents 1 and 2 in both petitions and the learned Counsel appearing on behalf of the National Highways Authority of India/third respondent in both petitions submitted that there is no question of directing the first respondent to



once again determine the compensation, since the first respondent had already passed an award and he has become *functus officio*. If the petitioners were aggrieved by the award passed by the first respondent, they ought to have challenged the same under Section 34 of the Arbitration Act. It was therefore, contended that the relief sought for by the petitioner is unsustainable.

11.It was further submitted that the first respondent has remanded the matter back to the file of the second respondent only with the direction to the second respondent to fix the compensation in line with the award that was passed by the first respondent. This direction given by the first respondent cannot be expanded and the petitioners cannot be allowed to seek for redetermination of the compensation and therefore, it was contended that the petitioners are attempting to reopen the award, which has already become final. In view of the same, they urged this Court to dismiss these writ petitions.

12.The issue that arises for consideration in both writ petitions is as to whether this Court must direct the first respondent to deal with the application that was filed by the petitioners in line with Section 3(G)(5) of the Act.

13.The competent authority had already determined the compensation



and passed an award. Aggrieved by the same, the petitioners had filed the arbitration application before the first respondent /arbitrator under Section 3(G) (5) of the Act. This arbitration application was considered by the first respondent/arbitrator and the first respondent through proceedings dated 18.09.2016 and 14.08.2016, respectively had directed the second respondent to provide the appropriate compensation to the land owners, based on the present guideline value after determining the same from the valuable sources and thereby, to take care of the interest of the land owners.

14. On a careful reading of this order, it is seen that the first respondent has already passed the award in this case and the first respondent had remitted the matter back to the file of the competent authority only for the recalculation of the same in line with the award passed by the first respondent /arbitrator. The second respondent /competent authority on receipt of the same, has calculated the compensation by taking the guideline value as on 01.04.2012 and has come to the conclusion that the petitioner in W.P. (MD)No.11952 of 2020 has to be paid a total compensation of Rs.3,80,572/- and the petitioner in W.P.(MD)No.12002 of 2020 must be paid with the total compensation of Rs.1,65,277/-.



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15.The limited scope that is available to the petitioners is to see as to whether the compensation that was fixed by the second respondent/competent authority is in line with the award that was passed by the first respondent/arbitrator. According to the petitioners, the first respondent/arbitrator while passing the award in the year 2016 had mentioned in the award that proper compensation must be fixed based on the present guideline value. Whereas, the competent authority has fixed the compensation based on the guideline value as on 01.04.2012.

16.Whether this recalculation of the compensation amount by the competent authority is in accordance with the award of the District Collector /arbitrator can be the only issue, which can be gone into in this case. That is the reason why the first respondent /arbitrator on receipt of the applications from the petitioners, directed the second respondent /competent authority to take appropriate action and to inform the same to the first respondent. The directions issued by the first respondent cannot be found fault with, since there was no occasion for the first respondent to once again go through the process of arbitration as he had become *functus officio* and at the best, the first respondent can only ask the second respondent/competent authority as to whether the award passed by the first respondent has been properly understood and complied with while recalculating the compensation



amount that is payable to the petitioners.

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17.This is exactly the information that the first respondent has sought for from the second respondent /competent authority through proceedings dated 21.10.2017. In view of the same, there is no scope for interfering with the proceedings of the first respondent dated 21.10.2017 in both these writ petitions.

18.The petitioners in the guise of seeking for redetermination of compensation, are attempting to go into certain other issues like determination of compensation under the 2013 Act and those are issues, which are beyond the scope of determination as on date. In other words, the petitioners cannot be allowed to reopen the arbitration proceedings, which has already come to an end and by coming up with certain new issues, it cannot once again be gone into by the first respondent/arbitrator.

19.In light of the above discussion, there shall be a direction to the second respondent /competent authority to act upon the proceedings of the first respondent/arbitrator dated 21.10.2017. The second respondent shall correctly understand the purport of the award that was passed by the first respondent /arbitrator through proceedings dated 18.09.2016 and 14.08.2016,



respectively and pass appropriate orders. To make it more clearer, the second respondent /competent authority shall once again look into the issue as to whether the compensation was properly recalculated and whether any rectification /correction is required on the compensation that was already determined by the second respondent through proceedings dated 14.11.2016 and Nil.10.2016, respectively.

20.If ultimately the second respondent /competent authority comes to the conclusion that the compensation that was determined through the above proceedings is not correct and in line with the award passed by the District Collector /arbitrator, the correct compensation amount shall be recalculated and difference, if any, shall be paid to the petitioners. On the other hand, if the second respondent comes to the conclusion that the compensation already determined is correct, the same shall be informed to the petitioners. While undertaking this exercise, the second respondent shall grant an opportunity both to the petitioners as well as the authorities of the National Highways of India and also seek for any further particulars. This process shall be completed by the second respondent /competent authority within a period of three months from the date of receipt of a copy of this order.



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21.These Writ Petitions are disposed of in the above terms. No costs.

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NCC : Yes / No
Index : Yes/No
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To

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N.ANAND VENKATESH, J.

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