

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 30076 of 2013 (H)

PETITIONERS:

1. K.M.BALAN, AGED 72 YEARS
S/O. MANIKUTTY, RESIDING AT KOTTATHUPARAMBIL HOUSE
OLLUKKARA, THRISSUR DISTRICT
NOW RESIDING AT KANNATHUKADU, MANAPADOM P.O., PUDUCODE
PALAKKAD DISTRICT.

2. THANKA AGED 65 YEARS
W/O. VELU, RESIDING AT KOPPLIPARAMBU, MURIYAD P.O.
PORAKKATTUKARA, KODAKARA, THRISSUR.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.SANIL JOSE

RESPONDENTS:

1. THE DISTRICT COLLECTOR & ARBITRATOR (NATIONAL HIGHWAY)
COLLECTORATE, THRISSUR-680 003.

2. THE SPECIAL DEPUTY COLLECTOR
SPECIAL LAND ACQUISITION OFFICER & COMPETENT AUTHORITY (LA)
NHDP, THRISSUR-680 020.

Addl.3. NATIONAL HIGHWAY AUTHORITY OF INDIA
G.5 &6, SECTION -10, DWARAKA
NEW DELHI -110 075.

(ADDL. R5 IS IMPEADED AS PER ORDER DATED 25/06/2014 IN IA
7952/2014).

R3 BY ADV. SRI.THOMAS ANTONY
R1 & R2 BY GOVERNMENT PLEADER SRI. C.K.JAYAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-
08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

WP (C) .No. 30076 of 2013 (H)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DTD.17.4.2010.

P2 : COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED NIL.

P3 : COPY OF THE DISCHARGE SUMMARY ISSUED BY THE JUBILEE HRUDHAYALAYA,
SUPER SPECIALITY HEART HOSPITAL, THRISSUR, DATED NIL.

P4 : COPY OF THE CERTIFICATE ISSUED BY THE JUBILEE HRUDHAYALAYA, SUPER
SPECIALTY HEART HOSPITAL, DTD.23.2.2011.

P5 : COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT ON RECEIPT OF THE
APPLICATION MADE BY THE PETITIONERS UNDER SECTION 3G(5) OF THE ACT,
DTD.2.8.2013.

P6 : COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DTD.4.11.2013
REJECTING THE APPLICATION SUBMITTED BY THE PETITIONERS UNDER SECTION 3G
(5) OF THE ACT.

RESPONDENT(S) ' EXHIBITS
-----:NIL

TRUE COPY

P.S. TO JUDGE

AL/-

ANU SIVARAMAN, J.

W.P.(C). No.30076 of 2013

Dated this the 21st day of August 2015

JUDGMENT

This writ petition is filed challenging Ext.P6 order of the District Collector and Arbitrator,(National Highway) rejecting the application submitted by the petitioners under Section 3 G (5) of National Highways Act, 1956 on the ground that it is barred by limitation.

2. Petitioners are the co-owners of a property, 2.58 Ares in extent ,comprised in survey No. 985/F of Ollukkara Village in Thrissur Taluk. The property was notified for acquisition for the widening of NH 47 along the Mannuthy -Vaniyampara stretch. It is stated that by Ext.P1, the petitioners received intimation dated 17.4.2010 as to award of compensation of Rs. 3,24,701/- each in respect of their shares in the acquired property. Petitioners contended that they are senior citizens and the first petitioner had suffered a stroke and was hospitalised and the second petitioner who is his sister was unable to take steps for getting the matter referred for arbitration since she is illiterate.

They were aggrieved by the inadequacy of the compensation awarded and were desirous of having the question of quantum referred to arbitration. By Ext.P5 they had preferred an application for having the matter referred to arbitration. Ext.P5 is dated 2.8.2013. However, by the impugned order dated 4.11.2013, the same has been summarily rejected stating that there is no power in the arbitrator to condone the delay. The delay,. according to the petitioners, is only of three months and 15 days. Therefore, the arbitrator ought to have returned Ext.P5 as defective and should have permitted the petitioners to apply for condonation of delay in filing the arbitration case, it is contended.

3. Heard Sri. A.R.Nimod, learned counsel appearing for the petitioner and Sri. Thomas Antony, learned counsel appearing for the additional third respondent as well as the learned Government Pleader appearing for the respondents 1 and 2. Learned counsel appearing for the petitioner would urge that the time limit for preferring an application for referring a dispute to arbitration is not specifically provided under the National Highways Act 1956. He would also contend that going by the provisions of Section 3 G (6) of the National Highways Act 1956, the provisions of the Arbitration and Conciliation Act 1996 are to apply to every

arbitration under the National Highways Act. Section 43 of the Arbitration and Conciliation Act 1996, provides that the Limitation Act 1963 shall apply to arbitration as it applies to proceedings in court. Learned counsel would also submit that the Hon'ble Supreme Court has, in **Asia Resorts Ltd. V. Usha Breco Ltd.** (2001 (8) SCC 710) held that since the Limitation Act 1963 has been made applicable to arbitration, having regard to the nature of disputes between the parties, the delay caused in filing an application can be condoned if the person making the application shows sufficient cause for the delay.

4. It is stated in the counter affidavit filed by the additional R3 that Ext.P5 arbitration petition was filed after three years, three months and 15 days after receipt of the compensation awarded. It is further stated that it is understood that the first petitioner is mostly bedridden and the second petitioner is illiterate. It is also stated that if the petitioners are to file a petition to condone the delay in filing the arbitration application, the third respondent has no objection in the first respondent considering the petition to condone the delay on merits.

5. In the above circumstances, the writ petition is disposed of with the following directions. Exhibit P6 is set aside. The Petitioners

shall make an application for condonation of delay of 3 months and 15 days in filing Ext.P5 before the first respondent within a period of one month from the date of receipt of a copy of this judgment. On such an application being submitted, the first respondent shall consider the same on merits and pass appropriate orders thereon with notice to the additional third respondent also within a period of three months from the date of submission by the petitioners of the application to condone the delay as stated above. The 1st Respondent shall proceed to deal with the case in accordance with the out come of the said application.

The writ petition is disposed of as above.

Sd/-
ANU SIVARAMAN
(JUDGE)

al/-

True copy

P.S to Judge

W.P.(C). No.30076 of 2013

:5:

correct one.