

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.04.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.15589 of 2014
and M.P.No.1 of 2014

M.SANGEETHA

[PETITIONER]

Vs

- 1 THE ARBITRATOR CUM DISTRICT
COLLECTOR VILLUPURAM VILLUPURAM DISTRICT
- 2 THE SPECIAL DISTRICT REVENUE OFFICER (LA)
N.H.68 COMPETENT AUTHORITY,SALEM -4
- 3 THE PROJECT DIRECTOR
NATIONAL HIGHWAY AUTHORITY OF INDIA
NO.212-3/D3-1 SRI NAGAR COLONY
NARASOTHIPATTI, SALEM

[RESPONDENTS]

Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus calling for the concerned records from the 1st respondent quash the award having reference Na. Ka. Aa2-814-13 dated 25.3.2014 passed by the 1st respondent and consequently direct the 1st respondent to conduct the fresh enquiry by following the steps mentioned in the judgement of this Honourable court passed in WP (MD) No.3832/2010 dated 8.12.2011 by providing reasonable opportunity to the petitioner to file documents and lead evidences examine and cross examine the witnesses and pass an appropriate award within a stipulated time award cost.

For Petitioner : Mr.D.Muthukumar

For Respondents : Mr.R.Vijayakumar, AGP (R1&2)
Mr.P.Wilson Senior Counsel for
M/s P.Wilson Associates (r3)

ORDER

Heard Mr.D.Muthukumar, learned counsel for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader for the 1st and 2nd respondents and Mr.P.Wilson, learned Senior Counsel for M/s P.Wilson Associates for the third respondent and with their consent, the main writ petition itself is taken up for final disposal.

2. This writ petition is filed challenging the letter of the 1st respondent, who is an Arbitrator to decide the claims for enhanced compensation, when lands are acquired under the provisions of the National Highways Act.

3. The facts which are necessary for the disposal of the writ petition are that the petitioner is the owner of the land in Survey No.283/1 and an extent of 1140 square meters was acquired for the purpose of widening the existing the National Highway No.68. Since the petitioner has not challenged the Land Acquisition Proceedings, the details pertaining to the same are not gone into. The question which is raised in this writ petition is with regard to the award of just compensation for the land acquired from the petitioner. The 2nd respondent viz., the Special District Revenue Officer (Land Acquisition), who is the competent authority, quantified the compensation payable at Rs.37 per sq.mt. and awarded a total compensation of Rs.46,398/- for the total extent of 1140 sq.mts., which includes 10% additional value and user compensation. This amount of compensation was awarded pursuant to the award dated 07.09.2009. The petitioner filed an application for enhanced compensation before the 1st respondent, by way of claim statement, raising several contentions and stating that the proper market value of the property was not fixed and the directions issued by the Hon'ble Supreme Court for the purpose of fixing the market value of the property was not adhered to and the compensation awarded is grossly inadequate. The claim petition filed by the petitioner was rejected by the impugned order.

4. The learned counsel for the petitioner submitted that none of the points canvassed by the petitioner in the claim petition has been adverted to and mechanically the 1st respondent accepted the report submitted by the 2nd respondent stating that the compensation determined and awarded was just and fair.

5. Though such a reference has been made in the impugned letter, the copy of the said report given by the 2nd respondent to the 1st respondent has not been placed before this Court nor a copy of the same was communicated to the petitioner. On a perusal of the impugned letter, it is seen that the only reason assigned by the 1st respondent for rejection of the claim petition is that the petitioner has not produced any document in support of her claim that she is

entitled to the compensation at the rate of Rs.700 per sq.mt.

6. The learned counsel for the petitioner referred to an earlier order passed by this Court in W.P.No.22224 of 2014 in the case of T.Vijaya Vs. The Arbitrator-cum-District Collector, Villupuram, Villupuram District, dated 12.01.2015, wherein, identical points were canvassed before this Court and this Court, after taking into consideration the earlier order in the case of A.VENKATACHALAPATHY v.THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, NEW DELHI AND OTHERS. [CDJ 2011 MHC 6279], allowed the writ petition, the relevant portion of which, reads as follows:-

"5.The short issue which falls for consideration in this writ petition is as to whether the Arbitrator cum District Collector, Villupuram District followed the procedure while considering the claim for enhancement of compensation under the provisions of the National Highways Act. In this regard, it is worthwhile to refer to the decision of this Court in the case of A.VENKATACHALAPATHY v.THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, NEW DELHI AND OTHERS. [CDJ 2011 MHC 6279], wherein this Court after comparing the provisions of the Land Acquisition Act, 1984 and the National Highways Act, 1956, held as follows:

"9.What makes impugned Award a mockery of the procedure established by law, is the fact that the District Collector who passed the Award has arrayed himself as the first respondent in the proceedings before him. It shows complete non-application of mind on the part of the second respondent.

10.Under the Land Acquisition Act,1894, there is a fool proof procedure for reference of any request for enhancement of compensation, to the Sub Court under Section 18. Elaborate procedural safeguards are available to both parties before the Sub Court. As against the decision of the Sub Court under the Land Acquisition Act, 1894, an appeal would lie to this Court. Therefore, a person whose property is acquired under the 1894 Act will be assured for a reasonable compensation as fixed by a Court of law.

11. But, unfortunately, such safeguards are not available in the National Highways Act. The role of the Court has been minimised even in respect of payment of compensation, under the National Highways Act, 1956. After naming the District Collector as the Arbitrator, the Act makes the Award passed by him, equivalent to an Award under the Arbitration and Conciliation Act, 1996. Consequently, the only method by which such an Award passed by a Collector can be tested by the Court, is in a petition under section 34 to set aside an Award, is extremely circumscribed. Therefore, the National Highways Act, 1956, which is a post Constitutional enactment is more draconian than the colonial legislation viz., the Land Acquisition Act, 1894."

6. It is pointed out that the award which is to be passed by the first respondent is in terms of Section 3-G(5) of the National Highways Act and the proceedings are akin to the proceedings while passing the award under the provisions of the Arbitration and Conciliation Act, 1996. That is precisely why the first respondent is termed as Arbitrator under the provisions of the National Highways Act. Therefore, both the procedures have to be virtually followed while adjudicating the claim petition under the provisions of the Arbitration and Conciliation Act, 1996, by the competent authority while examining the claim for enhanced compensation. Copy of the Application filed before the first respondent by the petitioner under section 23 of the Arbitration and Conciliation Act read with under section 3-G(6) & (7) of the National Highways Act is available in the affidavit in the form of additional typed set of papers.

7. On a perusal of the same, it is evidently clear that the petitioner has stated that he has to be paid the enhanced value of a sum Rs.700/- per sq.ft., and he would prove the same by cross examining the witnesses during trial. That apart, the petitioner relied upon the various

reported decisions and unreported decisions of this Court as well as the decision of the Hon'ble supreme Court in SABHIA MOHAMMED YUSUF ABDUL HAMID MULLA v. LAND ACQUISITION OFFICER [2012 (7) SCC 595], wherein the criterias which are required to be examined for the purpose of calculating the market value were all brought to the notice of the first respondent. That apart, the petitioner by placing reliance on the decision of this Court in the case of T.CHAKRAPANI & OTHERS v. UNION OF INDIA &ORS [2011 WLR 193], for payment of solatioum. Further, the petitioner pointed out the directions issued by this Court in W.P.No.3832/2010 in the case of A.VENKATACHALAPATHY (supra), as to how the Arbitration Proceedings has to be conducted under the provisions of the Act. The petitioner also made a claim for interest at the rate of 9%. p.a.

8.The petitioner having raised all these points, if the impugned award is perused, there is no discussion as to how the petitioner's claim is not sustainable. In fact the Award though runs three pages, the finding is only in the penultimate paragraph and even in that paragraph, no reason is assigned by the first respondent as to how the petitioner's claim is not established and how it is excessive. Further more, there is no record to show that the petitioner was permitted to lead evidence, inspite of the fact that he has specifically pleaded that he will be able to substantiate his claim by leading evidence during the trial. In such circumstances, this Court is convinced that the impugned award has been passed without taking into consideration the relevant factors and without affording adequate opportunity to the petitioner. Therefore, the same calls for interference.

9.Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner shall appear before the first respondent on the date fixed by the said authority, produce both oral and documentary evidence in support of his claim and examine the witnesses. It is also open to the authorities who are resisting the enhancement,

may cross examine those witnesses produced by the petitioner and after hearing the arguments of the petitioner, the first respondent is directed to pass a reasoned order on merits and in accordance with law, within a period of eight weeks from the date on which the oral enquiry is concluded. No costs. Consequently, connected Miscellaneous Petitions is closed".

7. The above referred decision of this Court would squarely apply to the facts of the present case. On a perusal of the impugned letter, this Court has no hesitation to hold that the 1st respondent has not exercised his statutory powers and failed to consider the contentions raised by the petitioner nor adverted to the same. Unless and until an enquiry was conducted with proper opportunity to the petitioner, the compensation claim could not have been rejected. The impugned letter of rejection is virtually an one line rejection order on the ground that the petitioner has not produced any document to substantiate her claim and the 2nd respondent has stated that the petitioner has no justification for claiming the enhanced compensation.

8. In the light of the above facts, the impugned letter deserves to be set aside. Accordingly, the writ petition is allowed and the matter is remanded to the first respondent for fresh consideration. The petitioner shall appear before the first respondent on the date fixed by the said authority, produce both oral and documentary evidence in support of his claim and examine the witnesses. It is also open to the authorities who are resisting the enhancement, may cross examine those witnesses produced by the petitioner and after hearing the arguments of the petitioner, the first respondent is directed to pass a reasoned order on merits and in accordance with law, within a period of eight weeks from the date on which the oral enquiry is concluded. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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N.H.68 COMPETENT AUTHORITY
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NO.212-3/D3-1 SRI NAGAR COLONY
NARASOTHIPATTI, SALEM

1 cc to Mr.D. Muthukumar, Advocate, sr. 20289
1 cc to Government Pleader, Sr. 20564

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MG (CO)
kk 21/4



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