IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.37350 & 37351 of 2015 & MP.Nos.1&1/2015

S.Deivasigamani ...Petitioner in W.P.No. 37350 of 2015

S.S.kandasamy ...Petitioner in W.P.No. 37351 of 2015

Vs

1. The Project Director
Project Implementation Unit
National Highways Authority of India (NHAI)
Door No.9/9A, 4th Cross Street
Kothari Layout, B.R.Nagar, Opp. Stock Exchange
Trichy Road, Singanallur, Coimbatore 641 005.

2. The District Collector-cum-Arbitrator
Erode District
Dheeran Chinnamalai Maaligai
District Collectorate, Perundurai Road
Erode 638 011.

3. The District Revenue Officer
Competent Authority, NH - 47 (L.A)
Erode District Collectorate Building
Erode 638 011.

4. The Special Tahsildar
(Land Acquisition)
Erode Taluk National Highways
NH-47 (Four Way Project)
13 Rasu Goundar Thottam
Choolai
Opp. Sampoorna Theatre
Near Reliance Petrol Bunk
Erode 638 004. ... Respondents in the writ petitions

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Prayer in W.P.No.37350 of 2015:-Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus to call for the relevant records relating to the impugned order of rejection by the proceedings on the file of the second respondent in The.Ne.47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in S.No.31/4B situated at Nallagoundenpalayam Village, Erode Taluk and consequently direct the second respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing after considering his representation dated 05.10.2015.

Prayer in W.P.No.37351 of 2015:

Hon'ble Court may be pleased to issue a Writ Of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of a writ Calling for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne. 47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in Survey No. 10/1 10/3 10/4 10/5 10/6 11/3 21/1 situated at Nasianur Village, Erode Taluk and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing in accordance with law after considering his representation dated 05.10.2015

For petitioners ... Mr.C.E.Pratap
For respondents ... M/s.G.Hema
for M/s.P.Wilson Associates
for R.1
Mr.R.Lakshmi Narayanan AGP
for R.R.2 to 4.

C O M M O N O R D E R

With the consent of the learned counsel appearing for the parties, these main writ petitions are taken up for final disposal.

2. Heard Mr.C.E.Pratap, learned counsel appearing for the petitioners and M/s.G.Hema for M/s.P.Wilson Associates for the first respondent and Mr.R.Lakshmi Narayanan learned counsel appearing for the respondents 2 and 4.

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3. In all these writ petitions, the lands belonging to the petitioners were acquired for the formation of the Four way laning of roads in NH – 47. The petitioners have not challenged the acquisition proceedings and the project has been implemented. The petitioners have claimed enhanced compensation for which purpose they have filed applications before the District Collector on 05.02.2009 to consider their case and grant enhanced compensation. These applications appears to have not been considered though other similarly placed persons cases were considered and it is stated that arbitration proceedings are in progress. Since the petitioners were not permitted to participate in the arbitration proceedings, they submitted representations to the second respondent on 05.10.2015. In the said representations, they have reiterated the contentions raised in their earlier representations and stated that the fixation of land value is inadequate. The second respondent, without considering the same, rejected the requested of the petitioners on two grounds:-

(i). Firstly, by stating that the representations said to have been made on 05.10.2015 is not available in the files of the second respondent.

(ii). It is stated that under the provisions of the National Highways Act, 1956, the claim for enchancement of compensation should be made within a period of three years from the date of passing of an Award.

4. Section 3 G of the National Highways Act, 1956 deals with determination of the amount payable as compensation. Sub-Section 1 of Section 3 G of the said Act states that where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

5. It is not in dispute that the second respondent is an Arbitrator so appointed to arbitrate the issues relating to claims for enhanced compensation. Statute does not prescribe any time limit within which such an application has to be filed.

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6. The learned counsel appearing for the first respondent submits that the Act does not provide for any outer limit for any application to be made for claiming the enhanced compensation. Therefore, the reasons assigned in the impugned order stating that the application for enhancement should have been made within a period of three years is not sustainable.

7. Further, it is stated that the petitioners earlier representations dated 05.02.2009 is not in the records of the second respondent. However, it has to be noted that the petitioners representations were given on 05.10.2015 and the same were rejected on 09.10.2015 and it can be safely presumed that proper scrutiny of the records could not have been made especially when vast extent of lands were acquired in the formation of National Highways. In any event, in respect of the applications filed by other land owners, now the arbitration proceedings are in progress. Therefore, no prejudice would be caused to the second respondent or the National Highways if the petitioners are also permitted to participate in the arbitration proceedings and put forth their submissions, for enhanced compensation.

8. In the light of the above, the impugned orders are held to be not sustainable in law.

9. In the result, these writ petitions are allowed and the second respondent is directed to permit the petitioners to participate in the arbitration proceedings and put forth their submissions in support of their claim for enhanced compensation which shall be considered in accordance with law as expeditiously as possible. No costs. Consequently, the connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

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   Near Reliance Petrol Bunk
   Erode 638 004.

+2cc to Mr.CE.Prathap, Advocate sr.63422,63421
+1cc to M/S.P.Wilson Associates, Advocate Sr.63687
+1cc to The Government Pleader Sr.63914

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vsn[co]
srg 10/12/2015

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