

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W.P.No.24146 of 2013
and
M.P.No.1 of 2013

T.Gunasekaran 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 this Court to issue Writ of Certiorarified Mandamus calling for the records from the 1st respondent, quash the Award having reference Na.Ka.A2-815-2013 dated 30.7.2013 passed by the 1st respondent and consequently direct the 1st respondent to conduct the fresh enquiry by following the steps mentioned in the judgment of this Hon^{ble} Court passed in WP (MD) No.3832/2010, dated 08.12.2011.

For Petitioner : Mr.D.Muthukumar

For Respondents : Mr.V.Jayaprakash Narayanan
Spl. G.P. for R1 and R2

Ms.C.Hema
for
M/s.Wilson Associates for R3

ORDER

Heard Mr.D.Muthukumar, learned counsel appearing for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents 1 and 2 and Ms.C.Hema for M/s.Wilson Associates, learned counsel appearing for the 3rd respondent

2. The petitioner seeks for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent who is the Arbitrator cum District Collector under the provisions of the National Highways Act, 1956.

3. The impugned order is an order rejecting the petitioner's claim petition, requesting for payment of enhanced compensation in respect of the land acquired from the petitioner for the purpose of forming the National Highway NH 68.

4. 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."

5. 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 scrupulously 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 typed set of papers.

6. 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 to pay a sum of Rs.59,42,183/- for Well 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 criteria 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 solatium. 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.

7. 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.

8. 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, M.P.No.1 of 2013 is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

bbr

To

- 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.

- 1 cc to Government Pleader, Sr. 6388
1 cc to Mr.D. Muthukumar, Advocate, sr. 6087
1 cc to Mr.P. Wilson, Advocate, Sr. 6168

W.P.No.24146 of 2013

RJ (CO)
kk 7/2