

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.1481 & 1482 of 2016 and  
WMP.Nos.1235 to 1238 of 2016

P.S.Moorthy ... Petitioner in WP.1481/2016  
R.Venkatachalam ... Petitioner in WP.1482/2016

Vs.

1. The District Collector/Arbitrator,  
Erode District, Erode.
2. The Competent Authority NH-47 (L.A.)/  
District Revenue Officer,  
Erode, Erode District. ... Respondents in both WPs

Prayer : Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No.NH-47/Arbitration/2015, dated 05.01.2016 and quash the same and consequently directing the 1st respondent to entertain the petitioner's appeal dated 12.11.2015 filed U/s.3-G(5) of National Highways Act for higher compensation and dispose the same on merits.

For Petitioners : Mr.C.Prakasam

For Respondents : Mr.S.Diwakar  
Additional Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioners and Mr.S.Diwakar, learned Additional Government Pleader accepting notice for the respondents and with their consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner seeks for issuance of writ of certiorarified mandamus to quash the impugned proceedings dated 05.01.2016 by which the petitioners applications for enhanced compensation under the provisions of the National Highways Act, 1956 have been rejected on the ground that it is barred by limitation.

3.It is accepted by the learned Additional Government Pleader that the legal issue involved in this case is covered by an earlier order passed by this Court in W.P.Nos.36544 to 36549 of 2015 dated 08.12.2015 (C.Vembusamy and others V. The District Collector, Erode and another). The operative portion of the order reads as follows:

"6.The learned counsel for the respondents as well as the National Highways Department would submit that the provisions of the Arbitration and Conciliation Act, 1996 would apply and therefore, the period of limitations will be three years. However, the impugned order does not refer to the provisions of the Arbitration and Conciliation Act and refers only to the National Highways Act, 1956 which does not provide for any specific period of limitation.

7.Before the First Bench of this Court a Writ Petition was filed as a Public Interest Litigation in W.P.No.32197 of 2012 [R.GOPALAKRISHNAN v. THE SECRETARY TO GOVERNMENT & 6 ORS] on behalf of the land owners whose lands were taken by the National Highways Department for the expansion of NH Road 68. The Division Bench considered the matter, directed the claims to be considered by the respective Collectors namely the District Collector of Villupuram, and the District Collector, Salem. The said order dated 4.12.2012 reads as follows:

"Heard the learned counsel appearing for the parties. By this writ petition, styled as public interest litigation, the petitioner seeks a writ of mandamus to

direct the respondents 1 to 3, 5 and 6 to consider and pass orders on his representation dated 08.11.2012.

2.It appears that the lands of agriculturists were acquired for widening the National Highway Road-68 from Ulundurpet to Salem. Against the compensation assessed by the fifth respondent - Competent Authority (District Revenue Officer) under the Act, it is stated that the concerned farmers moved the District Collector, who is functioning as an Arbitrator, for enhancement of compensation. Since nothing has been done till date, the present writ petition has been filed.

3.After hearing the learned counsel appearing for the petitioner and Mr.P.Wilson, learned Senior Counsel appearing for the National Highways Authority of India, we feel that the claim of each farmer for higher compensation shall be decided independently, as the same cannot be decided in a representative capacity. Therefore, the writ petitioner and the concerned farmers, if so advised, may file individual claim petitions for enhancement of compensation. Needless to say that if such claim petitions are filed, the third and fourth respondents - Collectors of Villupuram and Salem District, shall decide the same as expeditiously as possible, preferably within a period of three months from the date of filing claim petitions.

4.With the above direction, the writ petition is disposed of. There shall be no order as to costs."

Thus, the First Bench issued the above directions to consider the claims of the land losers within a stipulated time frame and that was without reference to the plea of limitation. Therefore, the question

question would be as to whether what is the nature of approach of the authorities to such issues.

8. As already observed, the petitioners have lost their valuable property and have not resisted the acquisition proceedings, bearing in mind the public interest involved. In such cases, the approach of the authorities should be to consider applications or claims for enhanced compensation in a pragmatic and justice oriented approach and their approach should be non-pedantic. There is always a distinction between inordinate delay and delay. It is not the case of the respondents that the claims of the petitioners were inordinately delayed, but, solely on the ground that the applications have been filed beyond the period of three years. The petitioners have also set out the reasons as to why they have approached the authority after the period of three years from the date of Award.

9. Section 3G of the National Highways Act, 1956, deals with determination of the amount payable as compensation. In terms of sub section (1) of Section 3G, where any land is acquired under the said Act, the amount payable as compensation shall be determined by an order of the competent authority and sub-section (3) stipulates the procedure to be followed by the competent authority while deciding the claim for compensation. Sub-section (4) states that notice given by the competent authority should be with full particulars and it provides for an opportunity to the persons interested in such land to appear in person or by an agent or by a legal practitioner to verify their claim. In terms of sub section (5) of section 3G, if the amount determined by the competent authority under section sub-section (1) or sub-section (2) is not

acceptable to either of the parties, the amount shall, on an application by either of the parties be determined by the arbitrator to be appointed by the Central Government. The Arbitrator so appointed by the Central Government is the Collector of the respective districts.

10. Thus, the authority who has to discharge the claim for enhanced compensation or the compensation so fixed is the Arbitrator who is appointed by the central Government. Thus, the function of the Arbitrator is to consider the Application for higher compensation.

11. In terms of sub section (6) of section 3G of the Act, proceedings to be conducted by the Arbitrator is in terms of Arbitration and Conciliation Act and the procedural law at best could aid in the object for which power had been conferred on the Arbitrator in terms of section 3G (5) of the National Highways Act. As long as the National Highways Act, does prescribe a period of limitation, the procedural law to be followed by the Arbitrator while adjudicating a dispute, cannot seek to take away the vested right of a land loser to seek for enhanced compensation for such procedural law cannot seek to abrogate the rights of the person who is aggrieved by the fixation of compensation by the competent authority. This is so because section 3G(5) of the national Highways Act uses the expression "not acceptable to either of the parties". This interpretation alone would subserve the intention of the statute as the compensation payable should be just and reasonable and not fanciful or a bounty.

12. This District Collector has filed a counter affidavit reiterating the contentions raised in the impugned order and by referring to section 3G(6) and the

provisions of the Arbitration and Conciliation of the Act.

13.It may be true that the proceedings are governed by the procedure contemplated under the Arbitration and Conciliation Act and that by itself cannot deny the right of the land owners for just and reasonable compensation and the delay in approaching the authority cannot non-suit the land owner who has lost his valuable right over the property.

14.In the light of the above, the impugned orders are held to be unsustainable and accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the first respondent is directed to consider the petitioners claim for enhanced compensation on merits and in accordance with law as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed."

Following the above decision, both the Writ Petitions are allowed and the impugned orders are set aside and the 1st respondent is directed to consider the petitioners claim for enhanced compensation on merits and in accordance with law as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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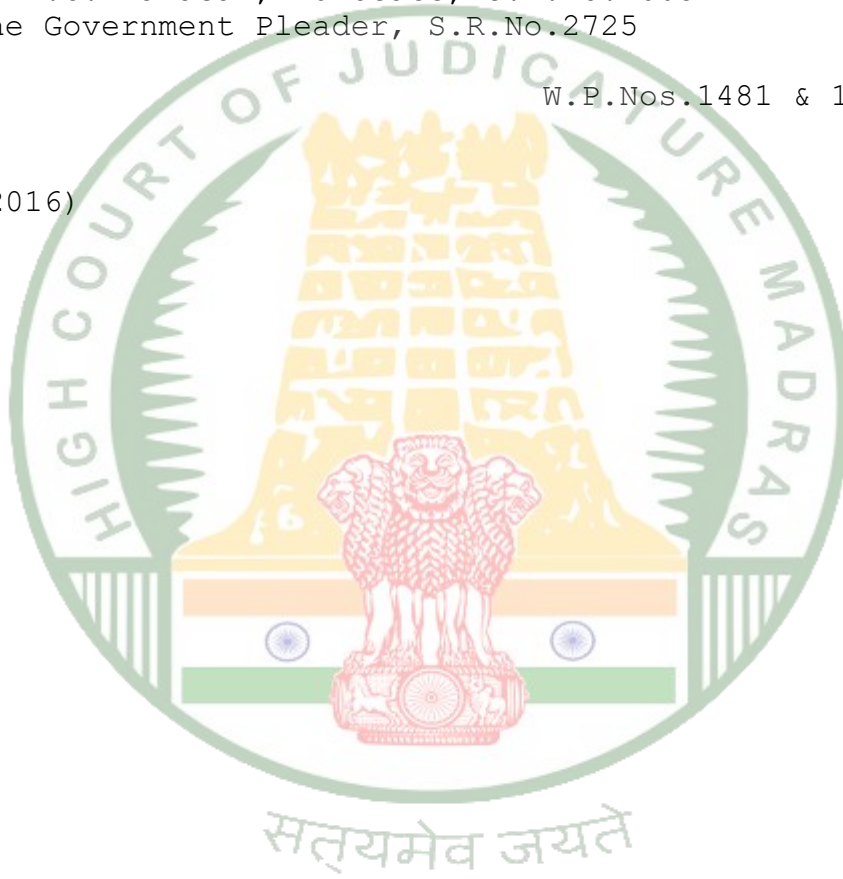
To

1. The District Collector/Arbitrator,  
Erode District, Erode.
2. The Competent Authority NH-47 (L.A.)/  
District Revenue Officer,  
Erode, Erode District.

+2cc's to Mr.C.Prakasam, Advocate, S.R.No.2803  
+1cc to the Government Pleader, S.R.No.2725

W.P.Nos.1481 & 1482 of 2016

PPA(CO)  
CA(25/01/2016)



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