

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.01.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.2222 of 2016

1. R.Kandasamy
- 2 C.P.Rajan
- 3 S.Rajavel
- 4 P.Ramakrishnan
- 5 M.Shanthi D/o.Varatharajan
- 6 R.Raja Gounder
- 7 P.Krishnan
- 8 M.Eswaran
- 9 R.Sengodan
- 10 Vasantha @ Vasanthamani
- 11 Mutha Gounder @ Subramani
- 12 S.Thangamuthu
- 13 Palaniappan
- 14 R.K.Palanisamy
- 15 Saraswathi
- 16 K.palaniammal
- 17 P.Rathinam
- 18 S.P.Manickam
- 19 K.Prakasam
- 20 P.Subramani
- 21 R.Sathish kumar
- 22 P.Jagadeshan
- 23 K.Raju
- 24 Perumayee
- 25 Rajammal
- 26 P.Rajagounder
- 27 R.Chinnannan
- 28 D.Velusamy
- 29 S.Athiyannan
- 30 R.K.Chindambaram
- 31 T.Birundhadevi
- 32 R.Rajavel
- 33 P.Kandasamy
- 34 Pavayee
- 35 N.Venkatachalam
- 36 P.Suresh
- 37 K.Natesan
- 38 R.Rajeshkumar
- 39 K.Perumal
- 40 P.Saraswathi
- 41 Dhineshkumar @ Senthilkumar

.. Petitioner

Vs

- 1 The District Collector/
Arbitrator Salem District Tamil Nadu
- 2 Competent Authority and Special
District Revenue Officer (LA) N.H.7 46 47
Salem-Dharmapuri Distircts Krishnagiri No.
26 Co-operative Colony Krishnagiri-635 001
- 3 National Highways Authority
of India Rep by its Project Director in
charge of NH 46 47 Salem-Dharmapuri
Districts Krishnagiri.

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in O.Mu.1094/2015/AARP, dated 27.11.2015 and quash the same and further direct the first respondent to take the arbitration cases on file and adjudicate the same in the manner know to law.

For Petitioner .. Mr.K.V.Sajeevkumar

For Respondents ... Mr.Lakshminarayanan for RR1&2
Mr.Su.Srinivasan for R3

O R D E R

Heard Mr.K.V.Sajeevkumar learned counsel appearing for the petitioners and Mr.R.Rajeswaran, learned Special Government Pleader, accepting notice for the respondents and with consent on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner have filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the first respondent dated 27.11.2015 and to direct the first respondent to take on file the Arbitration case filed by the petitioners and to adjudicate the same on merits.

3. The undisputed facts are the lands owned by the petitioners were acquired for National Highways Project for forming a four way lane in NH.49. The possession of the lands was taken over and awards have been passed on various dates under Section 3G of the National Highways Act, 1956 (Act). The petitioner would state that they are all illiterate persons and they came to know that the amount of compensation awarded was grossly inadequate when compared to the market value of the lands. It appears that on account of the illiteracy, the petitioners were

not aware that they could seek for enhancement of compensation by approaching the first respondent by invoking the power under Section 3G(5) of the Act. On advice, the petitioners filed separate petitions before the first respondent on 18.11.2013. However, no orders were passed on those petitions immediately and only on papers were returned and by the impugned order dated 27.11.2015, i.e., after about two years, the petitions have now been rejected on the ground that the petitions have been filed after a period of three years.

4. The learned counsel appearing for the petitioners after reiterating the factual position contended that the petitioners having lost their lands on account of compulsory acquirement are entitled for fair compensation and the same cannot be deprived on technical grounds. It is further submitted that the provision of the Limitation Act, 1963, shall apply to the arbitration as it applies to the proceedings in Court and without considering these aspects, the first respondent has rejected their applications.

5. Heard the learned Special Government Pleader appearing for the respondents on the above submissions.

6. The issue which falls for consideration in this Writ Petition was considered earlier by this Court in the case of P.S.Moorthy & Anr., vs. The District Collector/Arbitrator, & Anr., in W.P.No.1481 & 1482 of 2010, dated 18.01.2016. The said Writ Petitions were disposed of after taking into consideration the order passed by the Hon'ble First Bench of this Court in a public interest litigation in W.P.No.32197 of 2012, 04.12.2012. The operative portion of the order reads as follows:-

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 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.

7. In the light of the fact that an identical issue has been decided by this Court in the aforesaid view, the said decision requires to be applied to the instant case also. Thus, following

the above orders, the Writ Petition is allowed and the impugned order is set aside and the first respondent is directed to consider the petitioner's 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 Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

pbn

To

- 1 The District Collector/
Arbitrator Salem District Tamil Nadu
- 2 The Competent Authority and Special
District Revenue Officer (LA) N.H.7 46 47
Salem-Dharmapuri Distircts Krishnagiri No.
26 Co-operative Colony Krishnagiri-635 001
- 3 National Highways Authority
of India Rep by its Project Director in
charge of NH 46 47 Salem-Dharmapuri
Districts Krishnagiri.

1 cc to Mr.Su. Srinivasan, Asst.Solicitor General, Sr. 4632

1 cc to Government Pleader, SR. 4160

1 cc to M/s. Royan Law Associates, SR. 4012

W.P. No.2222 of 2016

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