

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.40595 of 2016

1. K.K.Venkatesan
2. V.Chitra

.. Petitioners

-vs-

1. The District Collector
Namakkal

2. The Competent Authority cum
District Revenue Officer
NH-7 & 47, Namakkal District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in relation to the impugned proceedings in Na.Ka.No.16641/2010/Arbit dated 04.08.2016, quash the same and further direct the first respondent to hear the claim petitions preferred by the petitioners.

For Petitioners :: Mr.I.Abrar Md.Abdullah

For Respondents :: Mr.K.V.Dhanapalan
Special Government Pleader

ORDER

This writ petition has been filed by Mr.K.K.Venkatesan, S/o Kandasamy Gounder and Mrs.V.Chitra, W/o Mr.K.K.Venkatesan to quash the impugned proceedings issued by the District Collector, Namakkal in Na.Ka.No.16641/2010/Arbit dated 4.8.2016 with a further direction to the first respondent to hear the claim petitions filed by them.

2. The issue raised in the present writ petition is that the lands in question covered in Town Survey Nos.104, 103/2, 2/2, 2/1, 89, 102 and 8/3A2 in various wards and blocks situated at Kumarapalayam Agraharam, Tiruchengode Taluk were sought to be acquired by the respondents. Subsequently, the petitioners had participated in the award enquiry conducted by the second respondent under Section 3-G(3) of the National Highways Act, 1956. Although they produced various records to show that the valuation in respect of the land and buildings under their

enjoyment was not properly done during the enquiry, an award came to be passed and aggrieved by the determination of the value, they have made a representation on 9.4.2012. But no action was taken on the said representation. Thereafter, after a long time, the first respondent has passed the proceedings dated 4.8.2016 impugned herein, rejecting the claim of the petitioners, on the ground that their claim was barred by limitation. Therefore, they have been advised to file the present writ petition.

3. The learned Special Government Pleader for the respondents fairly submitted that the issue raised in the present writ petition is clearly covered by an order passed by this Court in W.P.No.6055 of 2016 dated 18.2.2016 (P.M.Palanisamy and another v. The District Collector/Arbitrator, Erode District and another) reported in 2016 SCC Online Madras 4623, wherein this Court has held that the delay in approaching the authority cannot non-suit the land owners who had lost their valuable right over the property.

4. Admittedly, the issue raised in this writ petition is squarely covered by an order passed by this Court in W.P.No.6055 of 2016 dated 18.2.2016 (P.M.Palanisamy and another v. The District Collector/Arbitrator, Erode District and another) reported in 2016 SCC Online Madras 4623, wherein this Court has held as follows:-

"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 3-G(5) of the National Highways Act uses the expression "not accessible 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. 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.

13. In the light of the above, the impugned order is held to be unsustainable and accordingly, the Writ Petition is allowed and the impugned order is 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."

5. Since a perusal of the above order clearly shows that the delay in approaching the authority cannot be a ground to non-suit the land owners to receive a reasonable compensation, the writ petition is bound to be allowed. Accordingly, the impugned order is set aside and the writ petition stands allowed with a direction to the respondents to consider the claim of the petitioners 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. Consequently, W.M.P.No.34593 of 2016 is closed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The District Collector
Namakkal

2. The Competent Authority cum
District Revenue Officer
NH-7 & 47, Namakkal District

<https://hcservices.ecourts.gov.in/hcservices/>

+lcc to Mr.I.Abrar Md Abdullah, Advocate, S.R.No.71878
+lcc to the Government Pleader, S.R.No.72389

W.P.No.40595 of 2016

SK (CO)
MA (28/12/2016)



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