

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2016

CORAM

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

W.P.No.5191/2016

S.Kumarasamy

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Petitioner

Vs

1.The District Collector/Arbitrator
Erode District, Erode.

2.The Competent Authority NH-47 [L.A.]/
The District Revenue Officer
Erode, Erode District.

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Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the first respondent in his proceedings No.NH-47/Arbitration/2015, dated 04.02.2016 and quash the same and consequently direct the first respondent to entertain the petitioner's appeal dated 19.11.2015 filed under section 3-G(5) of National Highways Act for higher compensation and dispose the same on merits.

For Petitioner .. Mr.C.Prakasam

For Respondents .. Mr.R.Rajeswaran
Special Govt.Pleader

O R D E R

Heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader accepting notice on behalf of the respondents and with their consent, the writ petition is taken up for final disposal at the admission stage.

2 In the present case, the petitioner claims for enhancement of compensation which came to be rejected by the District Collector by the impugned proceedings on the ground that the petitioner has not approached the authority within a period of three years from the date on which the Award has been passed.

3 Admittedly, the lands owned by the petitioner have been taken over for the purpose of formation of National Highways and it is a compulsory acquisition of land. The petitioner having lost his lands, is entitled for fair and reasonable compensation and such claims for higher compensation should be decided at the earliest, without much delay.

4 The petitioner is stated to be a poor agriculturist and probably not well informed about the legal position. Be that as it may, this Court has considered several writ petitions filed by the land owners who have approached the District Collector claiming enhanced compensation and the District Collectors have slept over the matter and kept the cases pending for several years. This has compelled this Court to issue directions to the respective District Collectors to conclude the proceedings at the earliest point of time, since the petitioners have lost their valuable right to property which has been held to be a human right.

5 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.

6 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 Villpuram, 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.

7 As already observed, the petitioner has lost his 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 petitioner has also set out the reasons as to why he has 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.

9 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.

10 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.

11 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.

12 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 petitioner's 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.

-s/d-
Assistant Registrar

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.]/
The District Revenue Officer
Erode, Erode District.

+1 cc to Mr.C.Prakasam Advocate sr.9252

+1 cc to the Government pleader sr.9092

W.P.No,5191/2016

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