

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.5473/2016 & WMP.No.4814/2016

K.Kalaivani

..

Petitioner

Vs

- 1.The Project Director
Project Implementation Unit
National Highways Authority of India [NHAI]
Ministry of Road Transport and Highways,
Door No.212-3/D3-1 Sri Nagar Colony
Narasothipatti, Salem 636 004.
- 2.the District Collector cum Arbitrator
Erode District, Dheeran Chinnamalai
Maaligai, District Collectorate, Perundurai
Road, Erode 638 011.
- 3.The District Revenue Officer
Competent Authority, NH-47 [L.A.]
Erode District Collectorate Building
Erode 638 011.
- 4.Special Tahsildar [Land Acquisition]
Erode Taluk National Highways NH-47 [Four Way
Project], O/o.The Special Tahsildar [Land Acquisition]
5th Floor, District Collectorate Building
Erode 638 011.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus calling for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 19.01.2016 and to quash the same insofar as it relates to lands comprised in Survey Nos.127/1, 127/1B situated at Vijayapuri Village, Perundurai Taluk, Erode District and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing for enhanced compensation in accordance with law for the lands acquired after considering her representation dated 28.12.2015.

For Petitioner : Mr.C.E.Prathap
For R1 : M/s.G.Hema for M/s.P.Wilson
Associates
For RR 2 to 4 : Mr.R.M.Muthukumar, AGP

ORDER

Heard Mr.C.E.Prathap, learned counsel for the petitioner ; M/s.G.Hema, learned counsel accepting notice on behalf of the 1st respondent ; and Mr.M.R.Muthukumar, learned Additional Government Pleader accepting notice on behalf of the respondents 2 to 4 and with their consent, this writ petition is taken up for final disposal at the admission stage itself.

2 The lands belonging to the petitioner were acquired for the formation of the Four Way laning of Roads in NH-47. The petitioner has not challenged the acquisition proceedings and the Project has been implemented. The petitioner has claimed enhanced compensation for which purpose she has filed application before the District Collector to consider her case and grant enhanced compensation. This application appears to have not been considered though other similarly placed persons' cases were considered and it is stated that arbitration proceedings are in progress. Since the petitioner was not permitted to participate in the arbitration proceedings, she submitted a representation to the 2nd respondent on 28.12.2015. In the said representation, she has reiterated the contentions raised in her earlier representation and stated that the fixation of land value is inadequate. The 2nd respondent, without considering the same, rejected the request of the petitioner on two grounds:-

[1] Firstly, by stating that the representation said to have been made on 28.12.2015 is not available in the files of the 2nd respondent.

[2] Secondly, it is stated that under the provisions of the National Highways Act, 1956, the claim for enhancement of compensation should be made within a period of three years from the date of passing of an Award.

3 Section 3G of the National Highways Act, 1956 deals with determination of the amount payable as compensation. Sub-section 1 of Section 3G of the said Act states that where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

4 It is not in dispute that the 2nd respondent is an Arbitrator so appointed to arbitrate the issues relating to claims for enhanced compensation. Statute does not prescribe any time limit within which such an application has to be filed.

5 The learned counsel appearing for the first respondent submits that the Act does not provide for any outer limit for any application to be made for claiming the enhanced compensation. Therefore, the reasons assigned in the order stating that the application for enhancement should have been made within a period of three years is not sustainable.

6 Further, it is stated that the petitioner's representation was rejected on 19.01.2016 and it can be safely presumed that proper scrutiny of the records could not have been made especially when vast extent of lands were acquired in the formation of National Highways. In any event, in respect of the applications filed by the other land owners, now the arbitration proceedings are in progress. Therefore, no prejudice would be caused to the 2nd respondent of the National Highways if the petitioner is also permitted to participate in the arbitration proceedings and put forth their submissions, for enhanced compensation.

7 In the light of the above, the impugned order is held to be not sustainable in law.

8 In the result, the writ petition is allowed and the impugned order dated 19.01.2016 is set aside. The 2nd respondent is directed to permit the petitioner to participate in the arbitration proceedings and put forth her submissions in support of her claim for enhanced compensation which shall be considered in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

AP

To

1.The Project Director
Project Implementation Unit
National Highways Authority of India [NHAI]
Ministry of Road Transport and Highways,
Door No.212-3/D3-1 Sri Nagar Colony
Narasothipatti, Salem 636 004.

2.The District Collector cum Arbitrator
Erode District, Dheeran Chinnamalai
Maaligai, District Collectorate, Perundurai
Road, Erode 638 011.

3.The District Revenue Officer
Competent Authority, NH-47 [L.A.]
Erode District Collectorate Building
Erode 638 011.

4.Special Tahsildar [Land Acquisition]
Erode Taluk National Highways NH-47 [Four Way
Project], O/o.The Special Tahsildar [Land Acquisition]
5th Floor, District Collectorate Building
Erode 638 011.

1 cc to M/s. P. Wilson Associates, Sr. 9813
1 cc to Government Pleader, Sr. 9652
1 cc to Mr.C.E. Pratap, Advocate, Sr. 5473

WP.No.5473/2016

AK (CO)
kk 24/2



WEB COPY