

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2016

C O R A M

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

W.P.Nos.8089 to 8091 of 2016 &
WMP Nos. 7205 to 7207 of 2015

A.Muthusamy ...Petitioner in W.P.No.8089 of 2016
V.Somasundaram ...Petitioner in W.P.No.8090 of 2016
A.Saminathan ...Petitioner in W.P.No.8091 of 2016

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,
District Collectorate Building
Erode 638 011.
4. The 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 in all WPs.

Comman Prayer :-Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorarified mandamus to call for the relevant records relating to the impugned orders of rejection by the proceedings

on the file of the second respondent in The.Ne.47/Arbitration/2015 dated 22/02/2016 and to quash the same in so far as it relates to lands comprised in S.Nos.13/1B; S.Nos.117/6 & 117/7B; and S.Nos.38/2B, 42/2A, 42/8A, situated at Kandampalayam Village, Perundurai Taluk; Nasianur Village and Kandampalayam Village, Perundurai Taluk, Erode District, respectively, and consequently direct the second respondent to permit the petitioners to participate in the Arbitration Proceedings and afford the petitioners an opportunity of fair hearing for enhanced compensation in accordance with law after considering their respective representations dated 01/02/2016.

For petitioners ... Mr.C.E.Pratap
(in all W.Ps)

For respondents ... Mrs.S.R.Sumathy-R1
(in all W.Ps)

Mr.R.Lakshmi Narayanan-R2 to R4
Addl.Govt.Pleader

C O M M O N O R D E R

With the consent of the learned counsel appearing for the parties, the main Writ Petitions are taken up for final disposal.

2. Heard Mr.C.E.Pratap, learned counsel appearing for the petitioners, Mrs.S.R.Sumathy, learned counsel accepting notice on behalf of the first respondent in all the Writ Petitions and Mr.R.Lakshmi Narayanan, learned Additional Government Pleader accepting notice on behalf of the respondents 2 and 4, in all the Writ Petitions.

3.In these writ petitions, the lands belonging to the petitioners were acquired for the formation of the Four way laning of roads in NH - 47. The petitioners have not challenged the acquisition proceedings and the project has been implemented. Since the petitioners were not permitted to participate in the arbitration proceedings, and claiming enhanced compensation, they have submitted their respective representations 01.02.2016 before the District Collector to consider their case for grant enhanced compensation. However, those representations appear to have not been considered though other similarly placed persons cases were considered and it is stated that arbitration proceedings are in progress and the second respondent, without considering their representations, rejected the requested of the petitioners on ground 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.

4. Section 3 G of the National Highways Act, 1956 deals with determination of the amount payable as compensation. Sub-Section 1 of Section 3 G 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.

5. It is not in dispute that the second 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.

6. 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 impugned order stating that the application for enhancement should have been made within a period of three years is not sustainable.

7. Further, in another set of cases with an identical issue was came for consideration, this Court passed an order in W.P.Nos.1481 & 1482 of 2016 dated 18.01.2016 (P.S.Moorthy and another V. The District Collector/Arbitrator, Erode and another). The operative portion 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 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."

4.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."

8. In the result, these writ petitions are allowed and the second respondent is directed to permit the petitioners to participate in the arbitration proceedings and put forth their submissions in support of their claim for enhanced compensation which shall be considered in accordance with law as expeditiously as possible. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Project Director
Project Implementation Unit
National Highways Authority of India (NHAI)
Ministry of Road Transport and Highways
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+3ccs to M/s.S.R.Sumathy, Advocate, S.R.No.14155, 14156, 14157
+6ccs to Mr. C.E. Pratap, Advocate, S.R.No.13855, 13856, 13854
+1cc to the Government Pleader, S.R.No.14290

SVI (CO)
EU(18/03/2016)

W.P.Nos.8089 to 8091 of 2016