

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.07.2017

Pronounced on:10.11.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P. No.106 of 2017

J.Saroja

.. Petitioner

Versus

1.The Special District Revenue Officer (LA)N.H.68,
Competent Authority,
Door No.3B/8, Ram Nagar Road,
Swarnapuri (2nd Gate), Salem-636 004.

2.The National Highways Authority of India
rep. by its Chief General Manager,
Regional Office,
NHAI, Sri Tower, 3rd Floor,
DP-34, SP Industrial Estate,
Guindy, Chennai-32.

Respondents

(2nd respondent impleaded as per order dated
01.03.2017 in Application No.1274/2017)

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act read with National Highways Act, 1956 to set aside the Award dated 02.11.2016 in Arb.No.91/Arbi NH.No.68 passed by the Arbitrator and to declare that the land under survey No.146/3A2 to an extent of 4163 sq.mt. as plot land and award the compensation accordingly..

For petitioner

: Mr.D.Muthukumar

For Respondents

: No appearance for 1st
respondent
Mr.Richardson Wilson for
M/s.P.Wilson Associates
for 2nd respondent

ORDER

This petition is filed in terms of Section 34 of the Arbitration and Conciliation Act (in short 'Act) read with the National Highways Act 1956 (Highways Act) challenging an award passed by the Arbitrator dated 05.10.2009.

2.Heard Mr.D.Muthukumar, learned counsel for petitioner and Mr.Richardson Wilson for M/s.P.Wilson Associates, learned counsel for second respondent, the first respondent being unrepresented.

3.The submissions of Mr.Muthukumar, learned counsel for the petitioner are as follows:

i)Land under Survey Nos.141/2B and 146/3A(2) of an extent of 6008 sq.mtrs in Abinavam Village, Salem District was acquired by the Government of India for the expansion of National Highway 68 under the Highways Act.

ii)The Special District Revenue Officer, Land Acquisition (LA) was appointed as the competent authority and compensation was quantified under an award dated 5.10.2009 and an additional award dated 21.10.2010. Out of a total of 6008 sq mts 4163 sq mts was covered under the first award and 1085 sq mts covered under the second award.

iii)The categorisation of the lands under the awards was twofold – plot land and agricultural land. In Survey No.141/2B, 230 sq.mts and 530 sq.mts were taken to be plot land (the latter originally considered as

agricultural land but later taken as plot land vide order dated 11.01.2010) and 65 sq.mts taken to be Agricultural land. The valuation was uniformly taken at a figure of Rs.699 per sq mt. In Survey No.146/3A2, 4163 mts was taken to be agricultural land and 1020 sq.mts taken to be plot land. While the former was valued at a figure of Rs.699 per sq ft, the value adopted as regards the latter was a sum of Rs.49/- per sq.mt.

iv)As the competent authority proceeded to fix different amounts in respect of portions of the land covered under the same Survey Number – an application was moved on 11.01.2010 in terms of section 3G(5) of the Highways Act before the Arbitrator appointed by the Central Government, the District Collector, for proper determination of compensation.

v)Thereafter, as no response was forthcoming on the petition dated 11.1.2010, a representation was filed on 17.02.2011 along similar lines as the earlier petition pointing out that the classification of 4163 sq.mts. of land under S.No.146/3A2 as agricultural land, and the valuation thereof at Rs.49 per sq mtr, was incorrect. The petitioner had produced proof to establish that the land was of the nature of plot land. Thus, according to the petitioner, the categorisation of 4163 sq.mts in S.No.146/3A2 as well as the valuation thereof was incorrect and liable to be corrected.

vi) Insofar as the representation was not disposed of for long, a Writ Petition was filed and this Court vide order dated 16.08.2012 in W.P. No.11097 of 2012 directed the Arbitrator to consider and dispose of the same within four months.

(vii).The site was inspected and a report dated 19.12.2015 filed by

the 1st respondent wherein the grievance of the petitioner stood accepted

by the Inspecting Authority. The Arbitrator however still did not pass an award incorporating the conclusion in the report in an award as a result that a Writ Petition came to be filed again by the petitioner before this court. By order dated 17.6.2016 the Arbitrator was directed to consider and dispose of the representation within ten weeks from the date of receipt of the order of this court.

(ix) An award was passed on 2.11.2016 rejecting the report of the respondent and confirming the categorisation of 4163 sq.mts in S.No.146/3A2 as agricultural land and the valuation thereof at a figure of Rs.49 per sq mtr.

(x) It is against the aforesaid order that the present challenge is filed in terms of Section 34 of the Act. Pursuant to the filing of the present petition, the National Highways of the India has also been impleaded on directions of this Court as the second respondent.

4. A preliminary defence raised by Mr. Wilson is to the maintainability of the present petition. He would point out that the arbitration had taken place in Salem and as such it is the competent civil court, being the Principal District Court, Salem that would have jurisdiction over the matter. On facts, he would support the award passed arguing that the valuation of land after categorising the same as agricultural land has been done after following proper procedure and taking into account recent sale instances of land in the vicinity. He would point out that the initial report valuing the subject land at an average sum of Rs.49 per sq.mt. had been properly done based on relevant documents. The District Revenue Officer had,

after conducting a full fledged enquiry wherein the petitioner was heard in detail and had let in substantial evidence, filed a report dated 27.2.2015 valuing the land at Rs.49 per sq.mt. However, the second report from the same officer recommended the grant of higher compensation. The Arbitrator preferred to adhere to the valuation in the first report since the second report had not provided any basis for the enhanced valuation, whereas the earlier report had relied on sale documents entered into almost contemporaneous with the process of acquisition.

5. On the aspect of maintainability, Mr.Wilson would submit that several similar petitions filed by similarly placed petitioners were, in fact, pending before the District Court, Salem. He would, in this regard rely on the following judgements:

- (i) Indus Mobile Distribution Limited vs Datawind Innovations Private Limited and others (2017 SCC Online 442)
- (ii) Chandrakanth P.Sanghvi vs Chandrakanth P.Sanghvi (2016 3 Bom C R 595)
- (iii) State of west Bengal and others vs Associated Contractors (2015 1 SCC 32)
- (iv) Jagmittar Sain Bharat and others vs Director, Health Services, Haryana and others (2010 10 SCC 136)
- (v) Konkola Copper Mines vs Stewarts and Lloyds of India Limited (2013 4 Bom CR 619)
- (vi) Kanwar Singh Saini vs High Court of Delhi (2012 4 SCC 307)
- (vii) Videocon Industries Limited vs Union of India and another (2011 6 SCC 161)

6. The defence put forth is that the provisions of section 2(1)(e) provide for the exercise of concurrent jurisdiction by both the civil court as well as the High Court and as such the petition should be held to be maintainable.

7. Heard learned counsel in detail and perused the papers as well as case-law cited. Since the matter involves an interpretation of Section 2(1)(e) of the Act, I extract the same hereunder:

2 [(e) "Court" means— (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal civil court, or court of small causes.

8. A plain reading suggests that jurisdiction to entertain a challenge in terms of section 34 of the Act vests concurrently in both the Principle civil court of original jurisdiction in a District as well as the High Court in exercise of its ordinary original civil jurisdiction, that has jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit. The question that falls for determination is one of precedence as between the two courts as well as the parameters that are to be taken into consideration in establishing such precedence having regard to the requirements of the provision.

9. The question of which would be the appropriate court to entertain a challenge under section 34 of the Act in the light of the provisions of section 2(1)(e) is no longer res integra, the Supreme Court having considered the same in *Executive Engineer Road Development Division No III Panvel vs Atlanta Ltd* (AIR 2014 SC 1093). The appellant in that case relied upon the provisions of clause 15 of the Civil procedure Code that reads as follows:

15. Court in which suits to be instituted

Every suit shall be instituted in the Court of the lowest grade competent to try it.

10. Based on Section 15 extracted above it was submitted by the appellant in that case, that in the event of concurrent jurisdiction between two courts, it was imperative to choose the Court of the lowest grade competent to try the suit. Accordingly, it was contended, that from between the original side of the High Court of Judicature Bombay and the District Court, Thane, in terms of the mandate of Section 15 of the Code of Civil Procedure, the District Court, Thane, being the Court lower in grade than the original side of the High Court Bombay, ought to have been chosen to adjudicate upon the matters. It was also pointed out, that the choice of District Court, Thane, would even otherwise be beneficial to the rival parties on account of the fact, that determination of issues by the said Court, would be open for re-examination before the High Court Bombay, which exercises supervisory jurisdiction over it.

The Bench however rejected reliance on clause 15 of the CPC observing that the two provisions, viz. clause 15 of the CPC and section

2(1)(e) of the Act operated in different spheres and were not comparable.

The Bench states thus:

'Accordingly, the principle enshrined in Section 15 of the Code of Civil Procedure cannot be invoked whilst interpreting Section 2(1)(e) of the Arbitration Act. Secondly, the provisions of the Arbitration Act, leave no room for any doubt, that it is the superior most court exercising original civil jurisdiction, which had been chosen to adjudicate disputes arising out of arbitration agreements, arbitral proceedings and arbitral awards. Undoubtedly, a principal Civil Court of original jurisdiction in a district, is the superior most court exercising original civil jurisdiction in the district over which its jurisdiction extends. It is clear, that Section 2(1)(e) of the Arbitration Act having vested jurisdiction in the principal Civil Court of original jurisdiction in a district, did not rest the choice of jurisdiction on courts subordinate to that of the District Judge. Likewise, the High Court in exercise of its ordinary original jurisdiction, is the superior most court exercising original civil jurisdiction, within the ambit of its original civil jurisdiction. On the same analogy and for the same reasons, the choice of jurisdiction, will clearly fall in the realm of the High Court, wherever a High Court exercises ordinary original civil jurisdiction. Under the Arbitration Act, therefore, the legislature has clearly expressed a legislative intent, different from the one expressed in Section 15 of the Code of Civil Procedure.

11. On the question of precedence of courts the Bench states thus:

25. All the same, it is imperative for us to determine, which of the above two courts which have been approached by the rival parties, should be the one, to adjudicate upon the disputes raised. For an answer to the controversy in hand, recourse ought to be made first of all to the provisions of the Arbitration Act. On the failure to reach a positive conclusion, other principles of law, may have to be relied upon. Having given our thoughtful consideration to the issue in hand, we are of the view,

that the rightful answer can be determined from Section 2(1)(e) of the Arbitration Act, which defines the term Court. We shall endeavour to determine this issue, by examining how litigation is divided between a High Court exercising ordinary original civil jurisdiction, and the principal civil court of original jurisdiction in a district. What needs to be kept in mind is, that the High Court of Bombay is vested with ordinary original civil jurisdiction over the same area, over which jurisdiction is also exercised by the principal Civil Court of original jurisdiction for the District of Greater Mumbai (i.e. the Principal District Judge, Greater Mumbai). Jurisdiction of the above two courts on the ordinary original civil side is over the area of Greater Mumbai. Whilst examining the submissions advanced by the learned counsel for the appellant under Section 15 of the Code of Civil Procedure, we have already concluded, that in the above situation, jurisdiction will vest with the High Court and not with the District Judge. The aforesaid choice of jurisdiction has been expressed in Section 2(1)(e) of the Arbitration Act, without any fetters whatsoever. It is not the case of the appellants before us, that because of pecuniary dimensions, and/or any other consideration(s), jurisdiction in the two alternatives mentioned above, would lie with the Principal District Judge, Greater Mumbai. Under the scheme of the provisions of the Arbitration Act therefore, if the choice is between the High Court (in exercise of its ordinary original civil jurisdiction) on the one hand, and the principal civil court of original jurisdiction in the District i.e. the District Judge on the other; Section 2(1)(e) of the Arbitration Act has made the choice in favour of the High Court. This in fact impliedly discloses a legislative intent. To our mind therefore, it makes no difference, if the principal civil court of original jurisdiction, is in the same district over which the High Court exercises original jurisdiction, or some other district. In case an option is to be exercised between a High Court (under its ordinary original civil jurisdiction) on the one hand, and a District Court (as principal Civil Court of original jurisdiction) on the other, the choice under the Arbitration Act has to be exercised in favour of the High Court.

12. The above judgement has also been concurred with by a Full Bench of the Supreme Court in *State of W B and others vs Associated Contractors (supra)* as follows:

'15. A recent judgment of this Hon'ble Court reported in *Executive Engineer, Road Development Division No. III, Panvel & Anr. v. Atlanta Limited*, AIR 2014 SC 1093 has taken the view that Section 2(1)(e) contains a scheme different from that contained in Section 15 of the Code of Civil Procedure. Section 15 requires all suits to be filed in the lowest grade of court. This Hon'ble Court has construed Section 2(1)(e) and said that where a High Court exercises ordinary original civil jurisdiction over a district, the High Court will have preference to the Principal Civil Court of original jurisdiction in that district. In that case, one of the parties moved an application under Section 34 before the District Judge, Thane. On the same day, the opposite party moved an application before the High Court of Bombay for setting aside some of the directions contained in the Award. In the circumstances, it was decided that the "Court" for the purpose of Section 42 would be the High Court and not the District Court. Several reasons were given for this. Firstly, the very inclusion of the High Court in the definition would be rendered nugatory if the above conclusion was not to be accepted, because the Principal Civil Court of original jurisdiction in a district is always a court lower in grade than the High Court, and such District Judge being lower in grade than the High Court would always exclude the High Court from adjudicating upon the matter. Secondly, the provisions of the Arbitration Act leave no room for any doubt that it is the superior most court exercising original jurisdiction which has been chosen to adjudicate disputes arising out of arbitration agreements. We respectfully concur with the reasoning contained in this judgment.'

13. Thus, in a case where the two courts, the principal civil court and the High Court exercise concurrent jurisdiction, the obvious and appropriate choice of 'Court' would be the High Court exercising ordinary original civil jurisdiction. A caveat that has been drawn by the Bench in *Atlanta* is this – *'It is not the case of the appellants before us that because of pecuniary dimensions, and/or any other consideration(s), jurisdiction in the two alternatives mentioned above, would lie with the Principal District Judge, Greater Mumbai'*.

14. A Division Bench of this Court in the case of *Sundaram Finance Limited vs. M.K.Kurien* (2006 1 MLJ 506) considered the question of whether the High Court of Judicature Madras, exercising ordinary original civil jurisdiction under the Letters Patent or the Principal Judge of the City Civil Court constituted under the Madras City Civil Court Act 1892 will exercise jurisdiction in respect of matters under the Act involving a value of not exceeding Rs.10,00,000/-. The Court observed that the Madras City Civil Court Act 1892 (MCCC Act) under which an Additional Civil Court is established for the city of Chennai has a limited pecuniary jurisdiction and the Act deal with matters where the value involved is less than Rs.10,00,000/- whereas under Clause 12 of the Letters Patent, the original jurisdiction of the High Court is unfettered and has been expressly saved by virtue of Section 16 of the MCCC Act. To quote Chief Justice A.P.Shah *'Competency embodied by this section is pecuniary competency and it has been held that this Section lays down a rule of procedure and not of*

jurisdiction. While it enjoins the institution of a suit in the court of the lowest grade competent to try it, it does not oust the jurisdiction of the Court of a higher grade. Even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lower grade, the decision rendered is not without jurisdiction. (see Ramamirtham v. Rama Film Service (FB), AIR (38) 1951 Madras 93). It was thus held that the phrase 'Principal Civil Court of original jurisdiction' as defined in Section 2(1)(e) of the Act would mean, in the context of the city of Chennai, the High Court exercising jurisdiction on the Original Side and not the City Civil Court. This conclusion has been reached in the context of two courts that exercise concurrent jurisdiction over a matter.

15. I am, in the present case however, concerned with two courts that do not have concurrent jurisdiction. The territorial limits of the Original Side of the Madras High Court have been determined by the *Madras High Court (Jurisdiction Limits Act) 1927* as extended by the *Madras High Court (Jurisdictional Limits) Extension Act 1985*. The cause of action in the present matter would fall within the territorial limits of the Principal Civil Court at Salem, the District Court, which incidentally, itself has an unlimited pecuniary limit. Both Atlanta as well as Sundaram Finance (*supra*) deal with matters where the territorial jurisdiction of the High Court as well as the Principal Civil Court were concurrent leading to the conclusion that it was the jurisdiction of the superior High Court that would prevail, particularly in the light of Section 16 of the Madras Chennai City Civil Court

fact that the territorial jurisdictions of both the courts in question are different and distinct, I hold that the challenge would fall within the jurisdiction of the District Court, Salem and is not maintainable before this Court. In view of the discussion above and reference to the decision of this court in Sundaram Finance as well as the Supreme Court in Atlanta that, in my view, are on the point with regard to the issue raised in this petition, I do not advert to or discuss the cases cited by the respondent.

16. The present petition stands transferred to the file of the District Court at Salem that shall proceed to hear the same without reference to limitation in view of the fact that the original petition was filed within time before this Court.

17. The original petition is disposed off in the above terms. No costs.

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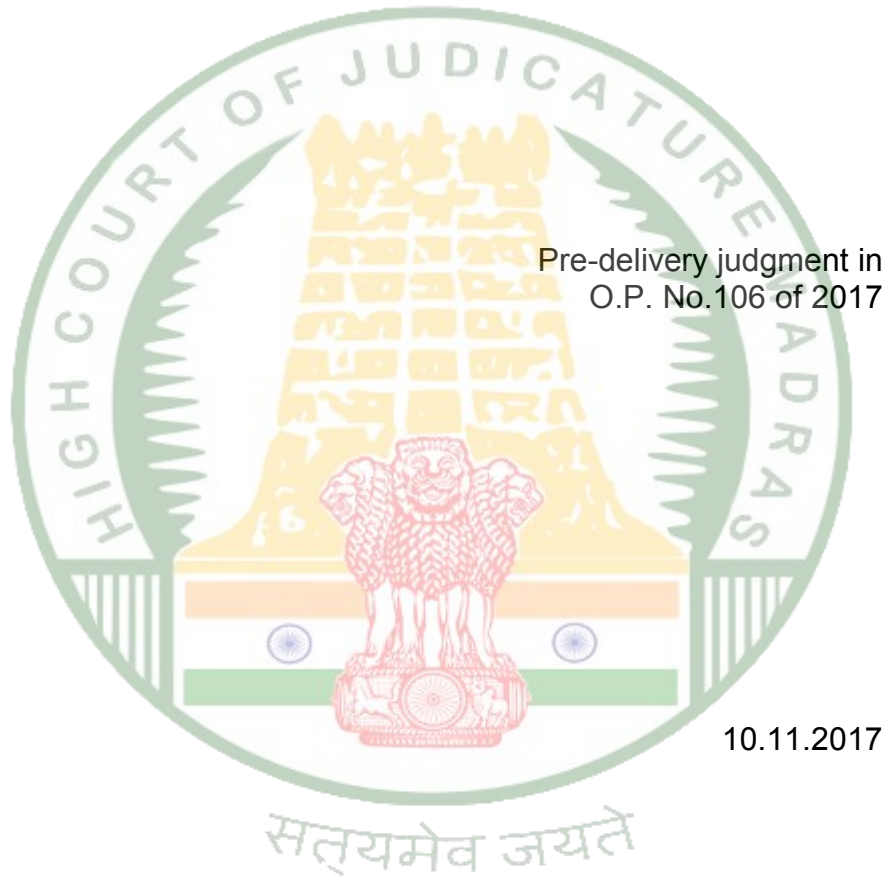
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Speaking order/Non speaking order
Index:Yes/No

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Dr.ANITA SUMANTH,J.

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