

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30-08-2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.23290 of 2017

P.Kandasamy

...Petitioner

Vs

1.The District Collector,
Namakkal District
appointed as Arbitrator
under Section 3(G)(5)
of the National Highways Act,1956

2. The Competent Authority,
(NHAI) / District Revenue Officer
NH-7 & 47,
Namakkal District.

.... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in relation to the impugned proceedings in Na.Ka.4523/2012/Arbit dated 19.09.2016 quash the same and further direct the 1st Respondent to hear the claim petitions preferred by the petitioner.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.S.Diwakar

Special Government Pleader.

O R D E R

The petitioner's land comprised in Survey No.61/5A of Mulakkadu Village, Rasipuram Taluk, Namakkal District, to an extent of 126.0 Sq.mtrs. was acquired by the second respondent for the purpose of expansion of NH-7 & 47. The petitioner participated in the award enquiry and had produced various records to show that the valuation already done was incorrect and sought for enhanced compensation. An award was passed on 26.01.2009 by the 2nd respondent directing a sum of Rs.1,05,000/- to be paid as compensation. Aggrieved over the same, a representation was sent by the petitioner dated 20.06.2016 to

refer the matter to the Sole Arbitrator under Section 3(G) (5) of the National Highways Act (hereinafter referred to as "the Act"). However, an order was passed by the 1st respondent, by his proceedings dated 19.09.2016, rejecting the petitioner's claim, stating that it is barred by limitation, as per Article 137 of the Constitution of India. The said order is being challenged before this Court.

2. Heard Mr.S.Senthil, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader, who takes notice on behalf of the respondents.

3. No doubt, the petitioner has filed an application for enhancement under Section 3(G) (5) of the Act before the first respondent, who is the sole Arbitrator appointed under the Act. There is no limitation mentioned in the Act. In that event, the provisions of Limitation Act has to be invoked. However, taking note of the valuable rights of the petitioner guaranteed under Article 300 A of the Constitution of India, the limitation has to be viewed very leniently and not technically. It is only a procedure. Therefore, the limitation cannot defeat the constitutional right of the petitioner.

4. Further, in similar circumstances, this Court in W.P.No.6055 of 2016 dated 18.02.2016 and in W.P.No.40595 of 2016 dated 15.12.2016 has held that limitation cannot take away the substantial right of the petitioners therein.

5. Paragraph No.10 of the order dated 18.02.2016 made in W.P.No.6055 of 2016 is usefully extracted hereunder:-

"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 looser 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".

6. In view of the above, the impugned order dated 19.09.2016 passed by the 1st respondent is quashed and the first respondent is directed to proceed and pass appropriate award within a period of twelve weeks from the date of receipt of a copy of this order.

With the above observations, the writ petition is disposed of. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Rg/kyl

To

1.The District Collector,
Namakkal District
appointed as Arbitrator
under Section 3(G) (5)
of the National Highways Act,1956

2. The Competent Authority,
(NHAI) / District Revenue Officer
NH-7 & 47,
Namakkal District.

+1 Cc to Mr.Senthil, Advocate sr 62462.

+1 Cc to Govt. Pleadersr 62854.

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KS (CO)
sp(27/09/2017)