

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

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THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.24430 of 2017

1 Radhamani [Petitioners]
2 Monaka
3 Rajkumar

v.

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 filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the 1st respondent in relation to the impugned proceedings in Na. Ka. 4523/2012/Arbit. dated 19.9.2016, to quash the same and further direct the 1st respondent to hear the claim petition preferred by the petitioners.

For Petitioners : Mr.N.C.Ashok Kumar

For Respondents : Mr.P.V.Selvakumar
Addl.Govt. Pleader

ORDER

Mr.P.V.Selvakumar, learned Additional Government Pleader, takes notice for the respondents. By consent, the main writ petition itself is taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in relation to the impugned proceedings dated 19.9.2016, to quash the same and further direct the 1st respondent to hear the claim petitions preferred by them.

3.1 It is the case of the petitioners that an extent of 175.0 sq.mtrs land in Survey No.73/2A1 of Mulakkadu Village, Rasipuram Taluk, Namakkal District, belonging to them was acquired by the 2nd respondent for the purpose of extension of NH-7 & 47. The officials from the respondents and the petitioner had participated in the Award enquiry conducted by the 2nd respondent under section 3(G)(5) of the National Highways Act, 1956. Even at the time of award enquiry, the petitioners produced various records to show that the valuation of the building, lands under enjoyment and other factors to show that the valuation already done by the authorities was incorrect and therefore,

they sought for enhanced compensation based upon the prevailing market value at the time of acquisition.

3.2 According to the petitioners, since the compensation given by the respondents is inadequate, they sent a representation to the 1st respondent, however, the 1st respondent did not consider their request regarding enhancement of compensation and rejected their request stating that the claim made by the petitioner is barred by limitation.

4. Mr.N.C.Ashok Kumar, learned counsel appearing for the petitioner submitted that in similar circumstances, this court in an unreported order dated 18.02.2016 made in W.P.No.6055 of 2016 [P.M.Palanisamy and another v. The District Collector/Arbitrator, Erode District, Erode and another], following the ratio laid down by the First Bench of this court dated 04.12.2012 in W.P.No.32197 of 2012 [R.Gopalakrishnan v. The Secretary to Government and 6 others], held that section 3(G) (5) of the National Highways Act does not prescribe a period of limitation and that 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. Further, 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.

5. The ratio laid down by this court in the said writ petition squarely applies to the facts and circumstances of the present case.

6. In the light of the order passed by the Division Bench in W.P.No.32197 of 2012 dated 04.12.2012 and the order dated 18.02.2016 passed in W.P.No.6055 of 2016, the impugned order dated 19.09.2016 is held to be unsustainable and accordingly the impugned order is set aside. The writ petition stands allowed 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 four weeks, from the date of receipt of a copy of this order. No costs.

12.09.2017

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To

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M.DURAIWAMY,J.

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