

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.43229 of 2016

K.Muthusamy

...Petitioner

Vs.

1. The District Collector/Arbitrator,
Namakkal District, Namakkal.

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

...Respondents

Prayer: This writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, call for the entire records relating to the impugned order passed by the first respondent in his proceedings No. Na.Ka.16643/2010/Arbitration dated 19.09.2016 and quash the same and consequently, direct the first respondent to entertain the petitioner's appeal dated 31.07.2015 filed under Section 3-G(5) of National Highways Act for survey No.232/1A2, 232/6B1, 232/6A1 and 232/7A for higher compensation and dispose the same on merits.

For petitioner : Mr.T.Gandhi

For Respondents : Mr.K.J.Sivakumar,
learned Government Advocate

O R D E R

Challenging the impugned order passed by the first respondent in his proceedings No.Na.Ka.16643/2010/Arbitration, dated 19.09.2016, by which the appeal filed by the petitioner on 31.07.2015 was rejected, on the ground of delay, the present writ petition is filed.

2.Acquisition proceedings have been completed against the petitioners and others, as there was a dispute on the apportionment, the amount was deposited on the file of the District Court, Namakkal,. The District Court, Namakkal passed an order in L.A.O.P.No.18 of 2010 dated 22.02.2012 and

thereafter, the petitioner approached the respondent, who in turn rejected it, on the ground of delay by placing reliance upon Article 137 of the Limitation Act, 1963.

3.The learned counsel appearing for the petitioner would submit that the delay has occasioned due to the pendency of the proceedings before the District Court. The petitioner made a representation within a reasonable time. The Act does not prescribe any period of limitation. The period of three years will have to be reckoned from the date of adjudication by the District Court in L.A.O.P.No. 18 of 2010 dated 22.02.2012. The petitioner's neighbours have got enhanced compensation. Reliance has been made on the judgment of this Court in W.P.Nos. 1481 & 1482 of 20136 dated 18.01.2016, wherein it has been held 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 Villpuram, 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."

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.

5.The learned Government Pleader appearing for the respondent would submit that considering the nature of delay no interference is required.

5.Considering the facts of the case, this Court of the view

that the ratio laid down in the case referred supra would be applicable in favour of the petitioner. It is the specific case of the petitioner that the neighbours have got enhanced compensation. What he wants is an opportunity to put forth his case, seeking higher amount as compensation. A technical approach is not required especially when the lands of the petitioner have been acquired already.

6.In such view of the matter, the order impugned is set aside and consequently, the first respondent is directed to decide the application of the petitioner seeking enhancement on his own merits, within a period of twelve weeks from the date of a copy of this order.

7.Hence, this writ petition is allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The District Collector/Arbitrator,
Namakkal District, Namakkal.
- 2.The Competent Authority, NH-7 (LA) /
District Revenue Officer,
Namakkal, Namakkal District.

+1cc to Mr.T. Gandhi, Advocate Sr. 22479
+1cc to the Government Pleader Sr. 22725

W.P.No.43229 of 2016

SK(CO)
VR(19/4/2017)

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