

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1239 of 2018

S.Raja Mahendra Kumar.

... Appellant/ Appellant

versus

- 1.Arbitrator and District Collector,
District Collector office, Sathuvachari
Vellore-9.
- 2.The Special District Revenue Officer,
(Competent Authority, Land Acquisition),
Land Acquisition, National Highways,
District Collector office, Sathuvachari,
Vellore District-9.
- 3.Special Tahsildar, (Arbitration),
National Highways Unit - I,
B.Block, District Collector Office, Sathuvachari
Vellore District-9.
- 4.General Information Officer and Special Tahsildar,
National Highways Unit - I,
B.Block, District Collector Office, Sathuvachari
Vellore.
- 5.The Project Director,
National Highways Authority,
No.259/1, Near KAKL Petrol Bunk,
Salem Main Road,
Krishnagiri - 635 001.

... Respondents

PRAYER: Appeal filed against the order passed by this Court
dated 26.02.2018 made in W.P.No.32326 of 2017.

W.P.No.32326 of 2017

Writ Petition in filed under Article 226 of the Constitution of India for issuance of Writ pf certiorarified Mandamus, to call for the records of the 1st Respondent in RC.G4/11764/04 dated 14.07.2010 and quash the same and consequently direct the 1st and 2nd Respondents to pass an award of compensation of Rs.43 16 019/- along with interest and other statutory benefits to the petitioner

For Appellant :Mr.Subbiah, Senior Counsel
for M/S.M.Malar, A.Subadra

For Respondents : Mr.V.Anandhamoorthy,
Additional Government Pleader for R1 to R4

Mr.Richardson Wilson
for M/s.Wilson Associates for R5

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this intra-Court Appeal is to the order of the learned Single Judge dated 26.02.2018, in and by which, the Writ Petition filed by the appellant seeking a Writ of Certiorarified Mandamus to quash the proceedings of the 1st respondent dated 14.07.2010 and to direct the respondents 1 and 2 to pass an award of compensation of Rs.43,16,019/- along with interest and other statutory benefits was dismissed.

2. The case of the appellant before the Writ Court was that the land measuring an extent of 1855 sq.ft. belonging to the appellant was acquired by the National Highways Authority of India for the purpose of four-laning National Highways between Krishnagiri and Ranipet in Athurkuppam Village, Tirupattur Taluk, Vellore District. By an award dated 05.04.2006, the 2nd respondent awarded a total compensation of Rs.2,92,934/-.

3. Aggrieved, the petitioner had approached the Arbitrator viz., the 1st respondent for re-fixation. The appellant participated in the arbitration proceedings. However, the award passed by the Arbitrator was not communicated to him. During the year 2011, a cheque for Rs.3,39,178/- was handed over by the 2nd respondent to the appellant. The appellant was under the impression that it was interim compensation. Since no award was communicated to the petitioner, the petitioner applied to the 4th respondent under the Right to Information Act seeking details of

the arbitration proceedings. By a letter dated 13.10.2017 the petitioner/ appellant was informed that the 1st respondent/ Arbitrator had passed an award as early as on 14.07.2010 and it is pursuant to the said award a sum of Rs.3,39,178/- was paid to the appellant. The appellant thereafter approached this Court, seeking issuance of a Writ of Certiorari to call for the records relating to the award of the 1st respondent dated 14.07.2010 to quash the same and to direct the respondents to pay compensation at the rate claimed by him.

4. The learned Single Judge who heard the Writ Petition dismissed the same on the ground of delay and laches. Aggrieved, the appellant is before us by way of this intra-Court appeal.

5. We have heard Mr.Subbiah, learned Senior Counsel appearing for M.Malar, learned counsel appearing for the appellant and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.Richardson Wilson for M/s.Wilson Associates for 5th respondent.

6. Mr.Subbiah, learned Senior Counsel appearing for the appellant would contend that as per the Provisions of Section 34 of the Arbitration and Conciliation Act, the right to challenge the award accrues to the aggrieved party only from the date on which the copy of the arbitral award is received by such party. Therefore, according to Mr.Subbiah, learned Senior Counsel the copy of the award was received by the appellant only on 13.10.2017, hence, he cannot be blamed for delay and laches. Section 3-G of the National Highways Act, 1956 provides for determination of amount payable as compensation. Section 3-G(5) provides a right to the party aggrieved by the award of the competent Authority to seek arbitration. The appellant had admittedly sought for an arbitration and the matter was also referred to the arbitrator which culminated in the award of the arbitrator dated 14.07.2010. It is the duty of the Arbitrator to communicate the award to the appellant. In order to find out as to whether the award was actually communicated to the appellant, we had required the learned Additional Government Pleader to take instructions from the respondents as to the date on which the award was actually communicated by the Arbitrator viz., the 1st respondent to the appellant.

7. The learned Additional Government Pleader on instructions would submit that the award was not in fact communicated to the appellant. Therefore, it can only be presumed that the copy of the award was received by the appellant for the first time only on 13.10.2017. The Writ Petition was filed within a period of three months i.e., on 07.12.2017. We therefore, do not think that, the appellant could be held guilty of delay or laches.

When a statutory duty is cast upon the arbitrator to communicate the award failure to do so should have its legal consequences. We are therefore of the considered opinion that, the dismissal of the Writ Petition, by the learned Single Judge, on the ground of delay and laches cannot be sustained.

8. However, the remedy of the appellant is not under Article 226 of Constitution of India. Section 3-G(6) of the National Highways Act provides that once an arbitration is initiated, the provisions of the Arbitration and Conciliation Act, 1996 would apply to every arbitration under the Act. If that be so, the remedy of appellant is under Section 34 of the Arbitration Act to seek to set aside the award before the proper Court. Section 34(3) of the Arbitration Act provides for a limitation of three months from the date of receipt of the award. The appellant had received the award on 13.10.2017, the three months period had expired on 13.01.2018, in the interregnum the appellant had preferred this Writ Petition.

9. The Hon'ble Supreme Court in State of Goa Vs. Western Builders reported in 2006 (6) SCC 239 has held that the provisions of Section 14 of the Limitation Act could be invoked by a person if he had bonafidely prosecuted the proceedings challenging the award before the wrong forum. We are therefore of the view that, the appellant would be entitled to invoke Section 14 to exclude the period during which the Writ Petition and this Writ Appeal were pending in this Court.

10. For the foregoing reasons the Writ Appeal is disposed of permitting the appellant to file appropriate proceedings challenging the award before the appropriate Court. If the appellant files an application to set aside the award under Section 34 of the Arbitration and Conciliation Act within a period of four (4) weeks from the date of receipt of a copy of the order, the District Court, Vellore will entertain the same de hors the question of limitation, inasmuch as we find that the appellant had challenged the award by way of the Writ proceedings, bonafide, in a wrong forum.

11. The Writ Appeal is disposed of with the above directions, in the circumstances without costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dsa

To

1.Arbitrator and District Collector,
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Vellore-9.

2.The Special District Revenue Officer,
(Competent Authority, Land Acquisition),
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3.Special Tahsildar, (Arbitration),
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5.The Project Director,
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+1cc to the Government Pleader, S.R.No.49373

W.A.No.1239 of 2018

VGII(CO)
GSP(03/08/2018)

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