

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

O.P. No. 510 of 2010

1.The General Manager
Southern Railway, Chennai.

2.The Senior Divisional Commercial Manager
Southern Railway, Madurai.

3.The Chief Commercial Manager
Southern Railway, Chennai.

... Petitioners

Vs.

1.M.Balakrishnan
S/o.K.Muthuvel
Plot No.182, D.No.11
Vazhavanthan Street, Ramamurthy Nagar
New Velangudi, Madurai.

2.Mr.Justice V.Thangavelu
Sole Arbitrator
Dr.Moo.Va.Street, Arumbakkam, Chennai.

... Respondents

Prayer :: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, to set aside the award dated 07.09.2009 passed by the Learned Arbitrator, Mr.Justice V.Thangavelu, Sole Arbitrator, Dr.Moo.Va.Street, Arumbakkam and order cost of the proceedings.

For Petitioners : Mr.P.T.Ram Kumar

For Respondents : Mr.M.Rajasekar
For Mr.A.Muthuraman

ORDER

The Petitioner has come forward, challenging the Arbitration Award dated 07.09.2009.

2.Learned counsel for the First Respondent submitted that the First Respondent was a licensee holder for running a Car Parking stand at Railway Station, Madurai as per the agreement dated 07.09.2001 for a period of five years from 20.07.2001 to 19.07.2006 with an annual fee of Rs.3,30,690/- and he was given an area to the extent of 5150 square metres and paid Security Deposit of Rs.71,095/-. In December, 2001, an area of 2386 square metres was taken by the Railway Administration, out of 5150 square metres for Security reasons adjacent to V.I.P. Portico. Pro-rata reduction was made in license fee and the amount was reduced to Rs.1,65,345/-. In the year of September, 2003, an extent of 1284 square metres, out of 2100 square metres was handed over to the Respondents for car parking. But, however, it was agreed by the Railways that it would give proportionately alternate site, which is opposite to the Railway station and the same was provided by the Railways.

3.Learned counsel for the First Respondent further submitted that the contract period was extended up-to June, 2007 periodically and that there is no reason as to why the time would not have been granted despite several requests made by the First Respondent and there is no reason as to why there was a default

on the part of the Railways in respect of the extension as sought by the First Respondent. That apart, the Respondent did not make any objection till the verge of termination of the contract. The dispute was raised belatedly and there is no dispute raised during subsistence of the contract. The Arbitrator had not noticed that the alternate parking area provided by the Railways is sufficient to park the Cars of public along with 35 taxis and in the absence of any dispute raised at the time of subsistence of additional sub-contract, the Arbitrator ought not to have granted the relief to an extent of 2,50,000/- at Rs.35. He further contended that the Arbitrator ought not to have granted the relief to the loss of passes to taxis as it was not at all pleaded in the Petition. The Arbitrator without any reason or rhyme came to the conclusion that the 1st Respondent would be entitled to the compensation as the Railway did not give the area in the alternate site as agreed. He further contended that the question of grant of interest from 13.04.2006 to 23.07.2008 does not arise, apart from the fact that no cost is allowed to be paid by one party and it has got to be borne proportionately. He submitted that the larger extent of land was given, for which, the License fee was fixed and thereafter, for administrative reasons 50% of the land was taken by the Railways, for which, the proportionate license fee was reduced and further, yet another 50% of the land was taken by the Railways with the promise that they will provide an alternate site, which was not provided.

4.The contention raised by the Railways that time has been granted to the First Respondent and that the period has been extended, cannot be a ground to

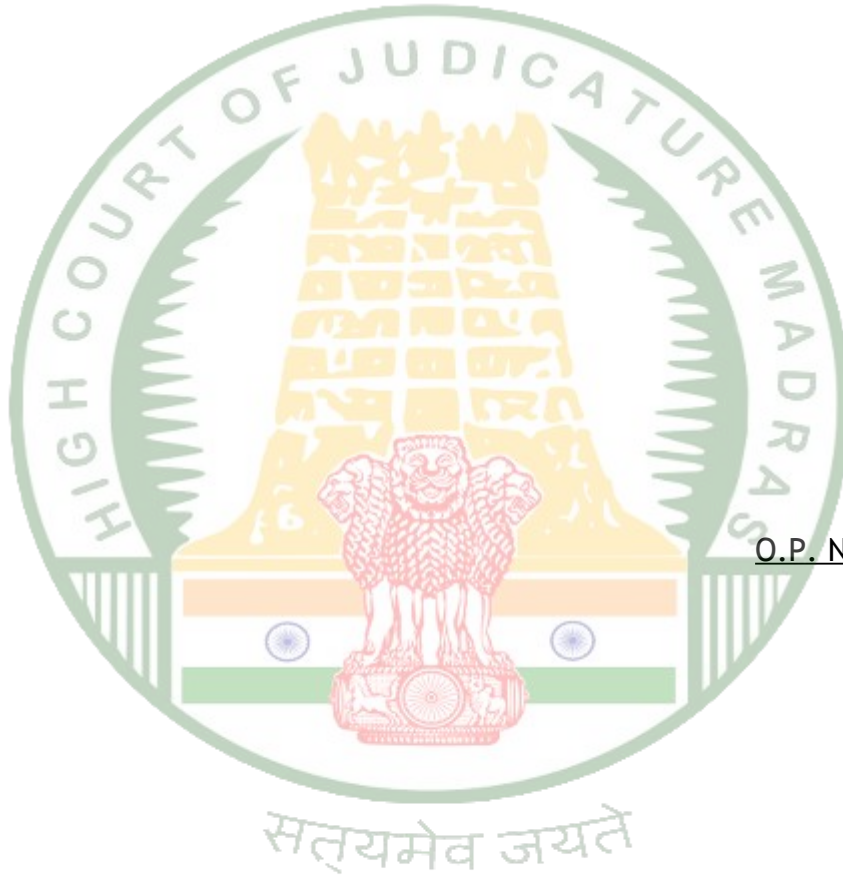
accept the contention of the Railways that they have granted actual size of the alternate place. Therefore, the Arbitrator has rightly granted a compensation of Rs.2,50,000/- for not providing the required space as agreed. Apart from the fact that the loss has been identified for a period of 47 months on account of the fact that only 35 taxis have been parked @ Rs.4/- per vehicle in the licensed area. I feel that the aforesaid two issues have been rightly dealt with by the Arbitrator and it is the finding of fact and even assuming that the Petitioner has not replied to the notice that there was a categorical finding in the Award to that effect and therefore, the Award need not be interfered with, and the Arbitrator has rightly come to the conclusion holding that the Railway is liable to pay the amount of compensation. In-so-far as the cost is concerned, it has to be proportionately borne by the parties and the grant of interest from 13.04.2006 to 23.07.2008 is not permissible in law. But, however, the Arbitrator is entitled to award future interest in-so-far as the award of cost of Rs.60,000/- is concerned. With regard to the grant of interest from 13.04.2006 to 23.07.2008 the award is interfered with. Except with the interference with regard to the grant of interest from 13.04.2006 to 23.07.2008, the Award is confirmed and the O.P. is disposed of.

05.12.2018

may
Index: Yes/No
Internet: Yes/No
Speaking/Non-speaking order

S.VAIDYANATHAN, J.

may



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Dated : 05.12.2018