

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07..08..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.16194 of 2018
and
W.M.P.No.19281 of 2018

Appavu

... Petitioner

-Versus-

1.The District Collector/Arbitrator,
Namakkal District.

2.The Competent Authority,
District Revenue Officer, (L.A.),
National Highways No.7,
Namakkal District.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.12246/2009/Arbitration, dated 05.12.2017 and to quash the same and for a consequential direciton to the 1st respondent to entertain the appeal preferred by the petitioner on 27.05.2017 under Section 3-G(5) of The National Highways Act for higher compensation and to dispose of the same on merits.

For Petitioner : Mr.K.Selvakumar

For Respondents : Mr.D.Raja for R1 and R2

ORDER

Heard Mr.K.Selvakumar, learned counsel for the petitioner, Mr.D.Raja, learned Additional Government Pleader for Respondents.

2. The petitioner challenges the order passed by the 1st respondent rejecting her appeal dated 27.05.2017 preferred under Sec.3-G(5) of The National Highways Act on the ground that the application is barred by limitation.

3. The case of the petitioner is that the land comprised in S.No.481/1A1 situate at Pillakalathur Village, Paramathi Velur Taluk, Namakkal District, over which, his mother and himself were having equal right and interest. The above said land was sought to be acquired under The National Highways Act for the purpose of widening the bypass Road on the stretches from K.M.217-600 to KM 278-600, Salem - Karur Section [NH7] by the National Highways Department. An Award was also passed on 31.01.2008. According to the petitioner, she had been unaware of filing an arbitration petition as against the award and only recently she was apprised of the right under Section 3-G(5) of the National Highways Act to seek enhancement of compensation. Hence, there has occurred delay in preferring the appeal. However, the 1st respondent by way of impugned order rejected the appeal preferred by the petitioner for enhanced compensation solely on the ground that as per Sec.43 of the Arbitration and Conciliation Act, 1996, the application for arbitration should be filed within a prescribed period. Since the application has been filed beyond the period of limitation, the 1st respondent dismissed the same as not maintainable. Challenging the order of the 1st respondent, the petitioner has come up with this writ petition.

4. The learned counsel appearing for the petitioner submitted that the issue involved in the writ petition is no more res integra in view of the judgement dated 25.04.2018, passed by the Division Bench of this Court in the matter of, Project Director, Project Implementation Unit, National Highways Authority of India, Coimbatore Vs. K.Periyasamy and 3 others reported in 2018 (4) CTC 263 wherein it was held that the provisions of the Limitation Act more particularly Art.137 would not apply to an Application for reference to Arbitration under Sec.3-G(5) of the National Highway Act, 1956.

5. The learned Additional Government Pleader appearing for the respondents would fairly admit the legal position and submit that the issue is already covered by the Judgment of the Division Bench of this Court.

6. In view of the above said legal position and the facts and circumstances of the case, the impugned order passed by the 1st respondent is liable to be set aside, accordingly, it is set aside, consequently, the 1st respondent is hereby directed to consider the petitioner's application filed under Sec.3-G(5) of

National Highways Act, 1956 afresh and pass suitable orders on merits in accordance with law within a period of eight weeks from the date of the copy of this order after giving sufficient opportunity of hearing to the petitioner.

7. In the result, the writ petition is allowed with the above direction. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector/Arbitrator,
Namakkal District.
- 2.The Competent Authority, District Revenue Officer, (L.A.),
National Highways No.7, Namakkal District.

+1cc to the Government Pleader Sr.55295

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W.P.No.16194 of 2018

mr[co]
srg 05/10/2018

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