

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
13.04.2018	25.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.308 to 312 of 2016,

1202 to 1206 of 2017 and

222 to 227 of 2018,

W.P.Nos.9250, 9251 and 9181 of 2016

and all connected Miscellaneous Petitions

THE PROJECT DIRECTOR ... APPELLANT in WA No.308 of 2016
PROJECT IMPLEMENTATION UNIT NATIONAL
HIGHWAYS AUTHORITY OF INDIA D.NO.9/9A 4TH
CROSS ST KOTHARI LAYOUT B.R.NAGAR TRICHY ROAD
SINGANALLUR, COIMBATORE 641 005.

THE PROJECT DIRECTOR PROJECT ... APPELLANT in WA No.1202 TO
IMPLEMENTATION UNIT (NHAI) 1206/2017, 222 TO 227/2018
MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS
DOOR.NO.212-3/D3-1
SRI NAGAR COLONY NARASOTHIPATTI
SALEM-636004

V.R.P.AVINASI MUTHUSAMY .. PETITIONER IN WP.9250/16
V.R.P.MURALI KRISHNAN .. PETITIONER IN WP.9251/16
T.MEENATCHI .. PETITIONER IN WP.9181/16

-VS-

1 K. PERIYASAMY ... 1ST RESPONDENT in WA No.308/2016

- 2 THE DISTRICT COLLECTOR CUM
ARBITRATOR ERODE DISTRICT DHEERAN
CHINNAMALAI MAALIGAI DISTRICT COLLECTORATE
PERUNDURAI ROAD ERODE-638 011.
...RESPONDENTS 2 & 3 IN WA.308 TO 312/16,
1202/2017 TO 1206/17,
RESPONDENTS 1 & 2 IN WP.9250 & 9251/16
- 3 THE DISTRICT REVENUE OFFICER
COMPETENT AUTHORITY NH-47(LA)
ERODE DISTRICT COLLECTORATE BUILDING ERODE -638 011.
- 4 THE SPECIAL TAHSILDAR (LAND
ACQUISITION) ERODE TK NATIONAL HIGHWAYS NH-
47 (FOUR WAY PROJECT) 13 RASU GOUNDER
THOTTAM CHOOLAI NEAR RELIANCE PETROL BUNK
ERODE-04.
...4TH RESPONDENT IN WA.308 TO 312/2016
THE SPECIAL TAHSILDAR(LA)
ERODE TALUK NATIONAL HIGH WAYS,
NH-47 (FOUR WAYS PROJECT)
O/O. THE SPECIAL TAHSILDAR (LA)
5TH FLOOR, DISTRICT COLLECTORATE
BUILDINGS ERODE 638 001.
... 4TH RESPONDENT IN WA.1204/2017
P.SENGOTTAIYAN ...1ST RESPONDENT in WA No.309 of 2016
S.NALLAMUTHU ... 1ST RESPONDENT in WA No.310 of 2016
M. KUMUDHAVALLI ... 1ST RESPONDENT in WA No.311 of 2016
P. SELVI ... 1ST RESPONDENT in WA No.312 of 2016
P.S.MOORTHY ... 1ST RESPONDENT in WA No.1202 of 2017
R.VENKATACHALAM ... 1ST RESPONDENT in WA No.1203 of 2017
A.MUTHU SAMY ... 1ST RESPONDENT in WA No.1204 of 2017
V.SOMASUNDARAM ... 1ST RESPONDENT in WA No.1205 of 2017

A.SAMINATHAN ... 1ST RESPONDENT in WA No.1206 of 2017

1 K. SENGODA GOUNDER ...1ST RESPONDENT in WA No.222 of 2018

2 THE DISTRICT COLLECTOR
ARBITRATOR, SALEM DISTRICT TAMIL NADU.

3 THE COMPETENT AUTHORITY AND
SPECIAL DISTRICT REVENUE OFFICER (LA) N.H.7
46, 4,7 SALEM DHARMAPURI DISTRICTS
KRISHNAGIRI, NO.26 CO OPERATIVE COLONY
KRISHNAGIRI 635 001.
... RESPONDENTS 2 & 3 IN WA.222 TO 227/17
AND RESPONDENTS 1 & 2 IN WP.9181/2016

P.KAVITHA ...1ST RESPONDENT in WA No.223 of 2018

A. PALANIAPPAN ... 1ST RESPONDENT in WA No.224 of 2018

M. KANDASAMY ... 1ST RESPONDENT in WA No.225 of 2018

R.ETIYANNA GOUNDER ... 1ST RESPONDENT in WA No.226 of 2018

P. PONNUSAMY ... 1ST RESPONDENT in WA No.227 of 2018

NATIONAL HIGH WAYS AUTHORITY OF INDIA
REP. BY ITS PROJECT DIRECTOR IN CHARGE OF
NH 46,47 SALEM, DHARMAPURI DISTRICT,
KRISHNAGIRI ...3RD RESPONDENT IN WP.9181 OF 2016

WA NO.308 TO 312/2016:

Writ appeal filed under clause 15 of the Letters patent against the common order dated 20/11/2015 in WP.NO.37138,37139, 37140, 37141 & 37142/2015

WP NO.37138/2015:

Writ petition filed under article 226 of the constitution of India praying this court for the issuance of writ of certiorarified mandamus to call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne. 47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in Survey Nos.118/5C, 118/5B, 118/8B situated at Nallagoundenpalayam Village Erode Taluk and consequently

direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing after considering his representation dated 05.10.2015.

WP No.37139 of 2015

Writ petition filed under article 226 of the constitution of India praying this court for the issuance of writ of certiorarified mandamus to call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in Survey Nos.105/4B, 106/3B, 105/7B, 104/2A, 105/4A2 situated at Nallagoundenpalayam Village, Erode Taluk and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing after considering his representation dated 05.10.2015

WP No.37140 of 2015

Writ petition filed under article 226 of the constitution of India praying this court for the issuance of writ of certiorarified mandamus to call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in Survey No.31/2 situated at Nallagoundenpalayam Village, Erode Taluk and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing after considering his representation dated 05.10.2015

WP No.37141 of 2015

Writ petition filed under article 226 of the constitution of India praying this court for the issuance of writ of certiorarified mandamus to call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in Survey Nos.10/3, 27/11B, 27/11CA, 27/15B situated at Kumilamparappu Village, Erode Taluk and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing after considering his representation dated 05.10.2015

WP 37142/2015:

Writ petition filed under article 226 of the constitution

of India praying this court for the issuance of writ of certiorarified mandamus to call for the relevant records relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne. 47/Arbitration/2015 dated 09.10.2015 and to quash the same in so far as it relates to lands comprised in Survey Nos.118/5C, 118/5B, 118/8B situated at Nallagoundenpalayam Village Erode Taluk and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing after considering his representation dated 05.10.2015.

WA No.1202 of 2017:

Writ appeal filed under clause 15 of the Letters patent to set aside the judgment dated 18/01/2016 passed by this Honble Court in WP No. 1481/2016

WP No.1481 of 2016

Writ petition filed under article 226 of the constitution of India praying this court to Call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No.NH-47/Arbitration/2015, dated 05.01.2016 and quash the same and consequently directing the 1st respondent to entertain the petitioner appeal dated 12.11.2015 filed U/s.3-G (5) of National Highways Act for higher compensation and dispose the same on merits

WA No.1203 of 2017

Writ appeal filed under clause 15 of the Letters patent to set aside the order dt.18/01/2016 passed by this honourable court in WP.No.1482/2016 .

WP No.1482 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No.NH-47/Arbitration/2015, dated 05.01.2016 and quash the same and consequently directing the 1st respondent to entertain the petitioner appeal dated 12.11.2015 filed U/s.3-G (5) of National Highways Act for higher compensation and dispose the same on merits

WA No.1204 of 2017

Writ appeal filed under clause 15 of the Letters patent to set aside the order dt 04/03/2016 passed by this Honourable Court in WP NO.8089/2016.

WP No.8089 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 22.02.2016 and to quash the same in so far as it relates to lands comprised in Survey No.13/1B situated at Kandampalayam Village, Perundurai Taluk, Erode District and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing for enhanced compensation in accordance with law after considering his representation dated 01.02.2016.

WA No.1205 of 2017

Writ appeal filed under clause 15 of the Letters patent to set aside the order dt 04/03/2016 passed by this Honourable Court in WP NO.8090/2016.

WP No.8090 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 22.02.2016 and to quash the same in so far as it relates to lands comprised in Survey No.117/6 and 117/7B situated at Nasianur Village, Erode District and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the petitioner an opportunity of fair hearing for enhanced compensation in accordance with law after considering his representation dated 01.02.2016.

WA No.1206 of 2017

Writ appeal filed under clause 15 of the Letters patent to set aside the order dt 04/03/2016 passed by this Honourable Court in WP NO.8091/2016.

WP No.8091 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the relevant records relating to impugned order of rejection by the proceedings on the file of the 2nd respondent in The.Ne.47/Arbitration/2015 dated 22.02.2016 and to quash the same in so far as it relates to lands comprised in Survey Nos.38/2B, 42/2A, 42/8A situated at Kandampalayam Village, Perundurai Taluk, Erode District and consequently direct the 2nd respondent to permit the petitioner to participate in the Arbitration Proceedings and afford the

petitioner an opportunity of fair hearing for enhanced compensation in accordance with law after considering his representation dated 01.02.2016.

WA No.222 of 2018

Writ appeal filed under clause 15 of the Letters patent to set aside the order dated 29/01/2016 in WP.No.3391 of 2016

WP No.3391 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the records on the file of the 1st respondent in O.Mu.777/ 2015/RP dated 26.11.2015 and quash the same and further direct the 1st respondent to take the Arbitration cases on the file and adjudicate the same in the manner know to law

WA No.223 of 2018

Writ appeal filed under clause 15 of the Letters patent to Set aside the order dated 29/01/2016 in WP.No.3392 of 2016

WP No.3392 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the records on the file of the 1st respondent in O.Mu.780/ 2015/RP dated 26.11.2015 and quash the same and further direct the 1st respondent to take the Arbitration cases on the file and adjudicate the same in the manner know to law

WA No.224 of 2018

Writ appeal filed under clause 15 of the Letters patent to set aside the order dated 29.01.2016 passed by this Honble Court in WP.3393 of 2016 and dismiss the said Writ petition on the file of this Honble Court.

WP No.3393 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the records on the file of the 1st respondent in O.Mu.778/ 2015/RP dated 26.11.2015 and quash the same and further direct the 1st respondent to take the Arbitration cases on the file and adjudicate the same in the manner know to law

WA No.225 of 2018

Writ appeal filed under clause 15 of the Letters patent to set aside the order dated 29.01.2016 passed by this Honble Court in WP.3394 of 2016.

WP No.3394 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the records on the file of the 1st respondent in O.Mu.779/ 2015/RP dated 26.11.2015 and quash the same and further direct the 1st respondent to take the Arbitration cases on the file and adjudicate the same in the manner know to law

WA No.226 of 2018

Writ appeal filed under clause 15 of the Letters patent to set aside the order dt.29/01/2016 passed by this Honble court in WP.No.3395/2016

WP No.3395 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the records on the file of the 1st respondent in O.Mu.774/ 2015/RP dated 26.11.2015 and quash the same and further direct the 1st respondent to take the Arbitration cases on the file and adjudicate the same in the manner know to law

WA No.227 of 2018

Writ appeal filed under clause 15 of the Letters patent to set aside the order dated 29/01/2016 passed by this Honble Court in WP No 3396 of 2016

WP No.3396 of 2016

Writ petition filed under article 226 of the constitution of India, praying this court to Call for the records on the file of the 1st respondent in O.Mu.776/ 2015/RP dated 26.11.2015 and quash the same and further direct the 1st respondent to take the Arbitration cases on the file and adjudicate the same in the manner know to law

WP No.9250 of 2016

Writ petition filed under article 226 of the constitution of India praying this court to issue a writ of certiorarified mandamus call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No. NH-47/Arbitration/2015, dated 27.10.2015 and quash the same and consequently directing the 1st respondent to entertain the petitioners appeal dt 19.10.2015 filed u/s. 3-G(5) of National Highways Act for higher compensation and dispose the same on merits

WP No.9251 of 2016

Writ petition filed under article 226 of the constitution of India praying this court to issue a writ of certiorarified mandamus to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No. NH-47/Arbitration/2015, dated 27.10.2015 and quash the same and consequently directing the 1st respondent to entertain the petitioners appeal dt 19.10.2015 filed u/s. 3-G(5) of National Highways Act for higher compensation and dispose the same on merits

WP No.9181 of 2016

Writ petition filed under article 226 of the constitution of India praying this court to issue a writ of certiorarified mandamus to call for the records of the file of 1st respondent in O.Mu.39002/2015/RP, dated 31.12.2015 and quash the same and further direct the 1st respondent to take the arbitration cases on file and adjudicate the same in the manner known to law

For Appellant : Mr.Richardson Wilson
for M/s.P.Wilson Associates [in all W.A.s]

For Petitioners : Mr.K.V.Sajeev Kumar
for M/s.Royan Law Associates [in W.P.No.9181/16]
Mr.C.Prakasam [in W.P.Nos.9250, 9251/16]

For Respondents : Mr.Silambanan
for M/s.C.E.Pratap
for R1 in WA.Nos.308 to 312/2016
for R1 and 2 in WP.Nos.9250 and 9251/2016

Mr.V.Anandhamoorthy, Additional Govt. Pleader
for R2 to R4 in WA.Nos.308 to 312/2016
for R2 and R4 in WA.Nos.1202 to 1206/2017
R2 & R3 IN WA.Nos.222 to 227/2018 and R1 & R2
IN WP.9250, 9251 & 9181 OF 2016

Mr.C.Prakasam
for R1 in WA.Nos.1202 to 1206/2017

Mr.K.V.Sajeev Kumar
for R1 in WA.Nos.222 to 227/2018

Mr.Richardson Wilson
for M/s.P.Wilson Associates
for R3 in W.P.No.9181/2016.

J U D G M E N T

K.K.SASIDHARAN, J.

and

R.SUBRAMANIAN, J.

Introductory:-

The applicability of the provisions of the Limitation Act, 1963, and more particularly Article 137 to the statutory arbitration under Section 3G(5) of the National Highways Act, 1956, is the substantial issue raised in these intra court appeals and the related Writ Petitions for our determination.

2. These intra-Court appeals have been filed by the Project Director, Project Implementation Unit, National Highways Authority of India challenging the orders passed in the respective Writ Petitions, wherein, the writ Court had directed initiation of Arbitration proceedings under Section 3-G(5) of the National Highways Act for determination of the value of the lands belonging to the landowners whose lands were acquired for the purpose of construction of National Highways. The Writ Petitions viz., W.P.Nos.9250, 9251 and 9181 of 2016 have been filed challenging the orders of the 1st respondent viz., the District Collector/ Arbitrator dated 31.12.2015 in and by which the representations of the petitioners in the respective Writ Petitions were rejected by the District Collector/ Arbitrator as barred by limitation.

The necessary facts that led to the filing of the Writ Petitions are as follows:

3. The lands belonging to several persons in the district of Erode were acquired for the purpose of widening the National Highway No.47 by the competent Authority under the National Highways Act, 1956. The Authorised Officer determined the compensation payable to the land owners under Section 3-G(1) of the National Highways Act, 1956. The land owners submitted applications invoking Section 3-G(5) of the National Highways Act, 1956 to the Arbitrator appointed by the Central Government on various dates. The Arbitrator by separate orders, rejected the claims for Arbitration on the ground that the applications seeking Arbitration have been made 3 years after passing the order determining the compensation under Section 3-G(1). The basis of the conclusion was that the claims are barred by limitation in view of Article 137 of the Limitation Act. The orders were challenged in various Writ Petitions before the writ court.

4. The learned Single Judge allowed those Writ Petitions by directing the Authorities to initiate Arbitration proceedings as per Section 3-G(5) of the National Highways Act, 1956. The learned Single Judge had proceeded on the premise that the rejection of the applications were not justified inasmuch as the landowners have claimed to have made several representations earlier.

5. The National Highways Authority has come forward with

these intra-Court appeals, challenging the orders passed by the writ court. The Writ Petitions viz., W.P.Nos.9250, 9251 and 9181 of 2016 have also been directed to be posted along with these appeals as the orders impugned in the Writ Petitions are also similar to the orders that were set aside in the other Writ Petitions which are the subject matter of the intra court Appeals.

Summary of submissions:-

6(a) Mr.Richardson Wilson, the learned counsel appearing for the appellant would contend that a reference to Arbitration or initiation of Arbitration proceedings under Section 3-G(5) of the National Highways Act, 1956 is not automatic. The learned counsel by pointing out that Section 3-G(5) contemplates an application by either of the parties for the purposes of initiating Arbitration proceedings, would contend that such an application must be made within a period of 3 years as provided under Article 137 of the Limitation Act.

(b) The learned counsel would also point out that Section 3-G(6) makes the provisions of the Arbitration and Conciliation Act applicable to Arbitrations under the National Highways Act, 1996. He invited our attention to the provisions of Section 43 of the Arbitration and Conciliation Act, 1956, which makes the provisions of the Limitation Act, 1963 applicable to the Arbitration proceedings. Drawing our attention to Section 21 of the Arbitration Act which provides that Arbitration proceedings are deemed to have commenced on the date on which a request for the dispute to be referred to Arbitration is received by the respondent, the learned counsel would contend that applications made after the period of 3 years prescribed under the residuary Article 137 of the Limitation Act are time barred.

(c) The sum and substance of the contention of the learned counsel for the appellant is that once an application is contemplated under the provisions of National Highways Act for the reference of a dispute to Arbitration, in view of Section 43 of the Arbitration and Conciliation Act, 1996 r/w. Section 21 of the said Act, the provisions of the Limitation Act, 1963 will apply and any application seeking arbitration as contemplated under Section 3-G(5) of the National Highways Act should be made within a period of 3 years in accordance with Article 137 of the Limitation Act, 1963.

7. Mr.S.Silambanan, learned Senior Counsel appearing for the landowners would contend that the provisions of the Limitation Act, 1963 do not apply to a statutory arbitration inasmuch as the National Highways Act, 1956 which provides for acquisition of land is a self contained code and it does not prescribe a period of limitation for the purposes of filing an

application under Section 3-G(5) of the Act. The learned Senior Counsel would also add that the right to receive reasonable compensation being a constitutional right guaranteed under Article 300A of the Constitution of India cannot be curtailed by invoking the provisions of the Limitation Act, 1963.

8. Mr.K.V.Sajeev Kumar, learned counsel appearing for the respondents in some of the Writ Appeals would contend that Section 2(4) of the Arbitration and Conciliation Act, 1996 makes Section 43 inapplicable to statutory arbitrations. Therefore, according to the learned counsel, the provisions of Section 43 of the Arbitration and Conciliation Act, 1996 will not apply to a statutory arbitration contemplated under Section 3-G(5) of the National Highways Act, 1956 and as a consequence the provisions of the Limitation Act, 1963 will also not apply.

The core question:-

9. The central question that arises for consideration is :-

"Whether the provisions of the Limitation Act, 1963, particularly Article 137 would apply to an application seeking Arbitration under Section 3-G(5) of the National Highways Act, 1956?

The statutory framework:-

10. Section 3-G(1) of the National Highways Act, 1956 reads as follows:

"(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the Competent Authority."

Section 3-G(5) of the National Highways Act, 1956 reads as follows:

"(5) If the amount determined by the competent authority under 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."

Section 3-G(6) of the National Highways Act, 1956 reads as follows:

"(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act."

Section 21 of the Arbitration and Conciliation Act, 1996 reads as follows:

"21. Commencement of arbitral proceedings. Unless otherwise agreed by the

parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

Section 43 of the Arbitration and Conciliation Act, 1996 reads thus:

" 43. Limitations.

1. The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

2. For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.

3. Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some steps to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

4. Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

Section 2(4) of the Arbitration and Conciliation Act, 1996 reads as follows:

"2.(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an

arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part, are inconsistent with that other enactment or with any rules made there under."

Article 137 of the Limitation Act reads as follows:

Description of application	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.

11(a) Mr. Richardson Wilson, learned counsel appearing for the appellant would rely upon the judgment of the Division Bench of Kerala High Court in K. Leela Vs. The District Collector and Arbitrator rendered in W.A.No.226 of 2015 dated 30th March 2015 in support of his submissions that the provisions of the Limitation Act, 1963 would apply to the arbitrations under Section 3-G(5) of the National Highways Act, 1956. The learned counsel would invite our attention to the conclusions of the Division Bench which are as follows:

"20. Though Arbitration under the NH Act is statutory, in so far as the 1996 Act is made applicable to such Arbitration, the Limitation Act equally applies and if under normal circumstances, a request to refer the dispute to Arbitration is filed beyond time, that is after a period of three years from the date on which the right to sue accrued, the Arbitration has to be held to be beyond the period of limitation. The Apex Court has held that even in a petition filed under Section 11 of the 1996 Act, it shall be open for the Chief Justice or the designated Judge to verify whether the claim is hopelessly barred by limitation. Under such circumstances, it cannot be contended by the appellant that Limitation Act has no application at all."

(b) He would also rely upon the judgment of a Division Bench of the Karnataka High Court in T. Yunis Vs. National Highways Authority of India and others [ILR 2012KAR 6055]. In the said judgment, the Karnataka High Court had considered the question whether the Article 119 of the Limitation Act or Article 137 of the Limitation Act would apply. The Karnataka

High Court on an assumption that the Limitation Act is applicable to the Arbitrations under the National Highways Act concluded that Article 137 would apply to an application under Section 3-G(5) of the National Highways Act, 1956.

(c) Mr. Richardson Wilson, learned counsel would also rely upon the judgments of the Hon'ble Supreme Court in Steel Authority of India Vs. J.C. Budharaja (1999) 8 SCC 122, Union of India Vs. Momin Construction Company [(1997) 9 SCC 97], Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta [(1993) 4 SCC 338] and Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma [AIR 1997 SC 282] and the judgment of a Division Bench of this Court in Madras Metro Water Supply and Sewerage Board Vs. O. Ramakrishna Reddy [(1995) 2 LW 694]. The learned counsel would also draw our attention to the judgment of the Hon'ble Supreme Court in State of Goa Vs. Praveen Enterprises [(2012) 12 SCC 581] and the judgment in Fairgrowth Investments Ltd., Vs. Custodian [(2004) 11 SCC 472].

12. At the outset it should be pointed out that the judgments of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant do not deal with the applicability of the provisions of the Limitation Act to a statutory arbitration. In Steel Authority of India, the Hon'ble Supreme Court had considered the case of an arbitration which stems out of a contract and held that reference of the dispute to arbitration might be sought for within 3 years when the cause of action arose in view of Section 43 of the Arbitration and Conciliation Act, 1996 which provides for the applicability of the provisions of the Limitation Act to Arbitration under the Arbitration and Conciliation Act, 1996.

13. In Momin Construction Company, the Hon'ble Supreme Court had considered an application under Section 20 of the Arbitration Act, 1940. Section 20 of the Arbitration Act, 1940 provides for an application to file an arbitration agreement in Court. Here again the Hon'ble Supreme Court was not called upon to decide as to whether the provisions of the Limitation Act, 1963 would apply to a statutory arbitration.

14. Similarly the Division Bench of this Court in O. Ramakrishna Reddy had also held that the provisions of Article 137 of the Limitation Act, 1963 would apply to a suit under Section 20 of the Arbitration Act, 1940 for reference of the dispute to an Arbitrator. Here again the Division Bench was not called upon to decide whether the provisions of Limitation Act, 1963 would apply to statutory arbitrations.

15. In Panchu Gopal Bose again the Hon'ble Supreme Court was concerned with a request for reference to arbitration

pursuant to the contract between the parties.

16. In T.P.Kunhaliumma, the Hon'ble Supreme Court had considered the applicability of the Limitation Act, 1963 to an application under Section 16(3) of the Indian Telegraph Act, 1885 where again the applicability of the provisions of the Limitation Act to a statutory arbitration was not an issue. The Hon'ble Supreme Court had also held that the words "any other application" under Article 137 cannot be said to be an application under the Code of Civil Procedure alone.

17. We are now left with the Division Bench judgments of the Kerala High Court in K.Leela Vs. The District Collector and Arbitrator (Judgment dated 30 March 2015 in W.A.No.226 of 2015), and the Karnataka High Court in T.Yunis Vs. National Highways Authority of India and others [ILR 2012KAR 6055]. These judgments are to the effect that the provisions of the Limitation Act, 1963 would apply to arbitrations contemplated under the provisions of Section 3-G(5) of the National Highways Act, 1956.

18. Thiru.K.V.Sajeev Kumar, learned counsel for the landowners would contend that none of the above three judgments had taken note of the provisions of Section 2(4) of the Arbitration and Conciliation Act, 1996. The learned counsel would point out that Section 2(4) of the Arbitration and Conciliation Act, 1996, makes the provisions of part (1) of the Arbitration and Conciliation Act, 1996 applicable to statutory arbitrations except the provisions of Sub-Section 1 of Section 40, Section 41 and Section 43. Therefore, according to the learned counsel, in view of Section 2(4), the provisions of Section 43 cannot be applied to a statutory arbitration. The learned counsel would submit that in view of Section 2(4) of the Arbitration and Conciliation Act, 1996, Section 43 which makes Limitation Act, 1963 applicable to arbitration proceedings cannot be invoked to a statutory arbitration under Section 3G of the National Highways Act. If the Limitation Act cannot be applied to statutory arbitrations there is no question of applications filed by the land owners seeking arbitration being rejected on the ground that they are barred by limitation.

19. In support of his submissions, Mr.K.V.Sanjeev Kumar, learned counsel would rely upon the judgments of the Hon'ble Supreme Court in Tamil Nadu Generation and Distribution Corporation Limited Vs. PPN Power Generating Company Private Limited [(2014) 11 SCC 53], Andhra Pradesh Power Coordination Committee and others Vs. Lanco Kondapalli Power Limited and others [(2016) 3 SCC 468] and the Division Bench judgment of the Bombay High Court in Savitra Khandu Beradi Vs. Nagar Agricultural Sale and Purchase Co-operative Society Ltd.,

Ahmednagar and others [AIR 1957 BOMBAY 178].

20. The Division Bench of the Bombay High Court in Savitra Khandu Beradi was concerned with a case arising under the Arbitration Act, 1940. The Division Bench after referring to Section 37 and 46 of the 1940 Act, observed thus :

"37. Limitations.

(1) All the provisions of the Indian Limitation Act, 1908 , (9 of 1908.) shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908 , (9 of 1908) an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require,

extend the time for such period as it thinks proper.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agree- ment shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908 , for the commencement of the proceedings (including arbitration) with respect to the difference referred.

46. Application of Act to statutory arbitrations. The provisions of this Act, except sub- section (1) of section 6 and sections 7, 12, '[36] and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is in- consistent with that other enactment or with any rules made thereunder."

21. The provisions of Section 37 and 46 of the 1940 Act are substantially similar to the provisions of Section 43 and Section 2(4) of the 1996 Act.

22. While considering the effect of provisions of Sections 37 and 46 of 1940 Act, the Division Bench of the Bombay High Court said :

"10. It is clear from the judgment in Ramdutt Ramkissendass's "case (A) and also in Astley and Tyldeslay Coal and Salt Co.'s case (B) that in a mercantile reference it is an implied term of the contract of reference that the arbitrator must decide the dispute consistently with the law of limitation. If this were a case which arose under a contract of reference, even apart from Section 37 of the Indian Arbitration Act, the provisions of the Limitation Act may be regarded as

applicable to the claim made by the Society. But in an arbitration proceedings, where the source of the authority of the arbitrator is a statute, and not an agreement between the contending parties, a condition that the arbitrator must decide the dispute according to the law of limitation cannot in the absence of a statutory provision be implied. The Legislature has by Section 46 of the Arbitration Act expressly excluded from the operation of Section 37 statutory arbitrations, and if notwithstanding that express exclusion the provisions of the Indian Limitation Act are applied, the Court would in effect be rendering the exclusion clause ineffective."

23. The Hon'ble Mr. Justice Gokhale in his separate concurring judgment in Savitra Khandu Beradi had observed as follows:

"The effect of these two sections, therefore, would be that the provisions of the Indian Limitation Act have been made applicable to arbitrations, so that arbitration proceedings are placed on the same footing as proceedings in Court contemplated under Section 3 of the Limitation Act; but though Section 46 of the Arbitration Act provides for the application of most of the provisions of the Act to arbitration proceedings held under any statute, this section makes an exception along with some other sections, regarding the application of Section 37. The result therefore would be that though under Section 37 the provisions of the Limitation Act would apply to arbitration proceedings, those provisions would be excluded so far as arbitration proceedings held under any statute are concerned, by virtue of Section 46 of the Arbitration Act. This position in law is not disputed by Mr. Tarkunde."

24. A similar question arose in Tamil Nadu Generation and Distribution Corporation Limited Vs. PPN Power Generating Company Private Limited [(2014) 11 SCC 53], wherein, the Hon'ble Supreme Court while considering the applicability of Limitation Act, 1963 to a statutory arbitration under the Electricity Act, 2003 had concluded that in view of Section 2(4) of Arbitration and Conciliation Act, 1996, the provisions of Section 43 will

not apply to a statutory arbitration. The Hon'ble Supreme Court had observed thus:

"65. The submission of the appellant that the Limitation Act would be available in case the reference was to be made to arbitration, in our opinion, is also without merit. Firstly, the State Commission exercised its jurisdiction to decide the dispute itself. The matter was not referred to arbitration, therefore, the Limitation act would not be applicable. Secondly, Section 43 of the Arbitration and Conciliation Act would not be applicable even if the matter was referred to arbitration by virtue of Section 2(4) of the Arbitration Act, 1996. Section 2(4) of the Arbitration Act reads as under :

"2.(4) This part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."

66. By virtue of the aforesaid provision, the provision with regard to the Limitation Act under Section 43 would not be applicable, to statutory arbitrations conducted under the Electricity Act, 2003."

25 (a) In Andhra Pradesh Power Coordination Committee and others Vs. Lanco Kondapalli Power Limited and others [(2016) 3 SCC 468], the Hon'ble Supreme Court had considered the question of applicability of the provisions of Limitation Act, 1963 to a proceeding initiated before the State Electricity Regulatory Commission under Section 86(1) F of the Electricity Act, 2003. The Hon'ble Supreme Court had framed the following question for determination:

Whether the Limitation Act, 1963, particularly Section 3 and the Schedule will apply to any action instituted before the Commission under Section 86(1) of the

Electricity Act, 2003?

(b) After considering the judgment in PPN Power Generating Company Pvt.Ltd. (supra), the Hon'ble Supreme Court had concluded that the provisions of the Limitation Act will not apply to a proceeding under Section 86(1) of the Electricity Act, 2003. The following observation would make the position clear :-

"24. Mr.Sundaram placed reliance upon the judgment in M.P Steel Corpn. to support his submission that the Limitation Act applies only to courts stricto sensu and not to quasi-judicial tribunals. It may be noted here that the matter in M.P Steel Corpn. had arisen from the proceedings under the Customs Act and hence in that case there was no occasion to consider the issue whether the Limitation Act is applicable to an action initiated before the Commission by virtue of the provisions of the electricity act, 2003. However, this judgment does help the respondents to an extent by holding that the principles underlying section 14 of the limitation act will be applicable even in matters filed before a quasi-judicial tribunal such as the Commission. But the moot question remains to be answered-Whether the bar of limitation is required to be respected by the Commission on the ground that there is no provision in the Electricity Act conferring additional rights upon a party moving the Commission for relief so as to claim even such reliefs which stand barred by limitation before the civil court or even for arbitral proceedings? The other ancillary issue required to be answered is - Whether by virtue of the provisions of the electricity act, 2003 the limitation act has been made applicable to an action before the Commission by express provision or even by necessary intendment?

28. Coming back to the issues relating to limitation, in view of law noticed above and for the reasons noted in M.P Steel Corpn., we respectfully concur and hold that by itself the Limitation Act will not be applicable to the Commission under the Electricity Act, 2003 as the Commission is not a court stricto sensu. The further stand of the respondents that the Commission being

a statutory tribunal, cannot act beyond the four walls of the Electricity Act also does not brook any exception. In PPN Power Generating Co. (P) Ltd. this Court examined the issue of limitation in a very summary manner and without referring to the relevant provisions of the electricity act, 2003, at the end of para 64 it was observed in a single sentence that the Limitation Act is inapplicable to proceeding before the State Commission. But in view of detailed discussion in M.P Steel Corpn., we have held above that by itself the Limitation Act is inapplicable to proceeding or action brought before the State Commission."

26. In Khoday Distilleries Limited (Now known as Khoday India Limited) Vs. Scotch Whisky Association and others [(2008) 10 SCC 723] the Hon'ble Supreme Court held that Article 137 of the Limitation Act, 1963 is not applicable to a proceeding for rectification under the Trade and Merchandise Marks Act, 1958.

27. Our attention was also drawn to a judgment of the Karnataka High Court in National Highways Authority of India Vs. Udaykumar and others [CDJ 2017 Kar Hc 190], wherein, the Division Bench had taken the view that Section 137 of the Limitation Act will not apply to a statutory arbitration under Section 3-G(5) of the National Highways Act, 1956.

28. As rightly pointed out by Mr.K.V.Sanjeev Kumar, learned counsel for the landowners, the provisions of Section 2(4) of the Arbitration and Conciliation Act, 1996 which makes Section 43 of the said Act inapplicable to statutory arbitrations was not brought to the notice of the Division Bench of the Kerala High Court which decided the issue in K.Leela Vs. The District Collector and Arbitrator. In T.Yunis Vs.National Highways Authority of India the question of applicability of the Limitation Act, 1963 was conceded and the dispute was confined only to the question as to whether Article 119 or Article 137 would apply to such proceedings. The Karnataka High Court on consideration of the provisions of the National Highways Act, 1956 as well as the Limitation Act, 1963 concluded that it was only Article 137 that would apply to such proceedings.

29. The Division Bench of the Karnataka High Court in National Highways Authority of India Vs. Udaykumar and others had held that in view of Section 2(4) of Arbitration and Conciliation Act, 1996, the provisions of Limitation Act, 1963 would not be applicable to statutory arbitrations.

30. Adverting to the cases on hand, the facts are not in dispute. The lands belonging to the land owners who are the respondents in the Writ Appeals and petitioners in the Writ Petitions were acquired for the purpose of widening the National Highways under the National Highways Act, 1956. The competent Authority passed orders under Section 3-G(1) of the said Act. The landowners had filed applications though belatedly seeking re-determination of the compensation by referring the matter to an arbitrator appointed by the Central Government in terms of Section 3-G(5) of the Act. The applications were dismissed by the Arbitrator on the ground that they have been filed beyond 3 years.

31. The judgment of the Kerala High Court in K.Leela is the basis for the contention of the National Highways authorities to non-suit the landowners.

32 (a) The Division Bench of the Kerala High Court in K.Leela case cited (supra) by placing reliance on Section 43 of the Arbitration and Conciliation Act, 1996, which made the provisions of Limitation Act, 1963 applicable to arbitrations under Section 3-G(5) of the National Highways Act, 1956, concluded that Limitation Act would apply to a proceeding for arbitration under the Act.

(b) The attention of the Division Bench of the Kerala High Court was not drawn to the provisions of Section 2(4) of the Arbitration and Conciliation Act, 1996 which exclude the applicability of Section 43 to statutory arbitrations. The judgments of the Hon'ble Supreme Court in PPN Power Generating Company Private Limited and Lanco Kondapalli Power Limited and others would make the position clear that the provisions of the Limitation Act, 1963 cannot be applied to statutory arbitrations in view of Section 2(4) of the Arbitration Act, 1996.

33. The judgment in Savitra Khandu Beradi Vs. Nagar Agricultural Sale and Purchase Co-operative Society Ltd., Ahmednagar and others [AIR 1957 BOMBAY 178], though rendered under the Arbitration Act, 1940, the provisions being substantially same, we see no difficulty in applying the ratio laid down by the Division Bench of the Bombay High Court and the Hon'ble Supreme Court in the above quoted decisions to conclude that the provisions of the Limitation Act will not be applicable to statutory arbitrations under Section 3-G(5) of the National Highways Act, 1946.

34. We therefore make the position clear that the provisions of the Limitation Act and more particularly Article

137 would not apply to an application for reference to arbitration under Section 3G() of the National Highway Act, 1956.

35. In view of the aforesaid reasons, the orders of the learned Single Judge in the Writ Petitions directing initiation of arbitration proceedings are confirmed. The order passed by the 1st respondent in the Writ Petitions dated 27.10.2015 and 31.12.2015 are quashed. There will be a direction to the respondents to refer the claims of the petitioners in the Writ Petitions for arbitration as contemplated under Section 3-G(5) and (6) of the National Highways Act, 1956.

36. The intra court appeals are dismissed. The Writ Petitions are allowed. There is no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

dsa/tar

To

- 1.The Project Director,
Project Implementation Unit,
National Highways Authority of India,
Door No.9/9A, 4th Cross Street,
Kothari Layout, B.R.Nagar,
Opp. Stock Exchange, Trichy Road,
Singanallur, Coimbatore - 641 005.
- 2.The District Collector cum Arbitrator,
Erode District,
Dheeran Chinnamalai Maaligai,
Perundurai Road,
Erode - 638 011.
- 3.The District Revenue Officer,
Competent Authority, NH-47 (LA),
Erode District Collectorate Building,
Erode - 638 011.
- 4 THE SPECIAL TAHSILDAR (LAND
ACQUISITION) ERODE TK NATIONAL HIGHWAYS NH-
47 (FOUR WAY PROJECT) 13 RASU GOUNDER
THOTTAM CHOOLAI NEAR RELIANCE PETROL BUNK
ERODE-04.

5. THE SPECIAL TAHSILDAR (LA)
ERODE TALUK NATIONAL HIGH WAYS,
NH-47 (FOUR WAYS PROJECT)
O/O. THE SPECIAL TAHSILDAR (LA)
5TH FLOOR, DISTRICT COLLECTORATE
BUILDINGS ERODE 638 001.
- 6 THE DISTRICT COLLECTOR
ARBITRATOR, SALEM DISTRICT TAMIL NADU.
- 7 THE COMPETENT AUTHORITY AND
SPECIAL DISTRICT REVENUE OFFICER (LA) N.H.7
46, 4,7 SALEM DHARMAPURI DISTRICTS
KRISHNAGIRI, NO.26 CO OPERATIVE COLONY
KRISHNAGIRI 635 001.
- 8 THE PROJECT DIRECTOR IN CHARGE OF
NH 46,47 NATIONAL HIGH WAYS AUTHORITY OF INDIA
SALEM, DHARMAPURI DISTRICT, KRISHNAGIRI
- +1cc to Mr.C.PRAKASAM, Advocate, S.R.No.31384
+1cc to Mr.P.WILSON ASSO, Advocate, S.R.No.31163
+1cc to Mr.ROYAN LAW ASSO, Advocate, S.R.No.31003
+6cc to Mr.C.E.PRATAP Advocate, S.R.No. 30553

Judgment in W.A.Nos.308 to 312 of 2016,
1202 to 1206 of 2017, and 222 to 227 of 2018,
W.P.Nos.9250, 9251 and 9181 of 2016

NRL (CO)
TR(07/05/2018)

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