



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A(MD)Nos.1760, 1889 & 1942 of 2013

1.C.M.A(MD)No.1760 of 2013:-

Chellaiah (died)

1.P.Bagyalakshmi

A.Bagyalakshmi (died)

(Amended as per order passed
in I.A.No.1966/2012)

2.C.Bhuvaneswari

3.C.Sivashanmugam ... Appellants/Petitioners

Vs.

1.The Competent Authority cum Special District

Revenue officer,

National Highways 45-B (Land Acquisition), Unit II,

Pon Nagar,

Tiruchirappalli - 620 001.

2.The Arbitrator cum District Collector,

Collectorate,

Tiruchirappalli - 1.

3.National Highways Authority of India,

Rep. By its Chief General Manager,

Having office at G5 and 6, Sector 10,

Dwarka,

New Delhi - 110 075.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 37(1)(a) of the Arbitration and conciliation Act, 1996, to call for the records relating to the order of the learned Principal District Judge, Tiruchirappalli, in Arbitration O.P.No.1 of 2010, dated 23.04.2013, refusing to set aside the arbitral award passed by the learned Arbitrator cum District Collector, Tiruchirappalli, dated 10.10.2009.

For Appellants

: Mr.S.K.Mani

For RR 1 & 2

: Mr.A.K.Baskara Pandian,
Special Government Pleader.

<https://hcservices.ecourts.gov.in/hcservices/>

For R - 3

: Mr.C.Arul Vadivel @ Sekar



2.The Arbitrator cum District Collector,
Collectorate,
Tiruchirappalli - 1.

3.National Highways Authority of India,
Rep. By its Chief General Manager,
Having office at G5 and 6, Sector 10,
Dwarka,
New Delhi - 110 075.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 37(1)(a) of the Arbitration and conciliation Act, 1996, to call for the records relating to the order of the learned Principal District Judge, Tiruchirappalli, in Arbitration O.P.No.5 of 2009, dated 23.04.2013, refusing to set aside the arbitral award passed by the learned Arbitrator cum District Collector, Tiruchirappalli, dated 10.10.2009.

For Appellant : Mr.K.Govindarajan, for
Mr.T.Antony Arulraj,

For RR 1 & 2 : Mr.A.K.Baskara Pandian,
Special Government Pleader.

For R - 3 : Mr.C.Arul Vadivel @ Sekar

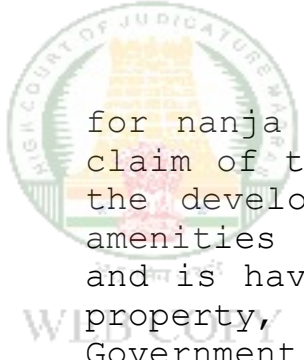
COMMON JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The facts leading to these appeals are interlinked and hence, this common order is passed.

2.These appeals are filed by invoking Section 37 of the Arbitration and Conciliation Act, 1996.

3.In C.M.A(MD)No.1760 of 2013, the legal representatives of the claimant, namely P.Chelliah, are the appellants and Chelliah was the owner of the lands in T.S.Nos.383/7B1, 383/8B1 and 383/10B1 at Tuvarankurichi Village, Manapparai Taluk, Tiruchirappalli District. The first respondent had acquired 248 sq. meters of land in S.F.Nos.383/7B1, 302 sq. meters in S.F.No.383/10B1 and it was acquired for laying four lane road by the National Highways Authority of India. The first respondent, [https://hcservices.courts.gov.in/service/CompetentAuthorityCumSpecialDistrictRevenueOfficer, National Highways 45-B \(Land Acquisition\) Unit II, Pon Nagar, Trichy - 1](https://hcservices.courts.gov.in/service/CompetentAuthorityCumSpecialDistrictRevenueOfficerNationalHighways45-B(LandAcquisition)UnitIIPonNagarTrichy-1), had fixed the market value at Rs.11.72 sq.meter



for nanja land and Rs.8.57 sq. meter for punja land. It is the claim of the claimant that the acquired land is situate adjoining the developing real estate area and nearby the land, very many amenities are available like bus stand, shops, petrol bunks etc., and is having a potential value and at the time of acquiring the property, the market value, as per the guideline fixed by the Government of Tamil Nadu, works out to Rs.3,250/- per sq. meter. The claimant has also averred that in the acquired land, 36 yielding coconut trees and 8 grown up saplings and 5 margosa trees are there and therefore, compensation is to be fixed at Rs.1,800/- per coconut tree including the grown up saplings for an average yield period of 40 years and however, though the trees had been cut and removed by the third respondent, no compensation has been awarded and without considering the same, the first respondent/competent authority, has fixed a very low value and therefore, filed an application under Section 3(G)(7) of the National Highways Act, 1956.

(ii) The second respondent/Arbitrator vide award, dated 10.10.2009 has upheld the compensation determined by the first respondent/competent authority and dismissed the petition. Therefore, the claimant filed a petition in Arbitration O.P.No.1 of 2010 before the Appellate Authority, namely, the Principal District Court, Tiruchirappalli, by invoking Section 34 of the Arbitration and Conciliation Act, 1996. The learned Judge, taking note of the legal position as to the scope of interference under Section 34(1), has dismissed the said O.P vide impugned award, dated 23.04.2013 and challenging the legality of the same, the present Civil Miscellaneous Appeal is filed.

4. In C.M.A(MD)No.1889 of 2013, the claimant is the appellant and he is the owner of the lands in T.S.Nos.383/7A, 383/8A, 383/10A, 385/4 and 384/5B at Tuvarankurichi Village, Manapparai Taluk, Tiruchirappalli District. The first respondent had acquired 200 sq. meters with borewell in S.F.No.383/7A; 150 sq. meters in S.F.No.383/8A; 500 sq. meters in S.F.No.383/10A, 550 sq. meters in S.F.No.385/4 and 1,450 sq. meters in S.F.No.385/5B. The first respondent/competent authority had fixed the market value at Rs.11.72 sq. meter for nanja land and Rs.8.57 sq. meter for punja land. It is the claim of the claimant that the acquired land is situate adjoining the developing real estate area and nearby the land, very many amenities are available like bus stand, shops, petrol bunks etc., and is having a potential of developing as a real estate land in nature. That apart, the guidelines fixed by the Government of Tamil Nadu works out to Rs.3,250/- and as such, he is entitled to get more compensation and it is also the claim of the claimant that there are 80 yielding coconut trees, 8 grown up saplings and 5 margosa trees and therefore, compensation is to be fixed at Rs.1,800/- per coconut tree including the grown up saplings for an average yield period of 40 years would be Rs.63,36,000/- and that apart, entitled to 10% solatium and as



such, the claimant claimed a compensation of Rs.1,43,08,714/-.

(ii) The second respondent/Arbitrator has considered the issue and found that the value of compensation arrived by the first respondent/competent authority is correct and therefore, rejected the same vide order, dated 10.10.2009 and challenging the same, the claimant filed arbitration O.P.No.2 of 2010 before the Appellate Authority, namely, the Principal District Court, Tiruchirappalli, by invoking Section 34 of the Arbitration and Conciliation Act, 1996. The learned Judge found that under Section 34(1) of the Arbitration and Conciliation Act, 1996, the scope of interference is very limited and by applying the legal principles, had rejected the arbitration O.P vide impugned order, dated 23.04.2013 and challenging the same, the present Civil Miscellaneous Appeal is filed.

5. In C.M.A(MD)No.1942 of 2013, the claimant is the appellant and he was the owner of the lands in T.S.Nos.383/6B, 383/1B, 385/2B, 385/3A, 385/5A2 and 384/2B1 at Tuvarankurichi Village, Manapparai Taluk, Tiruchirappalli District. The first respondent had acquired 170 sq. meters of land in S.F.Nos.383/6B, 1671 sq. meters in S.F.No.384/1B, 3.752 sq.meters in S.F.No.385/2B, 735 sq.meters in S.F.No.385/3A, 2250 sq.meters in S.F.No.385/5A2 and 2.518 sq.meters in S.F.No.384/2B1 and it was acquired for laying four lane road by the National Highways Authority of India. The first respondent, namely, the Competent Authority cum Special District Revenue Officer, National Highways 45-B (Land Acquisition) Unit II, Pon Nagar, Trichy - 1, had fixed the market value at Rs.11.72 sq.meter for nanja land and Rs.8.57 sq.meter for punja land. It is the claim of the claimant that the acquired land is situate adjoining the developing real estate area and nearby the land, very many amenities are available like bus stand, shops, petrol bunks etc., and is having a potential value and at the time of acquiring the property, the market value, as per the guideline fixed by the Government of Tamil Nadu works out Rs.3,250/- per sq.meter. The claimant has also averred that in the acquired land, 184 yielding coconut trees are there and therefore, compensation is to be fixed at Rs.1,800/- per coconut tree including the grown up saplings for an average yield period of 40 years and however, though the trees had been cut and removed by the third respondent, no compensation has been awarded and without considering the same, the first respondent/competent authority, has fixed a very low value and therefore, filed an application under Section 3(G) (7) of the National Highways Act, 1956.

(ii) The second respondent/Arbitrator vide award, dated 10.10.2009 has upheld the compensation determined by the first respondent/competent authority and dismissed the petition. Therefore, the claimant filed arbitration O.P.No.5 of 2009 before the Appellate Authority, namely, the Principal District Court,



Tiruchirappalli, by invoking Section 34 of the Arbitration and Conciliation Act, 1996. The learned Judge, taking note of the legal position as to the scope of interference under Section 34 (1), has dismissed the said O.P vide impugned award, dated 23.04.2013 and challenging the legality of the same, the present Civil Miscellaneous Appeal is filed.

6.The learned respective counsel appearing for the appellants have invited the attention of this Court to the typedset of documents and would submit that admittedly, on the acquired lands, yielding trees were there and as per the counter-affidavit filed by the National Highways Authority, orders were issued to cut the trees and the claimants had cut the trees and removed it and however, the second respondent, did not consider the said issue at all and by a cryptic order, has confirmed the order of the competent authority and arbitration O.Ps' were preferred on the file of the Court of the Principal District Judge, Tiruchirappalli. The learned Judge has clearly stated that the scope of interference is very limited in exercise of power under Section 34(1) of the Arbitration and Conciliation Act, 1996 and therefore, dismissed the petitions and would further add that since the claimants/land holders were deprived of their lands and thereby, which affected their constitutional right to hold the lands guaranteed under Article 300(A) of the Constitution of India has been deprived and proper application of mind is required on the part of the respondents 1 and 2 and however, having failed to apply their mind in the light of the statutory provision and prays for interference.

7.The learned respective counsel appearing for the parties has also placed reliance upon the Judgment of the Karnataka High Court in *Siddagangappa Vs. Thimmanna* [AIR 2003 Karnataka 164] as well as the un-reported Judgment of the Kerala High Court in *WP (C)No.11645 of 2017 (E)*, dated 04.10.2017 in *Rajamma Vs. Project Directors and others*.

8.Per contra, Mr.C.Arul Vadivel @ Sekar, learned standing counsel appearing for the third respondent would submit that admittedly, the lands were acquired for public purpose for putting up a four lane and the first respondent/competent authority, taken into consideration the potential value of the land and other relevant factors, has rightly fixed the compensation and the second respondent, on an independent application of mind, has rightly confirmed the said order passed by the competent authority and the learned Judge, by correctly taking into consideration, the limited scope under Section 34(1) of the Arbitration and Conciliation Act, 1996, has rightly dismissed the arbitration O.Ps and therefore would further add that in the light of the ~~scope of interference~~ findings, the scope of interference is very very limited and thus, this Court may not interfere with the same and prays for dismissal of all these appeals with costs.



9. This Court has carefully considered the rival submissions and perused the materials placed on record as well as the original records.

10. It is not in dispute that the lands owned by the claimants have been acquired for public purpose to develop a four lane for road use by the National Highways Authority of India. The primordial submission of the learned respective counsel appearing for the parties is that admittedly yielding trees were there and despite the stand taken by the National Highways Authority of India in the counter-affidavit, as ordered, the claimants had cut the trees for the purpose of awarding compensation and the said fact has been completely overlooked by the second respondent/arbitrator.

11. The learned respective counsel appearing for the parties would submit that despite documents have been marked, the second respondent/arbitrator, did not apply his mind to the contents of the documents and merely confirmed the orders passed by the competent authority. It is urged by the learned respective counsel appearing for the parties that the learned Judge has simply rejected the arbitration O.Ps' under Section 34(1) of the Arbitration and Conciliation Act, 1996, overlooking the fact that the arbitrator has totally failed to apply his mind to the materials placed.

12. This Court has gone through the award passed by the arbitrator as well as the impugned order passed by the learned Judge in the Arbitration O.Ps'. It is to be remembered at this juncture that the lands of the claimants have been acquired for the public purpose and therefore, their constitutional right to hold the lands guaranteed under Article 300(A) of the Constitution of India has been deprived though by resorting to due process of law. Therefore, it is obligatory on the part of the acquiring authority to pay the compensation as per parameters laid down for acquiring the said lands and award of compensation.

13. A perusal of the award passed by the arbitrator, though documents have been marked, it is seen that the contents of the same having not been discussed at all and especially with regard to the value of the trees that said to have been cut and removed by the claimants. It is also to be noted at this juncture that the stand of the National Highways Authority of India in the counter-affidavit is that they have ordered the claimants to cut and remove the trees and they cut and removed the same and thus, they wanted to convey the information, that the trees that were cut might have been sold by the claimants and as such, they are not entitled to compensation for the value of the trees. Though it was obligatory on the part of the second respondent to consider the said issue, the second respondent have not been dealt with



the said issue while awarding the compensation.

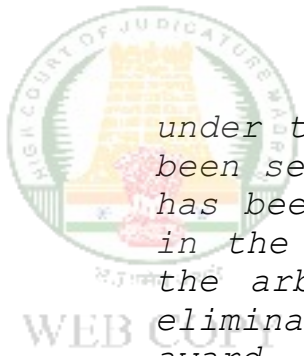
14.As rightly pointed by the learned respective counsel appearing for the parties that the award passed by the second respondent/arbitrator, nothing has been discussed with regard to the marked documents and would *prima facie* exhibit total non-application of mind on his part. The claimants filed arbitration O.Ps' by invoking Section 34 of the Arbitration and Conciliation Act, 1996, and the Appellate Authority merely held that the claim made by the claimants did not come within the scope and ambit of Section 34 of the said Act.

15.In the considered opinion of this Court, the said approach is not in consonance with law for the reason that the award passed by the second respondent did not discuss any evidence at all and in the considered opinion of this Court, the findings accorded are based upon no evidence.

16.The learned counsel appearing for the respective parties has invited the attention of this Court to the Judgment rendered by the Honourable Supreme Court of India in *Kinnari Mullick and another Vs. Ghanshyam Das Damani* [AIR 2017 SC 2785]. The issue arose for consideration in the said decision was whether Section 34(4) of the said Act empowers the Court to relegate the parties before Arbitral Tribunal after setting aside arbitral award in question. The facts of the case would disclose that the Bombay High Court has set aside the award and granted liberty to the parties to invoke Section 34(4) of the said Act and the Honourable Supreme Court of India observed that once the award is set aside, there cannot be any opportunity granted to invoke Section 34(4) of the said Act and it is relevant to extract Section 34(4) of the said Act:-

"12..... "Section 34 (4). On receipt of an application under sub-Section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral proceedings or to take such other action as in the opinion of arbitral Tribunal will eliminate the grounds for setting aside the arbitral award."

13.On a bare reading of this provision, it is amply clear that the Court can defer the hearing of the application filed under Section 34 for setting aside the award on a written request made by a party to the arbitration proceedings to facilitate the Arbitral Tribunal by resuming the arbitral proceedings or to take such other action as in the opinion of arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. The quintessence for exercising power



under this provision is that the arbitral award has not been set aside. Further, the challenge to the said award has been set up under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. No power has been invested by the Parliament in the Court to remand the matter to the arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in sub-Section 4 of Section 34. This legal position has been expounded in the case of *McDermott International Inc. (Sic) (supra)*. In paragraph 8 of the said decision, the Court observed thus:

"8....parliament has not conferred any power of remand to the Court to remit the matter to the arbitral Tribunal except to adjourn the proceedings as provided under sub-Section (4) of Section 34 of the Act. The object of sub-Section (4) of Section 34 of the Act is to give an opportunity to the arbitral Tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award." (Emphasis supplied)

14. In any case, the limited discretion available to the Court under Section 34(4) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings. It is crystal clear that the Court cannot exercise this limited power of deferring the proceedings before it suo motu. Moreover, before formally setting aside the award, if the party to the arbitration proceedings fails to request the Court to defer the proceedings pending before it, then it is not open to the party to move an application under Section 34(4) of the Act. For, consequent to disposal of the main proceedings under Section 34 of the Act by the Court, it would become functus officio. In other words, the limited remedy available under Section 34(4) is required to be invoked by the party to the arbitral proceedings before the award is set aside by the Court.

15. In the present case, the learned Single Judge had set aside the award vide Judgment dated 07.03.2014. Indeed, the respondent carried the matter in appeal before the Division Bench. Even if we were to assume for the sake of argument, without expressing any opinion either way on the correctness of this assumption, that the application was in continuum of the application under Section 34 for setting aside of the award and therefore, the Division Bench could be requested by the party to



the arbitral proceedings to exercise its discretion under Section 34(4) of the Act, the fact remains that no formal written application was filed by the respondent before the Division Bench for that purpose. In other words, the respondent did not make such a request before the learned single Judge in the first instance and also failed to do so before the Division Bench rejected the appeal of the respondent."

17. Though in the considered opinion of this Court, the award passed by the arbitrator would exhibit total non-application of mind and that the findings are based upon no evidence, which has been confirmed by the dismissal of the arbitration O.Ps by the Appellate Authority on account of limited scope available for judicial review, this Court is not in a position to remand the matter to the second respondent/arbitrator for fresh adjudication.

18. At this juncture, the learned respective counsel appearing for the parties would pray that the Civil Miscellaneous Appeals can be kept pending and they may be at liberty to invoke Section 34(4) of the said Act to point out the deficiency in the arbitrary award, which may be curable.

19. In the light of the findings reached in the foregoing paragraphs, the appellants/claimants are entitled to invoke Section 34(4) of the said Act by taking out appropriate application before the Appellate Authority/Principal District Judge, Trichirappalli, and upon filing of the same, the Appellate Authority shall consider the said application on merits and in accordance with law.

20. In the result, the Civil Miscellaneous Appeals are partly-allowed and the impugned orders, dated 23.04.2013 passed by the Appellate Authority/Principal District Judge, Trichirappalli, in O.P.Nos.1 of 2010, 2 of 2010 and 5 of 2009 are set aside and remitted back to the Appellate Authority and the claimants/legal representatives of the claimants are at liberty to invoke Section 34(4) of the said Act by filing appropriate applications within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the Appellate Authority is directed to adjudicate the said application in accordance with law and pass orders within a further period of ten weeks thereafter. However, in the circumstances of the case, there shall be no order as to costs.

Sd/
Assistant Registrar (T&P)

/True copy/



To

1.The Competent Authority cum Special District
Revenue officer,
National Highways 45-B (Land Acquisition), Unit II,
Pon Nagar,
Tiruchirappalli - 620 001.

2.The Arbitrator cum District Collector,
Collectorate,
Tiruchirappalli - 1.

3.Chief General Manager,
National Highways Authority of India,
Having office at G5 and 6, Sector 10,
Dwarka,
New Delhi - 110 075.

4.The Principal District Judge,
Tiruchirappalli.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (**2 COPIES**)

+1cc to Mr.C.ARUL VADIVEL @ SEKAR, Advocate, SR.No. 57500
+1cc to Mr.T.ANTONY ARUL RAJ, Advocate, SR.No. 57752

C.M.A(MD)Nos.1760, 1889 & 1942 of 2013
23.03.2018

PS

KK/KKR/SAR-1/21.05.2018/11P-9C