

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.1936 of 2012 and
M.P.No.1 of 2012

S.Palanivel

...Petitioner

Vs

1. The District Collector,
Namakkal District,
Namakkal.

2. The Authorized Officer and
the District Revenue Officer,
O/o.the District Revenue Officer,
Namakkal District, Namakkal.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in Na.Ka.No.12245/2009/H2 dated 21.9.2011 on the file of the District Collector, Namakkal, quash the same and consequently, direct the 1st respondent to conduct the Arbitration by giving an opportunity to all the petitioners under Section 3G6 of the National Highways Act, 1996.

For Petitioner : Mr.R.Karthikeyan

For Respondents: Mr.M.Elumalai, Govt. Advocate

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O R D E R

Challenging the correctness of the Order of the District Collector, Namakkal, in Na.Ka.No.12245/2009/H2 dated 21.9.2011 on the ground that since no notice whatsoever was issued to the petitioner while conducting Arbitration Proceedings, therefore, the impugned award which was passed without hearing the land owners is liable to be set aside, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner would submit that the petitioner is the owner of the land having an extent of 3527 Sq.mts. in Survey No.79/3B situated at Konur Village, Namakkal District. The same was acquired under a

Notification issued under Section 3-A of the National Highways Act (hereinafter referred to as, 'the Act') for the purpose of laying four lane in National Highway No.7 between Salem and Karur within 217.600 to 278.600 in meters. A notice under Section 3-A(1) of the Act was published on 4.5.2006 in respect of 20,721.5 Sq.meters and another Notification was published under Section 3-A(1) on 19.1.2007 in respect of the lands measuring 59,049 Sq.meters. Thereafter, the Central Government has also issued notice under Section 3D(1) of the Act declaring that the lands have been acquired under the National Highways Act, 1956 and also published a Notice under Section 3-G(3) of the Act in Na.Ka.No.2295/2004 dated 20.02.2007 calling for explanation from all the land owners. The land owners have participated in the enquiry conducted under Section 3-G of the Act inviting claims from the owners of the lands to be acquired. Thereafter, the 2nd respondent herein, namely, the Authorized Officer and the District Revenue Officer, Namakkal District, passed an Award No.14/2007 dated 16.10.2007 determined the value at the rate of Rs.8,26,781/- per acre thereby fixing Rs.12.35/- per sq.mt. for agricultural lands and Rs.204.21/- per Sq.mt. in respect of house plots covered under the Notification dated 4.5.2006.

3. The learned Counsel for the petitioner would further submit that the land belonging to the petitioner was also subject matter of acquisition in the Notification dated 19.01.2007 and the compensation for the said land was passed in Award No.13/2008 dated 11.2.2008. Aggrieved thereby, the petitioner and other land owners during the month of May 2008 submitted a Letter of Requisition to the 2nd respondent to refer the matter for Arbitration as provided under Section 3-G(5) of the Act as against the determination of the value made by the 2nd respondent. Since no orders were passed referring the matter to an Arbitrator, one of the land owners, namely, P.Kandasamy has filed O.P.No.611 of 2008 before this Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for an appointment of Arbitrator under Section 3-G(5) of the Act. This Court by an order dated 5.12.2008 directed the District Collector, Namakkal District, Namakkal, the 1st respondent herein to function as an Arbitrator under the regular provisions of the Act with a further direction to the respondent to send the claim and file to the District Collector, within four weeks. Pursuant to the order passed by this Court, it is contended that the District Collector, Namakkal, has to issue notice to the petitioner and all other land owners. But without issuing any notice, the 1st respondent has passed the impugned order dated 21.09.2011 under Section 3-G(7) of the National Highways Act, 1956.

4. The learned Counsel for the petitioner would also submit that in respect of the lands of one P.Kandasamy, the 1st

respondent has passed an Award stating that in Survey No.324/3, a sum of Rs.204.21 per Sq.m. has been fixed as compensation. Though it is stated in that Award that similar lands situated in that area which were sold in between 04.05.2005 and 03.05.2006 were taken into account and inspected by a Committee, no notice whatsoever has been given to the petitioner and other land owners . Therefore, the petitioner and similarly placed persons were not able to place their facts properly before the Arbitrator before passing the award. Hence, according to the learned Counsel for the petitioner, the present Writ Petition has to be allowed.

5. A detailed Counter Affidavit has been filed by the 1st respondent, namely, the District Collector, Namakkal.

6. Learned Government Advocate appearing for the respondents would submit that the writ petition itself is not maintainable by virtue of Section 34 (2) (iii) of the Arbitration and Conciliation Act, 1996, inasmuch as, once an award was passed by the learned Arbitrator, namely, the District Collector, Namakkal herein, as provided under Section 34 of the Arbitration and Conciliation Act, the remedy for the petitioner is only to file an appeal before the Principal District Judge, Namakkal which has not been resorted to. Therefore, the present Writ Petition is liable to be dismissed.

7. To answer the above contention, it is relevant to extract Section 34 of the Arbitration and Conciliation Act, 1996 here under:

'34. Application for setting aside arbitral award. -

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if-

(a) the party making the application furnishes proof that-

(i) A party was under some incapacity, or
(ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) The arbitral award deals with a dispute

not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

PROVIDED that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) The court finds that-

(i) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) The arbitral award is in conflict with the public policy of India.

[Explanation 1 - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2 : For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award;

PROVIDED that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under

section 33, from the date on which that request had been disposed of by the arbitral tribunal:

PROVIDED that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days, but not thereafter.

(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 tribunal an opportunity to resume 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.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]''

A perusal of Section 34(2)(iii) and 34(2)(iv) of the Arbitration and Conciliation Act, 1996, clearly speaks that the writ petition is not maintainable as the petitioner has got sufficient remedy available before the District Court as against the award impugned herein. But a close reading of Section 34 (3) of the Arbitration and Conciliation Act says that application for setting aside may not be made after three months have elapsed from the date on which the party making has received the arbitral award or from the date on which the request has been disposed of by the arbitral Tribunal.

8. In the present case, although the award was passed on 21.09.2011, within three months time, the petitioner has filed this Writ Petition in W.P.No.1936/2012 and obtained an order of stay of the impugned proceedings on 30.1.2012 and till date, the order of stay is continuing. Therefore, this Court finds no impediment to direct the petitioner to approach the District Court, Namakkal as per Section 34 of the Arbitration and Conciliation Act, 1996, questioning the correctness of the impugned order, if so advised, within a period of two weeks from the date of receipt of a copy of this Order. If any such

application is filed within two weeks from the date of receipt of a copy of this Order, the same shall be considered as though there is no any delay, since the order of interim stay was granted on 30.01.2012 and the same is still in force and the learned District Judge, Namakkal shall consider and dispose of the matter expeditiously on merits.

9. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Namakkal District,
Namakkal.
2. The Authorized Officer and
the District Revenue Officer,
O/o.the District Revenue Officer,
Namakkal District, Namakkal.

+lcc to Mr.R.Karthikeyan, Advocate, SR.No.75905
+lcc to the Govt.Pleader, Vide Sr.No.76500

Writ Petition No.1936 of 2012

Kak(31/10/2019)

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