

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.20438 of 2013

1. J.P.Nagarajan
2. J.P.Aswathnarayanan
3. J.P.Prabhakaran

... Petitioners

-vs-

1.The District Collector cum Arbitrator
(LA-NH7),
Collectorate of Dharmapuri District,
Dharmapuri.

2.The Special Tahsildar,
(LA) Unit I & II,
National Highway Authority of India-NH7,
Dharmapuri-5.

3.Competent Authority - NHAI - 7 &
The District Revenue Officer,
Dharmapuri.

4.National Highway Authority of India - NH7
rep. by its Project Officer,
Opp. to AMS Dhidyam Jewellery,
Korangu Chavady, Salem.

.. Respondents

Prayer in all cases: Petitions are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings in S.R. No.40/2007 UI dated 19.07.2012 (received by the petitioners on 30.01.2013) passed by the first respondent against the Award dated 27.07.2007 in Roc.29118/06/U1, passed by the third respondent and quash the same and consequently direct the first respondent to conduct the arbitral proceedings in accordance with the provisions of Arbitration and Conciliation Act 1996 and pass a fresh order re-determining the compensation amount, in accordance with Section 3G(7) of the National Highways Act 1956.

For Petitioners ::Mr.Rathina Asohan

For Respondents ::Mr.M.Elumalai,
Government Advocate
for R1 to R3

ORDER

The writ petition has been filed questioning the impugned proceedings in S.R. No.40/2007 UI dated 19.07.2012 passed by the first respondent against the Award dated 27.07.2007 in Roc. No.29118/06/U1, passed by the third respondent and seeking a direction to the first respondent to conduct the arbitral proceedings in accordance with the provisions of Arbitration and Conciliation Act 1996 and pass a fresh order re-determining the compensation amount, in accordance with Section 3G(7) of the National Highways Act 1956.

2.When the matter was taken up for hearing, Mr.M.Elumalai, learned Government Advocate appearing for respondents 1 to 3 would submit that since Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') mandates that 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 of the Act, from the date on which that request had been disposed of by the arbitral tribunal, the petitioners cannot come to this Court. In the present case, the Award has been passed by the District Collector, Dharmapuri under the provisions of Section 3G(5)(6) of the National Highways Act, 1956 and if the petitioners are aggrieved by the Award, challenge can be made only under Sections 34(1) & (2)(a)(iii) before the Principal District Court, Dharmapuri, who is the competent authority to decide the matter.

3.It is relevant to extract Section 34(1), (2) & (3) as 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 -

...

(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

...

(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. It is seen from records that in the writ petition, an Award has been passed on 19.07.2012 and the same was received by the petitioners on 30.01.2013 and the writ petition has been filed by the petitioners before this Court on 30.04.2013.

5. Therefore, this Court, accepting the submission made by the learned Government Advocate appearing for respondents 1 to 3, is not inclined to entertain the writ petition, however, since the Writ Petition was filed within three months time from the date of receipt of the Award for setting aside the same as per Section 34(3) of the Act, four weeks time is given to the petitioner to approach the competent Court, namely, the Principal District Court, Dharmapuri by moving appropriate application under Section 34 of the Act and the time taken by the petitioner during the pendency of the writ petition shall be excluded while entertaining any such application to be filed by the petitioner.

6. With the above observation, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector cum Arbitrator
(LA-NH7),
Collectorate of Dharmapuri District,
Dharmapuri.

2.The Special Tahsildar,
(LA) Unit I & II,
National Highway Authority of India-NH7,
Dharmapuri-5.

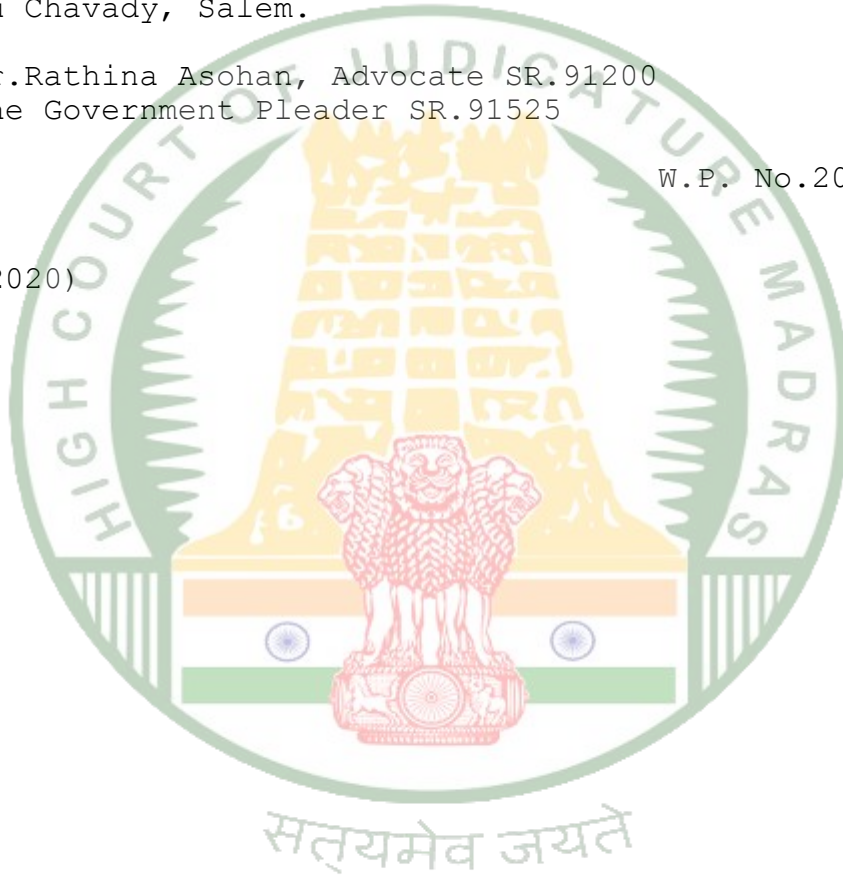
3.The Competent Authority - NHAI - 7 &
The District Revenue Officer,
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4.The Project Officer,
National Highway Authority of India-NH7,
Opp. To AMS Dhidyam Jewellery,
Korangu Chavady, Salem.

+1cc to Mr.Rathina Asohan, Advocate SR.91200
+1cc to the Government Pleader SR.91525

W.P. No.20438 of 2013

PPA(CO)
CB(02/01/2020)



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