

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2019

PRONOUNCED ON : 07.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.1443 of 2014
and M.P.No.1 of 2014

- 1.O.Annamalai(Deceased)
- 2.P.Vishwanathan
- 3.N.Ramasubramaniyan
- 4.G.Krishnaveni
- 5.G.Bharanidharan
- 6.G.Ashok Kumar
- 7.S.Hemamalini
- 8.G.Rangaraju
- 9.G.Loganathan
- 10.R.Ranganathan
- 11.A.Karthikeyan
- 12.T.Anand
- 13.V.Loganathan
- 14.R.Madhavi
- 15.V.Sasi Kumar
- 16.K.Mallikeshwari
- 17.V.Chandrasekar
- 18.T.Chandrikadevi
- 19.N.Sidhuraj
- 20.Pavayee Ammal
- 21.P.Vishwanathan
- 22.K.Palanisamy
- 23.V.Sivakumar
- 24.R.Veeramani
- 25.S.R.Asaithambi
- 26.R.Sekar
- 27.N.Rajasekaran
- 28.Thulasi Kala
- 29.Jagadeesan
- 30.S.K.Sengoda Gounder

31.B.Prabakaran
 32.V.Sankararaman
 33.Susila Devi
 34.Se.Venkatachalam
 35.Alagammal
 36.Mani
 37.Kannayee
 38.J.Satish Kumar
 39.K.Shanmugam
 40.K.Sengottuvel
 41.Venkatesh
 42.Venkatachelam
 43.Kanthamani
 44.Srinivasan
 45.Senthil Kumar
 46.Ramesh Kumar
 47.Nagaraj
 48.N.Siduraj
 49.S.P.Kathiravan
 50.U.Jeeva
 51.S.Rani
 52.N.Kandasamy
 53.Thiyagarajan
 54.Hemalatha
 55.Ganesan
 56.A.Balaganesh
 57.A.Narsimaraj
 58.V.Yaminigowri
 59.A.Sampoorani

(Petitioners 56 to 59 brought on Lrs.of the
 deceased the 1st petitioner vide order
 dated 24.11.2015 made in M.P.No.1 of 2015
 in CRP.No.1443 of 2014)

.. Petitioners

vs

The Project Director,
 National Highways Authority of India,
 Project Implementing Unit,
 Door No.212-3/D3-1,
 Sri Nagar Colony,
 Narasothipatty,
 Salem 630 004.

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 26.03.2014 passed in I.A.No.226 of 2014 in Arbitration O.P.No.164 of 2013.

For Petitioners : M/s.V.lakshmi Narayanan

For Respondent : Mr.Richardson Wilson for
M/s.Wilson Associates

ORDER

The petitioners are aggrieved by the fair and decretal order dated 23.03.2014 in I.A.No.226 of 2014 in Arbitration O.P.No.164 of 2013 passed by the 1st Additional District Judge, Salem.

2. By the impugned order, the Court below has dismissed the said application filed under Order VII Rule 11 of CPC. It was held that issue as to whether the said O.P was barred by limitation or not can be decided at the time of final hearing of the case and not at the interlocutory stage.

3. The petitioners herein are some of land owners whose lands were acquired under the provisions of the National Highways Act. An Arbitral Award 8.11.2012 was passed by the District Collector who awarded compensation to the petitioners.

4. Aggrieved by the same, the respondent filed Arbitration O.P.No.164 of 2013 before the District Court on 6.8.2013 under Section 34 of the Arbitration and Conciliation Act , 1996.

5. The petitioner filed the above application to reject the Arbitration O.P.No.164 of 2013 in limini on the ground that it was barred by law in view of specific period of limitation under Section 34(3) of the Arbitration and Conciliation Act, 1996.

6. Mr.T.M.Hariharan, learned counsel for petitioners 1 to 26 , 29 to 32, 34 to 59, Mr.M.S.Krishnan, Senior Counsel for Mr.P.Sivakumar, learned counsel for petitioners 27 and 28, Mr.A.R.L.Sundaresan, Senior Counsel for Mr.J.Ramakrishnan, learned counsel for 33rd petitioner appeared and submitted that the respondent had filed Arbitration A.O.P.No.164 of 2013 by making a false statement that the impugned award dated 08.11.2012 was received by the respondent only on 21.05.2013 to make it seem as if the said A.O.P was in time.

7. According to the learned counsel for the petitioners, the Award was received by the respondent on 21.12.2012 and therefore, it was filed beyond

the condonable period of limitation under Section 34(3) of the Arbitration Act, 1996.

8. The learned counsel for the petitioners drew attention to copies of some of the internal communication particularly letter dated 24.07.2013 sent *by the General Manager (Tech) and Project Director, Chennai* wherein it has been stated as follows:

“Further, it is to state that even though the Arbitration Award was passed on 08.11.2012 by the Arbitrator, the copy of the same was received in PIU on 21.12.2012.

Due to lapse of time limit, the award passed by the Arbitrator could not be challenged before the High Court.”

9. They further submitted that in the aforesaid letter, the respondent has also admitted that the rate adopted by the District Collector/Arbitrator was reasonable as the village is situated within the vicinity of Salem Corporation and is the first revenue village on NH-47 starting from Salem. Thus, due to increase in rate in sale value, the Arbitrator has adopted Rs.5328.18/- sq.m irrespective of type of lands, as these lands are within the Salem Corporation limit. A plan showing the Salem Corporation limits was also enclosed indicating Annathanapatti Village in the limits.

10. They also drew my attention to yet another letter dated 05.02.2013 addressed to the Competent Authority and Special DRO(LA), National

Highways, Krishnagiri to obtain clarification and for further cause of action to be adopted.

11. It was mentioned that even on 15.06.2013, the statutory period of limitation under Section 34(3) had already expired and therefore, the respondent exceed their jurisdiction in filing the aforesaid Arbitration O.P. before the Court by misrepresenting to the Court.

12. Countering the arguments advanced by Mr. Richardson Wilson, learned counsel for the respondent defended the order passed by the Court and stated that the petitioners were not entitled to rely on the internal documents of the respondent to make out the case in the present revision.

13. The learned counsel further submitted that provisions of Order VII Rule 11 of C.P.C. cannot be invoked in the scheme of Arbitration and Conciliation Act, 1996 and therefore submitted that the present revision was liable to be dismissed. It was further submitted that the Arbitration Original Petition cannot be scuttled by filing application under Order VII Rule 11 of C.P.C. which is not applicable in the scheme of Arbitration and Conciliation Act, 1996.

14. Heard both sides and considered rival submissions.

15. The documents of the respondent make it clear that the Arbitral Award was received on 21.12.2012 and the copy received on 21.5.2013 was a copy received under RTI. On facts therefore it cannot be denied that the Arbitral Award dated 8.11.2012 was received by the respondent's Project Director on 21.12.2012.

16. Copy procured under RTI to get over the limitation by making a false averment to bring the Arbitration O.P.No.164 of 2013 within the limitation prescribed under Section 34 of Arbitration and Conciliation Act, 1996 was impermissible. It has been falsely stated that the Arbitral Award came to the knowledge only on 21.05.2013 which was an untrue statement. This falsehood was reiterated by the respondent in their counter to the application filed by the Petitioner even though inter departmental communication referred to in the forgoing paragraph clearly indicates that the Arbitral Award dated 08.11.2012 was received by the respondent on 21.12.2012. In fact, copy of the Arbitral Award in Page 1 of the typed set also bears the received seal of the respondent with the said date of receipt on 21.12.2012.

17. It is impermissible for the respondent to mislead the Court and amounts to blatant falsehood and misrepresentation and fraud on the Court

and invites penal action. Be that as it may, without dilating further on this aspect, it would suffice to state that the petitioners were justified in questioning the limitation at the threshold.

18. Under Section 34 of the Arbitration and Conciliation Act, 1996, an application/petition to set aside an Arbitral Award has to be either within three months of the said Award or within a further period of 30 days along with an application to condone the delay.

19. Thus, the last date for filing A.O.P of 164 of 2013 would have expired on 20.04.2013 with an application to condone the delay. Instead, it was filed on 06.08.2013 by enclosing a copy of the Arbitral Award procured under RTI on 21.5.2013.

20. In view of the admission of the respondent that they received the Arbitral Award dated 08.11.2012 on 21.12.2012 in their communication, order of the learned District Judge, Salem cannot be sustained.

21. There was no justification in keeping the Arbitration O.P No.164 of 20913 alive on the files of the Court as it was time barred. To postpone the enquiry to the stage of final disposal on merits would only mean to add to the pendency of cases which was an exercise of futility.

22. In any event, no useful purpose would have served in deferring determination of maintainability at the threshold when there are overwhelming evidence to show that the respondent resorted to falsehood which filing the application.

23. Following decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner clearly bring out the legal position as far as limitation is concerned:

- i) Union of India vs. Popular Construction Co., (2001) 8 SCC 470
- ii) Ramesh B.Desai and Others vs Bipin Vadilal Mehta and Others (2006) 5 SCC 638.
- iii) Balasaria Construction (P) Ltd. vs Hanuman Seva Trust and Others (2006) 5 SCC 658.
- iv) State of Himachal Pradesh and another vs Himachal Techno Engineers and another (2010) 12 SCC 210.
- v) P.Radha Bai and Others vs P.Ashok Kumar and Another 2018 SCC Online 1670.

The respondents have no answer to the applicability of the above case laws to the facts of the case.

24. The decision of the Hon'ble Supreme court in **Ganpatbhai Mahijibhai Solanki vs State of Gujarat and others** (2008) 12 SCC 353, has held that " *it is*

now a well settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same.” The Court further held that “ the Courts, for the aforementioned purpose may have to consider the respective rights of the parties. The State has a constitutional duty/obligation to comply with the principle of social justice as adumbrated under Section 23 of Contracts Act and take the decision of their logical conclusion.”

25. In **Urban Improvement Trust Bikaner vs. Mohan Lal** (2010) 1 SCC 512. The Court referred to an earlier decision rendered in **Bhag Singh vs UT of Chandigarh** [(1985) 3 SCC 737] wherein it was held as follows:

“25.....3... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.”

26. In Paragraph 7, it as observed as follows:

7. In **Dilbagh Rai Jarry vs. Union of India** [1973 (3) SCC 554] where this Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court):

“25. ... ‘5....”*The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved*

in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.

8. In **Madras Port Trust v. Hymanshu International** by its Proprietor v. Venkatadri (Dead) by L.Rs. [(1979) 4 SCC 176] held:

"2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a

plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable...."

27. The above observations of the Courts are relevant. The respondent as a body of the State ought to have acted in fair and should not have initiated the proceedings belatedly by playing fraud on Court by giving wrong date of receipt the Arbitration Award dated 18.11.2012 as 21.5.2013 wherein indeed the said Arbitral Award was received on 21.12.2012.

28. The Civil Revision Petition thus stands allowed with consequential relief. The respondent is directed to comply with the Arbitral Award within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2019

Speaking : Non-speaking order
Index : Yes/No
Internet : Yes/No
kkd

WEB COPY

To

1. The Project Director,
National Highways Authority of India,
Project Implementing Unit,
Door No.212-3/D3-1,
Sri Nagar Colony, Narasothipatty,
Salem 630 004.

2. 1st Additional District Judge,
Salem.



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C.SARAVANAN,J.

kkd



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