

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.07.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.P.Nos.995, 996, 997 & 998 of 2018 &
211, 212, 213, 216 & 233 of 2019 and
Application Nos.2129, 2140, 2141, 2144 & 2314 of 2019

O.P.No.995 of 2018

M/s.P.Ramachandriah Son & Co.,
 Rep. by its Partner P.Arunkumar,
 S/o.Late P.Manohar,
 1/871, Plot No.28,
 Venkateswara Nagar Main Road,
 Somu Nagar, Medavakkam,
 Chennai - 600 100.

Petitioner

...
versus

1.National Highways Authorities of India,
 Rep. by its Project Director,
 SRI Tower - 3rd Floor, DP-34
 (SP) Industrial Estate, Guindy,
 Chennai - 600 032.

2.The Competent Authority and the
 Special District Revenue Officer,
 Land Acquisition,
 National Highways,
 Kancheepuram & Thiruvallur Districts,
 Collectorate Campus,
 Kanchipuram - 631 501.

3.The District Collector,
 Chennai District,
 32, Rajaji Salai,
 4th Floor, Singaravelar Maaligai,
 Chennai - 600 001.

...

Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the portion of the impugned Arbitral Award dated 27.04.2018 passed by the 3rd respondent received by the petitioner on 11.07.2018 in respect of rejection of claims made in the heads of additional compensation, solatium and interest and award the same to the petitioner on basis of the market value determined by the 3rd respondent in the impugned Award by allowing this petition.

For Petitioner : Mr.Shivakumar
For Respondents : Mr.Su.Srinivasan

O.P.No.996 of 2018

P.Arunkumar,
S/o.Late P.Manohar,
1/871, Plot No.28,
Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai - 600 100.

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versus

1.National Highways Authorities of India,
Rep. by its Project Director,
SRI Tower - 3rd Floor, DP-34
(SP) Industrial Estate, Guindy,
Chennai - 600 032.

2.The Competent Authority and the
Special District Revenue Officer,
Land Acquisition,
National Highways,
Kancheepuram & Thiruvallur Districts,
Collectorate Campus,
Kanchipuram - 631 501.

3.The District Collector,
Chennai District,
32, Rajaji Salai,
4th Floor, Singaravelar Maaligai,
Chennai - 600 001.

...

Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the portion of the impugned Arbitral Award dated 27.04.2018 passed by the 3rd respondent received by the petitioner on 07.07.2018 in respect of rejection of claims made in the heads of additional compensation, solatium and interest and award the same to the petitioner on basis of the market value determined by the 3rd respondent in the impugned Award by allowing this petition.

For Petitioner : Mr.Shivakumar

For Respondents : Mr.Su.Srinivasan

O.P.No.997 of 2018

B.Rajyalakshmi,
W/o.B.Dasarathan,
1/871, Plot No.28,
Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai - 600 100.

...

Petitioner

versus

1.National Highways Authorities of India,
Rep. by its Project Director,
SRI Tower - 3rd Floor, DP-34
(SP) Industrial Estate, Guindy,
Chennai - 600 032.

2.The Competent Authority and the
Special District Revenue Officer,
Land Acquisition,
National Highways,
Kancheepuram & Thiruvallur Districts,
Collectorate Campus,
Kanchipuram - 631 501.

3.The District Collector,
Chennai District,
32, Rajaji Salai,
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Chennai - 600 001.

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Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the portion of the impugned Arbitral Award dated 27.04.2018 passed by the 3rd respondent received by the petitioner on 07.07.2018 in respect of rejection of claims made in the heads of additional compensation, solatium and interest and award the same to the petitioner on basis of the market value determined by the 3rd respondent in the impugned Award by allowing this petition.

For Petitioner : Mr.Shivakumar

For Respondents : Mr.Su.Srinivasan

O.P.No.998 of 2018

M.Harikumar,
S/o.Late M.Nageswara Rao,
No.16, Kaveri Street,
Plot No.B3, The Park,
Guruswamy Nagar Extension,
Gowrivakkam,
Chennai - 600 073.

...

Petitioner

versus

1.National Highways Authorities of India,
Rep. by its Project Director,
SRI Tower - 3rd Floor, DP-34
(SP) Industrial Estate, Guindy,
Chennai - 600 032.

2.The Competent Authority and the
Special District Revenue Officer,
Land Acquisition,
National Highways,
Kancheepuram & Thiruvallur Districts,
Collectorate Campus,
Kanchipuram - 631 501.

3.The District Collector,
Chennai District,
32, Rajaji Salai,
4th Floor, Singaravelar Maaligai,
Chennai - 600 001.

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Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the portion of the impugned Arbitral Award dated 27.04.2018 passed by the 3rd respondent received by the petitioner on 01.09.2018 in respect of rejection of claims made in the heads of additional compensation, solatium and interest and award the same to the petitioner on basis of the market value determined by the 3rd respondent in the impugned Award by allowing this petition.

For Petitioner : Mr.Shivakumar

For Respondents : Mr.Su.Srinivasan

O.P.No.211 of 2019

National Highways Authority of India,
Rep. by its Project Director,
PIU, Chennai
"Sri Tower" 3rd Floor,
DP-34 (SP) Industrial Estate,
Guindy, Chennai - 600 032.

Petitioner

...
versus

1.P.Arun Kumar,
S/o.Late P.Manohar,
No.1/871, Plot No.28,
Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai - 600 100.

2.The District Collector / Arbitrator,
32, Rajaji Salai,
Singaravelar Maaligai,
Collectorate, Chennai.

3.The Competent Authority
and Special District Revenue Officer (NH),
Kancheepuram & Thiruvallur Districts,
at Kancheepuram.

Respondents

PRAYER: Original Petition has been filed under Section 34(2)(a)(iv), (b)(ii) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award dated 27.04.2018 in Rc.No.J9/15681/2011 on the file of the Arbitrator and District Collector, Chennai.

For Petitioner : Mr.Su.Srinivasan
For Respondent No.1 : Mr.Shivakumar

O.P.No.212 of 2019

National Highways Authority of India,
Rep. by its Project Director,
PIU, Chennai
"Sri Tower" 3rd Floor,
DP-34 (SP) Industrial Estate,
Guindy, Chennai - 600 032.

Petitioner

versus

1.P.Rajesh Kumar,
S/o.Late P.Manohar,
No.1/871, Plot No.28,
Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai - 600 100.

2.The District Collector / Arbitrator,
32, Rajaji Salai,
Singaravelar Maaligai,
Collectorate, Chennai.

3.The Competent Authority
and Special District Revenue Officer (NH),
Kancheepuram & Thiruvallur Districts,
at Kancheepuram.

Respondents

PRAYER: Original Petition has been filed under Section 34(2)(a)(iv), (b)(ii) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award dated 27.04.2018 in Rc.No.J9/15681/2011 on the file of the Arbitrator and District Collector, Chennai.

For Petitioner : Mr.Su.Srinivasan
For Respondent No.1 : Mr.Shivakumar

O.P.No.213 of 2019

National Highways Authority of India,
Rep. by its Project Director,
PIU, Chennai
"Sri Tower" 3rd Floor,
DP-34 (SP) Industrial Estate,
Guindy, Chennai - 600 032.

...

Petitioner

versus

1.B.Rajyalakshmi,
W/o.B.Dasarathan,
1/871, Plot No.28,
Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai - 600 100.

2.The District Collector / Arbitrator,
32, Rajaji Salai,
Singaravelar Maaligai,
Collectorate, Chennai.

3.The Competent Authority
and Special District Revenue Officer (NH),
Kancheepuram & Thiruvallur Districts,
at Kancheepuram.

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Respondents

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For Petitioner
For Respondent No.1

: Mr.Su.Srinivasan
: Mr.Shivakumar

O.P.No.216 of 2019

National Highways Authority of India,
Rep. by its Project Director,
PIU, Chennai
"Sri Tower" 3rd Floor,
DP-34 (SP) Industrial Estate,
Guindy, Chennai - 600 032.

...

Petitioner

versus

1.P.Ramachandriah Sons & Company,
Rep. by its Managing Partner P.Arunkumar,
No.1/871, Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai - 600 100.

2.The District Collector / Arbitrator,
32, Rajaji Salai,
Singaravelar Maaligai,
Collectorate, Chennai.

3.The Competent Authority
and Special District Revenue Officer (NH),
Kancheepuram & Thiruvallur Districts,
at Kancheepuram. ...

Respondents

PRAYER: Original Petition has been filed under Section 34(2)(a)(iv), (b)(ii) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award dated 27.04.2018 in Rc.No.J9/15681/2011 on the file of the Arbitrator and District Collector, Chennai.

For Petitioner : Mr.Su.Srinivasan
For Respondent No.1 : Mr.Shivakumar

O.P.No.233 of 2019

National Highways Authority of India,
Rep. by its Project Director,
PIU, Chennai

"Sri Tower" 3rd Floor,
DP-34 (SP) Industrial Estate,
Guindy, Chennai - 600 032. ...

Petitioner

versus

1.M.Harikumar,
S/o.Late M.Nageswara Rao,
No.16, Kaveri Street, Plot No.B3,
The Park Guruswamy Nagar Extension,
Gowrivakkam,
Chennai - 600 073.

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2.The District Collector / Arbitrator,
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Collectorate, Chennai.

3.The Competent Authority
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Respondents

PRAYER: Original Petition has been filed under Section 34(2)(a)(iv), (b)(ii) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award dated 27.04.2018 in Rc.No.J9/15681/2011 on the file of the Arbitrator and District Collector, Chennai.

For Petitioner : Mr.Su.Srinivasan
For Respondent No.1 : Mr.Shivakumar

COMMON ORDER

The Original Petitions in O.P.Nos.211, 212, 213, 216 and 233 of 2019 have been filed by the National Highways, challenging the award of the learned Arbitrator, namely, the District Collector, Chennai, in fixing the market value of the land as Rs.4,103/-per sq.ft., whereas, O.P.Nos.995, 996, 997 and 998 of 2018 have been filed by the land owners, challenging the award on the ground that solatium and interest have not been awarded.

2. The Competent Authority of National Highways has acquired an extent of 24,134.5 sq.mtrs of land in Koyambedu Village and the Competent Authority has fixed the compensation as Rs.1,925/- per sq.ft., which was not agreed by the land owners. Hence, the matter was referred to the learned Arbitrator. The District Collector of Chennai has arrived as Arbitrator as per the National Highway Act, 1956 [hereinafter referred to "the Act"] as notified by the Central Government.

3. The learned Arbitrator while deciding the issue has fixed the market value of the land as Rs.4,103/- per sq.ft. However, with regard to solatium and interest, no order has been passed. Challenging the above award, the National Highways has filed O.P.Nos.211, 212, 213, 216 and 233 of 2019 and similarly, the land owners had filed O.P.Nos.995, 996, 997 and 998 of 2018 for the grant of solatium and interest.

4. Mr.Su.Srinivasan, learned counsel appearing for the National Highways vehemently contended that the learned Arbitrator has not proceeded the issue as per Arbitration and Conciliation Act and the award has been passed merely on the basis of the representation given by one of the land owners dated 25.04.2018 and no opportunity has been given in this regard to

the petitioner herein. Hence, it is his contention that the learned Arbitrator had proceeded to decide the matter, without any evidence and only on the basis of mere representation and such award cannot be sustained in law.

5. Mr. Shivakumar, learned counsel for the petitioners in O.P.Nos.995, 996, 997 and 998 of 2018 would contend that the proceedings are pending before the learned Arbitrator from the years 2011 to 2018 and the petitioners were all appearing before the learned Arbitrator. Therefore, it cannot be said that they are not given any opportunity. In fact, it is his contention that the registered document dated 28.03.2005 prayed to 3A(1) Notification was relied on by the learned Arbitrator to fix the value and hence, submitted that the award cannot be interfered. He further submitted that solatium and interest has not been awarded by the Arbitrator merely on the ground that prohibition of Section 3-G of the Act.

6. The learned counsel further submitted that the above Section 3-J of the Act has already struck down by the Punjab and Haryana High Court in the case of **GOLDEN IRON & STEEL vs. UNION OF INDIA and Others [CWP No.11461 Of 2005]**, and also by this Court in the case of **T.CHAKRAPANI & OTHERS vs. THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (W.P.No.21735**

of 2015). However, the judgment of the learned single Judge was challenged in an Appeal in Chakrapani's case and the same has been stayed by the Division Bench of this Court.

7. In the light of the above submissions, normally at the arbitral proceedings strictly conducted as per the Arbitration and Conciliation Act, 1996, the scope of interference of the award is very limited unless any of the grounds set out in Section 34 of the Arbitration and Conciliation Act is made out, the award cannot be interfered.

8. Similarly, when the award is result of ignoring the documents or in violation of the principles of natural justice, such award would be normally interfered. Be that as it may. The arbitral proceedings conducted in this case is not based on the contract between the parties, it is statutory arbitration, the arbitration to be conducted subject to the provision of the Act in fixing the compensation. Admittedly, the lands of the owners have been acquired by the authorities and the Competent Authority has fixed the compensation at the rate of Rs.1,925/- per sq.ft..

9. Aggrieved by such finding, land owner has referred the matter to the learned Arbitrator appointed by the Central Government in this regard. The Arbitrator, namely, the District Collector, Chennai, has to follow the procedure contemplated in the National Highways Act, either disagreeing or agreeing the finding of the Competent Authority, any compensation is enhanced or refixed by the Arbitrator, the same should be based on the material evidence, particularly, he has to consider the market value of the land acquired on the date of Notification. Though the Collector has relied upon a registered Document dated 28.03.2005 stated to be prior to the Notification, the award has proceeded mainly on the ground that the representation given by one of the land owners on 25.04.2018 to the effect that the market value has fixed at Rs.4,103/- per sq.ft. as per the Sale Deed Document No.1181/2005, no further proceedings will be initiated questioning the value fixed by the learned Arbitrator.

10. Taking note of the above representation, the learned Arbitrator has fixed the above value as a market value of the property and hence, this Court is of the view that the learned Arbitrator ought to have considered necessary documents to arrive at a fair market value as on the date of Notification and ought to have given opportunity to both parties to adduce

their evidence in this regard. Since the issue in arbitration is not a simple issue, its determining the right of a fair compensation to the parties, whose lands were acquired by the State. The compensation payable to a person, who deprived of the property must be fair and reasonable as per the Act. Therefore, without deciding the market value based on any documents merely on the representation fixing the market value is not correct as per law. It is further to be noted that the learned Arbitrator has not considered the plea of the solatium and interest to be awarded towards such acquisition.

11. It is stated by the learned counsel appearing for the land owners that Section 7-J of the National Highways Act was struck down by the Punjab and Haryana High Court. Though, this Court also in Chakrapani case stated supra, has taken a similar view that the above order of this Court has been stayed by the Division Bench, pending adjudication. Be that it may one of the High Court has already quashed the above said provision. Therefore, the Collector, while deciding the issue as to whether the owners are entitled to solatium or not along with interest has not been considered the same. Since the arbitration proceedings award is proceeded on the basis of the representation, no further opportunity has been given to the National Highways to meet such representation and such award cannot be sustained in

the eye of law.

12. Therefore, the learned Arbitrator shall fix the market value as per Section 3-G sub-clause (7) of the Act by taking into consideration of the market value as on date of Notification and other aspects and also to decide the solatium and interest also. When the land has been acquired from the owners, the object of the Act is to provide just and fair compensation as per statute. Hence, it is the duty of the learned Arbitrator to decide fair market value as per law. The parties are at liberty to produce the registered documents, which are effected much prior to the Notification.

13. The learned Arbitrator shall decide the issue of solatium and interest as per law. The District Collector, Chennai, shall decide the entire issue afresh, within a period of three (3) months from the date of receipt of a copy of this order and before that, issue notice to both sides, hear the parties and set aside the issue. Accordingly, the Award dated 27.04.2018 passed by the learned Arbitrator is set aside and the matter is remanded back to the District Collector, Chennai / the sole Arbitrator to decide the issue itself afresh, without influencing any observation made by this Court.

14. With these observations, these Original Petitions are disposed of. Consequently, connected Applications are closed. However, there is no order as to costs.

04.07.2019

Note : Issue Order Copy on 10.07.2019

Speaking Order / Non Speaking Order
Index : Yes / No
Internet : Yes

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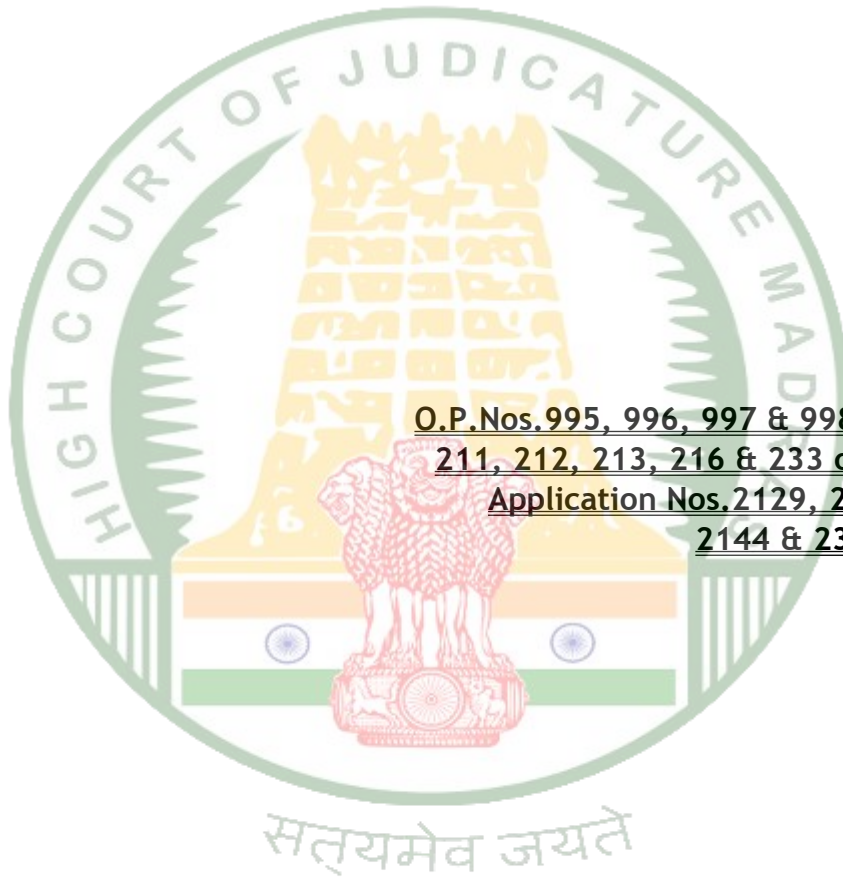
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N.SATHISH KUMAR, J.,

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O.P.Nos.995, 996, 997 & 998 of 2018 &
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