



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.13885 of 2019

Palian

...Petitioner

-Vs-

- 1.The Union of India,
rep., by its Director,
Ministry of Road Transports and Highways,
(Department of (Road Transports and Highways),
Transport Bhavan,
New Delhi-110001.
- 2.The District Collector,
Kanyakumari District,
Nagercoil.
- 3.The Competent Authority and
Special District Revenue Officer,
(Land Acquisition)
National Highway NH-47,
Door No.6, Thiruvalluvar Nagar,
Kesava Thiruppuram,
Vetturnimadam Post,
Kanyakumari District.
- 4.The Project Director,
National Highways Authority of India,
Door No.1332, Pleasant Street,
Pleasant Nagar, Nagercoil,
Kanyakumari District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to consider petitioner's representation dated 08.12.2018 and thereby directing the second respondent to pay the revised compensation for RS.No:835/2, 835/4 and 835/7 of Valvachamgostam village as such the compensation awarded for RS.No.835/1 of Valvachamgostam village.



For Petitioner : Mr.G.Cenil

For Respondents : Mr.Rajarajan (for R1)
Government Advocate

Mr.Vaishnavi (For R2 and R3)
Government Advocate

Mr.Su.Srinivasan (for R4)

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ORDER

The prayer sought for in this writ petition is to issue a Writ of Mandamus, to direct the second respondent to consider petitioner's representation, dated 08.12.2018, and thereby, directing the second respondent to pay the revised compensation for RS. No:835/2, 835/4 and 835/7 of Valvachamgostam village as such the compensation awarded for RS.No.835/1 of Valvachamgostam village.

2.I have heard the learned counsel for both sides.

3.The learned Standing Counsel appearing for the fourth respondent and the learned Government Advocate appearing for the official respondents made a submission that, as against the impugned order passed by the second respondent, dated 23.04.2017, in ந.க.உ2/7324/2016, the petitioner cannot seek for any review and therefore, the present prayer sought for to consider his review filed before the very same second respondent on 08.12.2018, cannot be considered by the second respondent.

4.I have considered the said submission made by the learned counsel appearing for the respondents. Since the order passed by the second respondent, dated 23.04.2017 itself, is the order under Section 3 G (5) of the National Highways Act, it is nothing, but an arbitration petition, which was considered and order was passed as an Arbitrator and if at all any order passed by the Arbitrator/District Collector under Section 3 G (5) of the National Highways Act, certainly against that order arbitration original petition alone has to be filed before the concerned Principal District Judge under Section 34 of the Arbitration and Conciliation Act, 1996.

5.In order to appreciate the said aspect, the relevant provisions of the National Highways Act as well as the Arbitration and Conciliation Act are hereunder extracted:-

(i) Provision under Section 3 G (5) of the National Highways Act reads thus:-

"(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by



the arbitrator to be appointed by the Central Government."

(ii) Section 34 of the Arbitration and Conciliation Act reads thus:-

"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 submissions 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 re-appreciation 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 if 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.]”

6.Since the order was passed by the second respondent/the District Collector being an Arbitrator, the provisions of the Arbitration and Conciliation Act, 1996 alone shall be applied in such proceedings. It is evident under Sub-Section 6 of Section 34.

7.Aggrieved party against any such order passed by the District Collector/Arbitrator under Section 3G(5) of the National Highways Act, can very well agitate the issue before the appropriate forum under Section 34 of the Arbitration and Conciliation Act, 1996.



8. In that view of the matter and in view of the legal position, the present move made by the petitioner that the order of the second respondent/District Collector dated 23.04.2017 can be reviewed by himself, cannot be accepted. Therefore, the present application for review made by the petitioner on 08.12.2018 pending before the second respondent/District Collector cannot be directed to be considered by himself, as the remedy to the petitioner is available elsewhere as has been stated above.

9. In view of the same, this Court is of the considered view that the present prayer sought for herein cannot be granted. Therefore, the present prayer is rejected. But, at the same time, it is open to the petitioner to file appropriate petition i.e., Arbitration Original Petition before the concerned Principal District Judge invoking Sub-Section 2 of Section 34 of the Arbitration and Conciliation Act, 1996 and if any such application is filed, within a period of one week from the date of receipt of a copy of this order, the same shall be entertained by the concerned Court without insisting upon the limitation aspect, as the matter has been pending for sometime before this Court.

10. With these observations, the Writ Petition is dismissed. No costs.

11. These above observations are given only taking into account the peculiar circumstances of this case. Therefore, the said observations cannot be treated as the precedent for all such cases in future.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Director,
Union of India,
Ministry of Road Transports and Highways,
(Department of (Road Transports and Highways),
Transport Bhavan,
New Delhi-110001.

2. The District Collector,
Kanyakumari District,
Nagercoil.



3.The Competent Authority and
Special District Revenue Officer,
(Land Acquisition)
National Highway NH-47,
Door No.6, Thiruvalluvar Nagar,
Kesava Thiruppuram, Vetturimadam Post,
Kanyakumari District.

4.The Project Director,
National Highways Authority of India,
Door No.1332, Pleasant Street,
Pleasant Nagar, Nagercoil,
Kanyakumari District.

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-72523[F] dt.01/07/2019)

+1 CC to M/s.SU.SRINIVASAN, Advocate (SR-72575[F] dt.01/07/2019)

+1 CC to M/s.SPL GP (SR-73178[F] dated 03/07/2019)

+1 CC to M/s.G.CENIL, Advocate (SR-72975[F] dated 03/07/2019)

Order made in
W.P. (MD) No.13885 of 2019
01.07.2019

rmk

JMN(26.08.2019) 6P : 9C