



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) Nos.387 and 390 of 2014

E.Duraiaraj (Died)
2.D.Maruthambal
3.A.Meenakumari
4.S.Chitra
5.D.Arunkumar
6.K.Vijayalakshmi
7.D.Ilayaraja
8.D.Saravanan
9.D.Chinnababu ... Appellants in C.M.A.(MD) No.387 of 2014

(Appellants 2 to 9 are brought on record
as LR's of the deceased Sole Appellant
vide Court Order Dt. 13.08.2018 made
in CMP(MD) Nos.7651 to 7653/18 in
CMA (MD) No.387/14 by PSNJ & TKJ)

R.Sundarajan ... Appellants in C.M.A.(MD) No.390 of 2014

-vs-

- 1.The Authorised Officer,
(Land Acquisition),
National Highways Department and
Special District Revenue Officer,
Tiruchirappalli.
- 2.The Arbitrator/District Collector,
Tiruchirappalli.
- 3.The Project Director,
National Highways Authority of India,
No.44, 3rd Main Road,
Ponnagar,
Tiruchirappalli.

... Respondents in both Appeals

Civil Miscellaneous Appeals filed under Section 37(1) of
Arbitration and Conciliation Act, 1996 against the order dated
22.03.2013, made in Ar.O.P.Nos.6 and 5 of 2010 on the file of the



Principal District Judge, Trichirappalli.

For Appellant	: Mr.P.Arun Jayatram
For Respondents 1 & 2	: Mr.A.K.Baskarapandian Special Government Pleader
For 3 rd Respondent	: Mr.C.Arul Vadivel @ Sekar

COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

These Civil Miscellaneous Appeals are filed by the claimants, whose lands were acquired by the National Highways Department under the National Highways Act. The appellants did not contest the acquisition of land, but contested the claim of compensation in terms of Section 30(2) of the National Highways Act. The Competent Authority determined the compensation payable. The appellants were not satisfied with the compensation paid and therefore, challenged the orders by filing Petitions under Section 34 of the Arbitration and Conciliation Proceedings Act, 1996. The said petitions were heard by the learned Principal District Judge, Tiruchirappalli. By the impugned orders, they were dismissed on the ground that the petitioners do not fall within Section 34 of Arbitration and Conciliation Act. Challenging the correctness of the said orders, these Civil Miscellaneous Appeals have been filed.

2.Heard Mr.P.Arun Jayatram, learned counsel appearing for the appellants, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.C.Arul Vadivel @ Sekar, learned Standing Counsel appearing for the third respondent in these Civil Miscellaneous Appeals.

4.Identical issue came up for consideration before this Court in ***C.M.A. (MD) Nos.1760, 1889 and 1942 of 2013 dated 23.03.2018 (Chelliah (died) and others v. The Competent Authority cum Special District Revenue Officer, Tiruchirappalli)***. The said Civil Miscellaneous Appeals were allowed by a common order dated 23.03.2018. The issue involved in the present Civil Miscellaneous Appeals was also subject matter of consideration in the batch of cases and the Hon'ble Division Bench has analyzed as to how the Arbitrator is entitled to exercise the power under the provisions of the Arbitration and Conciliation Proceedings Act, 1996 and as to how the District Judge can test the correctness of the decision under Section 34 of the Act.

5.At this juncture, it is worthwhile to extract the following paragraphs of the said judgment:

"10.It is not in dispute that the lands owned by the claimants have been acquired for public purpose to develop a four lane for road use by the National Highways Authority of



India. The primordial submission of the learned respective counsel appearing for the parties is that admittedly yielding trees were there and despite the stand taken by the National Highways Authority of India in the counter-affidavit, as ordered, the claimants had cut the trees for the purpose of awarding compensation and the said fact has been completely overlooked by the second respondent/arbitrator.

11.The learned respective counsel appearing for the parties would submit that despite documents have been marked, the second respondent/arbitrator, did not apply his mind to the contents of the documents and merely confirmed the orders passed by the competent authority. It is urged by the learned respective counsel appearing for the parties that the learned Judge has simply rejected the arbitration O.Ps' under Section 34(1) of the Arbitration and Conciliation Act, 1996, overlooking the fact that the arbitrator has totally failed to apply his mind to the materials placed.

12.This Court has gone through the award passed by the arbitrator as well as the impugned order passed by the learned Judge in the Arbitration O.Ps'. It is to be remembered at this juncture that the lands of the claimants have been acquired for the public purpose and therefore, their constitutional right to hold the lands guaranteed under Article 300(A) of the Constitution of India has been deprived though by resorting to due process of law. Therefore, it is obligatory on the part of the acquiring authority to pay the compensation as per parameters laid down for acquiring the said lands and award of compensation.

13.A perusal of the award passed by the arbitrator, though documents have been marked, it is seen that the contents of the same having not been discussed at all and especially with regard to the value of the trees that said to have been cut and removed by the claimants. It is also to be noted at this juncture that the stand of the National Highways Authority of India in the counter-affidavit is that they have ordered the claimants to cut and remove the trees and they cut and removed the same and thus, they wanted to convey the information, that the trees that were cut might have been sold by the claimants and as such, they are not entitled for compensation for the value of the trees. Though it was obligatory on the part of the second respondent to consider the said issue, the second respondent have not been dealt with the said issue while awarding the compensation.

14.As rightly pointed by the learned respective counsel appearing for the parties that the award passed by the second respondent/arbitrator, nothing has been discussed with regard to the marked documents and would prima facie exhibit total non-application of mind on his part. The claimants filed arbitration O.Ps' by invoking Section 34 of the Arbitration and Conciliation Act, 1996, and the Appellate



did not come within the scope and ambit of Section 34 of the said Act.

15. In the considered opinion of this Court, the said approach is not in consonance with law for the reason that the award passed by the second respondent did not discuss any evidence at all and in the considered opinion of this Court, the findings accorded are based upon no evidence.

....

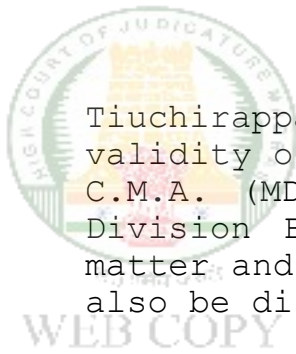
17. Though in the considered opinion of this Court, the award passed by the arbitrator would exhibit total non-application of mind and that the findings are based upon no evidence, which has been confirmed by the dismissal of the arbitration O.Ps by the Appellate Authority on account of limited scope available for judicial review, this Court is not in a position to remand the matter to the second respondent/arbitrator for fresh adjudication.

18. At this juncture, the learned respective counsel appearing for the parties would pray that the Civil Miscellaneous Appeals can be kept pending and they may be at liberty to invoke Section 34(4) of the said Act to point out the deficiency in the arbitrary award, which may be curable.

19. In the light of the findings reached in the foregoing paragraphs, the appellants/claimants are entitled to invoke Section 34(4) of the said Act by taking out appropriate application before the Appellate Authority/Principal District Judge, Trichirappalli, and upon filing of the same, the Appellate Authority shall consider the said application on merits and in accordance with law.

20. In the result, the Civil Miscellaneous Appeals are partly-allowed and the impugned orders, dated 23.04.2013 passed by the Appellate Authority/Principal District Judge, Trichirappalli, in O.P.Nos.1 of 2010, 2 of 2010 and 5 of 2009 are set aside and remitted back to the Appellate Authority and the claimants/legal representatives of the claimants are at liberty to invoke Section 34(4) of the said Act by filing appropriate applications within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the Appellate Authority is directed to adjudicate the said application in accordance with law and pass orders within a further period of ten weeks thereafter. However, in the circumstances of the case, there shall be no order as to costs."

6. The above decision would squarely be applicable to the case on hand as the only difference is that the amount of compensation determined by the Arbitrator was slightly different than what was determined in those cases. Thus, by following the above decision, these Civil Miscellaneous Appeals are partly allowed and the orders passed by the Principal District Judge, Trichirappalli dated 22.03.2013, made in Arbitration O.P.Nos.6 and 5 of 2010 are set aside and the matter is remanded to the Principal District Court,



Tiuchirappalli to take up the matter on file and consider the validity of the Award after affording opportunity to the parties. In C.M.A. (MD) Nos.1760, 1889 and 1942 of 2013 (supra), the Hon'ble Division Bench had fixed 10 weeks time for the disposal of the matter and if those petitions are not yet been disposed of, they may also be disposed of along with these Petitions. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal District Judge,
Tiruchirappalli.

Copy to:

The Section Officer,
VR Section, (2 copies),
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-94822[F] dated 30/10/2019)

+2 CC to M/s.P.ARUN JAYATRAM, Advocate SR-94932, 94933

C.M.A. (MD) Nos.387 and 390 of 2014
25.10.2019

sj

MK (15.11.2019) 5P 7C