



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.25826 of 2019

WEB COPY

J.Krishnappa

... Petitioner

vs.

1.The District Collector-cum-Arbitrator,
(Under the National Highways Act),
Thanjavur District, Thanjavur.

2.The Competent Authority /
Special District Revenue Officer
(Land Acquisition),
National Highways No.67 and 45 C,
Thiruvaru, Thiruvaru District.

3.The Project Director,
National Highways Authority of India,
No.54, 1st Floor, Natarajapuram,
Medical College Road, Thanjavur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings of the first respondent, dated 02.11.2019 in Land Acquisition Arbitration Case No.19/2018/11 of 2019 and quash the same as illegal and further to direct the first respondent to entertain the arbitration application under Section 3(G)(5) of the National Highways Act and to decide the same on merits within the time stipulated by this Court.

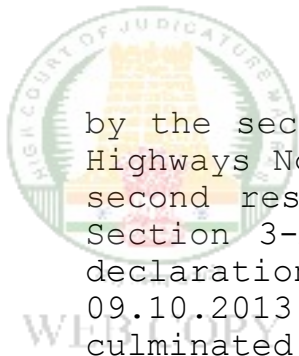
For Petitioner :Mr.M.P.Senthil

For R1 and R2 :Ms.V.P.M.Vaishnavi

ORDER

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned proceedings of the first respondent, dated 02.11.2019 in Land Acquisition Arbitration Case No.19/2018/11 of 2019 and to direct the first respondent to entertain the arbitration application under Section 3(G)(5) of the National Highways Act, 1956 and to decide the same on merits within the time stipulated by this Court.

2.The petitioner's land measuring to an extent of 2450 sq.mtr in R.S.No.61/18, 61/19 and 240/2A, Ukkarai Vattam, Thathuvanchary Village, Thiruvudaimaruthur Taluk, Thanjavur District, was acquired



by the second respondent for the purpose of laying road in National Highways No.45C from Vikkiravandi to Thanjavur, via Kumbakonam. The second respondent initiated proceedings by issuing a notice under Section 3-A of National Highways Act 1956, on 22.09.2012 and the declaration under Section 3-D of the Act was also published on 09.10.2013. It is stated that the acquisition proceedings culminated in passing of an Award by proceedings of the second respondent, namely, the Special District Revenue Officer (Land Acquisition), on 07.06.2016.

3.Since the compensation determined by the second respondent was far below the market value, it is stated by the petitioner that he submitted a representation for referring the dispute to the Arbitrator, namely, the District Collector, on 23.07.2018. Subsequently, the petitioner has filed an appeal, as contemplated under Section 3(G)(5) of National Highways Act 1956, before the first respondent. The first respondent, however, rejected the appeal filed by the petitioner on the ground that the petition filed by the petitioner is beyond the period of limitation prescribed. As against the same, the petitioner has preferred the present Writ Petition.

4.The learned Counsel for the petitioner submitted that the order of first respondent dismissing the appeal on the ground of limitation is quiet contrary to the law settled by this Court in various precedents. It is submitted that no period is prescribed in any of the provisions for filing an appeal before the first respondent as against the Award passed by the second respondent. It is also contended that this Court has considered the provisions of Arbitration and Conciliation Act 1996, and held that even Section 137 of the Limitation Act is not applicable. The learned Counsel also submitted that Section 43 of Arbitration and Conciliation Act 1996, pertaining to applicability of Limitation Act 1963 is not applicable to Statutory Arbitration as per the exception covered out in Section 3(4) of Arbitration and Conciliation Act 1996.

5.The learned Counsel for the petitioner relied upon the judgment of Honourable Division Bench of this Court in the case of **Project Director, Project Implementation Union, National Highways Authority of India vs K.Periyasamy**, reported in **2018 (4) CTC 263**, wherein, the Honourable Division Bench considered similar issue after referring to several precedents. Paragraphs 28 to 34 of the said judgment are extracted below for proper appreciation:

"28. As rightly pointed out by Mr.K.V.Sanjeev Kumar, learned counsel for the landowners, the provisions of Section 2(4) of the Arbitration and Conciliation Act, 1996 which makes Section 43 of the said Act inapplicable to statutory arbitrations was not brought to the notice of the Division Bench of the Kerala High Court which decided



the issue in **K.Leela Vs. The District Collector and Arbitrator**. In **T.Yunis Vs.National Highways Authority of India** the question of applicability of the Limitation Act, 1963 was conceded and the dispute was confined only to the question as to whether Article 119 or Article 137 would apply to such proceedings. The Karnataka High Court on consideration of the provisions of the National Highways Act, 1956 as well as the Limitation Act, 1963 concluded that it was only Article 137 that would apply to such proceedings.

29. The Division Bench of the Karnataka High Court in **National Highways Authority of India Vs. Udaykumar and others** had held that in view of Section 2(4) of Arbitration and Conciliation Act, 1996, the provisions of Limitation Act, 1963 would not be applicable to statutory arbitrations.

30. Adverting to the cases on hand, the facts are not in dispute. The lands belonging to the land owners who are the respondents in the Writ Appeals and petitioners in the Writ Petitions were acquired for the purpose of widening the National Highways under the National Highways Act, 1956. The competent Authority passed orders under Section 3-G(1) of the said Act. The landowners had filed applications though belatedly seeking re-determination of the compensation by referring the matter to an arbitrator appointed by the Central Government in terms of Section 3-G(5) of the Act. The applications were dismissed by the Arbitrator on the ground that they have been filed beyond 3 years.

31. The judgment of the Kerala High Court in **K.Leela** is the basis for the contention of the National Highways authorities to non-suit the landowners. 32 (a) The Division Bench of the Kerala High Court in **K.Leela** case cited (supra) by placing reliance on Section 43 of the Arbitration and Conciliation Act, 1996, which made the provisions of Limitation Act, 1963 applicable to arbitrations under Section 3-G(5) of the National Highways Act, 1956, concluded that Limitation Act would apply to a proceeding for arbitration under the Act.

(b) The attention of the Division Bench of the Kerala High Court was not drawn to the provisions of Section 2(4) of the Arbitration and Conciliation Act, 1996 which exclude the applicability of Section 43 to statutory arbitrations. The judgments of the Hon'ble Supreme Court in **PPN Power Generating Company Private Limited and Lanco Kondapalli Power Limited and others** would make the position clear that the provisions of the Limitation Act, 1963 cannot be applied to statutory arbitrations in view of Section 2(4) of the Arbitration Act, 1996.



33. The judgment in **Savitra Khandu Beradi Vs. Nagar Agricultural Sale and Purchase Co-operative Society Ltd., Ahmednagar and others [AIR 1957 BOMBAY 178]**, though rendered under the Arbitration Act, 1940, the provisions being substantially same, we see no difficulty in applying the ratio laid down by the Division Bench of the Bombay High Court and the Hon'ble Supreme Court in the above quoted decisions to conclude that the provisions of the Limitation Act will not be applicable to statutory arbitrations under Section 3-G(5) of the National Highways Act, 1946.

34. We therefore make the position clear that the provisions of the Limitation Act and more particularly Article 137 would not apply to an application for reference to arbitration under Section 3G() of the National Highway Act, 1956."

6.The learned Counsel for the petitioner then relied upon the judgment of learned Single Judge of this Court, in the case of **K.Jeyaraj vs The Project Director, Project Implementation Union, National Highways Authority of India**, reported in **2016 (1) CWC 627**. From the above judgments, it is to be seen that this Court has consistently taken a view that the Act, namely, National Highways Act 1956, does not prescribe a period of limitation. When an order of Land Acquisition Officer fixing compensation is challenged before Arbitrator under National Highways Act 1956, the application cannot be dismissed on the ground that the reference is barred by limitation. As it has been held by this Court in few precedents that the provisions of Section 2(4) of the Arbitration and Conciliation Act 1996, exclude the applicability of Section 43 of the Act to Statutory Arbitration, the impugned order rejecting the appeal / reference is unsustainable.

7.Even otherwise, if it is found that the Limitation Act 1963, applies the period prescribed under Section 137 of the Act (which is applicable) in the present case, the appeal was filed well within time. The petitioner has produced before this Court, the Award of second respondent, dated 07.06.2016 fixing /determining compensation. It is admitted even in the impugned order that the appeal/petition was filed before the first respondent on 12.02.2019.

8.From the facts admitted by the first respondent in the impugned order and the narration of events projected by the learned Counsel for the petitioner, this Court is satisfied that the appeal/reference has been preferred within time. Hence, this Court has no hesitation to hold that the impugned order passed by the first respondent dismissing the appeal on the ground of limitation is not only illegal on account of judgments of Honourable Division Bench of this Court, but, also by accepting the case of the first respondent regarding application of Limitation Act.



9.As a result, this Writ Petition is allowed and the impugned order passed by the first respondent, dated 02.11.2019 in Land Acquisition Arbitration Case No.19/2018/11 of 2019 is set aside. The first respondent is directed to entertain the petitioner's appeal and pass final orders after hearing the petitioner and considering all the documents within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The District Collector-cum-Arbitrator,
(Under the National Highways Act),
Thanjavur District, Thanjavur.

2.The Competent Authority /
Special District Revenue Officer
(Land Acquisition),
National Highways No.67 and 45 C,
Thiruvaru, Thiruvaru District.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-105514[F] dated 18/12/2019)

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VB(08.01.2020) 5P 4C