

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **16.03.2020**

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.435 of 2012

1. V.Eswari Ammal (Deceased)
2.V.Sathyanarayanan
3.V.Kandaswamy . Petitioners

Vs.

1. The National Highways Authority of India
Rep. By its Project Director
1/54-28, BuH Road
St.Thomas Mount, Chennai-16
2. Competent Authority and
Special District Revenue Officer/Land Acquisition
National Highways
Kancheepuram
3.Arbitrator and District Collector (in-charge)
District Revenue Officer, Chennai District
Singaravellan Maligai, # 62, Rajaji Salai
Chennai - 600 001 Respondents

(Petitioners 2 and 3 are brought on record as legal heirs of the deceased sole petitioner as per order dated 01.08.2018 in Appl.No.5927 of 2018)

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award/order dated 29.11.2011 passed by 3rd Respondent in Arbitration R.C.No.4315/2011.

For Petitioner : Mr.Joseph George Mayiladumpara

For Respondents : Mr.Richardson Wilson for R1
Mr.Sricharan Rangarajan (Spl.G.P)
Assist. by Mr.Y.T.Aravind Gosh
Government Advocate for R2 and R3

ORDER

Instant 'Original Petition' ('OP' for the sake of brevity) is under Section 34 of 'The Arbitration and Conciliation Act, 1996' (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for brevity, clarity and convenience. It may be necessary to set out 3 significant facets of Section 34 of A and C Act, namely a) Scope; b) Nature of disposal; and c) Time line.

2.With regard to the first facet, namely, scope, Section 34 finds its place under Chapter VII of A and C Act captioned 'RECOURSE AGAINST ARBITRAL AWARD' and Section 34 talks about 'APPLICATION FOR SETTING ASIDE ARBITRAL AWARD', but, in this Court, such applications are given the nomenclature OP and therefore, I will continue to

refer to instant matter on hand as OP. An OP under Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a limited judicial review which has to perambulate within a perimeter created by the contours and confines of Section 34. Section 34 gives an adumbration of as many as eight slots under which, an arbitral award can be dislodged/set aside.

3. This Court consciously choose to use the term 'slot' in preference to 'ground' as a OP under Section 34 is neither an appeal nor a revision. As mentioned earlier, it is a limited judicial review within the contours and confines of Section 34. In other words, if a party approaching this Court under Section 34 is able to demonstrate that the petition, which is a challenge to an arbitral award fits snugly and neatly into one or some of the eight slots, the award will be dislodged. Otherwise, the award will not be interfered with. To put it differently, Section 34 is a very delicate balance between sanctity of finality of arbitral awards and sacrosanct character attached to judicial review. To be noted, 'minimum judicial interference' is the sublime philosophy and salutary principle underlying the scheme of A and C Act.

4. From the narrative thus far, setting out the critical components/facets of Section 34 it emerges clearly that short facts shorn of elaboration or in other words a thumb nail sketch of facts for appreciating this order will suffice.

5. Entire matter pertains to acquisition of petitioners' land with superstructure thereon situate at 'S.No.141/4A and T.S.No.16, Block No.33, Poonamalle High Road, Koyambedu, Chennai – 600 107' (hereinafter 'said property' for the sake of convenience and clarity). This Court is informed that land area of said property is 181 square meters or in other words, 1948 sq.ft and that a two storied superstructure thereon made up of some small shops stood there. This Court is informed that petitioners had let out those shops and were collecting rent from the tenants.

6. Said property was acquired by the first respondent 'National Highways Authority of India' ('NHAI' for brevity) under 'The National Highways Act, 1956 (48 of 1956)', which shall hereinafter be referred to as 'NHAI Act' for clarity.

7. Competent Authority under NHAI Act, being Competent Authority within the meaning of Section 3(a) of NHAI Act, passed an award dated 06.12.2006 awarding a total sum of little over Rs.51.95 lakhs, the break up of which as can be culled out from the OP is as follows:

<i>'Compensation paid for 181 sq.ft mts of land</i>	<i>Rs.37,48,510.00</i>
<i>Land Appreciation</i>	<i>Rs. 3,74,851.00</i>
<i>Structure Value</i>	<i>Rs.10,72,079.00</i>
	<i>-----</i>
	<i>Rs.51,95,440.00</i>
	<i>-----</i>

8. From the aforementioned break up, it is clear that compensation has been paid for superstructure also besides taking into account appreciation of land value. To be noted, this award made by the Competent Authority is under Section 3-G(1) of NHAI Act. Petitioners, not being satisfied with the quantum, made an application for enhancement of the same to be determined by Arbitrator appointed by the Central Government (vide Section 3-G(5) of NHAI Act). To be noted, Competent Authority is Respondent No.2 in instant OP. To be noted, Arbitrator appointed by Central Government under Section 3-G(5) is Respondent No.3, he embarked upon the exercise of entering upon reference, adjudicating and returning an

award dated 29.11.2011, which has been called in question in instant OP and which shall hereinafter be referred to as 'impugned award' for the sake of convenience. Vide the impugned award made by the third respondent, compensation awarded by the second respondent Competent Authority was confirmed and the petitioners' application was rejected.

9. To be noted, Sub-section (6) of Section 3-G of NHAI Act reads as follows:

'3-G(6) Subject to the provisions of the Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.'

10. Therefore, the proceedings of A and C Act apply to impugned award making and obviously to instant OP, which according to caption is under Section 34 of A and C Act.

11. The OP placed before this Court does not mention the specific slots in Section 34 under which instant OP has been filed assailing the impugned award. This Court made it a point to put it to the learned counsel to state

with specificity the slots adumbrated under Section 34 under which challenge to impugned award is predicated. In the reply submissions, learned counsel for petitioners submitted that challenge is predicated on conflict with public policy slot and patent illegality.

12. This Court now proceeds to examine the points urged.

13. Learned counsel for petitioners urged two main points and they are as follows:

a) The original award made by the Competent Authority i.e., second respondent, being award dated 06.12.2006, has been made by Special District Revenue Officer (LA)(NH), Kancheepuram & Thiruvallur Districts @ Kancheepuram and the proceedings under Section 3-G (5) have also been decided by a District Revenue Officer, who was holding charge as District Collector (in charge) and District Revenue Officer, Chennai District.

b) The quantification made vide the impugned award is unacceptable as the market value has not been considered.

14. In response to the above, learned counsel for NHAI, while refuting the aforesaid two points, raised one aspect of the matter and that is, the claim made by the petitioners on 01.07.2011 is time barred in the light of Article 137 of Limitation Act read with Section 43 (1) of A and C Act. In other words, it is the pointed submission of learned counsel for NHAI that the claim ought not to have been entertained, as it is barred by limitation.

15. Learned State counsel submits that he is representing Respondents 2 and 3, who are for all practical purposes Arbitrators and therefore, without canvassing any adversarial lis, by way of assistance to the Court, submissions were made. Learned State Counsel pointed out that the limitation plea raised by learned counsel for NHAI can be entertained even without a separate petition under Section 34 by NHAI in the light of Section 3 of Limitation Act. With regard to causation and quantification, it was pointed out that the acquisition itself was vide a notification, which was made in 2003. To be noted, the acquisition itself was in 2005, whereas petitioners plea is that the guideline value in 2007 ought to have been taken. It was pointed that no evidence has been let-in with regard to market value.

16. This Court now embarks upon the exercise of examining the aforesaid submissions and giving its dispositive reasoning, in the backdrop of aforementioned setting.

17. With regard to the first point raised by learned counsel for petitioners, namely District Revenue Officer (DRO), being an Authority, who made the original award i.e., award made by Competent Authority within the meaning of Section 3(a) of NHAI Act on 06.12.2006 and the Authority making the impugned award also being a DRO i.e., award dated 29.11.2011, what is of significance is sub-section (6) of Section 3-G, which has already been extracted and reproduced supra. If A and C Act applies, the question of cadre or hierarchy of officials in the Government are of no significance. More importantly, a perusal of sub-section (6) of Section 3-G of NHAI Act brings to light that the Arbitrator is appointed by the Central Government. Central Government has appointed the District Collector, Chennai as the Arbitrator qua Section 3-G (5) of NHAI Act for embarking upon Section 3-G(6) of NHAI Act exercise. This is clearly set out in the

last paragraph of the award made by Competent Authority, which reads as follows:

'An appeal under Section 3G(6) of National Highways Act, 1956 against this order lies before the Arbitrator, The District Collector, Chennai is being notified as Arbitrator under this Act.'

18. Therefore, the DRO, who was holding charge as District Collector, Chennai District, made the impugned award. To be noted, there is no dispute or disagreement before this Court that incumbent holding the office of Competent Authority and DRO holding the charge of District Collector, Chennai are different. In other words, the award dated 06.12.2006 and impugned award dated 29.11.2011 have been made by two different individuals.

19. This Court carefully considered the submissions and the provisions of law referred to supra. The incumbent is different and the capacity in which the DRO passed the impugned award is also different. While 06.12.2006 award has been made by a DRO, who is obviously the Competent Authority within the meaning of Section 3(a) of NHAI Act, the impugned award dated 29.11.2011 has been made by another DRO not in

his capacity as DRO, but in his capacity as DRO holding charge as District Collector of Chennai, who is the ex-officio authority appointed by the Central Government. Therefore, this Court has no hesitation in coming to the conclusion that the impugned award is not vitiated by DRO being the Authority who made 06.12.2006 award and 29.11.2011 impugned award. This puts an end to the first point urged before this Court.

20. This takes us to the second point urged by learned counsel for petitioners. The fact that no evidence was let-in with regard to market value is not disputed and this is articulated in Paragraph 11 of the impugned award, relevant portion of which reads as follows:

'11. While offering remarks on the requests of the petitioner. The Competent Authority and Special District Revenue Officer (LA) has reported that there is no suitable sales for fixing the land value and the petitioner is at liberty to quote any suitable sales from 13.8.2005 to 15.9.2005 and since there is no registered evidence available for market rate, it is not possible to consider the land value on the basis of market rate and hence the guide line value has been adopted for fixing the land value.....'

(Underlining made by this Court to supply emphasis and highlight)

21. The formula, which according to the petitioners ought to have been

applied has been set out in sub-paragraph (i) of Ground (b) and entire Ground (b) reads as follows:

'b. The 3rd respondent ought to have appreciated the fact that the petitioner had already conceded that no sale deed was available to establish a higher value of land in respect of the area under acquisition. The Petitioner had already stated that since the area under acquisition was prime land adjoining the national highway, land holdings rarely ever changed hands, since these lands which command maximum market appreciation are rarely sold by its owners. The Petitioner had clearly made a submission that there were other methods for arriving at the true market value of the land being acquired.

i. One of the methods suggested by the Petitioner was to take a sale in School Street, a street near National Highways No.4, which was culled out by the Competent Authority (while passing the original award) from out of the multitude of sales which had happened in the vicinity of the acquired area and using that as an indication of the actual market value of the lands located on the national highway. The Petitioner had suggested that a comparison of the guideline value fixed for school street and the guideline value for lands on NH4 would help determine the price differential between the lands on school street and lands on NH4. The formula suggested by the petitioner for this purpose was:

Market value on Main Road = Market value on School Street x Guideline value on Main Road ----- Guideline Value on School Street Thus an estimate of the Market Value on the main road can be worked out in the following manner Market value on Main Road = 2000 x Rs.8000/Rs.1800=Rs.8888.88
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ii. The Petitioner also placed a submission before the arbitrator that the guideline value applied by the competent authority, came into force in the year 2003 and at the time of passing of the award, by the competent authority, the process of revision of guideline values was being carried on and the draft guideline values were already in the public domain. These draft guidelines values were thereafter brought into force in early 2007. In respect of the lands under acquisition the guideline value was revised to Rs.8,000/- . The process of revision of guideline value from Rs.1925/- to Rs.8,000/- was contemporaneous with the acquisition proceedings. '

(Underlining made by this Court to supply emphasis and highlight)

22. A perusal of the above ground makes it clear that petitioners are projecting their challenge qua quantification on the basis of draft guidelines, which even according to the petitioners, were brought into effect in April 2007, whereas the initial notification was in 2003 and the acquisition itself was completed in 2005. This Court therefore accepts the submission of

State counsel that the plea that ground (b), which is the sheet anchor with regard to quantification falls flat in its face.

23. In any event, the plea that patent illegality and public policy grounds were available in 2012 was argued by learned counsel for petitioners. Attention of this Court was drawn to judgment of Hon'ble Supreme Court in *Delhi Development Authority Vs. M/s.R.S.Sharma & Co., New Delhi* made in *Civil Appeal No.2424 of 2002*, being an order dated 26.08.2008. Relying on this judgment, learned counsel submitted that these grounds were available to the petitioners even in as of 2012.

24. Be that as it may, with regard to public policy, the law is now well settled that a petitioner, predicating his challenge to an arbitral award on the ground that it is conflict with public policy, should be able to demonstrate that one or some or all the three distinct juristic principles culled out by Hon'ble Supreme Court have been violated. Post R.S.Sharma case, Hon'ble Supreme Court rendered *ONGC Ltd. v. Western Geco International Ltd.*, reported in *(2014) 9 SCC 263* on 04.09.2014 and *Associate Builders Vs. Delhi Development Authority* reported in *(2015) 3 SCC 49* on 25.11.2014

wherein three distinct juristic principles laid down in *Western Geco* were reiterated. To be noted, both *ONGC Ltd. v. Western Geco International Ltd.*, reported in (2014) 9 SCC 263 and *Associate Builders Vs. Delhi Development Authority* reported in (2015) 3 SCC 49 were rendered prior to 23.10.2015.

25. A careful perusal of the impugned award reveals that there is nothing to demonstrate that the three distinct juristic principles or one or some of them have been violated. To be noted, the three distinct juristic principles are a) judicial approach, b) 'Natural Justice Principles' ('NJP' for brevity), and c) Irrationality / perversity. The three tests laid down by Hon'ble Supreme Court to test these three distinct juristic doctrines are a) fidelity of judicial approach, b) *audi alteram partem* and c) time honoured *Wednesbury* principle of reasonableness.

26. In the instant case, the second juristic principle touching upon NJP does not arise. Therefore, it will suffice to test the impugned award for judicial approach as well as irrationality/perversity. From the submissions made and grounds placed before this Court it comes to light that they are

more in the nature of grounds of appeal, which are made in a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity). This Court searched in vain for any lack of fidelity in judicial approach. Likewise, there is nothing to demonstrate that *Wednesbury* principle of reasonableness has been violated. Therefore, the plea that the impugned award is in conflict with public policy does not carry the petitioners' case any further. Learned counsel also submitted that patent illegality ground is available to the petitioners. With regard to patent illegality, the petitioners should be able to demonstrate that the Arbitral Tribunal has returned findings which shocks the conscience of this Court. In the instant case, this Court is unable to find any such finding in the impugned award.

27. This reverts the discussion to Limitation Act. NHAI has not filed a separate petition under Section 34 of A and C Act assailing the impugned award on the ground of limitation. Nonetheless, State counsel submitted that limitation can be looked into even if not pleaded owing to Section 3 of Limitation Act. Limitation is founded on public policy and this is

indisputable in the light of authoritative pronouncement of Hon'ble Supreme Court in ***N.Balakrishnan Vs. M.Krishnamoorthy*** reported in (1998) 7 SCC 123. In answer to the question as to whether delay is condonable qua arbitration proceedings, learned counsel pressed into service an order dated 23.04.2019 made by this Court in ***S.Sivakumar Vs. Sundaram Finance Limited*** case. Most relevant paragraph is Paragraph 42, but it would be appropriate to extract Paragraphs 40 to 42, which read as follows:

'40. There is no dispute or disagreement that there is no equivalent of Sub Section (5) of Section 14 of Arbitration and Conciliation Act operating in India. It therefore follows that the Commentary i.e., Russell on Arbitration does not help the first respondent finance company. Therefore, that takes us back to Section 21 of A & C Act. Now reverting to Section 21, as Section 21 does not make any distinction between arbitration where arbitrator has to be appointed by parties to arbitration agreement and where arbitrator is to be appointed by a third party i.e., a party other than a party to the contract, one has to look at Section 21 as a provision which applies to all arbitration agreements, the only exception being cases where the parties themselves have agreed in the arbitration clause/arbitration agreement that the arbitration proceedings will commence in some other manner.

41. In the instant case, in the light of Article 22 of Ex.A1 loan

agreement, there is no dispute or disagreement before this Court that the parties have not agreed for commencement of arbitral proceedings in any other manner. In this view of the matter, this Court is unable to accept the contentions of learned counsel for first respondent finance company that Section 21 of Arbitration Act does not apply.

42. This Court is also of the considered view that in the light of the scheme of A & C Act and in the light of theme of A & C Act, which is in the nature of continuing consent of the parties at every point/stage of arbitral proceedings, it cannot be gainsaid that Section 21 does not apply to arbitration where the arbitrator is to be appointed by a third party other than the parties to the contract.'

28. This Court is informed that there is no intra-court appeal against S.Sivakumar's case. Therefore, legal principle laid down in Sivakumar's case is that even in a case where the arbitrator is appointed by a third party, Section 21 of A and C Act will operate and limitation is to be computed from the date of commencement of arbitration proceedings within the meaning of Section 21 of A and C Act holds the field. With regard to whether it is condonable, learned counsel for NHAI pressed into service a judgment of a Division Bench of Karnataka High Court in ***T.Yunis Vs.***

National Highways Authority of India and others reported in ***ILR 2012 KAR 6055*** and another judgment made by a Division Bench of Kerala High Court in ***K.Leela's*** case [***K.Leela Vs. The District Collector and another*** reported in ***2015 SCC Online Ker 11800***]. Suffice to say that the principles laid down in ***T.Yunis's*** case and ***K.Leela's*** case are to the effect that Article 137 of Limitation Act will be attracted even to statutory arbitrations. However, in the instant case, there is one collateral development which is of relevance. The petitioners predecessor one Eswari Ammal (to be noted, when instant OP was filed in 2012, Eswari Ammal was alive) filed a writ petition in W.P.No.4323 of 2011 in this Court with regard to representations dated 30.07.2009 and 04.02.2011 made by her and made a plea that the same has to be dealt with under Section 3-G (6) of NHAI Act. This Court, after hearing all the parties concerned, disposed of the writ petition by way of an order dated 24.02.2012, which reads as follows:

'This writ petition is filed to direct the third respondent to enter reference upon the dispute raised by the petitioner in her representations dated 30.07.2009 and 04.02.2011, as mandated by section 3G(6) of the National Highways Act, 1956, conduct the proceedings in the manner prescribed by the said Act, and pass an award within such time period as this Court.

2. The petitioner states that the lands have been acquired for the purpose of widening of the National Highways under National Highways Act, 1956 and certain amounts as compensation has been paid. The petitioner seeks enhancement of compensation and has made a representations to the District Collector / third respondent on 30.07.2998 and 04.02.2011. Earlier to this, also there have been several representations. Since none of the representations were considered on the merits, the present writ petition has been filed.

3. Heard Mr.J.Ravindran, learned counsel for the first respondent, Mr.P.Wilson Associates, learned counsel for the second respondent and Mr.L.S.M.Hasan Fizal, learned Government Advocate for R3 and R4.

4. The learned Government Advocate stated tht if the plea of the petitioner has not been considered, so far, the authority will consider the same as may be directed, by this Court and they will proceed in the matter as per law.

5. Considering the limited scope of the prayer in the writ petition, if the so called representation has not been already disposed of on merits, the District Collector/third respondent is directed to consider the said representation and decide the same on its own merits within a period of six weeks from the date of receipt of a copy of this order. No costs.'

29. In the light of the aforesaid order made by another Hon'ble single Judge, which this Court is informed, has attained finality, as a matter of

judicial discipline, this Court deems it appropriate to leave the question of limitation open in the instant OP. This course is adopted, as in any case i.e., sans limitation plea the points raised by petitioners in assailing the impugned award have not found favour with this Court. In other words, limitation point is not going to be a clincher in the instant case. It is in this view of the matter and as a matter of judicial discipline (in the fact setting and collateral order in a writ petition in this Court), the question of limitation is left open.

30. This Court is informed that petitioners have already received the compensation little over Rs.51.95 lakhs.

In the light of narrative thus far, instant OP cannot but fail and is, therefore, dismissed. There shall be no order as to costs.

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Speaking order: Yes

Index: Yes

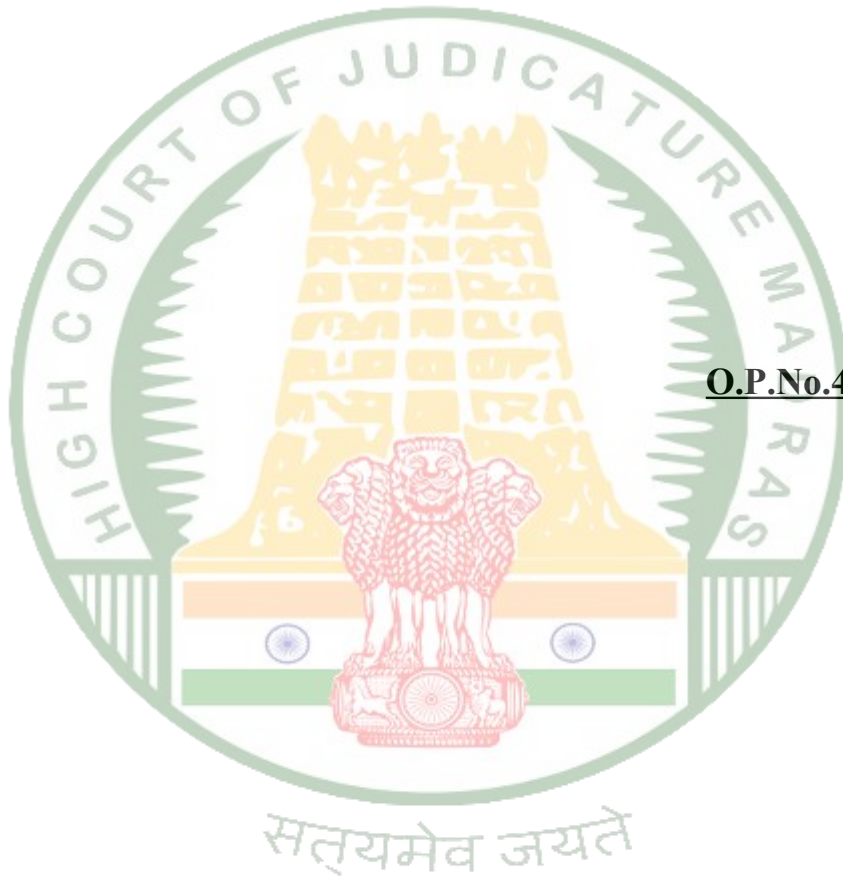
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