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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35558 of 2016

1.T.K.Paneerselvan (Died),
S/o.Kandasamy

2.P.Thenmozhi,
W/o.Late T.K.Paneerselvan

3.P.Janani,
D/o.Late T.K.Paneerselvan

4.P.Manojkumar,
S/o.Late T.K.Paneerselvan
[P2 to P4 are substituted as LR's of deceased

P1 - T.K.Paneerselvan as per order dated 03.04.2017
in W.M.P.No.5631/2017 in W.P.No.35558/2016] .. Petitioners

-vs-

1.The Arbitrator cum District Collector,
Villupuram.

2.The Authorized Officer cum
Special District Revenue Officer,
National Highways (Acquisition),
Villupuram-605 602.

3.The Project Director,
National Highways Authority of India,
Villupuram.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the entire records pertaining to the 1st respondent's proceedings in Na.Ka.(Arbit)Aa1/4033/2015 dated 05.08.2016 and quash the same and consequently direct the first respondent to consider the petitioner's appeal dated 20.01.2016 and pass order under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 with time framed manner.



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For Petitioners: Mr.K.Sudhakar

For Respondents: RR1 & 2 - Mr.M.Elumalai,
Government Advocate

: R3 - Mr.B.Hari Krishnan

ORDER

Heard Mr.K.Sudhakar, learned counsel for the petitioners; Mr.M.Elumalai, learned Government Advocate for respondents 1 and 2 and Mr.B.Hari Krishnan, learned counsel for the third respondent.

2.The petitioners have challenged an order passed by the first respondent in the capacity of an Arbitrator exercising powers under Section 3G(5) of the National Highways Act, 1956.

3.The learned counsel for the petitioners had made elaborate submissions and referred to the decision of the Hon'ble Supreme Court in the case of Union of India and another vs. Tarsem Singh and others [C.A.No.7064 of 2019 dated 19.09.2019] stating that the petitioners are entitled to payment of solatium and interest as contained in Section 23(1A) and (2) and interest payable in terms of the proviso to Section 28 which has been held to be applicable to acquisitions made under the National Highways Act. It is submitted that to that extent, the provision of Section 3J of the National Highways Act was held to be violative of Article 14 of the Constitution of India.

4.Though the petitioners pray for grant of compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act 30 of 2013], such a prayer cannot be granted because the acquisition proceedings were initiated much earlier before the said Act 30 of 2013 came into force. However, one other hurdle which the petitioners have to cross is with regard to the maintainability of the writ petition which is being raised by the learned counsels appearing for the respondents. Undoubtedly, the impugned order is an award passed by the District Collector in exercise of powers conferred under Section 3G(5) of the National Highways Act and the arbitrator has been nominated by the Government of India by notification. Furthermore, in terms of the provisions of the National Highways Act, the procedure to be adopted by the Arbitrator is in terms of the Arbitration and Conciliation Act, 1996. If that is so,



the impugned order is nothing else than an award and if the petitioners are aggrieved, then the only remedy available to the petitioners is to take recourse under Section 34 of the Arbitration and Conciliation Act, 1996. In fact the scheme of the National Highways Act provides for remedy for not only the land owner but also the National Highways in the event they are aggrieved by the award. Therefore, the preliminary objection raised by the learned counsels for the respondents needs to be sustained.

5. For the above reasons, it is held that this writ petition is not maintainable in the light of the remedy available under Section 34 of the Arbitration and Conciliation Act. However, taking note of the fact that the writ petition was filed before this Court on 05.10.2016 and was subsequently admitted and pending before this Court and the respondents have also filed counter, this Court is of the view that for the purpose of maintaining application under Section 34 of the Arbitration and Conciliation Act before the concerned Principal District Court, the period during which the writ petition was pending should stand excluded as there is a likelihood of a dispute arising regarding computation of delay. Bearing in mind that the writ petition was pending for all these years, this Court is inclined to grant thirty days time to the petitioners to file before the concerned Principal District Court to set aside the award passed by the first respondent.

6. In the result, while holding that the writ petition is not maintainable, liberty is granted to the petitioners to file an application before the concerned Principal District Court under Section 34 of the Arbitration and Conciliation Act within a period of thirty days from the date of receipt of a copy of this order. If the same is done, the petition should be entertained and a decision be taken on merits and should not be rejected on the ground of limitation. Therefore, the concerned Principal District Court is requested to take note of the legal position and if there is consensus, the matter can be referred to the Lok Adalat to bring out an early resolution to the problem.

7. With the above observation, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse



To

1.The Arbitrator cum District Collector,
Villupuram.

2.The Authorized Officer cum
Special District Revenue Officer,
National Highways (Acquisition),
Villupuram-605 602.

3.The Project Director,
National Highways Authority of India,
Villupuram.

Copy to:
The Section Officer,
ER Section,
High Court, Madras.

+1cc to the Government Pleader SR.24318
+1cc to Mr.B.Harikirhsnan, Advocate SR.24140
+1cc to Mr.K.Sudhakar, Advocate SR.24248

W.P.No.35558 of 2016

RLD(CO)
CB(10/07/2020)
CB(15/07/2020)