

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09 / 07 / 2018

DELIVERED ON : 09 / 03 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.M.A. NO.1733 OF 2014

&

C.M.P.No.5295 of 2016

Sri Venkateshwar Glue
and Leather Products,
Rep by its partner N.Sathiyamoorthi
having office at 5/2A2, 2B2,
Trunk road, Valyampet
Vaniyambadi, Vellore District ... Appellant / petitioner

Vs.

1.The Special District Revenue Officer
Competent Authority Land Acquisition
National Highways, having
office at Collectorate, Vellore

2.The District Collector, Vellore
having office at Vellore ... Respondents/respondents

PRAYER: Civil Miscellaneous Appeal filed under Or.37 of
Arbitration and Conciliation Act of 1996, to set aside the order
and decreetal order passed in Ar.O.P.No.1 of 2009 dated
19.03.2014 on the file of the learned Principal District Judge,
Vellore.

For Appellant : Dr.A.E.Chelliah, Senior Advocate
for M/s S.Sadasharam

For Respondent : Mr.S.R.Raja Gopal, AAG IX for
Ms.A.Madhumathi, AGP (CS)

J U D G M E N T

Challenging the award passed u/s. 34 of the Arbitration and
Conciliation Act, 1996, the above appeal has been preferred u/s.
37 of the above Act.

2. Petitioner is a partnership firm. They purchased land and raised RCC building and erected machineries to the tune of Rs.45,00,000/- for running a tannery unit in Valayampatti village, Vaniyambadi Taluk, Vellore District. 20 persons joined together and erected a common effluent treatment plant in which the petitioner has invested Rs.2,00,000/- along with 19 subscribers. Thus total contribution is Rs.40,00,000/-. It is mandatory requirement that all the tannery units should have effluent treatment plant. The common effluent treatment plant was called as "Vaniyambadi Effluent Treatment Company" (VETCO). They got permanent certificate from Department of Industries and Commerce and appellant industrial unit was registered.

3. In the year 2002, a notification was issued by the Government of India for establishing Golden Quadrangle for providing four way lane. For the said purpose lands were acquired. The land on which common effluent treatment plant was erected was also acquired and the pipelines were removed and as a result the appellant could not run the tannery unit. The efforts put by him from 1983 commencing from purchase of land, erection of building, machineries etc all ended in failure by which he suffered financial blow besides mental and physical suffering. He estimated the damage caused to his business was a loss of around 69.83 lakhs. Therefore, he made a claim on 29.07.2004 to the Special District Revenue Officer who is the Competent authority determination of claims. Since his claim was not considered, he filed Writ petition No.10109 of 2008 and pursuant to the direction issued by this Court directing the District Collector to decide the matter within a time frame of six weeks, an arbitration award was passed on 19.03.2014 without conducting hearing. Aggrieved over the same, he preferred a Civil Miscellaneous Appeal, which was also dismissed. Against which, the appellant is before this Court.

4. Before the Appellate authority the respondents have taken a stand that the appellant has no right to claim any compensation for erecting a common effluent treatment plant on the National Highways. According to them any person laying pipelines beneath the National Highway shall obtain permission from the Government of India. The appellant has never obtained any permission. Even assuming that permission was granted, when the National Highways department wants to lay roads, the utility holder shall remove the pipelines at his own costs and does not have any right to claim compensation. As such the appellant neither being utility holder nor have any right to claim compensation and hence the appeal merits no consideration.

5. The Appellate authority has considered the rival submissions and found that the appellant in his evidence has categorically deposed that he did not produce any permission letter as a mandatory for erecting the common effluent treatment plant and that he was not aware that he has to remove it at his own costs. It was also found that the appellant had not rebutted the statement made by the respondents that for doing works on the National Highways, the utility holder shall remove the pipelines at his own costs and therefore, without getting permission without rebutting the expenses to be borne by him for removing the pipelines, the appellant cannot claim any compensation.

6. In so far as the conduct of arbitration proceedings is concerned, the Appellate authority has found that there is no irregularities in conduct of arbitration proceedings and found there is no flagrant error or violation of procedures in the 2nd respondent in conducting the arbitration proceedings and dismissed the appeal. Aggrieved over the same, the appellant is before this Court.

7. Learned Senior counsel appearing for the appellant would vehemently contend that the arbitration proceedings were not properly conducted as per Sec.34 of the Arbitration and Conciliation Act,1996. Pursuant to the order of this Court, the Arbitrator issued a hearing notice dated 11.06.2008 fixing the date of hearing as 16.06.2008. The notice was received only after 11.06.2008 and without giving breathing time the enquiry was conducted. As per Arbitration Act, the arbitrator is bound to provide hearing and not enquiry. However, the representative of the appellant firm was summoned to office and asked to sit and come on some other date. On a later date, he was served with an award dated 15.09.2008 with reference Na.Ka.04/11764/2004. The Arbitrator without following the adjudicatory process, misconducted himself in not conducting the arbitration by giving adequate and fair opportunity to both the parties. Infact, no counter or reply statement was filed by the other side. The Arbitrator has not considered the rival submissions, related claims or the issue of arbitration has mechanically passed the order. The award also was not issued as contemplated under the Act in a non judicial stamp paper. Absolute indifference as opposed to public policy and the principle adumbrated u/s. 18 of the Arbitration and Conciliation Act,1996 that equal treatment to parties shall be recorded was also given a go by, the award came to be passed in haste and hence it is liable to be set aside.

8. I considered the submissions.

9. The admitted fact remains that the appellant has erected his tannery unit in S.F.No.5/2A2 and 3B2 in Amburpet village, Vaniyambadi. To comply with the mandatory requirement of erecting a common effluent treatment plant, 20 persons have joined together and contributed Rs.2,00,000/- each and formed a company called Vaniyambadi Effluent Treatment Company (VETCO) through that company they erected a common effluent treatment plant in S.No.27/1C2 and 27/1D of Valayampet village, Vaniyambadi Taluk. The said plant was acquired by National Highways. It is relevant to point out that the said land was leased by the said company VETCO from one Jayalakshmi. As such the company is a lease holder of the land owned by Jayalakshmi for a period of 30 years starting from 01.10.1995. In that view of the matter, it is very clear that the said Jayalakshmi is the owner of the land and VETCO the effluent treatment plant is the interested party. The appellant is one of the subscribers of the company.

10. The National Highways Authority, Ministry of Road Transport and Highway, New Delhi issued a notification U/s. 3-A (3) of National Highways Act, 1956 on 25.06.2002. There is no dispute about the acquisition made by the National Highways. The dispute is only with regard to determination of amount payable as compensation u/s. 3-G of the above Act.

11. With this background, if this issue is analysed as stated supra, the owner of the land is one Jayalakshmi and the interested party is VETCO. Appellant is one of the subscribers to the satellite company. As such the company is the interested party and the appellant cannot be a interested party over the land. As per Sec.3(G) (2) of the National Highways Act, if any other right of any other person whose right of enjoyment in the land has been effected by the reason of such acquisition an amount calculated at 10% of the amount determined under as award of compensation shall be given. For that purpose, the Competent authority under Sec.3(G) (3) shall give a public notice published in two local news papers and the persons interested shall file their objections if the amount determined by the Competent authority under Sub section 2 is not acceptable to them. In that view of the matter, as discussed earlier, VETCO who is an interested party should have made an application as contemplated under the Act. On the other hand, the appellant who does not have any locus standi or right to submit his objection in his individual capacity, claims the same. Secondly, it is

contended by the learned Additional Advocate General that for erecting any common effluent treatment plant and laying the pipeline beneath the land belonging to National Highways Authority permission should be obtained from Government of India. Admittedly, the appellant had not obtained any such permission. Even though, it is stated that he has obtained permission under the Act. The further condition which is not rebutted by the appellant is that when the road laying works or expansion works are done by National Highways authority, it is incumbent on the utility holder to remove the pipelines at his own costs. He has no right to claim any compensation from the Government. In the instant case, the appellant is neither a utility holder nor erected pipelines on his own. It was even assuming pipelines were laid without permission from the National Highways it was done by the company floated by the 20 subscribers (tannery owners) they are bound to bear the costs for removing the pipelines and they cannot claim any compensation. It is not the case of the appellant that no compensation was paid to the land owner and the interested parties.

12. It is also pertinent to note that the appellant has not only claimed compensation from the acquisition authorities to the land, but also for the loss caused to his tannery unit, which is situated in a different Survey number. Such claim from the acquiring body cannot be made. For the loss caused to any utility holder on the land acquired, can alone be claimed not on the remote or extended damages caused due to the acquisition. It is always open to him to erect an effluent treatment plant in some other place. Hence the contention raised by the learned Senior counsel that business is spoiled because of the removal of pipelines cannot be accepted. He could have continued his business by complying with the requirement of erecting common effluent treatment plant in some other place. Be that as it may, under Sec. 34 the scope of interfering with the arbitrator award is very limited. Sec. 34 of the Arbitration and Conciliation Act, 1996 reads as under:

34 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 submission 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. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75

or section 81.

(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 it 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."

Unless it is ex-facie illegal or proceedings were conducted opposed to public law or in exercise of jurisdiction, it can be interfered with.

13. The judgment relied on by the learned Senior counsel for the appellant in Oil & Natural Gas Corporation Ltd vs. Saw Pipes Ltd, 2003 5 SCC 705, it is held as under :

"...

74. B. (1) The impugned award requires to be set aside mainly on the grounds:-

(i) there is specific stipulation in the agreement that the time and date of delivery of the goods was the essence of the contract;

(ii) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;

(iii) it was also explicitly understood that the agreed liquidated damages were genuine pre-

estimate of damages;

(iv) on the request of the respondent to extend the time limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;

(v) liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;

(vi) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable.

(vii) In certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care by Sections 73 and 74 of the Contract Act and in the present case by specific terms of the contract."

14. In that case, the claim of interest and damages is purely covered under a contract. But in the case of land acquisition there is no such contract to govern the parties. Infact, the appellant himself is not at all a party much less interested party in so far as this acquisition is concerned. Arbitration shall be conducted between the parties who are covered under the arbitration clause, Whereas in this case, as discussed above, the appellant is not at all a party to the arbitration and therefore he cannot complain about the conduct of arbitration. Further more, under Sec. 34 the scope of interfering with the arbitration award is very limited and it is further narrowed down in respect of Appeal u/s. 37 of the Act. In the considered opinion of this Court, the appellant was deprived of fair or ample opportunity to participate in the arbitration proceedings and the award is not opposed to public loan.

15. The Hon'ble Supreme Court in Mmtc Ltd vs. M/s. Vedanta Ltd, 2019 (4) SCC 163, has held as under:

" 11. As far as Section 34 is concerned, the position is well settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii), i.e. if the award is against the public policy of India. As per the legal position

clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2) (b)

(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA*, (2015) 3 SCC 49). Also see *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445; and *McDermott International v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181).

It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2A) has been inserted in Section 34, which provides that in

case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states 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.

12. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

13. Having noted the above grounds for interference with an arbitral award, it must now be noted that the instant question pertains to determining whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the Courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of re-assessment of the material on record, but only in terms of the principles governing interference with an award as discussed above."

In the light of the above decision, I do not find any grounds to interfere with the impugned order.

16. The other judgments relied on by the learned Senior counsel in the case of Tamil Nadu Civil Supplies Corporation Ltd vs. M/.s. Albert & Co, Egmore, 2000 III CTC 83, Union of India vs. Popular Construction Co, (2001) 8 SCC 470, Arun Keshavrao Mone (Mane) and others vs. Ramesh Balvant Baxi and another, 2006

2 M.L.J 203, Snehideep Structures Private Limited vs. Maharashtra Small Scale Industries Development Corporation Ltd, 2010 3 SCC 34, Oil and Natural Gas Corporation Limited vs. Western Geco International Limited, 2014 9 SCC 263 and Associate Builders vs. Delhi Development Authority, 2015 3 SCC 49 are not at all applicable to the case on hand.

17. In the result, Civil Miscellaneous appeal merits no consideration and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Kpr

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal District Judge, Vellore.

2. The Special District Revenue Officer

Competent Authority Land Acquisition
National Highways, having
office at Collectorate, Vellore

3.The District Collector, Vellore
having office at Vellore.

4. The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.S.Sadasharam, Advocate SR.No.20566

+lcc to the Special Gov. Pleader (Cs), High Court, Madras
SR No.21288

+lcc to Government Pleader, High Court, Madras SR.No.21667

C.M.A. NO.1733 OF 2014

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C.M.P.No.5295 of 2016

BR (CO)
mst (27/05/2020)