



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) Nos.560 of 2018

and

C.M.A. (MD) Nos.225, 226, 227, 228, 229, 230, 231,
28, 29, 30, 31 & 32 of 2019

and

C.M.A. (MD) No.386 of 2015

and

C.M.A. (MD) Nos.42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 464, 465,
466, 467, 468, 476, 487, 492,
493, 494, 503, 504, 505, 506, 515, 516,
518, 519, 520 & 526 of 2019

and

C.M.A. (MD) Nos.712, 713, 714, 715, 716,
717, 718, 719 & 760 of 2018

and

C.M.P. (MD) Nos.3086, 3087, 3088, 3089, 3091, 3092 of 2019
& 3178 of 2016 & 452, 453, 454, 455, 456, 499, 500, 501,
502, 503, 504, 505, 506, 507, 508, 5530, 5536, 5537, 5538,
5539, 5587, 5754, 5802, 5803, 5804, 5897, 5899, 5901, 5902,
5995, 5996, 5998, & 5999, 6000, 6231 of 2019 & 6533, 8185, 8186,
8187, 8188, 8189, 8190, 8191, 8192, 8672 of 2018 & 9798 of 2016

and

Cross Objection (MD) No.16 of 2015 and MP(MD)No.1 of 2015

Judgment Reserved On 22.11.2019	Judgment Pronounced On 13.02.2020
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CMA (MD) No. 560/2018

The Project Director,
National Highways No.45-E & 220,
National Highways Authority of India,
No.83/1, SBI 1st Colony Ext.,
(Near Gowri Krishna Hotel)
Formerly at Bye-pass Road,
Madurai-625 016.
Now at



Plot No.1, Aishwayam Heights,
Indira Nagar, Sennamanaickenpatti (PO),
Thadikombu Road,Dindigul-624 004.

.. Appellant/ 2nd Respondent

-vs-

1.M.Vijayalakshmi
W/o.Late Muthuvel

.. 1st Respondent/Petitioner

2.The Special District Revenue/
Competent Authority for Land Acquisition,
(National Highways-45E & 220)
Collectorate Buildings, Theni.

.. 2nd Respondent/ 1st Respondent

Prayer

Appeal under Sections 37(1) and 37(2) of the Arbitration and Conciliation Act, 1996 against the order and executable order made in Arbitration O.P.No.9 of 2015 on the file of Principal District & Sessions Court, Theni dated 22.03.2018 whereby the lower appellate Court had set aside and modified the arbitral award of the Arbitrator/ District Collector, Theni made in Arbitration Case No. A.P.No.35 of 2015 in Roc. No. A.P.No.35 of 2015/Theni/NH 45 E & 220/ Unit-I Dated 09.04.2015 and enhanced the compensation with interest @ 9% per annum from the date of taking possession of the land up to one year and after expiry of the date of one year further interest of 15% per annum till the deposit and further decreed to pay 30% solatium and interest @ 12%.

CMA(MD)Nos.225 to 231 of 2019 and CMA(MD)Nos.28 to 32 of 2019

The Project Director,National Highways
No.45 e &220,National Highways Authority of India,
Now at Plot No.1,Aishwaryam Heights Indira Nagar,
Sennamanaickenpatti(Po),
Dindigul-004.

.. Petitioner/2nd Respondent in
CMA(MD)Nos. 225/ 2019 to 231/2019 &
CMA(MD)Nos.28 to 32/2019

-Vs-

K.R.Soundararajan
S. Nainammal
S. Razzia
K. Gurusamy
K. Vengaian
K. Manickam
V. Ramesh

--Respondent No.1 in CMA(MD). 225/ 2019
--Respondent No.1 in CMA(MD). 226/ 2019
--Respondent No.1 in CMA(MD). 227/ 2019
--Respondent No.1 in CMA(MD). 228/ 2019
--Respondent No.1 in CMA(MD). 229/ 2019
--Respondent No.1 in CMA(MD). 230/ 2019
--Respondent No.1 in CMA(MD). 231/ 2019



R.Ramakrishnan,	--Respondent No.1 in CMA(MD) . 28/ 2019
R.Srimurugan,	--Respondent No.1 in CMA(MD) . 29/ 2019
P.V.Kumaresh	--Respondent No.1 in CMA(MD) . 30/ 2019
P.Asokan	--Respondent No.1 in CMA(MD) . 31/ 2019
C.Kanagaraj	--Respondent No.1 in CMA(MD) . 32/ 2019

The Special District /Revenue Officer/
Competent Authority for Land Acquisition,
(National Highways-45E & 220)
Collectorate Buildings, Theni.

.. 2nd Respondent/ 1st Respondent
in CMA(MD)Nos.225 to 231/19 and
CMA(MD)Nos.28,31 and 32 of 2019

The District Revenue Officers
(Land Acquisition Officer,
National Highways -45 Extension), Dindigul.

... 2nd Respondent/1st Respondent in
CMA(MD).29 and 30/ 2019

Prayer in CMA(MD) . 225/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.55 of 2015 dated 02.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD) . 226/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.64 of 2015 dated 10.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD) . 227/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.65 of 2015 dated 10.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD) . 228/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.67 of 2015 dated 18.12.2017 on the file of the Principal District and Sessions Judge, Theni.



Prayer in CMA(MD). 229/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.69 of 2015 dated 18.12.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 230/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.84 of 2015 dated 18.12.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 231/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.86 of 2015 dated **18.12.2017** on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 28/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.52 of 2015 dated 29/11/2017 on the file of the Principal District and Sessions Judge, Theni

Prayer in CMA(MD). 29/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.100 of 2016 dated 06/12/2017 on the file of the Principal District and Sessions Judge, Dindigul

Prayer in CMA(MD). 30/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.101 of 2016 dated 06/12/2017 on the file of the Principal District and Sessions Judge, Dindigul

Prayer in CMA(MD). 31/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.54 of 2015 dated 02.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 32/ 2019 :

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.72 of 2015 dated 18/12/2017 on the file of the Principal District and Sessions Judge, Theni.



CMA (MD) No. 386/2015

The Project Director, National Highways
Authority of India, Plot No.A-21
Thomas Nilayam Street, Thomas Road,
Thendral Nagar, Maharajanagar Post,
Tirunelveli -011.

... Petitioner

-Vs-

1.Esakkimuthu Konar
2.Nambiarasan
3.Manamaran
4.Subbiah Bharati

...Respondents 1 to 4/Petitioners

5. The Special District Revenue Officer,
Land Acquisition National Highways,
2nd Cross Road, Thiyagarajanagar,
Tirunelveli- 11.

6. The District Collector/the Arbitrator,
District Collector Campus,
Kokkirakulam, Tirunelveli -09.

... Respondents 5 & 6 / Respondents 2 & 3

Prayer

Civil Miscellaneous Appeal filed under sections 34(2) & 37(2)
of Arbitration and Conciliation Act, 1996, praying to set aside the
order dated 07/10/2014 made in Arbitration O.P.No.185 of 2009 on the
file of the Principal District and Sessions Judge, Thirunelveli,

CMA(MD) Nos.42 to 51 of 2019

The Project Director,National
Highways No.45 E &220,National Highways Authority of India,
Now at Plot No.1,Aishwaryam Heights Indira Nagar,
Sennamanaickenpatti(Po), Dindigul-004.

.. Petitioner in CMA(MD). 42/ 2019 to
CMA(MD) No.51/2019

-Vs-

S.Gurunathan
T.Kannan
A.Rajendran
R.R.Sathyanarayanan
R.R.Ganesh Rajkumar
M.Kamuthurai
A.Silambarasan
V.Jamunadevi
J.Parthasarathi

-1st Respondent in CMA(MD). 42/ 2019
-1st Respondent in CMA(MD). 43/ 2019
-1st Respondent in CMA(MD). 44/ 2019
-1st Respondent in CMA(MD). 45/ 2019
-1st Respondent in CMA(MD). 46/ 2019
-1st Respondent in CMA(MD). 47/ 2019
-1st Respondent in CMA(MD). 48/ 2019
-1st Respondent in CMA(MD). 49/ 2019
-1st Respondent in CMA(MD). 50/ 2019
-1st Respondent in CMA(MD). 51/ 2019



The Special District Revenue officer/Competent
Authority for Land Acquisition
(National Highways- 45E & 220)
Collectorate Buildings, Theni,

-2nd Respondent in CMA(MD).
42/ 2019 to CMA(MD No.51/2019

Prayer in CMA(MD). 42/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.6 of 2015 dated 21.11.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 43/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.7 of 2015 dated 21.11.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 44/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.8 of 2015 dated 21.11.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 45/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.20 of 2015 dated 10.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 46/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.21 of 2015 dated 22/03/2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 47/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.31 of 2015 dated 10.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 48/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the



order made in Arbitration O.P.No.50 of 2015 dated 27.11.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 49/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.51 of 2015 dated 27.11.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 50/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.56 of 2015 dated 27.11.2017 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 51/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.57 of 2015 dated 27.11.2017 on the file of the Principal District and Sessions Judge, Theni.

CMA(MD) Nos.464 to 466 of 2019

The Project Director,
(National Highways -7)

National Highways Authority of India,
Madurai.

..Appellant/2nd Respondent in CMA(MD)
No.464/2019 to 466/2019

-Vs-

-vs-

K.Palanisamy

V.Nehru

K.Thirumalaisamy

--1st Respondent in CMA(MD) No.464/2019

--1st Respondent in CMA(MD) No.465/2019

--1st Respondent in CMA(MD) No.466/2019

The District Revenue Officer,

Land Acquisition Officer/(National Highways-7)

Madurai

--2nd Respondent in CMA(MD) No.464/2019
to 466/2019:

Prayer in CMA(MD). 464/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.49 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.



Prayer in CMA(MD). 465/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.45 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 466/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.51 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

CMA (MD) Nos.467, 468 and 476 of 2019

The Project Director,
(National Highways -7)
National Highways Authority of India,
Madurai. ..Appellant in CMA(MD)
No.467, 468 and 476 of 2019

-Vs

V.Karuppana Gounder --1st Respondent in CMA(MD)No.467/2019

Rajangam (Died)

- 1) Kamalam
- 2) Karuppu
- 3) Selvi
- 4) Muthu
- 5) Shanmugam

-- Respondent No.1 to 5 in CMA(MD)No.468/2019

T. Ponperumal --1st Respondent in CMA(MD)No.476/2019

The District Revenue Officer,
Land Acquisition Officer/
(National Highways-7)Madurai, 2nd Respondent in CMA(MD) 467
468 and 476 of 2019

Prayer in CMA(MD). 467/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.35 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 468/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.48 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.



Prayer in CMA(MD). 476/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.34 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

CMA (MD) No. 487/2019

The Project Director, (National Highways-7),
National Highways Authority of India, Madurai.

.. Appellant/Petitioner

-Vs-

1. M.Karuppayee ...1st Respondent/Petitioner

2. The Special Tahsildar (La)
National Highways Project, Madurai South.

3.The Special District Revenue Officer,
Competent Land Acquisition Officer For
National Highways-7, Virudhunagar.

... Respondents 2 & 3/ Respondents 1 & 2 in
CMA (MD). 487/ 2019

Prayer

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.8 of 2014 dated 02.01.2019, on the file of the Principal District and Sessions Judge, Madurai

CMA (MD) Nos.492 to 494 of 2019

The Project Director,
(National Highways -7)

National Highways Authority of India,
Madurai

--Appellant in CMA(MD) 492 to 494 of 2019,

-vs-

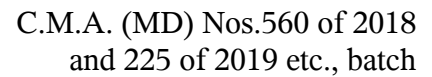
P. Nallasamy --1st Respondent in CMA (MD) No.492/2019

C. Velusamy --1st Respondent in CMA (MD) No.493/2019

C. Saraswathi --1st Respondent in CMA (MD) No.494/2019

The District Revenue Officer,
Land Acquisition Officer/(National Highways-7)
Madurai

--2nd Respondent in CMA(MD) 492 to 494 of 2019,



Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.42 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.30 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.55 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

The Project Director,
(National Highways -7)
National Highways Authority of India,
Madurai, --Appellant in CMA(MD) No.503 to 506 of 2019

P. Velusamy (Died)

1. Palaniammal
2. Chelladurai
3. Thangavel
4. Thirumayammal

The District Revenue Officer,
Land Acquisition Officer/
(National Highways-7)
Madurai

--2nd Respondent in CMA(MD) No.503/2019
505 & 506/2019 and
5th Respondent in CMA(MD) 504/2019;



Prayer in CMA(MD).503/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.52 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 504/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.53 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 505/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.36 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 506/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.38 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

CMA(MD) Nos.515,516, 518, 519, 520 and 526 of 2019

The Project Director,
(National Highways -7)

National Highways Authority of India,
Madurai

-Appellant in CMA(MD) 515, 516, 518, 519,
520 & 526 of 2019,

-vs-

K.Kaliappa Gounder	--1 st Respondent in CMA(MD) No.515/2019
C.Chinnakaruppu	--1 st Respondent in CMA(MD) No.516/2019
P.Muniammal	--1 st Respondent in CMA(MD) No.518/2019
S.Murugesan	--1 st Respondent in CMA(MD) No.519/2019
S.Indirani	--1 st Respondent in CMA(MD) No.520/2019
P.Muniammal	--1 st Respondent in CMA(MD) No.526/2019

The District Revenue Officer,
Land Acquisition Officer
(National Highways-7)
Madurai

--2nd Respondent in CMA(MD) 515, 516,
518, 519, 520 & 526 of 2019,



Prayer in CMA(MD). 515/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.33 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 516/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.39 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 518/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.54 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 519/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.31 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 520/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.56 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

Prayer in CMA(MD). 526/ 2019:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.47 of 2014 dated 02.01.2019 on the file of the Principal District and Sessions Judge, Madurai.

CMA(MD) Nos.712/18 to 719/18 and 760 of 2018

The Project Director, National
Highways No.45 E &220, National Highways Authority of India,
Now at Plot No.1, Aishwaryam Heights Indira Nagar,
Sennamanaickenpatti(Po), Dindigul-004.

.. Petitioner in CMA(MD). 712/ 2018
to 719/2018 and CMA(MD) No.760/2018

-VS-



P.Sanjeevi	--1 st Respondent in CMA (MD) No.712/2018
P.Chinnammal	--1 st Respondent in CMA (MD) No.713/2018
S.Muthupetchi	--1 st Respondent in CMA (MD) No.714/2018
S.Jeganathan	--1 st Respondent in CMA (MD) No.715/2018
R.Shyam Sai Sundar	--1 st Respondent in CMA (MD) No.716/2018
P.Vadamalai Muthu	--1 st Respondent in CMA (MD) No.717/2018
R.Rathina	--1 st Respondent in CMA (MD) No.718/2018
S.Thangaraj	--1 st Respondent in CMA (MD) No.719/2018
M.Hakeem,	--1 st Respondent in CMA (MD) No.760/2018

The Special District/revenue Officer/competent Authority
For Land Acquisition (National Highways-45E& 220),
Collectorate Buildings, Theni.

--2nd Respondent in CMA (MD). 712/ 2018 to 719/2018,
and CMA (MD) No.760/2018

Prayer in CMA (MD). 712/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.13 of 2015 dated 12.03.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA (MD). 713/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.16 of 2015 dated 12.03.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA (MD). 714/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.17 of 2015 dated 12.03.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA (MD). 715/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.32 of 2015 dated 31.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA (MD). 716/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the



order made in Arbitration O.P.No.19 of 2015 dated 22.02.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 717/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.38 of 2015 dated 23.02.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 718/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.36 of 2015 dated 23.02.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 719/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.40 of 2015 dated 31.01.2018 on the file of the Principal District and Sessions Judge, Theni.

Prayer in CMA(MD). 760/ 2018:

Civil Miscellaneous Appeal filed under section 37(1) & (2) of Arbitration and Conciliation Act, 1996, praying to set aside the order made in Arbitration O.P.No.37 of 2015 dated 23.02.2018 on the file of the Principal District and Sessions Judge, Theni.

Cross Objection (MD)No.16/2015

1. Esakkimuthu Konar
2. Nambiarasan
3. Manamaran
4. Subbiah Bharati

..Cross Appellants in
Cross Objection (MD)No.16/2015

-Vs-

- 1.The Project Director,
National Highways Authority of India,
Plot No. A 21, Thomas Nilayam St. Thomas Road,
Thendral Nagar, Maharajanagar Post,
Tirunelveli - 627 001.1st Respondent / Appellant

- 2.The Special District Revenue Officer,
Land Acquisition, National Higways,
2nd Cross Road, Thiyyagaraanagar,
Tirunelveli-627 011,



3.The District Collector/The Arbitrator,
District Collector Campus,
Kokkirakulam,
Tirunelveli

--Respondents 2 & 3 / Respondents 5 & 6

Prayer:

Cross objection filed under order 41 Rule 22 CPC, against the order passed in Ar.OP.No.185 of 2009 dated 07.10.2014 on the file of the Principal District Court, Tirunelveli.

For Appellant : Mr.Su.Srinivasan

(In C.M.A.(MD) Nos.560, 712 to 719 & 760 of 2018,
225 to 231, 28 to 32 and 42 to 51 of 2019)

For Appellant : Mr.C.Arul Vadivel @ Sekar

(In C.M.A.(MD) Nos.386 of 2015, 464 to 468, 476,
487, 492 to 494, 503 to 506, 515, 516, 518 to 520
and 526 of 2019)

For R1 : Mr.R.Govindaraj

(In C.M.A.(MD) Nos.560, 712 to 719 & 760 of 2018,
225 to 231, 28 to 32, 464 to 468, 476, 492 to 494,
503 to 506, 515, 516, 518 to 520 & 526 of 2019)

For R1 : Mr.M.Thirunavukkarasu

(In C.M.A.(MD) No.487 of 2019)

For R1 : Mr.R.R.Kannan

(In C.M.A.(MD) Nos.42 to 51 of 2019)

For RR 1 to 4 : Mr.H.Arumugam

(In C.M.A.(MD) No.386 of 2015 &
Petitioner in Cross Obj.(MD) No.16 of 2015)

For R2 : Mr.A.K.Baskarapandian

Special Government Pleader

(In C.M.A.(MD) Nos.560, 712, 719, 760 of 2018, 225
to 231, 28 to 32, 42 to 51, 464 to 468, 476, 487,
492 to 494, 503 to 506, 515, 518 to 520 and 526 of 2019)

For RR5 & 6 : Mr.A.K.Baskarapandian,

Special Government Pleader

(In C.M.A.(MD) No.386 of 2015)



COMMON JUDGMENT

ம.ஜ.1951 (Judgment of the Court was delivered by T.S.Sivagnanam, J.)

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The appellant in all these appeals is the National Highways Authority of India (NHAI), represented by its Project Directors over the orders passed by the District Courts in the petitions filed by the respondents/land losers under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity "the Arbitration Act") enhancing the compensation awarded by the competent authority/District Collectors under the National Highways Act, 1956 (for brevity "the NH Act") for the lands acquired from the land losers/respondents, for the purpose of widening of the existing National Highways.

2.The appeals have been filed under Sections 37(1) and 37(2) of the Arbitration Act. Though there may be slight factual difference with regard to the quantum of compensation claimed/ awarded, since the larger question, a legal issue raised by the appellant being common in all these appeals, with the consent of either side, the appeals were clubbed together, heard and are being disposed of by this common judgment.

3.Only one of the land losers has filed a Cross Objection in Cross Objection (MD) No.16 of 2015 in C.M.A.(MD) No.386 of 2015 claiming further enhancement than what was granted to the land owners by the Principal District Court, Theni.

4.As observed earlier, the orders impugned in these appeals have been passed by the various Principal District Courts in the Southern Districts. There is difference in the factual matrix such as the extent of land acquired, quality and nature of land, veracity of the documents exhibited etc., yet the submissions made by the learned counsels on either side on the legal aspects are common. This has led to clubbing of these appeals.

5.By consent, C.M.A.(MD) No.560 of 2018 is taken as the lead case. This appeal has been filed against the order passed by the Principal District and Sessions Court, Theni in Arbitration O.P.No.9 of 2015 dated 22.03.2018. The respondent/land loser filed a petition under Section 34(2) of the Arbitration Act to set aside and modify the arbitral award dated 09.04.2015 passed by the District Collector/ Arbitrator in Arbitration Case No.35 of 2015 and for consequential direction to the appellant to pay the respondent a sum of Rs.40,000/- per cent with 30% solatium, 12% additional amount, interest for the first one year at the rate of 9% per annum, i.e., from 11.11.2011 to 10.11.2012 and thereafter, with 15% interest from 11.11.2012 till the date of payment with costs. The District Court by its fair and decretal order, allowed the arbitration original



petition, set aside the award of the Arbitrator, dated 09.04.2015 and held that the land loser is entitled for enhanced compensation of Rs.9,00,509/-, including 30% solatium and interest at the rate of 12% under Section 23(1A) of the Land Acquisition Act, 1894 interest at the rate of 9% per annum from the date of taking possessing of the land, i.e., on 07.09.2012 up to one year and after the expiry of one year, the land loser be entitled for interest at the rate of 15% per annum till the deposit of the amount of compensation awarded.

6.The arguments on behalf of the appellant were advanced by Mr.Su.Srinivasan, learned Standing Counsel and Mr.C.Arulvadivel @ Sekar, learned Standing Counsels for NHAI. It is submitted that under the provisions of the Arbitration Act, Courts are not conferred with power to modify the award and this is a significant departure from the provisions of the Arbitration Act, 1940 and the scope of interference by the Court under the Arbitration Act, 1996 has been restricted. It is submitted that the scope of interference has been clearly set out in three of the provisions of the Arbitration Act, 1996, viz., Sections 9, 34 and 37. It is further submitted that the Court cannot sit as an appellate forum, re-evaluate or re-appreciate the evidence of the Arbitral Tribunal to come to a different conclusion and such re-appraisal is impermissible under Section 34 of the Arbitration Act. It is further submitted that by invoking Section 34 of the Arbitration Act, the Court can either set aside the award or refuse to set aside the award, that too, only under the circumstances enumerated under sub-Section (2) of Section 34 of the Arbitration Act.

7.It is submitted that in none of the cases, the respondents/land losers have raised any specific ground falling under Section 34(2) of the Arbitration Act to set aside the award. Further, Section 34 should be conjointly read with Sections 5 and 37 of the Arbitration Act. That apart, the words used in Section 37(c) of the Arbitration Act have reiterated the powers of the Court contemplated under Section 34 and it has power either to set aside the award or refuse to set aside the award. The provisions of the 1940 Act, in particular Section 15 and Section 16, confer power on the Court to modify or vary the award and this power has been consciously omitted in the 1996 Act and therefore, the Court cannot introduce words into the statute. It is submitted that the contention of the land losers that the NH Act is the substantive law which provides for grant of compensation to the land losers and this right cannot be taken away by a procedural law, namely the Arbitration Act, is not sustainable because, the right granted under Section 3-G(5) of the NH Act is intact and not affected by the Arbitration Act, 1996 and the power of the Court to decide the issue flows only from Section 34 of the Arbitration Act and not from the



NH Act. Therefore, the contention of the respondent deserves to be rejected.

8. The exercise of power under Section 34 of the Arbitration Act by the Court is not an exercise of a power of an appellate court and therefore, there can be no re-appraisal of evidence placed before the Arbitrator. However, the District Courts without taking note of this legal principle, have virtually adjudicated the cases as if they are regular appeals arising out of orders passed by Civil Courts which is impermissible under law.

9. Further, it is submitted that in an application under Section 34(1) of the Arbitration Act, there can be a prayer only for setting aside the award and there can be no prayer for consequential reliefs. Since all the petitions filed before the District Courts were filed after the 1996 Act came into force, as they were filed during 2015, Section 34 of the Arbitration Act can be invoked only on the grounds enumerated under sub-Section (2) of Section 34. Further, the learned counsel submitted that the learned Arbitrator had considered all the documents and the data sale deeds and found that they were in respect of agricultural dry lands or small housing plots and therefore, the competent authority had adopted the guideline value fixed by the Government. However, the District Courts re-examined the documents and dealt with the matter as if it was a regular appeal from the decree of a Civil Court. The impugned orders are clearly hit by the proviso under Section 34(2)(a) of the Arbitration Act inserted with effect from 23.10.2015, as the Court has re-appreciated the evidence and also granted consequential relief, which is impermissible.

10. The learned counsel has drawn the attention of this Court to the copy of the petition filed by the land owners before the District Court, the grounds which were raised, the prayer sought for before the Court, etc., to impress upon this Court that such a petition was not maintainable, because all that the District Courts can do so was to either set aside the award or refuse to set aside the award and cannot grant consequential reliefs. The learned counsel had referred to the observations made by the District Collector/ Arbitrator and sought to sustain the said award.

11. Further, it is submitted that it is incorrect to state that the award of the Arbitrator is devoid of reasons, as the Arbitrator has discussed as to why he had discredited the exhibits (data sale deeds) produced by the land owners. It is further submitted that Section 34 of the Arbitration Act applies to both statutory and non statutory arbitrations and therefore, the Court has to test the correctness of the award only on the grounds enumerated under Section 34(2) of the Arbitration Act.



12.Mr.Su.Srinivasan, in support of his contentions, relied upon the following decisions for the propositions/contentions raised by him:-

(i) **Eastern Trading Company and Others vs. Kalpana Lamps & Components Ltd., and Another, 2008 (3) MLJ 680 (Madras);**

(ii) **Hindustan Steel Works Construction Limited vs. Project Director, Government of Tamil Nadu and Others, in O.P.No.122 of 2010 dated 27.04.2011 (Madras);**

(iii) **The National Highways Authority of India vs. Mahadevi G.Hiremath and Others, in Miscellaneous First Appeal No.25323 of 2012 (AA) dated 06.06.2017 (Karnataka);**

(iv) **National Highways Authority of India vs. MBL Infrastructure Ltd., in O.M.P.No.814 of 2011 and I.As.394 and 395 of 2017 dated 12.01.2017 (Delhi) for the proposition that the Court cannot correct errors committed by the Arbitrator, which was not ordinarily substituted, which is the interpretation for that of the Arbitrator, cannot set aside the award on the ground of mis reading, mis construction or mis appreciation of materials available on record. Re-appraisal of the evidence by the Court is not permissible under law.**

(v) **Central Warehousing Corporation vs. A.S.A.Transport, (2008) 3 MLJ 382 (Madras).** This decision was referred to support the contention that the Court can either set aside the award or refuse to set aside the award, but cannot grant any other reliefs;

(vi) **Puri Cosntruction P. Ltd., and Others vs. Larsen and Toubro Ltd., and Another, for the proposition that the Court while exercising power under Section 34, does not act as an Appellate Court;**

(vii) **Gayatri Balaswamy vs. ISG Novasoft Technologies Ltd., and Another (2015) 1 MLJ 5 (Madras) for the proposition that scheme of the Arbitration Act, 1996 aims at keeping the supervisor role of the Court at minimum level.**

(viii) **National Highways Authority of India and Others vs. T.Chakarapani and Others, in M.P.Nos.1 of 2011 in W.A.No.2356 of 2011 and M.P.Nos.2 to 2 of 2011 in W.A.Nos.2359 to 2388 of 2011 dated 23.02.2012 (Madras);**

(ix) **Angel Broking Ltd., vs. Sharda Kapur, in FAO Nos.435 and 492 of 2016, dated 09.05.2017 (High Court of Delhi) for the proposition that interest and compensation cannot be awarded, as it would amount to modification of the award;**

(x) **Sree Balaji Nagar Residential Association vs. State of Tamil Nadu and Others, in Civil Appeal No.8700 of 2013, dated 10.09.2014 (SC). "Causes and Omissus". This decision was referred to for the proposition that Court cannot supply words where the Parliament has consciously omitted a word;**



(xi) **Padma Sundara Rao (Dead) and Others vs. State of T.N. and Others**, (2002) 3 SCC 533 (SC) for the proposition that while interpreting the provisions, the Court only can interpret the law and cannot legislate;

(xii) **Mukund Dewangan vs. Oriental Insurance Company Ltd.**, (2017) 14 SCC 663 (SC) for the proposition as to how the language used by the legislature should be interpreted and how significant in a statute has to be interpreted;

(xiii) **Union of India vs. Dyagala Devamman and Others**, in S.L.P.(C) No.10358-10359 of 2015, dated 25.07.2018 of the Hon'ble Supreme Court for the proposition that the Hon'ble Supreme Court approved the reduction of development charges;

(xiv) **A.P.Housing Board vs. K.Manohar Reddy and Others**, (2010) 12 SCC 707 (SC) with regard to the percentage of deduction for development that can be made, which ranges from 20% to 75%;

(xv) **Raghunath Rai Bareja and Another vs. Punjab National Bank and Others**, in Appeal (Civil) No. 5634 of 2006, dated 06.12.2006 (SC) for the legal principle that equity cannot prevail over law;

(xvi) **Chandrashekar (Dead) By LRs. and Others vs. Land Acquisition Officer and Another**, (2012) 1 SCC 390 for the proposition that de-escalation is also one of the factors that requires to be considered;

(xvii) **Vithal Rao and Another Etc., vs. The Special Land Acquisition Officer**, in Civil Appeal Nos.1645-1647 of 2016, dated 07.07.2017 of the Hon'ble Supreme Court for the principles to be followed for determining market value of the acquired lands;

(xviii) **Union of India and Others vs. Dhanwanti Devi**, (1996) 6 SCC 44 for the proposition as to what is a binding precedent, a word or sentence in a judgment cannot become binding precedent;

(xix) **Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.**, (2003) 5 SCC 705 for the proposition as to what is the meaning and scope of Public Policy of India, the grounds of challenge of an award of an Arbitrator under Section 34(2);

(xx) **P.R.Shah Shares & Stock Brokers (P) Ltd. vs. B.H.H.Securities (P) Ltd. and Others**, (2012) 1 SCC 594 for the contention that the Court cannot re-assess and re-appreciate evidence in a petition under Section 34(2);

(xxi) **Harish Chandra & Company vs. State of U.P.**, (2016) 9 SCC 478 for the contention as to under what circumstances, the award could be set aside under the provisions of Act 30 of 1940;

(xxii) **Sutlej Construction Ltd., vs. Union Territory of Chandigarh**, (2018) 1 SCC 718 for the proposition that Court cannot re-appreciate the evidence;

(xxiii) **Associate Builders vs. Delhi Development Authority**, (2015) 3 SCC 49 for the proposition that Court does not sit as a



Court of appeal, consequently, cannot correct errors of fact;

(xxiv) Union of India and Others vs. Tarsem Singh and Another, in C.A.No.7064 of 2019, dated 19.09.2019 of the Hon'ble Supreme Court, striking down provision of Section 3J of the NH Act;

(xxv) The Chairman, TNHB and Another vs. P.Karuppa Konar and Others, 2007-4-L.W.981 (Madras) for the proposition that the requisitioning body becomes the absolute owner of the lands after the issuance of notification by the Government and it being a requisitioning body, is entitled to challenge the orders passed by the Arbitrator or by the Court; and

(xxvi) McDermott International Inc. vs. Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181. This decision was relied on to explain the legal scope of the challenge to an award of an Arbitrator.

13.On the merits of the orders passed by the various District Courts, it is submitted that the data sale deeds were rightly rejected by the competent authority on the ground that they are small housing plots and the value cannot be adopted for undeveloped dry lands. Further, the deduction has not been properly done, because each deduction has to be done separately and this is an error committed by the District Courts. In other words, it is submitted that no compartmental deduction could have been made. Further, while calculating deduction, it may range anywhere between 25% to 70% and in this regard, principles have been laid down by the Hon'ble Supreme Court in the case of **Vithal Rao** (supra). Thus, it is the submission of the learned counsel that the question of pleading equity by the land owners does not arise, because equity cannot prevail over law and the legal principles having been crystallised in various decisions of the Hon'ble Supreme Court, the District Courts committed an error in interfering with the awards passed by the competent authority.

14.Mr.C.Arulvadivel @ Sekar while adopting the above submissions of Mr.Su.Srinivasan, in addition, contended that the word "application" is used in Section 34 of the Arbitration Act and this cannot be equated to an "appeal", as the words "application" and "appeal" have totally different meaning. Since "application" is synonymous with the term "petition" and could be understood in a generic sense as a prayer made to an authority for some relief to set aside an order of another authority, whereas an "appeal" is a rehearing by superior court of both law and fact. Therefore, it is contended that an "appeal" is a proceeding taken to rectify an erroneous decision of a court by the higher Court, which is not permissible under Section 34 of the Arbitration Act.

15.It is further submitted that the power of the Court under Section 34 cannot be equated to the power of a Court in a case



referred under Section 18 of the Land Acquisition Act, 1894. It is submitted that though the Hon'ble Supreme court held Section 3-J of the NH Act as unconstitutional, it is only to the extent of applicability of solatium and interest. The learned counsel referred to the decisions in the case of **Shaik Saidula Alias Saida vs. Chukka Yesu Ratnam and Others, (2002) 3 SCC 130**; and **State of Gujarat vs. Salimbhai Abdulgaffar Shaikh and Others, (2003) 3 SCC 50** to explain the distinction between an "appeal" and an "application".

16.The decision in the case of **Kinnari Mullick and Another vs. Ghanashyam Das Damani, (2018) 11 SCC 328** was referred to explain the scope of interference under Section 34(4) of the Arbitration Act.

16.1. The decision in the case of **M.M.T.C. vs. Vicnivass Agency, (2009) 1 MLJ 199 (Madras)** was referred to with regard to the scope of the power exercisable under Section 34 of the Arbitration Act.

16.2. The decision in **Mahadevi G.Hiremath** (supra) was referred to for the proposition that the Court cannot re-appreciate the evidence, while considering a petition under Section 34(2) of the Arbitration Act.

16.3. The order of the Hon'ble Supreme Court in **Radha Chemicals vs. Union of India, S.L.P.(C) No(s).2334/2018**, dated 10.10.2018 was referred to wherein, the Hon'ble Supreme Court held that Court cannot remand the matter to the Arbitrator to consider the issue afresh and in this regard, also relied on the decision in the case of **Kinnari Mullick** (supra). The order in the case of **Radha Chemicals** (supra) was followed by the High Court of Rajasthan in the case of **Union of India vs. Madan Mohan Jain and Sons, C.M.A.No.2780/2018** dated 17.01.2019.

17.On the above grounds, the learned counsels prayed for setting aside the orders passed by the District Courts and restoring the orders passed by the competent authorities.

18.Mr.R.Govindaraj, learned counsel appearing for the first respondent in C.M.A.(MD) No.560 of 2018 submitted that the Court has power to modify the award, if it is against the fundamental policy of Indian Law. To explain what is "fundamental policy", the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of **Oil & Natural Gas Corporation Ltd., vs. Western Geco International Ltd., AIR 2015 SC 363**. It is submitted that in the said decision, the award was modified. For the same contention, the learned counsel relied on the decision of this Court in the case of **Gayatri Balaswamy vs. ISG Novasoft Technologies Ltd., and Anr. (2015) 1 MLJ 5**. Further, by relying upon the decision of the Hon'ble Supreme Court in **Tarsem Singh** (supra), it is submitted that the provisions of the Land Acquisition Act relating to solatium and



interest contained in Section 23(1A) and (2), and interest payable in terms of Section 28 proviso will apply to the acquisitions made under the NH Act and the Hon'ble Supreme Court held that the provisions of Section 37 to that extent was violative of Article 14 of the Constitution of India.

19.Further, it is submitted that the lands have been acquired for widening of an existing national highway and therefore, there cannot be automatic deduction of development charges, unless it is established by positive evidence, which is absent in the instant case and therefore, deduction of development charges is not sustainable. To support such contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of **C.R.Nagaraja Shetty vs. Special Land Acquisition Officer and Estate Officer and Another, 2009-5-L.W.64 (SC)**.

20.Further, on the quantum of compensation which was awarded, it is submitted by the learned counsel that the Arbitrator miserably failed to award enhanced compensation in spite of having admitted that the lands covered in the data sale deed and the lands which were acquired are of the same quality ("*tharam*") and failed to fix the correct market value and rejected 18 data sale deeds which were executed within a period of one year and considering all these factors, the District Court was right in enhancing the compensation. To support such contention, reliance was placed on the decision in the case of **V.Hanumantha Reddy (Dead) by Lrs. vs. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642 (SC)**.

21.Further, it is submitted that in the case of first respondent land owners in C.M.A.(MD) No.228 of 2019, the extent acquired is 5 cents, which is an approved house site and in C.M.A. (MD) No.229 of 2019, the extent acquired is 4 cents, which is also an approved house site. Further, there are instances where the road was formed by acquiring the land in the centre of the total extent thereby, dividing it into two pieces rendering the remaining extent being absolutely of no use. Thus, in cases where the entire extent if acquired, no deduction is to be made and to support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **The Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. Kunjunjamma Mathew and Others, AIR 2011 SC 2937**. Further, the learned counsel submitted that there are serious computation errors which have been committed, which needs to be rectified and in this regard, referred to the order impugned in C.M.A.(MD) No.560 of 2018 and submitted that the amount of compensation which was received by the land owner was only Rs.66,347/- which could be deducted, but the amount which was deducted is Rs.7,29,241/-. That apart, in other cases, there are deductions made by taking note of the compensation which was



received for the trees and standing crops on the land and such deduction could not have been made by the Court and this needs to be rectified.

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22. On the above submissions, the learned counsel prayed for affirming the amount of compensation fixed by the District Court and requested for directions to be issued to the competent authority to redo the calculation, set right the errors committed in the deduction made, and pay the enhanced compensation to the land losers.

23. Mr. R. R. Kannan, learned counsel appearing for the appellant in C.M.A. (MD) Nos. 42 to 51 of 2019 traced the history of the legislation, viz., the National Highways Act which came into force on 15.04.1957. It is submitted that by Act 16 of 1997, the existing Section 3 was substituted with effect from 24.01.1997 and Sections 3A to 3J were incorporated. Prior to 24.01.1997, the date of substitution of the erstwhile Section 3A, compensation was paid under the Land Acquisition Act, 1894. The object of introduction of Section 3A to 3J was to provide succour to the land losers. Therefore, the entire matter has to be looked at from the said angle and the plight of the land losers would be the paramount consideration.

24. It is further submitted that the Arbitration and Conciliation Act, 1996 was amended by amending Act 2015 with effect from 23.10.2015. The subject acquisition is of the year 2011, culminated in the award dated 09.04.2015, much prior to coming into force of the amending Act. Therefore, it is submitted that Section 26 of the amending Act can have no application to these cases, as it is only prospective and to support such submission with regard to the prospectivity of the amending Act, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of **Board of Control for Cricket in India vs. Kochi Cricket Private Limited and Others**, (2018) 6 SCC 287 (SC).

25. Further, the learned counsel referred to the relevant dates to substantiate that all proceedings in the cases were prior to the coming into force of the amending Act, i.e., from 23.10.2015. It is submitted that the competent authority passed the awards on 12.01.2012 and 12.04.2013 and appeals were filed under Section 3G(5) of the NH Act in January and February, 2015 and the awards were passed on 08.04.2015 and 09.04.2015. Therefore, it is submitted that the decisions relied on by the learned counsels for the appellant that there could not be re-appreciation of the evidence are not applicable to the cases on hand.



26. Further, it is submitted that in terms of Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act 30 of 2013"), the National Highways Act was included in the IV Schedule with effect from 01.01.2015. It is further submitted that with effect from 24.01.1997, Section 3 of the National Highways Act was substituted and Section 3A to Section 3J came into operation and up to 31.12.2014, the compensation was to be paid in terms of the Land Acquisition Act, 1894 and with effect from 01.01.2015, compensation is to be calculated and paid as per Act 30 of 2013. Further, it is submitted that the National Highways Act is more draconian a legislation than the erstwhile Land Acquisition Act. It is submitted that in the past, the petitions filed under Section 34 before the District Collectors were mechanically rejected on the ground that they have been filed beyond the period of three months, which was held to be not tenable by the Hon'ble Supreme Court. Though, this was being done by the District Collectors earlier, even while filing the appeals, the NHAI supported by a large legal team is not able to file the appeals on time and appeals are filed belatedly. As a result, the land losers are put to further difficulty and irreparable hardship. It is submitted that in several cases, compensation awarded for the standing coconut trees was more than the compensation awarded for the land which would establish that the lands were fertile coconut groves.

27. It is further submitted that the lands which are subject matter in C.M.A.(MD) Nos.46, 49, 50 and 51 of 2019 are all housing plots. In certain other cases, part of agricultural lands and irrigation wells have been acquired, as a result, the land owner cannot cultivate the remaining extent thereby, virtually driven to poverty. Referring to the decision of the Hon'ble Supreme Court in **Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A.P. And Others, (1994) 4 SCC 595**, it is submitted that the guideline value cannot be taken into consideration for the purpose of fixing compensation and it can be the basis only for calculating the stamp duty for registration of documents. It is further submitted that the appellant/ NHAI did not file any counter before the District Courts, they did not cross examine the witnesses examined by the land owners, they did not object to the documents exhibited by the land losers, nor produce any documents on their side, nor did they canvass the points pertaining to the jurisdiction of the Court under Section 34. Having failed to do any of the above, the appellant cannot be permitted to set up a new case in these appeals. Further, the District Courts rightly interfered with the orders passed by the Arbitrator, who without any reasons, rejected 756 documents and they were discarded without taking note of the effect of those documents. These factors would be sufficient to set aside the award passed by the competent authority. Further, the competent authority states



that he has taken note of the land situated in a radius of 1.6 km. Such valuation could not have been adopted when the acquisition is for a linear project. Further, the compensation given for trees and crops have been deducted from the compensation payable for the acquired lands, which is incorrect and erroneous. Thus, it is submitted that the District Court has awarded reasonable compensation and the amount awarded may be confirmed and the discrepancies in the deductions may be ordered to be rectified.

28.Mr.M.Thirunavukkarasu, learned counsel appearing for respondent in C.M.A.(MD) No.487 of 2019 while adopting the arguments of Mr.R.R.Kannan, referred to the various dates and events and reiterated that before the District Court, the appellant, NHAI did not produce any documents, nor did they cross examine the witnesses produced by the land losers and when the land losers were able to substantiate before the District Court by producing the document in respect of Survey No.64/7A, the Court after appreciating the documents, awarded a compensation of Rs.135.94 ps. per square meter as against Rs.10.33 ps. awarded by the competent authority. Further, the learned counsel drew a comparison between Act 30 of 2013 and the provisions of the erstwhile Land Acquisition Act, 1894.

29.The learned counsel relied upon the decision of the Division Bench of the High Court of Kerala in the case of **Ramadas M.R. vs. National Highways Authority of India, 2019 SCC OnLine Ker 106** and the decision in the case of **Udayakumar vs. Project Director Nhai and Another, 2019 SCC OnLine Ker 292** and submitted that when the award is against public policy, the Court can interfere as done in the impugned order. Further, it is submitted that this Court is exercising powers as an appellate court and power is vested with this Court under Order XLI Rule 24 CPC to re-appreciate the documents and modify or vary the award or the order passed by the District Court. On the above submissions, the learned counsel prayed for confirming the amount of compensation awarded by the District Court.

30.Mr.H.Arumugam, learned counsel appearing for the respondent in C.M.A.(MD) No.386 of 2015 submitted that on a plain reading of Section 28(1)(a) of the Arbitration Act, it is clear that in an arbitration, other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India. The substantive law in the instant case is the NH Act and in this regard, the learned counsel referred to Sections 3-G(5) and (6) and submitted that the applicability of the Arbitration Act is subject to the provisions of the NH Act which means, it is subordinate to the substantive law, which is the NH Act.



31.Further, it is submitted that in terms of Section 16 of the National Highways Authority of India Act, 1998 (hereinafter referred to as "the NHAI Act"), which sets out the 'functions of the authority', there is no power to challenge the award of enhanced compensation and in this regard, the learned counsel referred to Section 16(3)(b) of the said Act. The learned counsel referred to the decision of the Hon'ble Supreme Court in **Saw Pipes Ltd.** (supra) and submitted that the substantive law will prevail and the award which is contrary to that law is liable to be set aside and in the instant case, the substantive law is the NH Act.

32.Further, referring to the order in the case of **R.Kandasamy vs. National Highways Authority**, W.P.No.2222 of 2016 dated 22.01.2016 (Madras), it is submitted that in the said case, it was held that limitation will not affect the land losers right to claim enhanced compensation thus, holding that substantive law will prevail. Further, it is submitted that the provisions of Code of Civil Procedure are applicable while deciding an appeal against the award and this Court exercising powers under Order XLI and Rules 31 and 32 CPC has power to reverse or vary the award. It is submitted that the purpose of insertion of Section 3J was with a view not to apply the provisions of 1894 Act, the object being speedy implementation of the project, as this did not have any nexus to the object sought to be achieved, the Hon'ble Supreme Court struck down Section 3J to that extent in **Tarsem Singh** (supra). It is further submitted that as Section 3J has been struck down, the provisions of the 1894 Act would stand attracted as well as the provisions of Act 30 of 2013 can be brought into place, in the absence of specific provisions for determination of enhanced compensation under the NH Act.

33.It is submitted that the Hon'ble Supreme Court in **Tarsem Singh** (supra) had confirmed the modified award, therefore, the power under Section 34 of the Arbitration Act is inclusive and subject to the provisions of the NH Act. That apart, the power of the appellate Court under the 1894 Act as per Section 54 therein is applicable to the instant case, which provides power to vary, modify and pass any order. It is further submitted that the substantive law, NH Act provides for remedy to land owners to get adequate compensation whereas, procedural law restricts the power under Section 34 of the Arbitration Act. Therefore, to that extent, Section 34 of the Arbitration Act is inconsistent with the substantive law and therefore, Part I of the Arbitration Act is not applicable to the statutory remedy as provided under Section 2(iv) of the Arbitration Act. That apart, Section 34 of the Arbitration Act is inconsistent with order Order XLI Rules 31 and 33 CPC. Therefore, Section 2(iv) cannot be applied to statutory arbitrations. Hence, it is submitted that Section 3-G(7) of the NH



Act, the power of the appellate Court under Section 54 of the 1894 Act read with Section 41 CPC can be invoked for enhancement of compensation.

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34.It is further submitted that Section 3-G(6) of the NH Act starts with the words "subject to the provisions of this Act, the provisions of the Arbitration Act, 1996 shall apply to every arbitration under the said Act". The Hon'ble Supreme Court in **K.R.C.S. Balakrishna Chetty and Sons and Co. vs. The State of Madras, AIR 1961 SC 1152 (SC)** and the Hon'ble High Court of Allahabad in **Indian Minerals Co. vs. Northern India Lime Marketing Association, AIR 1958 Allahabad 692**, while interpreting the words "subject to", held that it is conditional upon, subordinate or inferior.

35.In **Ashok Layland Ltd. vs. State of T.N. and Another, AIR 2004 SC 2836**, "subject to" has been held to be liable, subordinate, subservient, inferior, obedient. Thus, when the provisions of NH Act is the substantive law, the application of Arbitration Act is conditional thereupon. Similarly, under Section 41 of the 1940 Act, it is stated that subject to the provisions of the 1940 Act, the provisions of CPC shall apply and in such cases, the 1940 Act is the substantive law and the application of CPC is conditional thereupon.

36.Relying upon the decision of the Kerala High Court in **Paul Mani and Ors. vs. Special Deputy Collector and Competent Authority and Anr., 2019 SCC OnLine Ker 2700**, it is submitted that Section 3-G(7) of the NH Act is to be considered as substantive law for determination of compensation and therefore, Section 34 of the Arbitration Act alone cannot be a substantive law. The words "shall apply to every arbitration" occurring in Section 3-G(6) of the NH Act includes "application" to Section 34 as well as "appeal" under Section 37.

37.Further, by referring to the decision of the Hon'ble Supreme Court in **Consolidated Engineering Enterprises and Another vs. Principal Secretary, Irrigation Department and Others, (2008) 7 SCC 169**, it is submitted that Section 34 is continuation of arbitration, like a suit and the same analogy could be applied to Section 3-G(7) of the NH Act, which would mean the application of the same was not excluded under the Act and therefore, it would apply for an application under Section 34 as well as an appeal under Section 37. Further, in terms of Section 3-E read with Section 3-D and Section 3-H, it is submitted that payment of compensation is mandatory to take possession under the NH Act which shows the object of the Act is for speedy disbursement of compensation also, as observed by the Hon'ble Supreme court in **Tarsem Singh** (supra) case.



38.The learned counsel referred to the order of the Karnataka High Court in **S.Arun Kumar Shetty and Others vs. Special Land Acquisition Officer and Competent Authority and Others**, in W.P.Nos.6137-6141 and 6142-6143/2012, dated 16.07.2012 and submitted that disbursement is not stayed on account of mere pendency of an appeal and therefore, Section 3-H requires to be harmoniously interpreted with Section 3-G(6) of the NH Act. The learned counsel referred to Section 34(2)(iv) of the Arbitration Act which empowers the Court to set aside the award in respect of the dispute which was not referred for Arbitration and the net result being that portion of the award is to be set aside thereby, modifying the original award.

39.It is submitted that the decision in **Gayatri Balaswamy** (supra) was affirmed by the Hon'ble Division Bench in O.S.A.Nos.59 and 181 of 2015, dated 08.08.2019. The decision of the Hon'ble Supreme Court reported in **Snehadeep Structures Private Limited vs. Maharashtra Small-Scale Industries Development Corporation Ltd., (2010) 3 SCC 34** was referred to substantiate the case that "appeal" includes an "application" under Section 34 of the Arbitration Act.

40.Referring to the decision of the Hon'ble Supreme Court reported in **Kanpur Jal Sansthan and Another vs. Bapu Constructions, (2015) 2 SCC (Civ) 780**, it is submitted that CPC is applicable and an application under Order XLI Rule 5 CPC is maintainable. Further, it is submitted that when a statute is silent, general procedure is required to be followed till suitable procedure is provided in law and the Court may evolve principles of law to meet the situation. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in **M.V.Elisabeth and Others vs. Harwan Investment & Trading Pvt. Ltd. and Another, 1993 Supreme (2) SCC 433 ; State (NCT of Delhi) vs. Shiv Kumar Yadav and Another, (2016) 2 SCC 402**; and the decision of the Calcutta High Court in **Mira Roy Chowdhuri vs. Arup Saha, 2011 0 Supreme (Cal) 473**. Further, it is submitted that in the absence of precedents, the Court must be guided by a sound logical principle with a view to avoid multiplicity of litigation. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in **Dhannalal vs. Kalawatibai and Others, (2002) 6 SCC 16**.

41.The learned counsel referred to Sections 4 and 5 of the NH Act and Sections 3, 11, 13, 16, 16(iii) and 18 of the NHAI Act to state that the appellant has no authority to file appeal or object the fixation and determination of compensation. With regard to the factors which are to be borne in mind for determining compensation, it is submitted that for acquisition for national highways, deduction is not necessary and in this regard, reliance was placed on the decision in **C.R.Nagaraja Shetty** (supra). It is submitted that the national highway would fetch higher price



as held by the Hon'ble Supreme Court in **New Delhi Municipal Council vs. Pan Singh and Ors. (2007) 9 SCC 447.**

42. Referring to the decision of the Hon'ble Supreme Court in **Dollar Company, Madras vs. Collector of Madras, AIR 1975 SC 1670**, it is submitted that the best evidence of sale is the sale of the same property. For the same proposition, reliance was placed on the decision of the Hon'ble Supreme Court in **Shakuntalabai (Smt) and Others vs. State of Maharashtra, (1996) 2 SCC 152**; and **Special Deputy Collector and Another etc., vs. Kurra Sambasiva Rao and Others, AIR 1997 SC 2625**. Commenting upon the order passed by the Arbitrator, it is submitted that all grounds available under Section 3-G(7) of the NH Act and the Land Acquisition Act were raised before the Arbitrator as well as in the application filed under section 34 before the District Collector. The Arbitrator did not decide any of the grounds whereas, the District Court considered the documents which are statistical data and passed the impugned order. It is submitted that the District Court committed an error in not accepting the documents produced in the application filed under Section 34 which ought to have been considered.

43. Further, it is submitted that the argument of the appellant that when equity and law are to be considered, law will prevail as an argument is not applicable to the instant case, as the substantive law, which will prevail over procedural. Further, it is submitted that Section 34(2)(a) which came into effect from 23.10.2015 is not applicable to the cases on hand, as the decision was rendered much prior to the insertion of the said provision. Even otherwise, the substantive law namely, Section 3-G(6) of the NH Act will prevail and the Arbitration Act is subservient to the substantive law. On the above submissions, the learned counsel prayed for confirming the quantum of compensation awarded and for issuing appropriate directions for rectifying the errors which have been pointed out by the other learned counsel who have appeared for the land losers.

44. Mr. Su. Srinivasan, learned Standing Counsel for the NHAI, in reply, submitted that the decision in **Western Geco International Ltd.** (supra) cannot be treated as a precedent for the instant case, as in the said decision, the Court did not go into the power to modify the award under Section 34. To explain as to what is a binding precedent, the learned counsel referred to the decision of the Hon'ble Supreme Court reported in **Dhanwanti Devi** (supra). Further, it is submitted that the point regarding deduction of tree cost was not raised earlier and the same cannot be raised in these appeals by the respondents. To support such contention, reliance was placed on the decision in **Sutlej Construction Ltd.** (supra). Referring to Section 5 of the Arbitration Act, 1996, it is submitted



that no judicial interference can be done except as provided under the said Act.

45.Reiterating the submissions that the scope of interference over an award of the Arbitrator is narrow and that the Court cannot sit as an appellate Court, the learned counsel referred to the decisions of the Hon'ble Supreme Court in **Associate Builders** (supra) and **Harish Chandra & Company** (supra). Further, it is submitted that both the substantive and the procedural law have to be read harmoniously and in terms of Section 3-G(6) of the NH Act, the dispute regarding compensation alone can go to the Arbitrator and the right given to the person, to whom the order of the competent authority is not acceptable in terms of Section 3-G(5) is not taken away. Further, it is submitted that the provisions of 1894 Act cannot be made applicable.

46.It is further submitted that the appellant NHAI is entitled to maintain the appeal, as they were a party before the Arbitrator as well as before the District Court. Further, Section 3-G(5) uses the words "either person" and there are only two parties, viz., the land owner and NHAI and therefore, the NHAI can maintain these appeals. It is further submitted that after issuance of the notification under Section 3-D of the NH Act, the land vests with the Government and once compensation is paid, NHAI takes over the land and therefore, entitled to file the appeal.

47.Mr.C.Arulvadivel @ Sekar, learned Standing Counsel for NHAI submitted that in the NH Act, the only provision which speaks about a reference is Section 3-H(4) where there is a dispute as to the apportionment of the compensation. However, the District Court while passing the impugned order, treated the petition under Section 34 to be a suit which is not sustainable in law. Further, it is submitted that an application under Section 34 cannot be read as an appeal and the Court has power either to set aside the award or refuse to set aside the award and cannot modify or vary the award. To substantiate the submissions, reliance was placed on the decisions of the Hon'ble Supreme Court in **Shaik Saidula Alias Saida** (supra); **State of Gujarat vs. Salimbhai Abdulgaffar Shaikh and Others** (2003) 8 SCC 50; **Kinnari Mullick** (supra); and the decision of this Court in **Vicnivass Agency** (supra).

48.Further, by referring to the celebrated decision in the case of **S.P. Gupta vs. Union of India And Ors. 1981 Supp. SCC 87**, the learned counsel submitted that the Hon'ble Supreme Court explained as to when and under what circumstances, the Court can interpret the law and the interpretation given by the appellant, NHAI, is the interpretation which is to be sustained.



49. On the above submissions, the learned counsel prayed for allowing the appeals.

50. Heard the learned counsel for the parties and perused the materials placed on record.

51. The fulcrum of the argument of the learned counsel for NHAI is on the jurisdiction of the District Court under Section 34 of the Arbitration Act, 1996 while testing the correctness of an award passed by an Arbitrator appointed by the Central Government under the NH Act. It was strenuously contended by the learned counsels for the appellant that the exercise of power under Section 34 of the Arbitration Act is not an exercise of power by an Appellate Court and therefore there can be neither appraisal nor re-appraisal of evidence placed before the Arbitrator. Further, it is submitted that the scope of interference of an award of the Arbitrator have been clearly circumscribed under Section 34 of the Act, the grounds of challenge to an award have been enumerated under Sub-section (2) of Section 34 and there can be no other ground on which an award can be tested for its correctness. It was further contended that ignoring this principle of law, the District Court proceeded to test the objections filed by the land losers as if it was hearing a regular appeal arising out of a decree of the Civil Court. Thus, it is contended that the District Court committed manifest error in interfering with the award by re-appraising evidences, modifying the award and issuing consequential directions and thus the impugned order is wholly without jurisdiction and unsustainable in law.

52. The contention raised by the learned counsels for the land losers is by referring to various decisions of the Hon'ble Supreme Court and this Court and pointing out that in all those cases, the Hon'ble Supreme Court has either confirmed the order of the High Court modifying the award or the Hon'ble Supreme Court itself had modified the award and granted different rate of interest, etc. Therefore, it is the contention that it is not an invariable rule where the award of an Arbitrator cannot be interfered by the District Court when the award suffers from a manifest illegality and is in conflict with the Public Policy of India. Further, it is contended that Section 26 of the Amending Act would have no application on the cases on hand as the awards were passed much prior to coming into force of the Amending Act. Further Section 26 of the Amending Act can only have prospective effect and cannot be relied on to unsettled decisions which were taken prior to coming into force of the Amending Act. It is the further submission of the learned counsels that if the award suffers from manifest illegality, the learned Arbitrator mechanically rejected all documents filed by the land losers without assigning reasons and erroneously adopted the guideline value of the property for



determining the compensation payable, then such award being against Public Policy is liable to be interfered by the District Court. It is further contended that Section 28 of the Arbitration Act deals with rules applicable to the substance and dispute and in terms of clause (a) of Sub-Section (1) of Section 28, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law and in the instant case, the substantive law is the National Highways Act, the applicability of the provisions of the Arbitration Act is subject to the provisions of the National Highways Act which would mean that the Arbitration Act is subordinate and subservient to the substantive law and therefore, this Court while considering the appeals can exercise all powers conferred on it under Order XLI and Rules 31 and 32 CPC and examine the correctness of the order passed by the District Court and would be well within its jurisdiction to revise or modify the order passed by the District Court. It was further contended that Section 3G(6) of the NH Act commences with the words, subject to the provisions of this Act, the provisions of the Arbitration Act, 1996 shall apply to every arbitration under the said Act. It is contended that the correct interpretation to the words that has to be given to the word "subject to" is it is subordinate or interfered or conditional upon. Therefore, it is contended that when the provisions of the NH Act, the substantive law, the application of Arbitration Act is conditional thereupon. Further, it was contended that a petition under Section 34 of the Arbitration Act is a continuation of the arbitration proceedings, like continuation of a suit before an Appellate Court and the same analogy could be applied to Section 3G (7) of the NH Act. Therefore, the said principle would not only apply to an application under Section 34 of the Arbitration Act but to an appeal under Section 37 of the Arbitration Act as well. The above are the principle contentions raised by the learned counsels for the land losers.

53. On the merits of the order passed by the District Court, two objections have been raised, namely, that deduction ought not to have been applied since it will not apply to linear projects, such as formation of a National Highway or widening of an existing National Highway. Secondly, while deducting the compensation paid to the land owners as initially fixed by the competent authority, the amount paid towards the trees, standing crops were deducted from the compensation fixed for the land which is not sustainable and therefore, to that extent the error needs to be rectified. There are other subsidiary points which have been raised by the learned counsels on the other side which we shall deal with after we answer the substantial legal issues raised before us.

54. To answer the legal question raised by the learned counsels for the appellant, we need to examine the various decisions cited at

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the bar and as to how the law, more particularly, Section 34 of the Arbitration Act was interpreted by the Hon'ble Apex Court and the High Courts.

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55. In the case of **Eastern Trading Company**, the matter was referred for arbitration pursuant to an agreement entered into between the parties in respect of demand and supply of goods. The award was challenged under Section 34 contending that the Arbitrator should have rejected the claim as it is barred by limitation. The petition was dismissed by the learned Single Bench of this Court, against which, an appeal was preferred to the Division Bench. After taking note of the decision in the cases of **McDermott International Inc.** (supra) and **ISPAT Engineering** (supra), it was held that if anyone of the contingencies as pointed out by the Hon'ble Supreme Court is found in the award passed by the Arbitrator, the Court exercising jurisdiction under Section 34 of the Arbitration Act can set aside the award but it cannot take the role of the Arbitrator and pass an award. Similar is the view taken in the cases of **Hindustan Steel Works Construction Limited** (supra), **Mahadevi G. Hiremath** (supra), **MBL Infrastructure Ltd.** (supra), **A.S.A. Transport** (supra) and **Puri Construction P. Ltd.** (supra).

56. We shall refer to the decision in the case of **McDermott International Inc.** as the law laid down by the Hon'ble Supreme Court prior to the said decision have been elaborately dealt with and the Court has analysed the scope of Section 34 of the Arbitration Act. Before we go into the legal scope of challenge to the award as discussed and held in the case of **McDermott International Inc.**, it would be beneficial to take note of the factual situation in the said case which travelled up to the Hon'ble Supreme Court. During 1974, oil was discovered in Bombay High Region and the Government of India through ONGC developed a plan for rapid development of off-shore oil and gas production. With that objective, ONGC appointed contracts and one such contractor was Burn Standard Company Limited (BSCL), the respondent before the Hon'ble Supreme Court. The contract contained an arbitration clause, wherein the parties consciously agreed that should there be any dispute or difference between the BSCL and the buyer in regard to any matter connected with BSCL relating to or arising out of the main contract(s), which may involve McDermott's performance or affect McDermott's interest under the sub-contract, etc. Further the parties agreed that all disputes and differences in respect of any matter relating to or arising out of or in connection with the execution or construction of the sub-contract is not settled mutually by negotiation shall be referred to arbitration under the Indian Arbitration Act, 1940, as amended from time to time by appointing some agency acceptable to both parties as arbitrators and if no agency is found acceptable to both parties, then by constituting a Board of Arbitration consisting



of three arbitrators. The venue of arbitration shall be at New Delhi and the decision of the arbitrators or the umpire, as the case may be, shall be final and binding on both parties. As disputes and differences arose between McDermott and BSCL, McDermott invoked the arbitration clause by a legal notice. The Hon'ble Retired Chief Justice of India had been appointed as the sole arbitrator to resolve the disputes and differences. The Arbitral Tribunal passed a partial award, additional award and a final award. An application was filed by BSCL under Section 34 of the Arbitration Act for setting aside the final award among other things contending that there is no jurisdiction to make a partial award which is not postulated under the 1996 Act as an award in piecemeal is impermissible in law. McDermott resisted the application contending that no case has been made out for setting aside the award. Ultimately, the matter travelled to the Hon'ble Supreme Court. From paragraph 45 of the judgment, the Hon'ble Supreme Court proceeds to decide the legal scope of challenge to the award under the 1996 Act. It was pointed out that the 1996 Act makes a radical departure from the 1940 Act; it makes provision for the supervisory role of Courts for the review of the arbitral award only to ensure fairness; intervention of the Court is envisaged in circumstances like fraud or bias by the arbitrators, violation of natural justice, etc.; the Court cannot correct errors of the arbitrators; it can only quash the award leaving the parties free to begin the arbitration again, if it is desired; the scheme of the provision aims to keep the supervisory role of the Court at minimum level and this can be justified as parties to the agreement make conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

57.The Court referred to the decision in **ONGC vs. Saw Pipes Ltd. [(2003) 5 SCC 705]**, wherein the expression "Public Policy" was explained. By referring to the decision in the case of **Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly [(1986) 3 SCC 156]**, wherein the Court was dealing with unequal bargaining power of the workmen and the employer, it came to the conclusion that any term of the agreement which is patently arbitrary and/or otherwise arrived at because of the unequal bargaining power would not only be ultra vires Article 14 of the Constitution of India but also hit by Section 23 of the Indian Contract Act. In the case of **Saw Pipes Ltd.**, apart from three grounds stated in **Renusagar Power Co. Ltd. vs. General Electric Co. [(1994) Supp (1) SCC 644]**, one other ground was added for exercise of the Court's jurisdiction in setting aside the award if it is patently arbitrary; such patent illegality must go to the root of the matter; the public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the Court. Further, it was pointed out that what would constitute public policy



is the matter dependent upon the nature of transaction and nature of statute and for the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the Court to judge what is in public good or public interest and what would otherwise be injurious to the public good at the relevant point as contradistinguished from the policy of the particular Government. The Hon'ble Supreme Court in the case of **Saw Pipes Ltd.** observed as follows:

"61. In ONGC this Court observed:-

"31. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in **Renusagar Power Co. Ltd. vs. General Electric Co., 1994 Supp (1) SCC 644** it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality; or
- (d) in addition, if it is patently illegal.

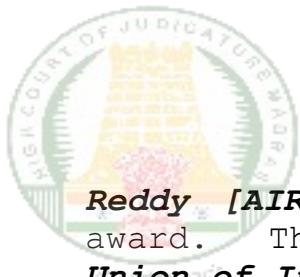
Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void"".

58. The cases before us have to be tested on the above anvil and the parameters laid down by the Hon'ble Supreme Court. The above referred decisions as well as the other decisions relied on by the learned counsels on either side were taken note of in **Gayatri Balasamy**. The said case was a petition filed under Section 34 of the Arbitration Act, not being satisfied with the quantum of compensation awarded by the sole arbitrator. The question decided



was whether in a petition under Section 34, the Court is entitled to modify the award either by enhancing the amount awarded by the Tribunal or by granting the relief that was rejected by the Tribunal, especially in the light of the express language of Section 34 of the Arbitration Act. Before we proceed to note the reasons assigned by the Court, it needs to be pointed out that the decision has been affirmed by the Hon'ble Division Bench in O.S.A.Nos.59 and 81 of 2015 dated 08.08.2019. While deciding the question framed for consideration, the Court pointed out that Section 34(1) of the Arbitration Act provides that "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)". It was pointed out that in view of the express language so used in Sub-section (1), the other Sub-sections, namely, Sub-Sections (2), (3) and (4) used only the expression "set aside by the Court" and none of the sub-sections of Section 34 of the Arbitration Act used any other expression such as modified, revised, reversed or vary. Therefore, the Court entertained a doubt on the power of the Court to modify or revise or vary an award under Section 34 of the Arbitration Act. The Court took note of the decision in **Gautam Constructions and Fisheries Limited vs. National Bank for Agricultural and Rural Development [(2000) 6 SCC 519]** wherein the Single Bench upheld the award but modified the date from which the interest is payable. The Division Bench reversed the judgment of the Single Bench and reduced the rate of compensation and also reduced the rate of interest. On appeal to the Hon'ble Supreme Court, the judgment was modified.

59. In **Hydro Electric Power Supply Co. Ltd. vs. Union of India. [(2003) 4 SCC 172]**, the award was modified by the Hon'ble Supreme Court. In **Hindustan Zinc Limited vs. Friends Coal Carbonisation [(2006) 4 SCC 445]** pertaining to a contract for sale and supply metallurgical coke, the award passed by the arbitrator was modified by the District Court in a petition under Section 34, an appeal was filed under Section 37 before the High Court which was allowed upholding the award in its entirety and the same was challenged before the Hon'ble Supreme Court and on account of the understanding reached between the parties, the Hon'ble Supreme Court allowed the appeal, set aside the judgment of the High Court and restored the judgment of the trial court and in the said case, the Hon'ble Supreme Court did not specifically address the issue as to whether the Court has power under Section 34 to modify the award. However, the modified award as done by the Trial Court was affirmed. After referring to the decision in **McDermot International Inc.**, the Court held that the observations made in paragraph 52 of the judgment were not given any answer to a pointed question as to whether the Court has power under Section 34 to modify and revise or vary an award. In the case of **Krishna Bhagya Jala Nigam Ltd. vs. G. Harischandra**



Reddy [AIR 2007 SC 817], the Hon'ble Supreme Court modified the award. The decision of the High Court of Bombay in the case on **Union of India vs. Artic India [(2007) 4 Arb.L.R. 524 (Bom)]** and the judgment of the High Court of Delhi in the case of **Union of India vs. Modern Laminators [(2008) Arb.L.R. 489 (Del)]** were also noticed and it was held that from the various decisions of the Hon'ble Supreme Court and that of the Bombay and Delhi High Courts, it is seen that judicial trend appears to favour an interpretation that would read into Section 34, a power to modify or revise or vary an award. Further it was pointed out that except one observation found in the decision of the Hon'ble Supreme Court in **McDermott International Inc.**, all the decisions of the Hon'ble Supreme Court have either modified the awards or approved the modification of the awards done by the Courts under Section 34 of the Arbitration Act.

60. After rendering the above finding, the Court proceeded to examine the Arbitration Acts of England, The United States (Federal Law), Canada, Australia and Singapore. Keeping the global scenario in mind, the Court looked into the language of Section 34(1) of the Arbitration Act, 1996 and it was held that Section 34(1) is divided into two parts, the first concerning a right and the latter indicating the remedy. It was pointed out that if one perceives the first part of Section 34(1) as the sole and substance, then the second part of Section 34(1) is the form in which the remedy is worked out and the form or manner in which a remedy is to be sought, can never curtail or limit the right, which is made available under a statute. Further, it was held that the expression "re-course to a Court against an arbitral award" is a comprehensive and inclusive expression and merely because it is made in the form of an application to set aside the award, it cannot be construed that the power of the Court is limited by Section 34(1) only to set aside the award and leave the parties in a position much worse than what was contemplated or deserves before commencement of the arbitral proceedings. It was further held that a statute cannot be interpreted in such a manner as to make a remedy worse than the disease; a narrow interpretation of Section 34(1) would actually spell doom for the arbitration regime and actually create a mischief. Thus, it was held that the expression "re-course to a Court against an arbitral award" appearing in Section 34(1) cannot be construed to mean only a right to seek set aside of an award; it could be either for setting aside or for modifying or for enhancing or for varying or for revising an award. Further it was pointed out that an expression "application" appearing in Sections 34(2) and 34(3) merely prescribes the form in which a person can seek re-course against an arbitral award and such form cannot curtail the substantial right conferred by the statute. In other words, it was pointed out that the right to have a re-course to a Court is a substantial right and the right is not liable to be curtailed by the



form in which the right has to be enforced or exercised. Further, by referring to the decision in the case of **McDermott International Inc.**, it was held that the jurisdiction vested under Section 34 is not an appellate jurisdiction but a supervisory jurisdiction almost like a revisional jurisdiction under Section 115 of CPC. The revisional jurisdiction would normally include within its purview, a power to correct patent illegality. Thus, it was held that the Court has power under Section 34 to modify or vary an award passed by the Arbitral Tribunal. One note worthy feature is that all decisions of the Hon'ble Supreme Court referred to by the learned counsels for the appellant do not arise out of an arbitral award passed in a claim for enhanced compensation under the National Highways Act.

61. In support of the contentions of the appellant, the learned counsels referred to the decisions of the High Court of Delhi and the High Court of Karnataka to state that the Court cannot modify or vary an award. In our considered view, the cases on hand needs to be viewed from a different angle and through a different prism. This is so because the State in exercise of its power of eminent domain has issued notification and resorted to compulsory acquisition of the respondents' land. The impugned acquisition is under the provisions of the National Highways Act, 1956 which was an Act to provide for declaration of certain highways to be National Highways and for matters connected therewith. Until the enactment of Central Act 16 of 1997 with effect from 24.01.1997, the land acquisition proceedings were under the 1894 Act. By virtue of Act 16 of 1997, the existing Section 3 of the NH Act stood substituted with Section 3A-Power to acquire land, etc., Section 3B-Power to enter for survey, etc., Section 3C-Hearing of objections, Section 3D-Declaration of acquisition, Section 3E-Power to take possession, Section 3F-Right to enter into the land where the land has vested in the Central Government, Section 3G-Determination of amount payable as compensation, Section 3H-Deposit and payment of amount, Section 3I-Competent authority to have certain powers of Civil Court and Section 3J-Land Acquisition Act 1 of 1894 not to apply. The purpose of enacting Act 16 of 1997 was to avoid inordinate delay involved in the acquisition proceedings by following the 1894 Act. Thus, with effect from 24.01.1997, the compulsory acquisition of land for implementation of a project under the NH Act was as per the procedure stipulated under Section 3A to Section 3H of the NH Act. Therefore, Mr.H.Arumugam, learned counsel for the respondents was right in his submissions that the NH Act is the substantive legislation though his argument was by referring to Sub-Section (6) of Section 3G of the NH Act.

62. In the preceding paragraphs, we have mentioned the object and purpose of enacting Act 16 of 1997 and substituting the existing



Section 3 with Section 3A to Section 3J. This, in our considered view is a vital distinction which has to be borne in mind while deciding these cases. One more unique feature in Section 3G which deals with determination of amount payable as compensation is that if the amount determined by the competent authority under Sub-Section (1) or Sub-section (2) of Section 3G is not acceptable to either of the parties, the same can be agitated before an Arbitrator appointed by the Central Government. This is a note worthy distinction between the provisions of the 1894 Act which did not provide for a remedy to the State to challenge the correctness of the compensation determined by the Land Acquisition Officer and the remedy provided under Section 18 of the 1894 Act is only to the land losers who can seek for a reference to a Civil Court of competent jurisdiction to decide his claim for enhanced compensation.

63.The Central Government has issued notification appointing the District Collectors of every District where acquisition is being done under the NH Act to be the Arbitrator to determine the amount of compensation payable on an application made by either of the parties under Sub-section (6) of Section 3G. The substantive portion of Section 3G is Sub-section (1) mandates the payment of compensation which shall be determined by an order of the competent authority. Sub-section (2) of Section 3G deals with cases where the right of user or any right in the nature of an easement on, any land acquired under the Act arises. Sub-sections (3) to (7) of Section 3G is the procedural law as to how the competent authority should proceed while determining the compensation. As pointed out earlier, Sub-section (5) of Section 3G gives either of the parties to whom the amount determined by the competent authority is not acceptable are at liberty to file an application before the Arbitrator appointed by the Central Government. Sub-section (6) of Section 3G states that subject to the provisions of the NH Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under the NH Act. The language of Sub-section (6) of Section 3G is clear to mean and to state that that the provisions of the Arbitration Act, 1996 shall be subject to the provisions of the NH Act. Therefore, the substantive legislation in the cases before us is the NH Act and the Arbitration Act, 1996 is the procedural law, the procedure to be adopted by the competent authority while determining as to whether the amount of compensation fixed by the competent authority under Section 3G(1) or Section 3G(2) was proper. Therefore, the procedural law shall yield to the substantive law and as rightly contended that it shall be subservient to the substantive law.

64.We are dealing with the case of compulsory acquisition of land by which a person is deprived of his property. No man can be deprived of his right over property without following the procedure



established by law. Thus, Courts have always interfered where there is procedural infirmity in land acquisition proceedings because depriving a man of his property is depriving him of his dignity. Thus, the statutory protection given under any of the land acquisition enactments is placed at a higher pedestal largely due to the fact that right to property is no longer a fundamental right. Thus, when a man is deprived of his property by way of compulsory acquisition of land, can it be said that the Arbitrator, namely, the District Collector will pass orders at his whims and fancies and when the land loser invokes the remedy under Section sub-section (5) of Section 34, he can be curtailed and imprisoned within the scope of Sub-section (2) of Section 34 of the Arbitration Act, 1996. Can it be said that in such cases, the Court while considering an application under Section 34 will be a mute spectator to an illegality, an order passed without reasons and arbitrary and unreasonable order and yet say that the Court is empowered either to set aside the award or refuse to set aside the award and nothing beyond and in cases, where the Court sets aside the award, once again the land loser will have to initiate fresh arbitration proceedings.

65. We respectfully agree with the finding rendered by the Hon'ble Court in the case of **Gayatri Balasamy**, that a statute cannot be interpreted in such a manner as to make the remedy worse than a disease. In the said case, the Court had referred to various decisions of the Hon'ble Supreme Court and the decisions of the High Court of Delhi and the High Court of Bombay where the awards passed by the Arbitral Tribunal were modified or the modified awards by the Courts under Section 34 of the Arbitration Act were given a seal of approval. One more reason which prompts us to make the above observations is the nature and scope of reference to the arbitration in contradistinction with the arbitration clauses existing in a mutually agreed upon contract. It was pointed out in the case of **McDermott** that the 1996 Act makes provision for the supervisory role of Courts for the review of the arbitral award only to ensure fairness and intervention is envisaged in few circumstances only, like, in a case of fraud or bias by the Arbitrators, violation of natural justice, etc. The Court further pointed out the scheme of the provision aims at keeping supervisory role of the Court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer expediency and finality offered by it. Thus, the bed rock of the above finding is the consensus of parties to exclude Court's jurisdiction by opting for arbitration. In the cases before us, it is not the conscious decision of the land loser to exclude the common law remedy available but it is a statutory compulsion under Sub-section (5) of Section 34 that he should go before the Arbitrator to be appointed



by the Central Government. Therefore, as we had observed earlier the cases on hand requires to be viewed through a different prism. In all these cases, the land owners were compelled to approach the Arbitrator who had passed orders fixing ridiculously low amount as compensation. The correctness of which was challenged before the District Court in an application under Section 34 of the Arbitration Act.

66.We have carefully perused the impugned judgments of the District Court as well as the awards passed by the District Collector/competent authority.

67.To say the least, the awards passed by the District Collector are wholly illegal, devoid of reasons and the illegality goes to the root of the matter. Bunch of documents were filed by the land losers as data sale deeds. Some of the documents filed by the land losers are documents concerning the very same land, a smaller extent and the sale transactions were between one to three years before the acquisition. Unilaterally, the District Collectors rejected those documents and we find no justifiable reason for having done so and have fallen back on the guideline value which could not have been the sole basis for computing the compensation payable to the land loser. The guideline value is fixed by the Government and revised from time to time for the purpose of collecting stamp duty on transactions which require compulsory registration. If the District Collector was of the opinion that the value of the land stated in any of the data sale deeds cannot be accepted, then reasons have to be assigned. An order devoid of reasons is a nullity and violative of Article 14 of the Constitution of India, thus affecting the Fundamental Policy of Indian Law. The illegality which has occurred in the orders passed by the District Collectors is not trivial in nature but it is so unfair and unreasonable which has rightly shocked the conscience of the District Court. Interestingly, the point canvassed before us by NHAI regarding the jurisdiction of the Court under Section 34 of the Arbitration Act was never canvassed before the District Court. No counter was filed to the applications filed by the land losers. The documents which were filed by the land losers were marked and the NHAI did not cross examine the claimant witnesses nor they lead any oral or documentary evidences before the District Court. Therefore, we would have been well justified in rejecting the entire plea of the appellant on this sole ground. Nevertheless, since we heard the learned counsels at length, we proceeded to decide the issue as we would have been justified in observing that such a decision is unwarranted in the instant appeals as the appellants were not diligent in raising any such issue before the Courts below and also to observe that the question raised regarding the jurisdiction of the District Court is not a pure question of law but a mixed question of fact and law and having failed to raise the same before the District Courts, the appellant would be precluded from raising



such an issue before us. One more aspect which has prompted us to broadly agree with the findings of the District Court is that none of the grounds raised by the land owners were considered by the Arbitrator. Thus, the Arbitrator has abdicated his power and once a statutory authority abdicates his power, it is against the provisions of the substantive law, the NH Act which is the law which governs the present proceedings and if there is violation of such a law, then the arms of the Court under Section 34 are long enough to correct such patently illegal and arbitrary awards. The contention that this Court has got power as if an Appellate Court and can exercise all powers under Order XLI of CPC though may be an attractive submission nevertheless as held in **McDermott**, the Court (here-District Court) exercises under Section 34 only a supervisory role and therefore, the Court does not act as an Appellate Court. That apart, the present appeal petitions have been filed under Section 37 of the Arbitration Act, 1996. Therefore, we are not fully in agreement with the learned counsel for the respondents that this Court can examine the correctness of the order passed by the District Court as if it is a regular Court trying an appeal suit against a decree of the Civil Court. While on this issue we need to point out that the District Court in the impugned order rightly exercised its jurisdiction. It interfered with the arbitrary, unjust and unreasonable award passed by the District Collector ignoring the law governing the proceedings, the substantive law. In such circumstances, the District Court was well within its jurisdiction to examine the contention raised by the land losers and provide them adequate compensation for the lands which were compulsorily acquired from them. As pointed out by the Hon'ble Supreme Court in **Tarsem Singh** (supra) that the Government is of the view that it is not possible to discriminate between land owners covered by Act 30 of 2013 and the land owners covered by the NH Act when it comes to compensation to be paid.

68.An argument was advanced by the learned counsel for the respondents that NHAI cannot maintain the present appeals. We do not agree with the said submission for more than one reason. Firstly in the light of the explicit language of Sub-Section (5) of Section 3G of the NH Act which provides for remedy to either party to whom the amount determined as compensation by the competent authority is not acceptable. Assuming the competent authority had passed an award which was not acceptable to NHAI, a remedy is provided to them to file an application before the Arbitrator for determining the appropriate amount as compensation. That apart, the NHAI is the requisitioning body or in other words the entity for which the lands are compulsorily acquired and necessarily the compensation has to be paid from the funds of the requisitioning body. Therefore, they have a right to be heard before a decision is taken on the quantum of compensation payable to the land loser.



That apart, the NHAI was arrayed as a respondent before the District Court, rightly so, in the application filed by the respondents under Section 34 of the Arbitration Act. Thus the appellant/NHAI is entitled to maintain these appeals.

69. An argument was advanced by the learned counsel for the appellant that none of the grounds under Section 34(1) were raised before the District Court by the land losers. We do not agree with the said submission. The contention of the land losers was that the award of the Arbitrator was in violation of the principles of natural justice and wholly unreasonable and unjustified and they sought to sustain these grounds by demonstrating before the District Court as to how the documents relied on by them were arbitrarily rejected without reasons. Before the competent authority, NHAI cannot expect the land losers who are invariably agriculturists without much educational background to raise substantial questions of law before the competent authority. Therefore, the District Court was right in considering the grounds raised by the land losers and it rightly exercised its jurisdiction and it is incorrect to state that it assumed the role of an Appellate Court. Therefore, such contention raised by the learned counsels for the appellant stands rejected.

70. There is yet another angle from which these cases can be viewed, namely, the scheme of the NH Act which mandates the deposit of the amount determined under Section 3G as required under Sub-section (1) of Section 3H. This clearly demonstrates that there is a major shift as to how the land loser is to be treated vis-a-vis treatment meted out to him under 1894 Act. Therefore to state that the District Court, if it finds that the award passed by the Arbitrator is against the principles of fair play and justice, unreasonable and unjust, all that can be done is to set aside the award and leave the land loser to work out his remedy under the law. If such an approach is to be adopted under the NH Act, the purpose of substitution of the existing Section 3 of the NH Act with Sections 3A to 3J with effect from 24.01.1997 would be rendered redundant. To be noted that the decision in **Gayatri Balasamy** has been upheld by the Hon'ble Division Bench in O.S.A.Nos.59 and 81 of 2015 dated 08.08.2019 and that being the recent decision of the Division Bench of this Court, we respectfully follow the said decision.

71. The interpretation to be given vis-a-vis the NH Act is to be different from the interpretation given to awards passed by arbitrators borne out by consensus of parties in an agreement. Here it is a statutory compulsion. By substituting Section 3 of NH Act the land loser cannot be in a worse position than under the 1894 Act which provided for a reference to civil court. None of the



parameters applied to an arbitration by consensus can be applied to these cases. When a person is deprived of his land, he is entitled to just compensation, not be left at the mercy of a District Collector, who under heavy workload may be compelled to endorse and sign an order prepared by the officers, who would invariably be guided in the background by the competent authorities or the officials of NHAI.

72.The appellant, NHAI, may contend that better and broader roads would pave way for development. The question is at whose cost. The dissatisfied land loser on seeing vehicles zipping past in high speed over the newly developed roads is not going to be proud, he would be in a state of resentment having been deprived of his land, denied of adequate compensation and further denied of pursuing further remedies on technical grounds by applying a procedural law and ignoring the substantive law. A welfare state is bound to take note of the interest of the land loser. The present attempt of the appellant, NHAI is to exploit the unequalness in bargaining power. Fortunate for the appellant, the land losers did not contest the land acquired proceedings. On their part, they as citizens of the country, accepted the project as it was to be in public interest. In such circumstances, how should the land loser be treated. Of Course not in the manner done by the appellant, NHAI in these appeals. The appellant is estopped from raising any contention as regards the veracity of the documents exhibited by the land losers, having not contested the claim. The belated attempt by the NHAI, on untenable technical ground lacks bonafide and against the interest of the land loser and against public interest.

73.The terms "public" is not the road user alone, but the person who contributed his land for such public purpose. Therefore, the land losers right to obtain adequate compensation regimes supreme. Such supremacy cannot be culled down on technicalities. The appellant, NHAI attempts to "piggy ride" on the orders of the District Collectors which are wholly illegal, devoid of reasons, in violation of the principles of natural justice and suffering from the vice of Article 14 of the Constitution of India.

74.Thus, for the above reasons we hold that the District Courts have rightly exercised its powers under Section 34 of the Arbitration Act and there is no bar in exercise of such powers. Having held so, the only other question which remains to be considered is with regard to the quantum of compensation awarded, the deductions made, etc whether they were just and proper. We had elaborately heard the submissions of both the learned counsels for the NHAI. The submissions were fully focused on the scope of the District Court under Section 34. To our mind, there was no serious challenge by NHAI to the reasons assigned by the District Court for



enhancing the compensation. Even assuming an attempt was made to put forth such submission, the appellant would be clearly barred from doing so having not cross examined the witnesses who were examined on the side of the claimants, having not disputed the documents filed by the claimants, having not lead any evidence on their side either oral or documentary. Thus, in the absence of any perversity in the interpretation made by the District Court, we are not inclined to interfere with the findings of the District Court with regard to the compensation arrived at. It was argued by the learned counsels for the appellant that the deduction was made on compartmental basis which is unsustainable. In fact we did an exercise in open Court based on the submission of the learned counsels for the appellant by adopting the method of deduction as argued by NHA I instead of the procedure adopted by the District Court. We find no significant change in the amount and therefore, we do not accept the contention of the NHA I that the District Court fell in error in adopting compartmental deduction. On the side of the land losers, it was argued that no deduction can be effected for linear projects. In one of these appeals, a cross objection has been filed by the land loser. On going through the grounds canvassed in the cross objection, we do not find any substantial grounds to hold that patent illegality was committed by the District Court while exercising power under Section 34 except with regard to the deduction made. The compensation awarded by the District Courts, to our mind, is just, fair and reasonable.

75. Deduction towards development charges from the compensation awarded to the land loser was held to be permissible when it was established by positive evidence that such development charges are justified. The expenditure to be incurred should come from the need of development contemplated and the expenditure which is likely/reasonably required for such development. In none of the cases before us, there was any positive evidence placed by NHA I to justify deduction towards development charges. Deduction towards development charges cannot be on *ipse dixit*, but required to be established by positive evidence. NHA I, by relying on the decisions to state that development charges can be as high as 70% can in no manner improve their case. As pointed out, no evidence was placed by NHA I to justify deduction of development charges.

76. In **Nelson Fernandes And Ors. vs. Special Land Acquisition Officer, South Goa And Ors.** reported in (2007) 9 SCC 447, the Hon'ble Supreme Court discussed the question of development charges. In the said case, lands were acquired for laying a Railway line. It was found that lands which were acquired were adjacent to the land which was already acquired for the same purpose, which fact was not noticed by the Land Acquisition Officer, District Court and the High Court and that the purpose of acquisition is a relevant factor to be



taken into consideration while fixing compensation. Similar view was taken in **Viluben Jhalejar Contractor vs. State of Gujarat** reported in (2005) 4 SCC 789.

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77. In **C.R. Nagaraja Shetty** (supra), the acquisition was for widening of the National Highway. The High Court deducted Rs.25/- per square feet for development charges. On appeal by the land loser, the Hon'ble Supreme Court pointed out that when lands are acquired for public purposes like setting up of industries, setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however it has to be established by positive evidence that such development charges are justified. With regard to acquisition of land for widening of the existing National Highway, it was held that land is acquired only for widening of the National Highway, there would, therefore be no question of any such development or any costs thereof. In the said case, there was no evidence placed by the acquiring body before the district Court that it would incur development charges. This decision would come to the aid and assistance of the land losers before us, which leads us to hold that deduction towards development charges is not sustainable and accordingly, the same are set aside.

78. At this juncture, it would be relevant to note the observation of the Hon'ble Supreme Court in **Special Land Acquisition Officer, U.K. Project vs. Mahaboob and Another**, where the plight of the land loser was vividly brought out and as to how the Collectors award meagre compensation. The observation in paragraph 8 of the judgment reads thus:-

"8. Statistics show that most of the acquisitions relate to lands held by small farmers, whose livelihood depends upon the acquired land. The land is taken purportedly in accordance with law by resorting to acquisition proceedings. The Collector (LAO) is supposed to offer a fair compensation by taking all relevant circumstances relating to market value into account. To safeguard the interests of the land loser, the Act requires the Collector to make the award before the land owner is dispossessed. The intention is that the land loser will immediately be able to draw compensation and purchase some other suitable land or make appropriate arrangements for his livelihood. But in practice the Collectors (LAOs) seldom make reasonable offers. They tend to err on the 'safer' side and invariably assess very low compensation. Such meager awards force the land loser to seek reference to civil court for increase in compensation in regard to

<https://hcservices.ecourts.gov.in/hcservices/>

every award made by the LAO. In fact, many a



time, even the reference courts are conservative in estimating the market value and it requires further appeals by the land loser to the High Court and Supreme Court to get just compensation for the land. We can take judicial notice of the fact that in several States the awards of the reference court or the judgments of the High Court and this Court increasing the compensation, are not complied with and the land losers are again driven to courts to initiate time consuming execution process (which also involves considerable expense by way of lawyers fee) to recover what is justly due. Resultantly the land losers seldom get a substantial portion of proper compensation for their land in one lump sum immediately after the acquisition."

79.The District Collectors/Arbitrators rejected all data sale deeds and relied on the guideline value fixed by the Government to arrive at the compensation to be awarded. This, according to the land losers is flawed.

80.In **Special Land Acquisition Officer vs. T.Adhinarayan Shetty** reported in **AIR 1959 SC 429**, the Hon'ble Supreme Court pointed out the broad methods of valuation to be, opinion of experts, price of purchase of lands possessing similar advantage in bonafide transaction within reasonable time and number of years purchase of the actual or immediately prospective projects of the lands acquired. The earlier decisions in **Tribeni Devi vs. Collector of Ranchi, (1972) 1 SCC 480** and **Periyar and Pareekanni Rubbers Ltd. vs. State of Kerala, (1991) 4 SCC 195** were referred to. Following the above decisions in the case of **Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A.P. And Other**, reported in **(1994) 4 SCC 595**, the Hon'ble Supreme Court after referring to the above decision, while answering the question as to whether the Basic Valuation Register (Guideline Value) would form foundation to determine the market value, held that the Indian Stamp Act, 1899 provides the power to prescribe stamp duty on instruments etc., after referring to the decision in **Sagar Cements Ltd. vs. State of Andhra Pradesh, (1989) 3 Andh. LT 677**, held that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force and it cannot be a basis to determine the market value under Section 23 of the 1894 Act. It was further held that evidence of bonafide sales between willing prudent vendor and prudent purchaser of the lands acquired or situated near by possessing same or similar advantageous features would furnish basis to determine market value. Thus, it was held that guideline value has no statutory force and cannot form any basis to determine



the market value of the acquired lands. Applying the above decisions to the cases on hand can only lead to the conclusion that the District Collector could not have adopted the guideline value for determining the market value of the land that were acquired. Thus, the District Courts were right in interfering with the Award of the District Collectors.

81.It was pointed by the learned counsel for the respondents that while depositing/paying the compensation as determined by the Arbitrator the compensation paid for trees and standing crops were deducted from the compensation which was determined for the land. If the same had been done, we find it to be wholly unjust. This is so because the compensation for the land is calculated in a different manner than the compensation for the standing crops. This contention is not refuted by the appellant. However, the learned counsel for the appellant submits that no such plea was raised by the respondent at earlier point of time. In our considered view, such submission cannot be raised by the appellant especially when they failed to raise any point before the District Court and raised all contentions before this Court for the first time. That apart, if the compensation paid for trees and standing crops were deducted from the compensation paid for the land as determined by the competent authority, the same is illegal. Therefore, the competent authority has to reverse such deductions, if any made, by examining all the cases and if the compensation for trees and standing crops paid to the land owner were deducted while payment of the compensation to the land as determined by the competent authority, then the same should be re-calculated and the compensation for the trees and standing crops should be paid to the land owner. This exercise shall be carried out by the competent authority within a period of eight weeks from the date of receipt of a copy of this judgment. In the light of the above reasons, we have not dealt with the other decisions relied on by the learned counsels for the parties.

82.In the result, the points raised for consideration are determined against the appellant and the appeals are dismissed with a direction to the competent authority to examine all cases and wherever compensation paid for the trees and standing crops have been deducted from the compensation determined for the land, the same shall be calculated and paid to the respective land loser/respondents. This exercise be completed within a period of eight weeks from the date of receipt of a copy of this judgment. The Cross Objection (MD) No.16 of 2015 stands disposed of to the extent indicated. Consequently, connected miscellaneous petitions are closed.

Sd/-
13.02.2020



These Civil Miscellaneous Appeals and connected Cross Objection petition having been posted today. On 13.02.2020, for pronouncing judgment and this Court after pronouncing orders, heard the submissions made by Mr.H.Arumugam, the learned counsel for the petitioner in Cross Objection Petition and in the presence of above said Advocates, this Court made the following order.

(Order of the Court was made by T.S.Sivagnanam, J.)

After we pronounced the judgment, Mr.H.Arumugam, learned counsel appearing for the land losers submitted that though this Court rejected the cross objection filed by his client, in the light of the recent judgment of the Hon'ble Supreme Court in **Union of India and Others vs. Tarsem Singh and Another**, in C.A.No.7064 of 2019, dated 19.09.2019, the land losers are entitled for solatium and interest. In fact, during the course of argument, Mr.Su.Srinivasan, learned counsel for the NHAI had submitted that in the light of the said decision of the Hon'ble Supreme Court, the land losers would be entitled to the solatium and interest as pointed out by the Hon'ble Supreme Court.

2.Accordingly, we direct that the land losers shall also be entitled to solatium and interest as directed by the Hon'ble Supreme Court in **Tarsem Singh** (supra).

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Special District Revenue/
Competent Authority for Land Acquisition,
(National Highways-45E & 220)
Collectorate Buildings, Theni.

2. The District Revenue Officers
(Land Acquisition Officer,
National Highways -45 Extension), Dindigul.

3. The Special District Revenue Officer,
Land Acquisition National Highways,
2nd Cross Road, Thiyagarajanagar,
Tirunelveli- 11.

4. The District Collector/the Arbitrator,
District Collector Campus,
Kokkirakulam, Tirunelveli -09.



5.The District Revenue Officer,
Land Acquisition Officer/(National Highways-7)
Madurai

6. The Special Tahsildar (La)
National Highways Project, Madurai South.

7.The Special District Revenue Officer,
Competent Land Acquisition Officer For
National Highways-7, Virudhunagar.

8.The Project Director,
National Highways Authority of India,
Plot No. A 21, Thomas Nilayam St. Thomas Road,
Thendral Nagar, Maharajanagar Post,
Tirunelveli - 627 001.

+2 CC to M/s.SU.SRINIVASAN, Advocate (SR-6042[F] dated 13/02/2020)
+2CC'S TO M/S.ARUL VADIVEL @ SEKAR, Advocate, Sr.No.6204,6203
+1cc to M/S.M.THIRUNAVUKKARASU, Advocate, Sr.No.6051
+10CC's to M/S.R.R.KANNAN, Advocate Sr.Nos.6075 to 6084
+41 CC to M/s.R.GOVINDARAJ, Advocate Sr.Nos.6001 to 6041

Judgment made in
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717, 718, 719 & 760 of 2018
13.02.2020

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