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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1964 of 2016

Sarada Sekar (Died)

2.M.G.Sekhar

3.Vetrikodi

4.Tamilkodi

5.Rajeshwari

6.Vengateswaran

...Appellants

(Appellants 2 to 6 brought on record as LRs of the deceased Appellant vide order of this Court dated 20.09.2021 made in CMP.No.15278, 15281 & 15282 of 2021 in CMA.No.1964 of 2016)

Vs

1.The District Collector cum Arbitrator, (LA-NH7),
Dharmapuri - 5.

2.The Competent Authority cum
Special District Revenue Officer,
Land Acquisition N.H.7,
Dharmapuri - 5.

3.The Special Tahsildar,
(LA) Unit I & II,
N.H.7, Dharmapuri - 5.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 37(1) of the Arbitration and Conciliation Act, against the order and decreetal order passed by the learned Principal District Judge, Dharmapuri in Arbitration O.P.No.17 of 2013 dated 18.04.2016 and refix the compensation amount to the tune of Rs.400/- per sq feet.

For Appellants	: Mr.R.Prabhudoss
For Respondents	: Dr.S.Suriya, Government Advocate

JUDGMENT

This appeal has been filed under section 37 of the Arbitration and Conciliation Act, challenging the order dated 18.04.2016 passed by the learned Principal District Judge, Dharmapuri in A.O.P.No.17 of 2013 under section 34 of the



Arbitration and Conciliation Act, wherein the said application was dismissed.

2. An arbitral award dated 17.08.2012 came to be passed by the first respondent in favour of the first Appellant under the National Highways Act, under which, the first respondent confirmed the proceedings of the District Revenue Officer, Dharmapuri dated 10.07.2007. The District Revenue Officer, Dharmapuri, the competent authority under the National Highways Act determined the compensation payable for the Appellant's lands which were acquired under the National Highways Act by its proceedings dated 10.07.2007. Under the said proceedings, the land acquisition officer has determined the compensation at Rs.1,97,600/- per hectare.

3. Aggrieved by the same, the first Appellant initiated arbitration as per the provisions of the National Highways Act and the first respondent, District Collector by order dated 17.08.2012 confirmed the order of the District Revenue Officer dated 10.07.2007 and did not grant any enhancement of compensation as sought for by the first Appellant.

4. Aggrieved by the arbitral award passed by the first respondent, District Collector, the first Appellant filed an application under section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge, Dharmapuri in A.O.P.No.17 of 2013. The learned Principal District Judge, Dharmapuri dismissed the application filed by the first Appellant by its order dated 18.04.2016. Aggrieved by the same, this appeal has been filed under section 37 of the Arbitration and Conciliation Act.

5. Heard Mr.R.Prabudoss, learned counsel for the Appellants and Dr.S.Suriya, learned Government Advocate for the respondents.

6. In the application filed by the first Appellant in A.O.P.No.17 of 2013 before the learned Principal District Judge, Dharmapuri, under section 34 of the Arbitration and Conciliation Act, the first Appellant has sought for enhancement of compensation from the one determined by the first respondent, District Collector under the National Highways Act.

7. It is now well settled as per the recent decision of the Hon'ble Supreme Court in the case of Project Director, National Highways vs. M.Hakeem and another reported in 2021 SCC Online SC 473 that an arbitral award cannot be modified by a court exercising power under section 34 of the Arbitration and Conciliation Act. The relevant paragraphs of the said decision are extracted hereunder:



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34 of the present Act. In para 51, the learned Single Judge then refers to recourse to a court against an arbitral award, and argues that a statute cannot be interpreted in such manner as to make the remedy worse than the disease. As has been pointed out by us, the "disease" can only be cured in very limited circumstances thus limiting the remedy as well. Also, to assimilate the Section 34 jurisdiction with the revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 [the "CPC"], is again fallacious. Section 115 of the CPC expressly sets out the three grounds on which a revision may be entertained and then states that the High Court may make 'such order as it thinks fit'. These latter words are missing in Section 34, given the legislative scheme of the Arbitration Act, 1996. For all the aforesaid reasons, with great respect to the learned Single Judge, it is not correct in law and therefore stands overruled.

42. Coming to the submission in support of the impugned judgment that the fact that the Central Government appoints an arbitrator and the arbitration would therefore not be consensual, resulting in a government servant rubber stamping an award which then cannot be challenged on its merits, cannot possibly lead to the conclusion that, therefore, a challenge on merits must be provided driving a coach and four through Section 34 of the Arbitration Act, 1996. The impugned judgment is also incorrect on this score.

43. Col. Balasubramanian, however referred to a passage in Jaishri Laxmanrao Patil v. Chief Minister, 2021 SCC OnLine SC 362 (at paras 412 to 415). He argued that 'purposive construction' referred to by Bennion in his classic on Statutory Interpretation must be applied by us on the facts of this case as in legislations dealing with land acquisition, a pragmatic view is required to be taken and the law must be interpreted purposefully and realistically so that the benefit reaches the masses. We may only add that the judgment cited by Col. Balasubramanian is a judgment dealing with a constitutional provision - Article 342A of the Constitution. We must



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never forget the famous statement of Chief Justice Marshall in *M'Culloch v. State of Maryland*, 17 US 316 (1819) that "it is a constitution we are expounding" - and the Constitution is a living document governing the lives of millions of people, which is required to be interpreted in a flexible evolutionary manner to provide for the demands and compulsions of changing times and needs.

44. The distinction between constitutional and statutory interpretation was felicitously put by Justice Aharon Barak, President of the Supreme Court of Israel thus:

"The task of expounding a Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A Constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions, bear these considerations in mind."

45. This quote has been cited in *Rameshwar Prasad (VI) v. Union of India*, (2006) 2 SCC 1 (at pages 91, 92).

46. "Purposive construction" of statutes, relevant in the present context, is referred to in a recent concurring judgment by Nariman, J. in *Eera v. State (NCT of Delhi)*, (2017) 15 SCC 133, as the theory of "creative interpretation". However, even "creative



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interpretation" has its limits, which have been laid down in the aforesaid judgment as follows:

"139. A reading of the Act as a whole in the light of the Statement of Objects and Reasons thus makes it clear that the intention of the legislator was to focus on children, as commonly understood i.e. persons who are physically under the age of 18 years. The golden rule in determining whether the judiciary has crossed the Lakshman Rekha in the guise of interpreting a statute is really whether a Judge has only ironed out the creases that he found in a statute in the light of its object, or whether he has altered the material of which the Act is woven. In short, the difference is the well-known philosophical difference between "is" and "ought". Does the Judge put himself in the place of the legislator and ask himself whether the legislator intended a certain result, or does he state that this must have been the intent of the legislator and infuse what he thinks should have been done had he been the legislator. If the latter, it is clear that the Judge then would add something more than what there is in the statute by way of a supposed intention of the legislator and would go beyond creative interpretation of legislation to legislating itself. It is at this point that the Judge crosses the Lakshman Rekha and becomes a legislator, stating what the law ought to be instead of what the law is.

47. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself



* * *

1. ... A batch of appeals before us by the Union of India question the view of the Punjab and Haryana High Court which is that the non-grant of solatium and interest to lands acquired under the National Highways Act, which is available if lands are acquired under the Land Acquisition Act, is bad in law, and consequently that Section 3-J of the National Highways Act, 1956 be struck down as being violative of Article 14 of the Constitution of India to this extent.



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54. It can be seen from the aforesaid provisions that the speeding up of acquisition of land needed for national highways has been achieved. The challenge process to an award passed will, of necessity, take its own time, both under Section 3G of this Act as well as under the provisions of the Land Acquisition Act. This being the case, it is a little difficult to appreciate as to why the wholesome regime of appeals under the Land Acquisition Act has been replaced by a regime in which an award passed by an Arbitrator, who is not consensually appointed but appointed by the Central Government, can only be challenged not on merits, but on the limited grounds contained in Section 34 of the Arbitration Act, 1996.

58. Given the fact that the NH Amendment Act, 1997 has not been challenged before us, we refrain from saying anything more. Suffice it to say that, as has been held in *Taherakhatoon v. Salambin Mohammad*, (1999) 2 SCC 635 (at para 20), even after we declare the law and set aside the High Court judgment on law, we need not interfere with the judgment on facts, if the justice of the case does not require interference under Article 136 of the Constitution of India..."

8. Since the arbitral award cannot be modified, even in cases involving determination of compensation under the National Highways Act, this Court is of the considered view that there is no merit in this Appeal and the learned Principal District Judge, Dharmapuri under the impugned order dated 18.04.2016 passed in A.O.P.No.17 of 2013 under section 34 of the Arbitration and Conciliation Act has rightly dismissed the said application.

9. In the result, there is no infirmity in the impugned order and the Civil Miscellaneous Appeal is dismissed and No costs.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar



To

1. The Principal District Judge, Dharmapuri
2. The District Collector cum Arbitrator, (LA-NH7),
Dharmapuri - 5.
3. The Competent Authority cum
Special District Revenue Officer,
Land Acquisition N.H.7,
Dharmapuri - 5.
4. The Special Tahsildar,
(LA) Unit I & II,
N.H.7, Dharmapuri - 5.

+1 CC to The Special Government Pleader(CS) sr 52555.

C.M.A.No.1964 of 2016

NR(CO)
SP(01/11/2021)