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O.P.Nos.403, 404, 405, 406 and 407 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.P.Nos.403, 404, 405, 406 and 407 of 2021

O.P.No.403 of 2021

1.Dhandapani
2.Rajendiran.R
3.Murugan.R ... Petitioners

O.P.No404 of 2021

P.Velmurugan Petitioner

O.P.No405 of 2021

1.Manivannan.D
2.Nirmalkumar.D ... Petitioners

O.P.No.406 of 2021

G. Shanmugam ... Petitioner

O.P.No.407 of 2021

1.Rajendiran.R
2.Murugan.R ... Petitioners



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O.P.Nos.403, 404, 405, 406 and 407 of 2021

VS

1. The District Collector,
Cuddalore District.
2. The Authorised Officer & District Revenue Officer,
(Land Acquisition) NH 45C
Vikravandi-Kumbakonam-Tanjore Division,
Villupuram
3. The Special Tahsildar,
(Land Acquisition),
NH 4C Unit II, Kurinjipadi @ Vadalur - 607 303

... Respondents in all the petitions

Prayer: Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award passed by the first respondent in Na.Ka.No.3(Arbit)/13474/2019 dated 13.03.2020 enhancing the compensation from Rs.161/-per Sq.meter to Rs.322/-per Sq.meter as illegal and arbitrary and enhance the compensation to Rs.2,000/-per Sq.meter as claimed by the petitioners.

For Petitioners in Mr.Adinarayana Rao
all the Petitions :

For Respondents : Mr.Edwin Prabakar
Government Advocate



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O.P.Nos.403, 404, 405, 406 and 407 of 2021

COMMON ORDER

These petitions have been filed by the respective land owners, where their lands have been acquired by the Land Acquisition Officer under National Highways Act, 1956 and the first respondent has passed a common Arbitral Award under the provisions of National Highways Act, 1956 , determining the quantum of compensation payable to the respective petitioners for the lands acquired from them.

2. The common Arbitral Award dated 13.03.2020 passed by the first respondent is the subject matter of challenge in these petitions, filed under Section 34 of the Arbitration and Conciliation Act, 1996. The first respondent/Arbitrator has enhanced the compensation amount, as determined by the Land Acquisition Officer from Rs.161/-Sq.meter to Rs.322/-per Sq.meter.



O.P.Nos.403, 404, 405, 406 and 407 of 2021

WEB COPY

3. The respective petitioners have challenged the common

Arbitral Award on the ground that the Common Arbitral Award is a non-speaking award and the learned Arbitrator has not considered the evidence placed by the respective petitioners with regard to the market value of the acquired lands. It is also the case of the petitioners that the first respondent has not adhered to the principles of natural justice and has not followed the procedure contemplated under the Arbitration and Conciliation Act, 1996 by giving equal opportunity to the respective petitioners to put forward their respective defences and also by placing the evidences in respect of their respective cases that they are entitled for higher compensation. According to the respective petitioners, the lands acquired by the Land Acquisition Officer from the petitioners are abutting the National Highways and will fetch Rs.2,00,000/-per cent, but, under the impugned Arbitral Award, the first respondent/Arbitrator has fixed a meagre amount of Rs.322/-per Sq.meter without any basis. According to the petitioners, the Land Acquisition Officer has fixed the compensation for the acquired lands at Rs.161/-per Sq.meter and without



O.P.Nos.403, 404, 405, 406 and 407 of 2021

any basis and arbitrarily, the first respondent/Arbitrator has doubled the compensation amount to Rs.322/-per Sq.meter.

4. It is the contention of the petitioners that the sale deeds of the adjoining properties, which disclose higher market value, were placed before the first respondent/Arbitrator and the same was not considered by the first respondent/Arbitrator under the impugned Arbitral Award. It is also the contention of the petitioners that the first respondent/Arbitrator, mechanically, without applying his mind, has fixed the market value for all the properties at the same rate of Rs.322/-per Sq.meter.

5. According to the petitioners, they were not given opportunity to place all the requisite evidence in support of their case by the first respondent/Arbitrator. According to the petitioners, without affording any opportunity to the respective petitioners to put forward their defence, the arbitral award has been passed against them arbitrarily and perversely and without any evidence. In the aforementioned grounds,



O.P.Nos.403, 404, 405, 406 and 407 of 2021

the respective petitioners have sought for setting aside the arbitral award passed by the first respondent/Arbitrator under the National Highways Act, 1956.

6. Counter Statements have been filed by the first respondent in these petitions, denying the contentions of the respective petitioners. According to the first respondent/Arbitrator, the market value of the property for the purpose of payment of compensation to the respective petitioners were determined only after giving due consideration to the nature of the land acquired from the petitioners. According to the first respondent/Arbitrator, as per the sale data, the lands acquired from the respective petitioners are agricultural lands and therefore, the compensation determined by the first respondent/Arbitrator under the impugned Arbitral Award is correct.

7. The first respondent/Arbitrator has also stated in the counter statement that for nearby land, which was a house site, the first



O.P.Nos.403, 404, 405, 406 and 407 of 2021

respondent has fixed the compensation of Rs.659.25 per sq.meter.

According to the first respondent/Arbitrator, being agricultural lands, the compensation determined by the first respondent for the respective petitioners' lands at Rs.322/- per Sq.meter is correct. The first respondent/Arbitrator has stated in the counter statement that originally the Land Acquisition Officer determined the compensation payable to the respective petitioners at Rs.161/-per Sq.meter and thereafter, it was enhanced by the first respondent/Arbitrator to Rs.322/-per Sq.meter . The first respondent/Arbitrator has stated that only in accordance with the procedure contemplated under the Arbitration and Conciliation Act, 1996, the Arbitral Award has been passed which is the subject matter of challenge in all these petitions.

8. Learned counsel for the petitioners drew the attention of this Court to the impugned Arbitral Award dated 13.03.2020 passed by the first respondent/Arbitrator and submits that by a non-speaking Arbitral Award, the first respondent/Arbitrator has determined the



O.P.Nos.403, 404, 405, 406 and 407 of 2021

compensation payable to the respective petitioners at Rs.322/-per Sq.meter on the acquired lands. Learned counsel for the petitioners would submit that all the lands acquired under the National Highways Act, 1956 are abutting the National Highway and the petitioner in O.P.No.404 of 2021 was earlier having a workshop. Learned counsel further submits that the lands acquired from the respective petitioners have commercial value and they are not agricultural lands as alleged by the first respondent/Arbitrator under the impugned Arbitral Award. Learned counsel also drew the attention of this Court to the Sale Deed dated 10.11.2010 registered as Document No.2576 of 2010, which is an adjacent land to the acquired lands, which has been placed before the first respondent/Arbitrator. However, learned counsel submits that the said sale deed discloses a higher market value which was also not considered by the first respondent/Arbitrator under the impugned Arbitral Award. He further submits that the Schedule to the aforementioned Sale Deed would reveal that the subject matter was sold in sq.feet basis and therefore, it is a residential/commercial land. He also submits that all



O.P.Nos.403, 404, 405, 406 and 407 of 2021

these facts were not considered by the first respondent/Arbitrator under the impugned Arbitral Award. He refers to the impugned Arbitral Award and submits that the first respondent/Arbitrator refers to a reply sent by the Land Acquisition Officer, but, in fact, no opportunity was granted to the respective petitioners to controvert the same and that is the reason why the date of reply has not been mentioned in the impugned Arbitral Award.

9. After referring to the above, learned counsel for the petitioners would submit that without any evidence and not by adhering to the principles of natural justice and also not affording equal opportunity to the respective petitioners to place all evidences in support of their respective cases, the Arbitral Award has been passed, under which, compensation for the lands acquired from the petitioners, has been determined by the first respondent at Rs.322/-per Sq.meter.

10. Learned counsel for the petitioners would submit that

9/17



O.P.Nos.403, 404, 405, 406 and 407 of 2021

the grounds raised by the petitioners will squarely fall within the provisions of Section 34 of Arbitration and Conciliation Act, 1996, as the Arbitral Award is a non-speaking Award and passed without any evidence.

11. Mr.Edwin Prabakar, learned Government Advocate appearing for the respondents would reiterate the contents of the counter statement filed in all these petitions and submits that the Arbitral Award has been passed only in accordance with law and the procedure contemplated under the provisions of the Arbitration and Conciliation Act, 1996 and therefore, the same cannot be interfered with by this Court under Section 34 of Arbitration and Conciliation Act, 1996.

Discussion:

12. Admittedly, as seen from the impugned Arbitral Award dated 13.03.2020, the Sale Deed dated 10.11.2010 registered as Document No.2576 of 2010, produced by the respective petitioners, has



O.P.Nos.403, 404, 405, 406 and 407 of 2021

not been given due consideration by the first respondent/Arbitrator. As seen from the Arbitral Award, without any evidence and arbitrarily, the market value of the property has been enhanced by the first respondent/Arbitrator from Rs.161/-per Sq.meter, fixed by the Land Acquisition Officer, to Rs.322/-per Sq.meter. The first respondent/Arbitrator has just doubled the compensation amount, as determined by the Land Acquisition Officer, without any evidence whatsoever. It has been the consistent stand of the respective petitioners that the acquired properties are not agricultural lands and have commercial value and since the lands acquired by the Land Acquisition Officer from the petitioners are abutting the National Highways. According to them, they will fetch Rs.2,00,000/- per cent, whereas, the first respondent/Arbitrator, under the impugned Arbitral Award, has fixed at Rs.322/-per Sq.meter, which is far less than the market value.

13. Infact, in the Arbitral Award, there is a reference to a reply sent by the Land Acquisition Officer, but, the date of reply has not



O.P.Nos.403, 404, 405, 406 and 407 of 2021

been mentioned. It is the categorical stand of the respective petitioners that no such reply, as disclosed in the Arbitral Award, was sent nor a copy of the same was given to the respective petitioners. None of the documents reflected in the impugned Arbitral Award has been furnished to the respective petitioners. The impugned Arbitral Award does not disclose the details of the documents filed by the petitioners as well as the respondents.

14. As per Section 18 of the Arbitration and Conciliation Act, 1996, equal opportunity will have to be given by the Arbitrator to all the parties to the dispute with regard to their respective contentions before passing the Arbitral Award.

15. In the case on hand, as seen from the Arbitral Award, the procedure contemplated under the Arbitration and Conciliation Act, 1996 has not been followed by the first respondent/Arbitrator. Further, under the Arbitration and Conciliation Act, 1996, any Arbitral Award must be a



O.P.Nos.403, 404, 405, 406 and 407 of 2021

speaking Arbitral Award which must be supported by evidence.

16. In the case on hand, the first respondent/Arbitrator, without any evidence, has enhanced the compensation amount as determined by the Land Acquisition Officer from Rs.161/-per Sq.meter to Rs.322/-Per Sq.meter. He has simply doubled the compensation, determined by the Land Acquisition Officer from Rs.161/-per Sq.meter to Rs.322/-per Sq.meter without any evidence.

17. It is well settled law as laid down by the various decisions of Hon'ble Supreme Court that in case an Arbitral Award has been passed without any evidence, Section 34 of the Arbitration and Conciliation Act, 1996 gets attracted. It is also settled law that the Arbitral Award can be set aside if the said Arbitral Award is a non-speaking one and no equal opportunity was granted to the petitioners in support of their respective contentions by the Arbitrator.



O.P.Nos.403, 404, 405, 406 and 407 of 2021

WEB COPY

18. In the case on hand, the aforementioned grounds have been fully satisfied by the respective petitioners. Hence, this Court is of the considered view that the common Arbitral award dated 13.03.2020 passed by the first respondent/Arbitrator in Proc.No.Na.Ka.No.L3(Arbit)/13474/2019 has to be necessarily set aside and the petitioners are permitted to initiate fresh arbitration under the National Highways Act, 1956 for the determination of compensation in accordance with law.

19. This Court also takes note of the fact that as per the latest decision of the Hon'ble Supreme Court in the case of ***Project Director vs M.Hakeem and another*** reported in ***2021 SCC Online SC 473***, a Court exercising power under Section 34 of the Arbitration and Conciliation Act cannot modify an arbitral award, but can only set aside the same or dismiss it. As land losers, the respective petitioners for the foregoing reasons will suffer by the inadequate fixation of market value



O.P.Nos.403, 404, 405, 406 and 407 of 2021

by the first respondent/Arbitrator under the impugned common arbitral award which this Court cannot shut its eyes when on the face of the arbitral award, it is clear that without any evidence, the first respondent / Arbitrator has determined the market value of the acquired lands at Rs.322/-per Sq.meter. The determination of compensation by the first respondent / Arbitrator shocks the conscience of this Court.

20. In the result, the Common Arbitral Award dated 13.03.2020 passed by the first respondent/Arbitrator is hereby set aside and these petitions are allowed as prayed for. The respective petitioners are permitted to initiate fresh Arbitration in respect of their acquired lands under the National Highways Act, 1956 before the first respondent/Arbitrator within a period of sixty days (60) days from the date of receipt of a copy of this order.

21. On receipt of the claims from the respective petitioners, the first respondent/Arbitrator shall pass an Arbitral Award, in



O.P.Nos.403, 404, 405, 406 and 407 of 2021

accordance with law, after affording sufficient opportunity to the respective petitioners to place all evidence in support of their respective claims.

No costs.

16.11.2021

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Index: Yes/No

Speaking Order: Yes/No



WEB COPY



O.P.Nos.403, 404, 405, 406 and 407 of 2021

ABDUL QUDDHOSE.,J

SR

O.P.Nos.403, 404, 405, 406 & 407
of 2021

16.11.2021

17/17