



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 21ST DAY OF JUNE 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No. 668 of 2018

In the matter of Arbitration and
Conciliation act, 1996

and

In the matter of Disputes between
M. Pakrisamy and the project
director, the National Highways
Authority of India, Thanjavur,
Thanjavur district and order dated
10.04.2018.

Between

M. Packrisamy,
Old No.18/A, New No.37,
Charkravathy Street,
East Tambaram, Chennai 600059.

... Petitioner

And

1. The Project Director,
The National Highways Authority of India,
Thanjavur,
Thanjavur District.

2. The Special District Revenue Officer /
The Competent Authority,
National Highways-67
No.12, Thamizhl Nagar,
Vilamal, Thiruvavur,
Thiruvavur District.

. . . Respondents



WEB COPY Original Petition praying that this Hon'ble Court be pleased to pray for a judgment and decree:

- a. To set aside the Order passed by the Special District Revenue Officer/ the second respondent in Order No.7/2011-2012 in Na.Ka.No.468/2010/A/N.H.67/ Thiruvarur, dated 10.04.2018 and award a compensation as per the market value of the lands acquired and to award the additional compensation sought by the petitioner in his application before the second respondent dated 29.09.2017 to a total sum of Rs.14,20,000/- along with the interest at the rate of 6% p.a. From the date of 12.12.2011, the earlier award passed by the competent authority to till date.
- b. To award the cost of the original petition.

This Original Petition coming on this day before this court for hearing in the presence of Mr.M.Jayapal Rajan, Advocate for the petitioner herein and Dr.R.Rajagopal, advocate for the respondents herein and upon reading the petition and award 10.04.2018 filed herein and this Court having observed that it is the specific case of the petitioner that when the land including residential house including bore



etc., is acquired, then the consequences that would necessitate the petitioner to change his place of residence/house etc., has to be taken into consideration by the competent authority, this aspect has not been considered by the learned Special DRO, the Order of the Special DRO indicates nothing but replication of the Award passed by the Arbitrator, except hiking a small amount of extra compensation, otherwise, it is just a format order of the Special DRO and when the Award is not based on the guidelines set out under Section 3G of the National Highways Act and no opportunity was given to the parties to prove the market value of the land and other consequences, such an Award is certainly fall within the ambit of patent illegality and against the very fundamental policy of India, it is ordered as follows:-

That the Order No.7/2011-2012 in Na.Ka.No.468/2010/A/N.H.67 / Thiruvarur, dated 10.04.2018 passed by the Special District Revenue Officer/Second Respondent herein be and is hereby set aside.

2. That the matter is the matter is remanded once again to the Collector, Thiruvarur District, Thiruvarur with a direction to give opportunity to the parties to adduce evidence both oral and documentary

and also consider the scope of Section 3G of the National Highways



Act, 1956 and pass an Award within a period of 4 (four) months from the date of receipt of copy of the Order.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 21ST DAY OF JUNE 2021.

Sd/-

ASSISTANT REGISTRAR (O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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O.P.No. 668 of 2018

ORDER

DATED : 21.06.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 23/09/2021

APPROVED ON: 23/09/2021

**THE HIGH COURT OF JUDICATURE AT MADRAS**

WEB COPY

Dated : 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR
O.P.No. 668 of 2018

M. Packrisamy
Old No.18/A, New No.37,
Charkravathy Street,
East Tambaram, Chennai 600059.

... Petitioner

Versus

1. The Project Director
The National Highways Authority of India
Thanjavur,
Thanjavur District.

2. The Special District Revenue Officer /
The Competent Authority,
National Highways-67
No.12, Thamizhl Nagar,
Vilamal, Thiruvarur,
Thiruvarur District.

. . . Respondents

PRAYER : Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the Order passed by the Special District Revenue Officer/ the second respondent in Order No.7/2011-2012 in Na.Ka.No.468/2010/A/N.H.67/ Thiruvarur, dated 10.04.2018 and award compensation as per the market value of the lands acquired and to award the additional compensation sought by the petitioner in his application before the second respondent a dated 29.09.2017 to a total sum of Rs.14,20,000/- along with the interest at the rate of 6% p.a.from 12.12.2011 to till date with costs.

For petitioner : Mr.M. Jayapal Rajan
For respondent : M/s.Dr.R. Rajagopal

ORDER



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Aggrieved over the order passed by the Special District Revenue Officer, the present Petition has filed under Section 34 of the Act.

2. Brief facts leading to file this Petition is as follows:

The Petitioner's land to an extent of 4130 Sq.Meter along with building thereon and a well having a depth of 40 feet and a borewell with a depth of 110 feet erected inside the well were acquired by the National Highways Authority of India for broadening the Highway between Nagapattinam and Thanjavur (NH 67). After acquisition of the lands, compensation was awarded on 12.12.2011 in Order No.7/2012-12 in Na.Ka.No.468/2010/N.H./Thiruvarur . The Competent Authority has awarded a total compensation of Rs.2,25,660/- but the same was protested by the Petitioner herein. An arbitrator appointed to resolve the dispute has passed the Award dated 14.03.2014 confirming the Order passed by the Competent Authority. As against which a challenge was made before this Court in O.P.No.113 of 2016. This Court set aside the order of the Arbitrator mainly on the ground that the Award was not in accordance with Section 3 G (1) to 3 G (7) of the National Highways Act 1956 and remanded the matter to the Special District Revenue Officer to pass an award considering the scope of the Section 3 (G) (1 to 7) of the National Highways Act after giving opportunities to the parties.

Pursuant to the direction of this Court, the Special District Revenue



Officer passed an Award confirming the Award of the Competent Authority which was put into challenge by way of this Petition.

3. The learned Counsel appearing for the Petitioner submitted that the District Revenue Officer has not considered the scope of Section 3(G)(1) to 3(G)(7) of the National Highways Act, instead of adopting the market value adopted the guideline value of the land and simply confirmed the Award of the Competent Authority. There was no consideration to the loss suffered by the Petitioner at the time of changing his dwelling house, motor shed, thatched house, concrete structure etc., Despite the direction passed by this Court to consider the scope of the provision of Section 3(G)(1-7) of the National Highways Act, the Special DRO mechanically passed the order confirming the Award of the Arbitrator, hence the order passed by the Special District Revenue Officer has to be set aside and compensation has to be awarded as per the market value of the lands together with additional compensation.

4. The learned counsel for the 1st Respondent submitted that after remand of the matter to the Special D.R.O. by this Court, the Special D.R.O. passed an order taking into consideration of various aspects.



There was no evidence whatsoever produced by the Petitioner before the competent authority to prove his claim for higher rate of market value and other aspects. The order has been passed after taking note of the report filed by the expert committee. Therefore, the order passed by the Special District Revenue Officer based on the material and other aspects placed before him, cannot be set aside and the Petition is liable to be dismissed. Accordingly, the learned counsel for the first respondent prayed to dismiss the Petition with costs.

5. Perused the entire materials.

6. This Court is aware of the limitation to exercise the power under Section 34 of the Arbitration and Conciliation Act. When the award is passed mechanically without considering the merits or the relief sought for or ignored the substantive law of the land, the award can be very well interfered by the Court.

7. As indicated above, the Government has proposed to lay a Bypass road between Nagapattinam and Thanjavur, for which they have acquired petitioner's nanja land which includes bore well, concrete building, small shed, coconut trees, etc., Section 3G of the National



arrived. Section 3G(7)(a) of the National Highways Act mandate that the market value of the land has to be taken note of, on the date of publication of the notification under Section 3A. It is also a mandate that in consequences of the acquisition of the land, if the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change has to be awarded. While determining the reasonable compensation, the Competent Authority has to take into consideration of market value and other aspects as indicated in Section 3G. This was mandated with the object to provide reasonable compensation to the person who is deprived of the land and made landless by virtue of such acquisition. Therefore, whenever order passed by the competent authority the compensation should be on the basis of parameters set out in the above section. If the order is passed mechanically or arbitrarily then the Court will interfere with the Award.

8. In the given case, on earlier occasion this Court interfered with the Award of the Arbitrator in O.P.113 of 2016 as this Court found that the learned Arbitrator has passed the award without considering the market value of the petitioner's land and without keeping in mind the aspects mandated in Section 3(G) of the National Highway Act and hence the matter was remitted back. Despite the direction of this Court



passing the Award, the manner in which the procedure has to be followed, the matter was remitted to the Special District Revenue Officer, again the same mistake was committed by the Special DRO. The Special District Revenue Officer has neither ascertained nor calculated the value of the acquired land on the basis of the market value, on the contrary, the guideline value was fixed to arrive the compensation, which is contrary to the very Section itself. The Learned Arbitrator being a quasi judicial body, should have acted fairly and should have passed the order as per law. He cannot shirk his function.

9.It is to be noted that it is a common sense that whenever agricultural lands were not put into any sale for many years the guideline value will remain the same. There will not be any increase in the guideline value of the land for many years, but it does not mean that the land value has not been increased at all. The market value has to be ascertained on the basis of various other evidence including the area of the land, particularly any development taken place in the nearby lands etc., To prove such aspect proper particulars should be given by the parties. No opportunity was given to the Petitioner to prove the market value also. It is also to be noted that it is the specific case of the petitioner that when the land including residential house including bore



etc., is acquired, then the consequences that would necessitate the petitioner to change his place of residence/house etc., has to be taken into consideration by the competent authority. This aspect has not been considered by the learned Special DRO. The Order of the Special DRO indicates nothing but replication of the Award passed by the Arbitrator, except hiking a small amount of extra compensation. Otherwise, it is just a format order of the Special DRO.

10. In such a view of the above, when the Award is not based on the guidelines set out under Section 3G of the National Highways Act and no opportunity was given to the parties to prove the market value of the land and other consequences, such an Award is certainly fall within the ambit of patent illegality and against the very fundamental policy of India.

11. In such a view of the matter, the Order No.7/2011-2012 in Na.Ka.No.468/2010/A/N.H.67/ Thiruvarur, dated 10.04.2018 passed by the Special District Revenue Officer/Second Respondent is set aside and the matter is remanded once again to the Collector, Thiruvarur District, Thiruvarur with a direction to give opportunity to the parties to adduce

evidence both oral and documentary and also consider the scope of



Section 3G of the National Highways Act, 1956 and pass an Award within a period of 4 (four) months from the date of receipt of copy of the Order.

12. The Original Petition is disposed of with the above direction.

Sd./-N.S.K.J.
21.06.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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