



C.M.A.No.2995 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2995 of 2017

K.Periyasamy

... Appellant

vs.

1.The District Collector,
Appointed as Arbitrator,
under Section 3(G)(5) of the
National Highways Act, 1956,
Namakkal District.

2. The Competent Authority,
(NHAI) District Revenue Officer,
Namakkal District.

3. The Project Officer,
The National Highways Authority of India,
Door No.212-3/D3-1, Srinagar Colony,
Narasothipatti, Salem

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 37 (1)(b) of Arbitration and Conciliation Act, 1996, against the award dated 21.04.2017 passed in Arbitration O.P.No.188 of 2013 on the file of Principal District Court, Namakkal.



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For Appellant : Mr.S.Senthil
For R.1 & R.2 : Dr.S.Suriya
Govt. Advocate
For R.3 : Mr.Richard Wilson
for M/s P.Wilson Associates

JUDGMENT

(through Video Conferencing)

Heard Mr.S.Senthil, learned counsel for the appellant and Dr.S.Suriya, learned Government Advocate for the respondents 1 and 2 and Mr.Richard Wilson, learned counsel for the third respondent.

2. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order dated 21.04.2017 passed by the Principal District Judge, Namakkal in Arbitration O.P.No. 188/2013.

3. The appellant, unsatisfied with the determination of compensation awarded by the first respondent, dated 03.06.2008, filed an application under Section 34 of the Arbitration and



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Conciliation Act, 1996 before the learned Principal District Judge, Namakkal in AOP No.188 of 2013. The appellant has raised the following grounds:-

(a) Principles of natural justice have been violated by the first respondent while passing the impugned arbitral award.

(b) The first respondent has failed to consider the documents relied upon by the learned counsel for the appellant while fixing the compensation under the impugned arbitral award,

(c) The Expert Committee Report relied upon by the first respondent, under the impugned award was not served on the appellant.

(d) The lands acquired from the appellant will fetch higher value, if the documents produced by the appellant were duly considered by the first respondent/arbitrator.

(e) The first respondent/arbitrator has failed to award 30% solatium and additional market value @12% from the date of 3A(1)modification to the date of possession and 15% interest for the enhanced compensation under the arbitral award as per the settled law.



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4. The learned Principal District Judge, Namakkal, under the impugned order dated 21.04.2017 in AOP No.188 of 2013, dismissed the application filed under Section 34 of the Arbitration and Conciliation Act, 1996, by the appellant, by rejecting the contentions raised by the appellant.

5. In the case of ***Project Director, National Highways No.45E and 220 National Highways Authority of India vs M.Hakeem and Another*** reported in ***2021 SCC On line SC 473***, the Hon'ble Supreme Court has held recently that the Court, while exercising power under Section 34 of the Arbitration and Conciliation Act, 1996, cannot modify an Arbitral Award even in land acquisition compensation cases under the National Highways Act. When the impugned order dated 21.04.2017 was passed by the learned Principal District Judge, Namakkal, in AOP No.188 of 2013, the aforesaid decision of the Hon'ble Supreme Court was not in place.



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6. The appellant who has lost his lands due to the land acquisition under the National Highways Act, 1956, cannot be made to suffer loss due to improper determination of compensation amount. Such a person must be afforded opportunity to place all the relevant records/ documents to support his case for proper determination of compensation amount.

7. Admittedly, in the case on hand, the first respondent/Arbitrator has relied upon an Experts' Committee Report for determining the compensation amount payable to the appellant towards his lands acquired under the National Highways Act, 1956. However, admittedly, the said Expert Committee Report was not furnished to the appellant. No documentary evidence has been produced by the respondents either before the Court below exercising power under Section 34 of the Arbitration and Conciliation Act, 1996 or before this Court exercising power under Section 37 of the Arbitration and Conciliation Act, 1996 to show that copy of the Expert Committee Report was furnished to the appellant.



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8. The appellant has also contended that no sufficient opportunity was given to him to put forward his contentions before the first respondent/Arbitrator.

9. Since the determination of the compensation amount passed by the first respondent/Arbitrator is based upon the Expert Committee Report, submitted by the Revenue District Officer, Namakkal and since the said Report has not been furnished to the appellant, whose lands have been acquired, this Court is of the considered view that principles of natural justice have been violated by the first respondent/Arbitrator under the impugned arbitral award passed under the National Highways Act.

10. Since principles of natural justice have been violated by the first respondent/Arbitrator under the impugned Arbitral Award, this Court, while exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996, has got the power to set aside the Arbitral Award dated 03.06.2008 passed by the first respondent.



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11. In case of land acquisition arbitral awards under the National Highways Act, 1956, where, there is no scope of enhancement of compensation, the Hon'ble Supreme Court has held that the Arbitral Award cannot be modified. This Court will have to necessarily see as to whether principles of natural justice have been violated by the Arbitrator while fixing the compensation amount for the subject acquisition of land.

12. In the case on hand, since the Expert Committee Report, which is the basis for assessment of land, was not furnished to the appellant by the Arbitrator, it is clear that principles of natural justice have been violated by the first respondent/arbitrator.

13. Therefore, the arbitral award dated 19.07.2013 passed by the first respondent in Na.Ka.No.12250/2009-A.P.No.39 of 2011 has to be necessarily set aside and accordingly, it is set aside.



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14. The impugned order dated 21.04.2017 passed by the Principal District Judge, Namakkal in AOP No.188 of 2013 is to be set aside and accordingly it is set aside.

15. In the result, the appeal is allowed by setting aside the order dated 21.04.2017 passed in Arb.O.P.No.188 of 2013 and the appellant is permitted to initiate fresh arbitration as per the provisions of National Highways Act, 1956 for determination of compensation of his acquired lands. The first respondent shall determine the compensation amount on merits and in accordance with law after affording a fair opportunity to the appellant. No costs.

25.10.2021

sr

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

To

The Principal District Judge,
Namakkal

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ABDUL QUDDHOSE, J.

sr

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