



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2021**

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .Nos.7983, 7984 and 7986 of 2021

WEB COPY

Palanichamy	... Petitioner in W.P.(MD) .No.7983 of 2021
Rajamani	... Petitioner in W.P.(MD) .No.7984 of 2021
Premavathi	... Petitioner in W.P.(MD) .No.7986 of 2021
Vs.	

1.The District Collector and Sole Arbitrator,
(Land Acquisition), Dindigul District ,
Dindigul.

2.The Competent Authority Cum
District Revenue Officer,
National Highways Authority of India,
Dindigul.

3.The Project Director,
National Highway Authority of India,
Dindigul. ... Respondents in all WPs

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in Appeal Nos.02/2020/NH45 (Extn.)/Vakkampatti, 04/2020/NH45(Extn.)/Vakkampatti, and 03/2020/NH45 (Extn.)/ Vakkampatti, dated 11.12.2020 and to quash the same and further directing the first respondent to entertain the appeal and to dispose of the same on merits and in accordance with law, within a stipulated time fixed by this Court.

For Petitioners : Mr.G.Sridharan
(In all W.Ps)

For Respondents : Mr.M.Lingadurai
(In all W.Ps) Government Advocate for R1 and R2

: Mr.Arul Vadivel @ Sekar for R3

COMMON ORDER

The issue involved in all these Writ Petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. The order passed by the first respondent dated 11.12.2020 is the subject matter of challenge in all these writ petitions.



3. The case of the petitioners is that they were the absolute owners of the subject properties, which were acquired under the National Highways Act, 1956. The second respondent conducted the award proceedings and fixed the total compensation payable by virtue of an award dated 10.01.2013. According to the petitioners, they received the compensation on protest, since they were not satisfied with the award passed by the second respondent. It is also stated that the copy of the award was not furnished/served to the petitioners and the petitioners made an application under the Right to Information Act and only thereafter, they received the copy of the award on 21.09.2020.

4. Immediately, on receipt of the copy of the award, the petitioners preferred an application before the first respondent under Section 3G (5) of the National Highways Act, 1956, seeking for enhancement of compensation. These applications were rejected by the first respondent, primarily, on the ground that the petitioners had approached the first respondent with an exorbitant delay of more than seven years and the application therefore, cannot be entertained, since it was not filed within a period of three years, as provided under Article 137 of the Limitation Act, 1963. Aggrieved by the same, these Writ Petitions have been filed before this Court.

5. The learned counsel for the petitioners primarily raised two grounds. The first ground that was raised by the learned counsel for the petitioners is that there is no period of limitation provided under the Act to initiate arbitration proceedings before the first respondent and therefore, the first respondent went wrong in rejecting the application on the ground of limitation. To substantiate this contention, the learned counsel for the petitioners relied upon the judgments of this Court in **K.Jayaraj Vs. The Project Director** reported in **2016 (1) CWC 627** and in **Project Director Vs. Periyasamy** reported in **(2018) 4 MLJ 711**. The next contention that was raised by the learned counsel for the petitioners is that the first respondent does not fall within the definition of a Court and therefore, unless the enactment itself provides for limitation, the provisions of the Limitation Act cannot be pressed into service by the first respondent.

6. Per contra, the learned Government Advocate appearing on behalf of the first and second respondents submitted that the petitioners had approached the first respondent with exorbitant delay and therefore, the claim made by the petitioners was liable to be rejected on that ground alone. It was further submitted that even if the Limitation Act does not apply, the petitioners must have approached the first respondent within a reasonable time and the petitioners cannot be allowed to approach the first respondent as and when they feel like filing an appeal against the award passed by



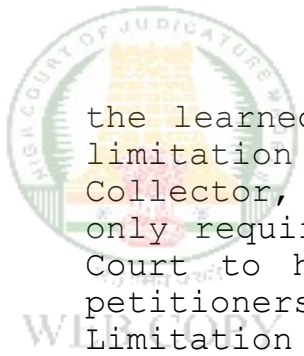
the second respondent.

7. Learned Standing Counsel appearing on behalf of the third respondent also vehemently opposed the claim made by the petitioners. The learned counsel submitted that the petitioners had received the compensation without any demur and some of the other land owners had received the enhanced compensation, after they challenged the award passed by the second respondent. Therefore, the petitioners wanted to take advantage of the same and were waiting for the result of the claim made by the other land owners and thereafter, they approached the first respondent with an exorbitant delay of seven years. Therefore, the learned counsel submitted that the first respondent was perfectly right in rejecting the applications submitted by the petitioners. The learned counsel further submitted that the National Highways Act does not have any provisions that is akin to Section 28A of the Land Acquisition Act, 1894, which gives an opportunity to the land owners to seek for refixation of compensation, based on the enhancement made for the other land owners. As per the scheme of the National Highways Act, the District Collector is given the status of an arbitrator and his order is construed to be an award, which can be challenged only by way of filing a petition under Section 34 of the Arbitration Act, as per Section 3G(6) of the National Highways Act. The learned counsel further submitted that the enhancement of compensation for those land owners, who had filed an application on time, cannot give a cause of action for the petitioners to approach the first respondent, seeking for enhancement of compensation by taking advantage of the said enhancement. The learned counsel concluded his argument by submitting that the order passed by the first respondent should be construed as an award under Section 3G(6) of the National Highways Act and hence, a Writ Petition cannot be maintained before this Court and at the best, the petitioners can only file a petition under Section 34 of the Arbitration Act.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The short issue that arises for consideration in these Writ Petitions is as to whether, the first respondent was right in rejecting the applications filed by the petitioners on the ground of limitation and more particularly, by placing reliance upon the Article 137 of the Limitation Act. The related issue that would also require an answer from this Court is as to whether the rejection order passed by the first respondent can be made a subject matter of challenge in a Writ Petition or whether the petitioners will have to only file a petition under Section 34 of the Arbitration Act.

10. The issue as to whether the Limitation Act will apply for filing an arbitration application before the District Collector is <https://hseervices.eCourts.gov.in/hseervices/Integra> and it is clear from the judgments cited by



the learned counsel for the petitioners that there is no period of limitation for filing an arbitration application before the District Collector, seeking for enhancement of compensation. It therefore, only requires a reiteration of the Division Bench judgment of this Court to hold that the Limitation Act cannot be put against the petitioners. The first respondent has applied Article 137 of the Limitation Act, in order to reject the arbitration applications filed by the petitioners. In the considered view of this Court, the provisions of the Limitation Act will apply only for suits, appeals and applications filed before a Court. The Hon'ble Supreme Court had an occasion to consider the application of the Limitation Act before the Commissioner of HR & CE, who deals with appeals filed under the HR & CE Act. The Hon'ble Supreme Court after dealing with the issue in detail came to a conclusion that the Act will apply only for proceedings before a Court and since the Commissioner cannot be held to be a Court, he will not have the power to condone the delay under Sections 5 of the Limitation Act. Useful reference can be made to the judgment of the Hon'ble Supreme Court in **Ganesan Vs. Commissiner, Tamil Nadu Hindu Regligious and Charitable Endowments Board** reported in **2019 (3) CTC 469**.

11. This Court can draw inspiration from the *ratio decidendi* of the above judgment and it can be safely held that the first respondent does not get the status of a Court while exercising jurisdiction under Section 3G (5) of the National Highways Act and hence, the Limitation Act cannot be applied in those proceedings. Unless the enactment itself provides for limitation, the first respondent was not right in holding that the application is barred by limitation by relying upon Article 137 of the Limitation Act.

12. The next issue that requires an answer is as to whether the Writ Petition can be maintained before this Court against the order passed by the first respondent. A careful reading of the order passed by the first respondent shows that the first respondent has refused to entertain the applications filed by the petitioners. This order does not get the status of an award in order to challenge the same under Section 34 of the Arbitration Act. If the first respondent had gone into the merits of the case and had passed an award, obviously, this Court would not have exercised its jurisdiction under Article 226 of the Constitution of India, in view of the provisions of Section 3G(6) of the National Highways Act. However, the issue involved in the present case is as to whether the first respondent failed to exercise his jurisdiction on the arbitration application filed by the petitioners. The first respondent refused to entertain the application on the ground that it is barred by limitation and this Court has already held that the Limitation Act will not apply for the proceedings before the first respondent. Therefore, the consequence of such a finding is that the first respondent failed to exercise his jurisdiction under Section 3G(5) of the Act and therefore, it requires the interference



of this Court in exercise of its writ jurisdiction.

13. The petitioners have taken a very categorical stand that they were not served with the award passed by the second respondent and they ultimately got it only after they applied under the RTI Act. Therefore some opportunity must be given to the petitioners to seek for enhancement of compensation before the first respondent. After all the petitioners have lost their properties and they will be entitled for payment of a just compensation.

14. In view of the above discussion, this Court has no hesitation to interfere with the impugned rejection order dated 11.12.2020, passed by the first respondent and accordingly, the same is hereby quashed. The first respondent is directed to entertain the applications filed by the petitioners seeking for enhancement of compensation and deal with the same on its own merits and in accordance with law, after affording opportunity to the petitioners and the third respondent. The final orders shall be passed by the first respondent within a period of four months from the date of receipt of a copy of this order.

15. In the result, all these Writ Petitions are allowed with the above directions. No costs.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The District Collector and Sole Arbitrator,
(Land Acquisition), Dindigul District ,
Dindigul.



2.The Competent Authority Cum
District Revenue Officer,
National Highways Authority of India,
Dindigul.

3.The Project Director,
National Highway Authority of India,
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+3 CC to M/s.G.SRIDHARAN, Advocate (SR-19809,19810,19811)

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