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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.1656 of 2022

R.Indira

... Petitioner

Vs

1. The Arbitrator & District Collector,
Thiruvallur District
2. The Project Director,
National Highways Authority of India,
Project Implementation Unit - Chennai,
"Sri Tower", 3rd Floor, DP-34 (SP),
Industrial Estate, Guindy,
Chennai 600 032
3. The Special District Revenue Officer(LA),
NH 205, No.3&4, Lal Bagadthur Sasthiri Street,
Periyakuppam Railway Street,
Near Thulasi Theatre, Thiruvallur - 602 001

... Respondents

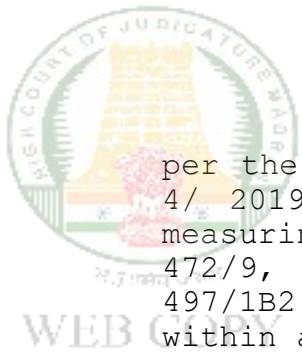
Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the third respondent to pay the petitioner the enhanced compensation as per the proceedings of the first respondent made in Rc.No.26259-4/ 2019/F2/Arbitration dated 31.01.2020 for petitioner's lands measuring an extent of 2140 sq.mtr. situated in S.Nos.472/8, 472/9, 472/10, 473/1B, 484/2A1B, 484/3A1B, 484/4A1B, 484/5A1B, 497/1B2 & 516/4, Pandur Village, Thiruvallur Taluk and District within a time frame as fixed by this Court.

For Petitioner : M/s.M.F.Shabana
For Respondents
For R1 & 3 : Mr.G.Ameedius,
Government Advocate

For R2 : Mr.Su.Srinivasan

ORDER

The writ petition is filed for direction directing the third respondent to pay the petitioner the enhanced compensation as



per the proceedings of the first respondent made in Rc.No.26259-4/ 2019/F2/Arbitration dated 31.01.2020 for petitioner's lands measuring an extent of 2140 sq.mtr. situated in S.Nos.472/8, 472/9, 472/10, 473/1B, 484/2A1B, 484/3A1B, 484/4A1B, 484/5A1B, 497/1B2 & 516/4, Pandur Village, Thiruvallur Taluk and District within a time frame as fixed by this Court.

2. The Competent Authority-cum-Special District Revenue Officer, National Highways i.e., the third respondent herein passed awards and determined the value for the petitioners' lands comprised in S.Nos.472/8, 472/9, 472/10, 473/1B, 484/2A1B, 484/3A1B, 484/4A1B, 484/5A1B, 497/1B2 & 516/4, Pandur Village, Thiruvallur Taluk and District under Section 3G(2) of the National Highways Act, 1956 and also awarded compensation for structural value. On several grounds, the petitioner has filed Arbitration Petition before the Arbitrator/District Collector, Tiruvallur, to enhance the award amount passed by the third respondent. The Arbitrator/District Collector, Tiruvallur passed Arbitration awards, thereby enhanced the compensation to Rs.795/- per sq.ft i.e., Rs.8554/- per sq.mt with an interest at the rate of 9% per annum to be paid for excess amount determined in this order from the date of taking possession viz. under Section 3D(1) of the National Highways Act 1956, till the date of actual deposit. On various dates, the award has been passed and enhanced the compensation. Though the petitioner approached the respondents for disbursement of compensation but of no avail. Therefore, the petitioner sent her representation as per the Arbitration Award passed by the Arbitrator/District Collector but of no avail. Hence, the petitioner approached this Court for mandamus directing the respondents to grant enhanced compensation amount in respect of her properties which were acquired for laying by-pass road for National Highways 205.

3. The very same issues involved in the writ petition have already been dealt with by this Court in WP.No.14766 of 2021, etc. batch dated 16.11.2021, wherein this Court held as follows:

12. For maintainability of the present writ petitions under Article 226 of the Constitution of India to enforce the Arbitral Award, it is relevant to extract the provision under Section 36 of the Arbitration and Conciliation Act 1996, hereunder ;

" 36. Enforcement : (1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.



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(2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing ;

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908) "

13. Accordingly, the Arbitral Award shall be enforced in accordance with the provisions of Civil Procedure Code in the same manner as if it were the decree of the Court. Further, mere filing an application to set aside the Arbitral Award under Section 34 shall not by its render that an order unenforceable, unless the Court grants an order of stay of the operation of the said Arbitral Award. The Hon'ble Supreme Court of India in the case of Bhaven Construction through Authorised Signatory Premjibhai K.Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr. in Civil Appeal No.14665 of 2015 dated 06.01.2021, held that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as "Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part". The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act. Further held that if the Courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished. Thus, it is clear that the



writ petitions are not maintainable to enforce the Arbitral Award when there is a specific alternative remedy provided under Section 36 of the Arbitration and Conciliation Act, 1996.

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14. Insofar as the deposit of enhanced award amount is concerned, it is relevant to extract the provision under Section 3H(5) and (6) of the National Highways Act, 1956, which is as follows ;

"(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine percent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit. "

15. Accordingly, the enhanced amount with interest, if any, shall be deposited by the respondents with the competent authority. In all the writ petitions, after passing an award and determining the compensation, the respondents have paid the compensation to the respective land owners. The Arbitral Award passed by the Arbitration/District Collector, Tiruvallur, enhanced the compensation amount has not been deposited so far and no records were produced to prove the same. As per the provision, the amount determined by the authority shall be deposited with competent authority before taking possession of the land. Accordingly, the petitioners were paid compensation as determined under Section 3G of the National Highways Act. However, aggrieved by the same, the petitioners filed application before the Arbitrator for enhancement of the award and accordingly, the compensation award has been enhanced by the Arbitrator.

4. Accordingly, the writ petition is disposed of with the following directions:

(1) The respondents are directed to deposit the enhanced compensation amount as per the Arbitral Award together with interest at the rate of 9% per annum from the date of taking



possession under Section 3D of the National Highways Act, 1956, with the competent authority within a period of one week from the date of receipt of a copy of this order.

(2) If the respondents failed to obtain any interim order against the arbitral award in the Arbitration Original Petition on the file of the Principal District Court, Tiruvallur within a period of four weeks from the date of receipt of a copy of this order, the competent authority is directed to disburse the compensation amount which was deposited by the respondents forthwith.

There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Arbitrator & District Collector,
Thiruvallur District
2. The Project Director,
National Highways Authority of India,
Project Implementation Unit - Chennai,
"Sri Tower", 3rd Floor, DP-34(SP),
Industrial Estate, Guindy,
Chennai 600 032
3. The Special District Revenue Officer(LA),
NH 205, No.3&4, Lal Bagadthur Sasthiri Street,
Periyakuppam Railway Street,
Near Thulasi Theatre, Thiruvallur - 602 001
4. Copy to :-
The Principal District Court,
Thiruvallur.

WP.No.1656 of 2022

PMK(CO)
CT(02/03/2022)