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W.P.No.33073 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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Kanchana

... 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),
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 : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 3rd respondent to pay the petitioner the enhanced compensation as per the proceedings of the 1st respondent made in Rc.No.22519/2016/F2/Arbitration dated 31.08.2020 for the petitioner's lands measuring to an extent 252 sq.mtr situated in S.Nos.139/6B, Panapakkam Village, Tiruttani Taluk, Thiruvallur District.



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For Petitioner : Mr.M.P.Saravanan

For Respondents : Mrs.Akil Rajendran
Government Advocate for R1
: Mr.Su.Srinivasan
Standing Counsel for R2 & R3

ORDER

In this case, the petitioner was able to get a favourable order from the District Collector/Arbitrator under Section 3(G)5 of the National Highways Act.

2. Even though such an award was passed by the District Collector longtime back, according to the petitioner, no appeal has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') before the Appellate Authority/District Collector. Therefore, in order to enforce the said award i.e. the execution of the same, seeking for writ of mandamus by giving a direction to the 3rd respondent to disburse the amount as per the enhanced award passed by the District Collector/Arbitrator, the present writ petition has been filed.

3. However, Mr.Su.Srinivasan, learned Standing Counsel appearing for respondents 2 and 3 on instruction would submit that, in this case appeal



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has been preferred under Section 34 of the Act and the appeal is pending before the concerned appellate forum.

4. Assuming that the appeal is so far not taken up for hearing, that would not make this petitioner entitle to seek for any mandamus by invoking the extraordinary jurisdiction under Article 226 of the Constitution. The only remedy open to the petitioner to seek for execution of the award passed by the District Collector/Arbitrator is to file necessary petition i.e. Execution Petition before the concerned Court under Section 36 of the Act, where if such an application is filed for execution, the same can be decided and execution can be made by the concerned Court by invoking the provisions of the Civil Procedure Code, he contended.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. As has been rightly pointed out by the learned Standing Counsel appearing for the respondents 2 and 3, the Courts have already taken a view



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that, as against the order/award passed by the District Collector/Arbitrator under Section 3G(5) of the National Highways Act, if appeal is not filed or even appeal is filed after expiry of the appeal time to be filed under Section 34 of the Act, execution petition can be moved by the person, who received an award in his/her favour only under Section 36 of the Act and for the said purpose Article 226 cannot be invoked, therefore the writ petition may not be entertained at this juncture.

7. Since that view has already been taken in some of the decisions which have been quoted by the learned Standing Counsel for the respondents, this Court is of the considered view that, the relief sought for by the petitioner in this writ petition cannot be granted, hence this writ petition is rejected with the liberty to the petitioner to file necessary petition under Section 36 of the Act within a period of two weeks from the date of receipt of a copy of this order.

8. If such petition is filed under Section 36 of the Act as indicated above within a time frame, it is open to the concerned Court to take up the same and expedite the hearing for the execution. Unless any such order is



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passed by the appellate forum in the appeal filed under Section 34 of the Act as expeditiously as possible even though the petitioner having secured an order from the Arbitrator/District Collector in her favour is not able to get their fruits. It is also for the concerned Court to consider the appeal already filed, by the 2nd respondent as claimed by the learned Standing Counsel and decide the same on merits and in accordance with law at the earliest.

9. With these observations, this Writ Petition is disposed of. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Sgl

To

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R. SURESH KUMAR, J.

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