



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1734 of 2013

The Union of India,
Ministry of Shipping Road,
Transport and National Highways,
New Delhi. Though its
The Project Director,
National Highways Authority of India
National Highways No.7-MKm88.00 to 128.000,
Kovilpatti Taluk, Tuticorin District.
Tamil Nadu Having their office at
The Project Director,
National Highways Authority of India,
83/1, SBI 1st Colony Extn., Bye pass Road,
Madurai-625 016.

... Appellant/2nd Respondent
Vs.

- 1.J.Ayyanar
- 2.K.Gandhi
- 3.K.Avudaiappan
- 4.S.Muthukrishnan
- 5.S.Mariappan
- 6.A.Kaandhaiya ... Respondents 1 to 6/Petitioners 1 to 6
- 7.The Arbitrator cum District Collector,
Thoothukudi District. ... Respondent No.7/Respondent No.1
- 8.The Competent Authority, (Land Acquisition)
cum District Revenue Officer,
National Highways-7,
Thoothukudi District. ... Respondent No.8/Respondent No.3

PRAYER: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, to set aside the judgment and decree dated 31.10.2012 made in AR.O.P.No.339 of 2009 on the file of the learned Principal District Judge, Thoothukudi.

For Appellants: M/s.L.Victoriya Gowri
Assistant Solicitor General
For R1 to R6 : Mr.N.Sankar Ganesh
For R7 & R8 : Mr.D.Gandhiraj
Special Government Pleader



JUDGMENT

[Judgement of the Court was delivered by **R.SUBRAMANIAN, J.**]

This appeal is filed by the National Highways Authority of India modifying the award of the Arbitrator in an application under Section 34 of the Arbitration and Conciliation Act, 1996.

2.The brief facts which are necessary for disposal of this appeal are as follows.

3.The lands belonging to the respondents were acquired by the National Highways Authority of India for widening and four laning of NH-7. A Preliminary notifications were published in the year 2005. The lands were taken over by the National Highways. Thereafter, the competent authority viz., the Special District Revenue Officer, Virudhunagar, passed an award on 29.12.2006 granting a sum of Rs.6.30 per Sq.mtr. In the award, the competent authority would refer to the proceedings dated 06.12.2006 under which he had fixed the valuation. The proceedings, dated 06.12.2006 is not one rendered under Section 3G of the National Highways Act. The National Highways Act requires the competent authority to fix the valuation of the land taking into account certain factors that are enumerated under sub-Section(7) of Section 3G of the Act.

4.A perusal of the award of the competent authority shows that such exercise was not carried out. The land owners, dissatisfied with the award, sought for arbitration, under Section 3G(5) of the National Highways Act. The District Collector, who was appointed as an Arbitrator, confirmed the valuation made by the competent authority by his order dated 11.06.2008. This award was sought to be set aside in an application under Section 34 of the Arbitration and Conciliation Act, 1996, filed before the Principal District Judge, Thoothukudi. The learned Principal District Judge, Thoothukudi, enhanced the compensation to Rs.200 per Sq.mtr., on the basis of certain sale deeds that have been produced by the land owners before him. It is this order of the learned Principal District Judge passed under Section 34 of the Act, which is subject matter of the challenge.

5.The learned Additional Solicitor General appearing for the National Highways Authority of India would submit that the order of the learned District Judge, modifying the award will have to be set aside, in view of the judgment of the Hon'ble Supreme Court in the case of **The Project Director, National Highways No.45 E And 220 National Highways Authority of India -vs- M.Hakeem and Anr.**, rendered in Civil Appeal No.2762 of 2021. In the said judgment, the Hon'ble Supreme Court held that in an application under Section 34, the Court has no power to modify the award. The Hon'ble Supreme Court held that it is open to the Court either to set aside the



award or to confirm it in toto.

6.The learned counsel appearing for the respondents/land owners is unable to counter the arguments of the learned Additional Solicitor General, in view of the proposition of law laid down in *Hakeem's case* referred to supra. Hence, this appeal will have to be allowed by setting aside the order of the learned District Judge modifying the award and the proceedings will have to be remanded to the Arbitrator for reconsideration.

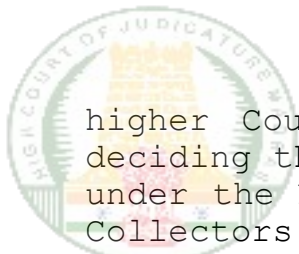
7.A perusal of the award shows that the District Collector, who was appointed as an Arbitrator, has not followed mandate of sub-Section(7) of Section 3G of the National Highways Act.

8.Sub-Section(7) of Section 3G of the National Highways Act, is as follows:

"(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration
(a)the market value of the land on the date of publication of the notification under section 3A;
(b)the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
(c)the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
(d)if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.]

9.Sub-Section(7) of Section 3G of the Act, mandates the arbitrator to take into consideration the above aspects enumerated under sub-Section(7), while determining the value of the land. A perusal of the award of the Arbitrator in the case on hand, clearly shows that he has not done anything that is required of him under sub-Section(7) of Section 3G of the Act. Except referring to the sale deed and saying that the award is proper, there is no consideration of the materials that were placed before him. Therefore, the appeal is allowed and the order of the District Court under Section 34 of the Arbitration and Conciliation Act, 1996 is set aside. The matter is remitted back to the Arbitrator for fixing the value afresh in terms of sub-Section 7 of Section 3G of the Act.

10.Before parting with the case, we wish to add that the Arbitrators, who have been nominated by the Central Government viz., the District Collectors, are expected to follow the decision of the



higher Courts viz., the High Court and the Supreme Court, while deciding the compensation payable to the owners of the land acquired under the National Highways Act. It is often seen that the District Collectors do not devote the required attention and awards are being passed mechanically without advertng to the relevant provisions of the law. In fact, in **Special Tashildar (LA)-vs- Rathinareddi**, reported in **2003(2) LW 267**, a Division Bench of this Court had held that the land owners would be entitled to have the highest value for the lands acquired by the Government. The Division Bench had followed the judgment of the Hon'ble Supreme Court in **Rane of Vuyyur -vs- Collector of Madras** reported in **1969(1) MLJ(SC) 45**.

11.We find that both the appropriate authority and the District Collectors award only the lower value in a mechanical manner without advertng to the requirements of law. In the case on hand itself, it is seen that a sale deed dated 06.06.2001 has been produced wherein an extent of 26 cents was sold for Rs.5,200/- @ Rs.200/- per cent. The appropriate authority under Section 47(A) of the Indian Stamp Act, felt that the valuation is low and upon reference the consideration was refixed at Rs.1,42,703/- ie., at Rs.5,488/- per cent. This being the valuation adopted by the Registration Department of the State Government, no doubt can be entertained upon such valuation. Therefore, the Arbitrator is required to take into account the sale deed and the valuation reflected therein and decide the appropriate compensation. The Arbitrator shall also follow the provisions of Section 3G(7) of the National Highways Act, in determining the compensation. The Arbitrator shall pass an award within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

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 Principal District Judge,
Thoothukudi.
- 2.The Arbitrator cum District Collector,
Thoothukudi District.
- 3.The Competent Authority, (Land Acquisition)
cum District Revenue Officer,
National Highways-7,
Thoothukudi District.

Copy to
The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.SPL GP (SR-7493[F] dated 21/02/2022)

+1 CC to M/s.N.SANKAR GANESH, Advocate (SR-7827[F] dated 22/02/2022)

JUDGMENT MADE IN
C.M.A(MD)No.1734 of 2013
18.02.2022

svs (CO)
TR(25.03.2022) 5P 8C