



WEB COPY



kC.M.P.No.991 of 2023
in
C.M.A.Sr.No.95048 of 2019

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

The petition in CMP.No.27655 of 2019 seeking to condone the delay in filing this appeal was only listed before a single Judge, overlooking the fact that the appeal itself is valued at Rs.64,56,538/-.

The learned Judge on 13.02.2020 passed the following order:-

"This Civil Miscellaneous Petition is filed to condone the delay of 1113 days in filing the above Civil Miscellaneous Appeal.

2.Though, this petition is liable to be dismissed on the ground of laches, as the petitioner herein is National Highways Authority of India (NHAI), this Court is of the view that, they should be given a chance to defend their case. As the merits of the case cannot be thrown out on the ground of laches, this Civil Miscellaneous Petition is ordered, as prayed for, subject to the condition that the Petitioner / Appellant deposits the entire amount ordered in the Arbitration O.P.No.1 of 2013 to the credit of the 1st Respondent / District Collector cum Arbitrator (LA-NH7), Dharmapuri, within a period of four weeks from today, who in turn, shall deposit the same in a Fixed Deposit Scheme in



the Tamil Nadu State Apex Co-operative Bank (TNSC Bank), Chennai, initially for a period of one year, renewable thereafter, periodically.

3.Registry is directed to number the Civil Miscellaneous Appeal, if it is otherwise in order and list the same for admission in the first week of March 2020.

4.If the amount is not deposited within the time stipulated, this Miscellaneous Petition will stand dismissed automatically, without further reference to this Court."

2.Mr.Su.Srinivasan, learned counsel appearing for the National Highways Authority of India would submit that the conditional order has been complied with. The factum of compliance could not be brought to the notice of this Court, in view of the pandemic that broke out immediately thereafter and as a result, this Court had recorded that the petition in CMP.No.27655 of 2019 stood dismissed. On discovery of the dismissal, the present petition in CMP.No.991 of 2023 has been filed seeking to condone the delay in seeking restoration of the CMP.No.27655 of 2019.

3.Mr.K.Chandrasekaran, learned counsel for the respondents / land owners would contend that the conditional order dated 13.02.2020 has



WEB COPY

not been properly complied with in as much as the interest awarded has not been paid.

4.A perusal of the judgment and decree of the Trial Court namely, in Arbitration O.P.No.1 of 2013 does not show that there was an order for payment of interest. A perusal of the papers filed in this case shows the manner in which the provisions for land acquisition inserted in the National Highways Amendment Act, 1997 are being abused / misused by the authorities concerned. Land belonging to the petitioner situated in the close proximity of the National Highways between Salem and Dharmapuri, which are two important towns in Tamil Nadu. The lands acquired for the purposes of widening of the National Highway in the year 2012.

5.The Land Acquisition Officer, who was exercising the constitutional function of determining the compensation payable for the land acquired, where a right guaranteed under 300-A was sought to be taken away, fixed a phenomenal sum of Rs.50,000/- per acre, which is just about Rs.1/- Sq.ft. for the lands that were acquired. Aggrieved by such wonderful grant made by the Land Acquisition Officer, who had the



wisdom to fix the value at about Rs.1/- per Sq.ft. in 2012, the land owners approached the so called Arbitrator appointed under Section 3(a) of the National Highways Act.

6.Of course, the Hon'ble Supreme Court in *Project Director, National Highways Authority of India Vs. M.Hakeem* expressed its reservations regarding the appointment of District Collectors as Arbitrators under the provisions of the National Highway Act. To our surprise, the District Collector passed an order on 06.10.2012, which shows total non-application of mind as well as ignorance of the provisions of law.

7.For the sake of clarity and to avoid any dilution of the facts, we re-produce the order of the District Collector passed in the Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 here under:-

"In the Award Proceedings first cited, the C.A(LA-NH7) and District Revenue Officer, Dharmapuri has awarded the compensation for the lands belong to Tmt.Kaliammal as detailed below:



WEB COPY

"Name of Village : Baisuhalli

Survey No. : 243/1A2 246/1B
Extent acquired : 45 Sq.mt. 541 Sq.mt.

Compensation awarded : 50000/- Per Acre

i) Land Value : 556 119730

ii) Structures value : -- 251328

iii) Tree value : -- 15500

iv) Well value : -- 26593

v) Add 10% Addl. value : 56 41315

Total : Rs.612 454466

2) Aggrieved by this Award, the land owner has preferred an appeal petition to the Collector-cum-Arbitrator, Dharmapuri on 8.1.08 as per the provisions contained in the National Highways Act, 1956 under Section 3 (G)(5)(6) and praying for enhancement of compensation read with Arbitration and Conciliation Act, 1996.

3) The petitioner Tmt. Kalliammal was asked to appear for Arbitration Enquiry on 24.09.2012 before the Collector-cum-Arbitrator, Collector Office Dharmapuri. She has



WEB COPY



appeared for enquiry and given statement that the land value may be fixed at Rs.300/- per sq.ft.

4) The petitioners request was examined in detail connected records. As per Section.3(G)(7) of the N.H.Act 1956, the L.A.O. has awarded compensation based on the sale deed No.1736 dated 05.10.2005. The rate per acre works out to Rs.50000. The data land for fixing the land value selected by him is within the radius of 1.6 K.M. from the acquired land. The sales statistics has been gathered by him for a period of one year prior to the date of publication of 3.A(1) Notification published in the Government of India Gazette on 05.10.06. The reasons for discarding the other sales in the Sales Statistics are within the rules in force.

5) The petitioner's request for the enhancement of compensation based on the market rate Rs.300/- Per sq.ft. prevailed in the area at the time of passing the Award by the LAO is untenable and cannot be accepted. Moreover she has produced the document evidence in support of her claim. Therefore, her appeal petition is rejected."

8.As against the award passed under Section 34 of the Conciliation Act, the land owners preferred an appeal under Section 37. The learned District Judge rightly interfered and fixed the valuation of the land at Rs.100/- per square feet. Unfortunately, the learned District Judge also



WEB.COM

fell in error and did not make any further grant regarding interest or any other statutory benefit that would be available to the land owners under the National Highway Act, 1956. It is against this order of the District Judge made in an appeal under Section 37, which was again numbered as an Arbitration Original Petition, the National Highways Authority of India is before us.

9.In this backdrop, we will have to now examine what would be the further course of action, which would be in the beneficial of the land owners, who have been deceived by the authority namely, National Highways Authority and deprived of reasonable compensation for the lands that were acquired from them for the past 11 years.

10.Let us now considered the petition that is before us. C.M.P.No.991 of 2023 is a petition to condone the delay in seeking restoration of CMA.Sr.No.95048 of 2019. It is actually a petition for seeking restoration of CMP.No.27655 of 2019, which automatically stood dismissed, in view of the fact that the alleged compliance with the conditional order dated 13.02.2020 was not brought to the notice of this Court.



WEB COPY



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

KKN

11. Accepting the reasons assigned in the affidavit filed in support of the petition, we condone the delay in seeking to restore the petition in CMP.No.27655 of 2019.

12. The petition to restore CMP.No.27655 of 2019 has been filed in CMP.Sr.No.181 of 2023(CMP.No.25462 of 2023), the said petition is also allowed. Registry is directed to number the same.

(R.S.M., J.) (N.S., J.)
06.11.2023

kkn

C.M.P.No.991 of 2023
in
C.M.A.Sr.No.95048 of 2019