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C.M.A.No.2763 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.2763 of 2023

and

C.M.P.No.25465 of 2023

NHAI (National Highways Authority of India),
By its Project Director, PIU,
Salem-4.

...Appellant

Vs.

- 1.District Collector Cum Arbitrator (LA-NH7),
Dharmapuri.
- 2.The Special District Revenue Officer CA (LA-NH7),
Dharmapuri.
- 3.Special Thasildar Phase 2 (LA-NH7),
Dharmapuri.

Kaliammal (Died)

4.Devagi

5.Sanjeevi

6.Savithri

7.Nagarajan

8.Kamala

9.Madesh

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10.Jayanthi

11.Jayapraesh

12.Murugesan

...Respondents

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Prayer: Civil Miscellaneous Appeal filed under Section 37(1) & (2) of Arbitration & Conciliation Act, 1996, against the order and executable order made in Arbitration O.P.No.1 of 2013 on the file of the Principal District Judge, Dharmapuri dated 05.03.2016.

For Appellant: Mr.SU.Srinivasan

For Respondents: Mr.R.Siddharth, Government Advocate
for R1 to R3

Ms.G.Ranjani
for Mr.K.Thiruvengadam for R4 to R6

Mr.K.Chandrasekaran for R7

R8 to R12 – No appearance

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

This Civil Miscellaneous Appeal has been filed by the National Highway Authority of India (NHAI) challenging the order passed by the Principal District Judge, Dharmapuri in an application under Section 34 of the Arbitration and Conciliation Act, 1996.



The facts that led to this appeal are as follows:-

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2. The land measuring an extent of 5455 sq.m in S.No.246/1B and 246/3 of Baisuhalli Village in Dharmapuri District was acquired for extension of National Highways No.7. Since the land owners were not satisfied with the award of the land acquisition officer, who granted a princely sum of Rs.22.13 per sq.m., they sought for arbitration and the matter was referred to the District Collector, Dharmapuri for arbitration. The District Collector, Dharmapuri passed an order dismissing the claim. Treating the said cryptic order of the District Collector as an award under the Arbitration and Conciliation Act, 1996, the land owners moved the Principal District Judge, Dharmapuri under Section 34 of the Arbitration and Conciliation Act, 1996. The Principal District Judge, Dharmapuri conducted the proceedings as if it is appeal against the order fixing compensation, entertained evidence and re-fixed the value of the land at Rs.100/- per sq.ft. Aggrieved, the National Highways Authority of India is before us by way of this Civil Miscellaneous Appeal under Section 37 of the Arbitration and Conciliation Act, 1996.



3. We have heard Mr.Su.Srinivasan, learned counsel appearing for the National Highways Authority of India / appellant, Mr.K.Chandrasekaran, learned counsel appearing for the land owner/ 7th respondent, Mr.R.Siddharth, learned counsel appearing for the District Collector,Dharmapuri / Arbitrator, and Ms.Ranjani, learned counsel appearing for the respondents 4 to 6. The other respondents though served are not appearing either in person or through counsel.

4. Mr.SU.Srinivasan, learned counsel appearing for the National Highways Authority of India would submit that the modification of the award made by the District Court is beyond the jurisdiction of the District Court under Section 34 of the Arbitration and Conciliation Act, 1996. The learned counsel would heavily rely upon the judgment of the Hon'ble Supreme Court in *Project Director, National Highways Authority Vs. Hakkim* reported in *2021 (9) SCC 1*, wherein, the Hon'ble Supreme Court had pointed out that a Court sitting under Section 34 of the Arbitration and Conciliation Act cannot modify the award, it can either set aside the award or can remit the matter to the Arbitrator, if the circumstances mentioned under sub-Sections 4 and 5 of Section 34 are available in the case on hand. The learned counsel would draw our attention to paragraph 48, where the

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Hon'ble Supreme Court pointed out that the parliament very clearly intended that no power of modification of an award exists under Section 34 of the Arbitration and Conciliation Act, 1996. We find that it will be useful to extract the said paragraph which reads as follows:-

48. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over.

5. In the light of what has been stated in **Project Director, National Highways Authority Vs. Hakkim reported in 2021 (9) SCC 1** and re-affirmed in **M/s. Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others reported in 2023 (5) CTC 79**, this appeal has to be straight away allowed setting aside the order of the learned District Judge.



6. But, the controversy does not end there. We feel compelled to point out that this case is a classic example of exploitation of the citizens by the State. The lands were acquired in 2005. The land acquisition officer awarded a sum of Rs.22.13/- per sq.m. equal to around Rs.2.20/- per sq.ft of land. The District Collector who has been appointed as the Arbitrator, by the Central Government, which boasts itself of being a welfare Government, passed the following order which throws to wind all principles of law and the scope of the very arbitration proceedings. We deem it fit to extract the entire order of the District Collector, just to demonstrate how the National Highways Authority of India has taken advantage of ignorance and gullibility of the District Collector in passing an award. The order of the District Collector reads as follows:-

"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:

<i>"Name of Village</i>	<i>:</i>	<i>Baisuhalli</i>
<i>Survey No.</i>	<i>:</i>	<i>243/1A2 246/1B</i>
<i>Extent acquired</i>	<i>:</i>	<i>45 Sq.mt. 541 Sq.mt.</i>
<i>Compensation awarded</i>	<i>:</i>	<i>50000/- Per Acre</i>
<i>i) Land Value</i>	<i>:</i>	<i>556 119730</i>



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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.Kaliammal was asked to appear for Arbitration Enquiry on 24.09.2012 before the Collector-cum-Arbitrator, Collector Office Dharmapuri. She has 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



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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 not produced the document evidence in support of her claim. Therefore, her appeal petition is rejected."

7. A reading of this order shows that the District Collector of Dharmapuri at the relevant point of time i.e., on 06.10.2012 had not even read the provisions of the Arbitration Act before venturing to decide on the valuable rights of compensation assured under Article 300A of the Constitution of India. A very valuable constitutional right vested in a citizen has been completely flouted and violated by the District Collector while she passed the order on 06.10.2012. We are 100% sure that this order cannot stand even a millisecond of judicial scrutiny at the hands of the District Court. Unfortunately for the land owners, the law as it stands today does not permit the Court exercising jurisdiction under Section 34 of the



Arbitration and Conciliation Act 1996 to modify the award. Therefore we are forced to interfere with the order of the District Court modifying this order of the District Collector purely on the legal ground.

8. We are sure that what we are doing is morally incorrect, still we have to follow the judgment of the Hon'ble Supreme Court, since it is binding on us. Judicial discipline requires us to follow the judgment of the Hon'ble Supreme Court, even though we honestly feel that what we are doing is ultimate injustice to the land owners.

9. We therefore **allow** the appeal and set aside the order of the District Court and also set aside the award of the District Collector. It will be open to the land owners to seek fresh reference and if the land owners seek fresh reference, the National Highways Authority of India will make a reference to the present District Collector, Dharmapuri, within a period of two weeks from the date of receipt of the reference. We direct the District Collector to whom the reference is to be made to decide on the compensation as per the provisions of the National Highways Act read with the Arbitration and Conciliation Act, 1996. We are sure that the District Collect will follow the principles of determining the compensation as enumerated under the Land

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Acquisition Act, 1894, while deciding the compensation, since the acquisition is of the year 2005. We expect the District Collector not to follow the foot prints of the predecessor, who passed a wholly unreasoned order after four years from the date of receipt of the proceedings. Once the reference is made, the District Collector shall dispose of the reference within a period of eight (8) months from the date of receipt of the reference, after giving due opportunity to the parties. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
15.12.2023

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Index :No
Internet :Yes
Neutral Citation :No
Speaking order

To

The Principal District Judge,
Dharmapuri.



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