



C.M.A.No.607 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY JUDGMENT RESERVED ON : 20.04.2023

JUDGMENT PRONOUNCED ON : 07.07.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.607 of 2023

P.K.Pounraj

...Appellant
vs.

1.The District Collector,
Dharmapuri – 5.

2.The District Revenue Officer/
Competent Authority (LA-NH),
Collectorate Campus,
Dharmapuri.

3.The Special Tahsildhar (LA),
National Highways, No.7, NHAI,
Collectorate,
Dharmapuri -5.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 37 of the Arbitration and Conciliation Act, praying to set aside the fair order and decreetal order dated 18.04.2016 passed by the learned Principal District Judge, Dharmapuri in Arbitration O.P.No.13 of 2013 thereby consequently grant enhanced compensation at the rate of Rs.500/- per sq. mtr.



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For Appellant : Ms.Gopika Nambiyar for
Mr.Prashanth Rajagopal

For Respondents : Mr.C.Jayaprakash,
Government Advocate

* * * * *

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant to set aside the fair and decreetal order dated 18.04.2016 passed by the learned Principal District Judge, Dharmapuri in Arbitration O.P.No.13 of 2013 thereby consequently grant enhanced compensation at the rate of Rs.500/- per sq. mtr.

2.The summary of the facts leading to the above appeal are as follows:

The appellant is the owner of the land comprised in survey Nos.148/7B1, 148/3A and 148/2A1 Nallanahalli Village, Dharmapuri Taluk and District. On 05.10.2006, a notice for acquisition for formation of 4 laning of National Highways Krishnagiri to Thoppur Ghat in Nallanahalli Village, Dharmapuri Taluk and District was issued by the respondent under



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Section 3A of the National Highways Act. On 12.03.2007, Public notification under Section 3 (D) of the National Highways Act was issued.

Thereafter on 08.05.2007, notice under Section 3 (G) of the National Highways Act for fixation of compensation was issued fixing the public hearing on 22.05.2007 & 23.05.2007 before the 2nd respondent herein. After hearing the appellant and other persons, the 2nd respondent passed an order in ROC No.27556/06/U1 dated 20.11.2007 fixing the value at the rate of around Rs.15/- per sq.mtr. Aggrieved by the same, the appellant preferred an appeal before the first respondent under Section 3 (G) 5 of the National Highways Act on 23.01.2008. The first respondent by order dated 04.11.2012 confirmed the order of the 2nd respondent. Thereafter appellant herein preferred a petition under Section 34(2) of the Arbitration and Conciliation Act 1996 on 17.12.2013 before the Principal District Court, Dharmapuri in Arbitration O.P.No.12 of 2013, claiming enhanced compensation of Rs.500/- per sq.mtr. The learned Judge dismissed the said O.P. Hence the present appeal.



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3. Though several grounds were raised in the grounds of appeal, the learned counsel appearing for the appellant restricted her arguments to the following three points:

The learned counsel for the appellant submitted that the appellant was entitled to solatium and interest on the market value. The learned counsel in support of the said contention relied on the Judgment of the Hon'ble Supreme Court in the case of *Union of India and another Vs. Tarsem Sigh and Others* reported in *(2019) 9 SCC 304*. The learned counsel further submitted that the learned District Judge in the Arbitration O.P. had failed to note that the assessment of the market value by the competent authority, as also the Arbitrator was perverse, as the documents relied on by the appellant were not considered. The learned counsel further submitted that the learned District Judge erred in its finding that the appellant had not produced any document in respect of the market value claimed by him. The learned counsel further submitted that though an objection was raised in the grounds of appeal before the learned District Judge that there was a violation of Section 3(G) 7(a) of the National Highways Act, in that, that the competent



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authority fixed the market value on the basis of a sale deed dated 19.12.2006, which was effected long after the 3 (A) notification dated 05.10.2006, the learned District Judge failed to consider the same. The learned counsel therefore submitted that in the absence of a finding that no documents were available in or about the date of acquisition, the competent authority ought not to have relied on the sale deed dated 19.12.2006, that too, for the purpose of fixing the market value at the lowest rate. On these grounds the learned counsel submitted that the appeal may be allowed.

4.The learned counsel relied on the following judgments in support of her case:

***1.The Union of India, Ministry of Shipping
Road, Transport and National Highways, New Delhi
Vs. J.Auumar and others in C.M.A.(MD).No.1734 of
2013 dated 18.02.2022;***

***2.Etti Gounder Vs. District Collector Namakkal
District reported in 2021 SCC Online Mad 15492 :
(2021) 6 CTC 618;***



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***3.Union of India and Another Vs. Tarsem Singh
and Others reported in (2019) 9 SCC 304;***

***4.The Project Director (LA), NH-68, NHAI,
Salem Vs. T.Palanisamy and others in C.M.A.No.3035
of 2019 dated 22.04.2022; and***

***5.Andal and Others Vs. Avinav Kannan and
another reported in 2019 (1) TNMAC 54 (DB).***

5.The learned counsel for the respondent on the other hand submitted that the fair and decretal order of the lower Court was unassailable as the lower Court had given cogent reasons for rejecting the petition filed by the appellant. The learned counsel therefore submitted that there were absolutely no merits in the appeal and the same deserved to be dismissed.

6.I have heard both the learned counsels, have perused the materials on record and also the Judgments relied on by the learned counsel for the appellant.



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7. On the first point raised by the learned counsel as regard the entitlement of the appellant to solatium and interest on the market value of the acquired lands, I am of the view that the same is covered by the Judgment of the Hon'ble Supreme Court in the case of ***Union of India and another Vs. Tarsem Singh and Others*** reported in ***(2019) 9 SCC 304***. The Hon'ble Supreme Court in the said Judgment held as follows:

*“We therefore declare that the provisions of the **Land Acquisition Act** relating to solatium and interest contained in **Section 23(1A)** and (2) and interest payable in terms of **section 28** proviso will apply to acquisitions made under the **National Highways Act**. Consequently, the provision of **Section 3J** is, to this extent, violative of **Article 14** of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ **SLP (C) No. 9599/2019** is dismissed.”*

In the light of the said Judgment of the Hon'ble Supreme Court it is held that



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the appellant shall be entitled to solatium and interest on the market value of the acquired lands. Though the learned counsel relied on other judgments in support of the aforesaid contention, as the other judgments followed the law laid down by the above Supreme Court Judgment, the same are not discussed in detail.

8.On the second point raised, it is seen that the Arbitrator did not refer to the appellant's documents nor did he consider the several grounds raised by the appellant in the appeal. The learned District Judge confirmed the order of the Arbitrator on the ground that the appellant had failed to produce any documents to prove the market value of Rs.500/- per Sq.mtr. claimed by the appellant. It is seen that in paragraph No.6 of the very same Judgment the learned District Judge referred to two sale deeds of the appellant and rejected the same on the ground that the documents were filed after the notification. In my view the said reason itself is perverse, because the documents were much prior to the Section 3 (A) notification dated 05.10.2006. Document No.1 filed by the claimant was a sale deed dated 01.06.2006 and Document No.2 was dated 28.08.2006. In my view, the



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learned District Judge was not justified in rejecting the above said two documents, that too, on untenable grounds. Therefore the second point is answered in favour of the appellant.

9.On the third point as to the violation of Section 3(G) 7(a) of the National Highways Act, it is seen that the competent authority relied on the sale deed dated 19.12.2006 registered as Document No.55 of 2006 for arriving at a market value of the acquired lands at Rs.62,000/-.

10.Sub-Section(7) of Section 3G of the National Highways Act, reads 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



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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.]”

11.Sub-Section(7) of Section 3G of the Act, mandates that the market value of the lands as on the date of the publication of the notification under 3 (A) has to be taken into consideration. In the present case, the competent authority took sale statistics for the period from 05.10.2005 to 04.10.2006 i.e. one year prior to the date of publication of Section 3 (A) notification The competent authority found that 73 sales took place in the said village during



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the relevant period. The competent authority rejected 72 sales on various grounds like the lands covered by the sales were far away, the lands were sold as house sites, the lands were not similar and that the lands covered were sold for commercial purpose. The competent authority therefore selected S.I.No.23 of the data sales which related to land in Survey No.24/4 to an extent of 0.75 acres which was sold under Document No.55/06 dated 19.12.2006 for a sale consideration of Rs.46,500/-. The competent authority on the basis of the said document fixed the market value for the acquired lands for Rs.62,000/- per acre. It is seen that the said document was more than two months after the 3 (A) notification and it is not known as how it could have been included in the sales statistics for the period from 05.10.2005 to 04.10.2006. It is not clear as to on what basis the said document was relied on by the competent authority. Therefore the learned appellant's counsel's submission that it was adopted only for the purpose of fixing the lowest market value for the acquired lands cannot be ignored. Further as rightly contended by the appellant's counsel when other documents, particularly the appellant's own documents under which the appellant got title to the acquired lands were available, the respondent ought



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not to have relied on the SI.No.23, (i.e.) Sale Deed dated 19.12.2006, that too, for fixing a lower market value. The learned counsel is therefore justified in contending that the award of the Competent Authority which was confirmed by the Arbitrator and the learned District Judge is against Section 3 G (7) (a) of the National Highways Act. Though the above objections among several other grounds were raised before the Arbitrator, the Arbitrator without even referring to those objections confirmed the award of the Competent Authority. In my view therefore the learned District Judge should have held that the award of the Arbitrator was perverse as there was total non-application of mind on the grounds of objection raised by the appellant before it and further the Arbitrator had failed to follow the mandate of Section 3 (G) 7 (a) of the National Highways Act. I am therefore of the view that the contention of the learned counsel for the appellant on the third issue is justified and sustainable. The reliance by the learned counsel for the appellant on the Division Bench Judgment in C.M.A.(MD).No.1734 of 2013 dated 18.02.2022 fortifies the view taken by me. The relevant para reads as follows:

“9.Sub-Section(7) of Section 3G of the Act,



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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.”

12.For the aforesaid reasons, the fair order and decree of the learned District Judge in Arb.O.P.No.13 of 2013 dated 18.04.2016 is set aside, as I



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have found on the above issues that the award of the competent authority as confirmed by the Arbitrator is perverse, the matter is remitted back to the Arbitrator for fixing the market value of the acquired lands afresh by strictly following Section 3(G) 7(a) of the National Highways Act. It is also made clear that the Arbitrator shall give fresh opportunity to the appellant and then pass orders. It is further directed that while passing the award the Arbitrator shall award the solatium and interest by following the Judgment of the Hon'ble Supreme Court in the case of *Union of India and another Vs. Tarsem Sigh and Others* reported in (2019) 9 SCC 304.

13. Accordingly, this Civil Miscellaneous Appeal is allowed with the above said directions. There shall be no order as to costs.

07.07.2023

Index : yes
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To



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N.MALA, J.

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PRE-DELIVERY JUDGMENT IN
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