



C.R.P.(MD).Nos.1898 and 1899 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	31.08.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.1898 and 1899 of 2023
and
C.M.P.(MD) Nos.9500, 9502 of 2023

1.A.Mohankumar ...Petitioner in C.R.P.(MD)No.1898 of 2023
2. Santhi ...Petitioner in C.R.P.(MD) No.1899 of 2023

-Vs-

1. The National Highways Authority of India
Represented by its Project Director
PIU-Nagercoil,
at No.395/3-1, M.S Road, Majestic colony,
Near Ayyapan Kovil, Parvathipuram
Nagercoil – 629 003.
2. The Arbitrator/District Collector
Kanyakumari District.
3. The Special District Revenue Officer (LA-NH),

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Tirunelveli,
Nagercoil.

...Respondents in both the C.R.Ps.

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Prayer in C.R.P(MD).No.1898 of 2023: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order made in Ar.O.P.No.302 of 2022 dated 09.02.2023 on the file of Learned Principal District Judge, Kanniyakumari at Nagercoil and remand the above Ar.O.P.No.302 of 2022 to the Learned Principal District Judge for fresh consideration on the objection petition filed by the petitioner on merits and in accordance with law, and allow this civil revision petition.

Prayer in C.R.P(MD).No.1899 of 2023: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order made in Ar.O.P.No.316 of 2022 dated 09.02.2023 on the file of Learned Principal District Judge, Kanniyakumari at Nagercoil and remand the above Ar.O.P.No.316 of 2022 to the learned Principal District Judge for fresh consideration on the objection petition filed by the petitioner on merits and in accordance with law, and allow the civil revision petition.

For Petitioners in both C.R.Ps. : Mr.V.S.Kumaraguru

For Respondents in both C.R.Ps :

For R1 : Mr.Su.Srinivasan



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Standing Counsel for R1

For R2 & R3 : G.Suriyananth
Additional Government Pleader

COMMON ORDER

These Civil Revision Petitions are preferred against the orders passed in Ar.O.P.No.302 of 2022 and Ar.O.P.No.316 of 2022 dated 09.02.2023 on the file of learned Principle District Judge, Kanniyakumri at Nagercoil dismissing the same as withdrawn, without disposing the objection petitions filed by the petitioners in Ar.O.P.No.302 of 2022 and Ar.O.P.No.316 of 2022.

2. According to the revision petitioners, the land acquisition proceedings were initiated for widening of NH-47 Road. The notification under section 3A (1) of NH Act was published in the Gazette of India on 23.03.2010 Section 3 (D) declaration was published in the Gazetted on

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25.02.2011. The enquiry under section 3 (G)(3) of NH Act was conducted on 04.08.2011, and the award was passed by the Competent Authority on 28.12.2015. The award was passed after the commencement of RFCTLARR Act 2013. As per the decision of Hon'ble Supreme Court of India made in ***Parsem Singh vs. UOI dated 19.09.2019*** reported in ***2019 (9) SCC 304***, the Solatium of 30% and interest is payable to the land owners. Aggrieved against the award, the Petitioners have filed Arbitration Claim before the 2nd respondent and the 2nd respondent under section 3 (G)(5) of NH Act, enhanced the compensation amount. But the 2nd Respondent fixed the compensation under the impression that the lands are wetlands. Aggrieved against the award passed by the 2nd Respondent, the 1st Respondent has filed Ar.O.P.Nos.302 and 316 of 2022 before the Learned Principal District Judge and the Petitioners also filed objection Petitions in the above Ar.O.P.Nos. 302 and 316 of 2022.

3. The learned counsel appearing for the petitioners would submit that without disposing the objection petitions filed by the petitioners, the learned



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Principle District Judge permitted the 1st respondent to withdraw the Ar.O.P.Nos.302 and 316 of 2022 is against law. The 1st respondent filed Ar.O.P.Nos.302 and 316 of 2022, challenging the award made by the 2nd respondent under the Arbitration and Conciliation Act, 1996. The limitation prescribed as per the act is only 90+30 days as per Section 34 (3) of the Arbitration and Conciliation Act, 1996. The 1st respondent only to play fraud upon the petitioners to see that the petitioners do not get more compensation, he made applications to withdraw Ar.O.P.Nos.302 and 316 of 2022 after filing the Objection Petitions by the petitioners. He would submit that as per the Order 41 Rule 22 (4) of CPC, the objection petitions have to be disposed, even if the original appeal is withdrawn or dismissed for default. But, the learned Principle District Judge without considering the above provisions, permitted the 1st respondent to withdraw the Ar.O.P.Nos. 302 and 316 of 2022 on 09.02.2023. The learned Principal District Judge ought to have allowed the Objections Petitions filed by the petitioners, while permitting the 1st respondent to withdraw the Ar.O.Ps. The petitioners have made objection stating that the commercial areas of the petitioners land are



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stated as wet lands, and the respondent fixed the compensation accordingly.

The above mistake has to be rectified by the learned Principle District Judge.

However, the learned Principle District Judge without considering the above objections erred in permitting the first respondent to withdraw the Ar.O.P.Nos.302 and 316 of 2022 is against law. The limitation to challenge the award passed by the 2nd respondent is expired and therefore, the petitioners are unable to challenge the same. The petitioners are under the *bona fide* belief that they have already raised their objections with respect to the enhanced compensation. The learned Principal District Judge ought not to have allowed the 1st respondent to withdraw the Ar.O.Ps., since the same has put the petitioners to great hardship, irreparable loss, mental agony. Hence, the orders passed by the learned Principal District Judge is liable to be set aside. The petitioners also prays to remand the above petitions to the learned Principal District Judge for fresh consideration on the objection petitions filed by the petitioner on merits and in accordance with law.

4. On the other side, the learned counsel appearing for the 1st



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respondent would submit that the land acquisition proceedings were initiated for construction of NH 47 and NH 47B in Kanniyakumari District upto Kerala border. In this regard, notification under Section 3A (1) of NH Act, 1956 was published in the Gazette of India Notification No. 547, S.O. 670(E) on 23.03.2010 for acquiring an extent of 9.61.0 Hectares of lands in Nagercoil Village, Agasteeswaram Taluk, Kanniyakumari District, including the petitioners lands comprised in R.S.Nos. 30/1A1A1 and 37/4 of Nagercoil Village. The substance of the notification was published in the local Newspapers under section 3A (3) of the NH Act, 1956 vide "Dina Thanthi (Tamil)" and "The New Indian Express (English)" on 27.04.2010. The copy of the 3A(1) notification was also published in the Nagercoil Village and calling for objections from the pattadars, but nobody objected the land acquisition. Subsequently, notification under Section 3D(1) of NH Act, 1956 was published in the Gazette of India Notification No. 374, S.O. 438(E) on 25.02.2011 and the substance of the notification was published in the local Newspapers viz., "Dina Thanthi (Tamil) & "The New Indian Express (English) on 20.07.2011. The Competent Authority of Land



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Acquisition had conducted 3G(3) enquiry at the Office of the Village Administrative Officer, Nagercoil on 04.08.2011 after causing necessary publication of public notice in the Village. The land owners who appeared for enquiry did not raise any objection to the measurement recorded in 3D(1) notification. Those who have appeared for 3G(3) enquiry with relevant records were examined and compensation was fixed and ordered for payment. An extent of 0.29.5 Hectares of wet lands comprised in R.S.No. 30/1A1A1 of Nagercoil Village stood registered in the name of Arunachalam S/o.Santhanamuthu as per patta No.1252. Out of which, an extent of 1350 Sq.mt. of wet land came under acquisition. One Thiru Raji S/o. (Late) Arunachalam turned up for 3G(3) enquiry and no records were submitted. In the absence of relevant documents, the ownership of the acquisition of land could not be finalized. Therefore, the land owned by the petitioners could not be determined and the compensation for an extent of 1350 Sq.mt. of land acquired in R.S.No.30/1A1A1 was worked out and ordered to be kept in the Joint Account of Competent Authority and Special District Revenue Officer (LA-NH), Tirunelveli and Project Director,



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National Highways Authority of India, Tirunelveli vide Award No. 08/2015,
dated 28.12.2015.

5. Similarly, an extent of 0.13.0 Hectares of Wet land comprised in R.S No.37/4 stood registered in the names of Kolappa Pillai S/o.Subbalah Asari, 2) Ambujam W/o.Jegatheesan, 3) Jegatheesan S/o.Krishnaiah Nadar and Arunachalam S/o.Santhanamuthu as per patta No. 1367 of Nagercoil Village of Agasteeswaram Taluk, Kanniyakumari District. Out of which, an extent of 900 Sq.mt. land came under acquisition. Thiru. Jegatheesan S/o. Krishnaiah Nadar and Tmt Ambujam W/o.Jegatheesan appeared for 3G(3) enquiry of NH Act, 1956. The other pattadar did not appear for 3G(3) enquiry. In the absence of relevant documents, the ownership of the acquired land could not be finalized. Therefore the compensation amount was worked out and deposited in the Joint Account of Competent Authority and Special District Revenue Officer (LA-NH), Tirunelveli and Project Director, National Highways Authority of India, Tirunelveli.



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6. After taking his own time, the petitioners brother one Thiru Chellakumar had claimed compensation with relevant documents for the land acquired in R.S.No. 30/1A1A1 Nagercoil Village. As per sale deed No. 334/1963, Thiru.Arunachalam owned an extent of 0.29.50 Hectares of land in R.S.No.30/1A1A1 of Nagercoil Village. Out of which an extent of 1350 Sqm. of land came under acquisition. The acquired land was in his possession and enjoyment and nobody had raised any objection against the ownership of the land. Thiru. Arunachalam expired on 06.11.2008 and his wife Saraswathi expired on 26.12.2009. The legal heirs of (late) Arunachalam are detailed below;

<i>S.No.</i>	<i>Name</i>	<i>Relationship</i>
1	Suseela	Daughter
2	Mohankumar	Son
3	Chellakumar	Son
4	Selvageetha	Daughter
5	Raju	Son
6	Santhi	Daughter
7	Krishnakumar	Son



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7. Hence, the compensation for an extent of 1350 Sq.mt. comprised in R.S.No. 30/1A1A1 of Nagercoil was ordered to be released to the legal heirs of late Thiru. Arunachalam (equal share) vide award No. 8/2015-14 dated 09.02.2019. Accordingly, the compensation sum of Rs.2,79,228/- (1/7 share) was paid to the petitioner through ECS Cheque No. 393611 dated 18.02.2019.

8. As per sale document No.799/2007, Thiru Arunachalam has title over the land in R.S.No.37/4 of Nagercoil Village. Out of which, an extent of 60 Sq.mt. of land came under acquisition. The acquired land was in his legal heirs possession and enjoyment. Nobody raised objection against the ownership of the land. Hence, the compensation for an extent of 60 Sq.mt. comprised in R.S.No.37/4 of Nagercoil was ordered to release to the legal heirs of (late) Thiru.Arunachalam vide award No. 8/2015-14 dated 09.02.2019. Accordingly, the compensation sum of Rs. 12,410/- (1/7 share) was paid to the petitioner through ECS Cheque No. 393611 dated



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18.02.2019.

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9. Aggrieved by the compensation determined by the 3rd respondent, the petitioners have filed an arbitration application before the Arbitrator/District Collector seeking for enhanced compensation. The Arbitrator had enhanced the compensation by applying and adopting the guideline value as on 01.04.2012 vide proceeding No. E3/28987/2018 dated 09.01.2021. The 1st respondent/the Arbitrator had to strictly decide the issue in accordance with the provisions of Arbitration and Conciliation Act, 1996 and he cannot ignore the legal mandate and also the legal embargo in determining the market value. Hence, the arbitral award dated 09.01.2021 was challenged before the Learned Principal District Judge, Kanniyakumari at Nagercoil under Section 34 (3) of Arbitration and Conciliation Act. Subsequently, the Executive Committee of NHAI had accepted and approved the enhancement of compensation for remaining 10% of land owners by adopting GLV of 01.04.2012 as being done in about 90% of the cases. Based on the decision of the Executive of Committee, the Competent



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Authority has accorded approval to accept the arbitral award passed by the District Collector, Kanniyakumari by adopting the GLV as on 01.04.2012 and directed to release payment to the eligible land owners. Hence, some appeal cases have been withdrawn and payment was made to the land owners. While so, the instant Civil Revision Petition is filed without valid grounds and it is not maintainable and liable to dismissed.

10. Heard learned counsel on both sides and perused the materials on record.

11. The Arbitral Award dated 09.01.2021 was challenged before the Learned Principal District Judge, Kanniyakumari at Nagercoil based on the instruction of the Competent Authority of NHAI. Subsequently, the Executive Committee of NHAI accepted and approved the enhancement of compensation for remaining 10% of land owners by adopting GLV of 01.04.2012, since 90% of the land owners have received the compensation in the village of the petitioners. Based on the decision of the Executive of



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Committee, the Competent Authority has accorded approval to accept the arbitral award passed by the District Collector, Kanniyakumari by adopting the GLV as on 01.04.2012 and release payment to the eligible land owners. Hence, some appeal cases have been withdrawn and payment made to the land owners.

12. It is pertinent to point out that Section 34 of Arbitration and Conciliation Act, 1996 does not provide either cross objection or cross appeal against the arbitral award. If the petitioners are aggrieved against the arbitral award, they have to separately initiate / take recourse to challenge the arbitral award. Admittedly, the petitioners have not filed any petition independently challenging the Arbitral award dated 09.01.2021. While this being the factual position, the petitioners have no locus standi to object the application in withdrawing the Ar.O.Ps filed by the 1st respondent herein.

13. Moreover, the limitation provided under Section 32 (3) of the Act cannot be extended and for that reason also the Ar.O.P's were withdrawn.



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While so, the cross objection filed by the petitioner is also time barred.

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14. It is well settled law that when the original petition itself is time barred, the objections made by the appellant is also time barred and cannot be entertained. Therefore, the claim made by the revision petitioner for remanding the Arbitration Original Petitions for considering his objections cannot be entertained. Hence, these civil revision petitions are devoid of merits and liable to be dismissed.

15. In the result, these Civil Revision Petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

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Index: Yes/No
Speaking Order : Yes/No



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To

The Principal District Court, Kanniyakumari.



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K.GOVINDARAJAN THILAKAVADI,J.

Mac/vsn

ORDER made in

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and
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