



W.P(MD)No.4217 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4217 of 2015

A.Karthik

... Petitioner

Vs.

**1.The Collector / The Arbitrator,
Collectorate,
Tuticorin District.**

**2.The Competent Authority (LA) & Virudhunagar
Special DRO,
National Highways,
Virudhunagar,
Virudhunagar District.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the Order in Na.Ka.E3.No. 80195/ 2010 Dated 5.1.2015 passed by the 1st Respondent and quash the same.

For Petitioner : Mr.B.Rajesh Saravanan

**For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1**

: No appearance for R2



WEB COPY



W.P(MD)No.4217 of 2015

ORDER

Heard both sides.

2. The petitioner's family owned the petition mentioned land. They were acquired under the provisions of the National Highways Act, 1956. The second respondent however determined the compensation payable at Rs.1,71,582/- vide award No.44/2009, dated 11.02.2010. Since the petitioner's father found the compensation amount to be meagre, he filed arbitration petition under Section 3 G (5) of the National Highways Act, 1956 before the first respondent. The first respondent took the petition on file in Na.Ka.E3.No. 80195/2010.

3. The second respondent filed their counter affidavit. During the pendency of the enquiry, the petitioner's father passed away on 30.04.2011. The legal heirs came on record. The petitioner was given power of attorney by his siblings to represent them in the enquiry. The case of the petitioner is that the first respondent conducted enquiry and both sides marked their documents. The second respondent filed his written argument on 03.04.2013 and the



W.P.(MD)No.4217 of 2015

counsel on either side made oral submissions on the same day. The matter was posted 'for orders' on 19.04.2013. Though as per law, reference must be answered within six months, no award was passed. Left with no other option, the petitioner filed W.P.(MD)No.137 of 2015. This Court vide order dated 07.01.2015 directed the first respondent to pass award in the arbitration proceedings within a period of two months from the date of receipt of a copy of this order. The case of the petitioner is that while he was expecting another enquiry notice, before passing the award, he was surprised to receive the impugned award dated 05.01.2015 holding that no case for redetermination has been made out. Challenging the same, the writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. The petitioner's case is that a back-dated award has been passed in order to wreck vengeance on the petitioner for having filed the writ petition. He called upon this Court to set aside the impugned award and called upon the first respondent to pass an award afresh on merits and in accordance with law.



W.P(MD)No.4217 of 2015

WEB COPY

5. The first respondent has not filed any counter affidavit denying the allegations of the petitioner. The learned Special Government Pleader submitted that the writ petition itself is not maintainable and called upon this Court to dismiss the same.

6. I carefully considered the rival contentions and went through the materials on record. The relevant provisions are Section 3 G (5) (6) & (7) of the National Highways Act, 1956. They are as follows:-

3G. Determination of amount payable as compensation:-

“5. If the amount determined by the competent authority under Sub-Section (1) or Sub-Section (2) is not acceptable to either of the parties, the amount shall on an application by either of the parties, be determined by the authorities to be appointed by the Central Government.

6. Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

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



W.P(MD)No.4217 of 2015

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.”

It is true that the award passed by the District Collector in his capacity as arbitrator named under the National Highways Act, 1956 has to be questioned only before the District Court under Section 34 of the Arbitration and Conciliation Act, 1996. The question is whether the petitioner should be non-suited on that ground. It is seen that the application was made before the arbitrator in the year 2010 itself. Section 3 G (6) of the Act makes provisions of the Arbitration and Conciliation Act will be applicable to every arbitration under the National Highways Act. As per the Arbitration and Conciliation Act, 1996, the arbitrator must hear the parties before passing the award. Sections 23 and 24 of the Act are as follows:-

23. Statements of claim and defence.—

(1) Within the period of time agreed upon by the parties or



determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. 1 [(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

1 [(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]

24. Hearings and written proceedings.—

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:



W.P(MD)No.4217 of 2015

2 [Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

7. From this one can conclude that the arbitrator who heard the parties must pass the award. In the impugned award, it has been mentioned that enquiry was conducted on various dates from 24.09.2012 to 19.04.2013. The impugned award was passed by Shri.M.Ravi Kumar I.A.S., District Collector, Thoothukudi. It is not the case of the respondents that it was Shri.M.Ravi Kumar I.A.S., who heard the parties. Of-course, in the affidavit filed in support of the writ petition, this ground has not been taken.



W.P.(MD)No.4217 of 2015

8. The learned counsel appearing for the petitioner states that enquiry was conducted by Shri.Ashish Kumar. Shri.Ravi Kumar assumed the office only on 08.08.2013. In the impugned order, Shri.Ravi Kumar has not stated that he had enquired the parties. The elementary principles of administrative law requires that the authority who heard the parties alone can pass the final order. On this sole ground, the order impugned in the writ petition is set aside.

9. There is yet another ground on which also the impugned order can be set aside. The grievance of the petitioner was that the arbitration application was kept pending without being disposed of for a very long time and that necessitated filing of W.P.(MD)No.137 of 2015. Paragraph Nos.3, 4, & 5 of the order read as follows:-

“3. The learned counsel for the petitioner would submit that the land of the petitioner's father was acquired by the second respondent for the purpose of expansion of National Highways and compensation has been awarded by Award No.44/2009, dated 11.02.2010. Since the amount of compensation is very less, the petitioner's father had filed an Arbitration Petition for enhancement of compensation and the same is pending before the first respondent. The second respondent has also filed his written argument as early as on 03.04.2013 and the petitioner has made a representation on 20.08.2014 before the first respondent and in spite of the same, so far, no order has been passed in the arbitration proceedings. Further, he submitted that under the National Highways



W.P(MD)No.4217 of 2015

Act, 1956, the arbitration proceedings has to be disposed of within a period of six months from the date of such reference. Since no order has been passed so far, the petitioner has come forward with this writ petition.

4. The learned Additional Government Pleader appearing for the respondents would submit that orders will be passed at the earliest.

5. Considering the fact that arbitration proceedings is pending for quite long time and even arguments of both sides was over, the authority concerned is directed to consider and pass orders in the arbitration proceedings within a period of two months from the date of receipt of a copy of this order.”

10. The impugned award was despatched through a registered post to the petitioner only on 09.01.2015. Of-course, the petitioner has not directly alleged that the order has been back-dated. In that case, the petitioner ought to have made Shri.M.Ravi Kumar as a party-respondent. If on 05.01.2015 itself the award had been passed, W.P.(MD)No.137 of 2015 which was disposed of on 07.01.2015 was infructuous at the very inception. If that be so, the matter ought to have been posted for being mentioned at the instance of the then Additional Government Pleader. Such a course of action was not taken. Therefore, I come to the conclusion that the order appears to have been back-dated. As already noted, the provisions of the



W.P(MD)No.4217 of 2015

Arbitration and Conciliation Act, 1996 will apply to the arbitration proceedings under Section 3 G of the Act also. Section 31 of the 1996 Act sets out the form and contents of the arbitral award. The impugned order does not confirm to Section 31 of the Act. After narrating the antecedents facts and after mentioning that enquiry was held on various dates, the rejection is set out in the following single sentence:-

“மதுரை, இந்திய தேசிய நெடுஞ்சாலை ஆணைய திட்ட இயக்குநர் மற்றும் அதிகாரம் பெற்ற அலுவலர் மற்றும் சிறப்பு மாவட்ட வருவாய் அலுவலர் (நில எடுப்பு NH 44&38) ஆகியோர்களது கருத்துருவின் அடிப்படையிலும், ஆவணங்களின் அடிப்படையிலும் மனுதாரரின் கோரிக்கையை நிராகரித்து இதன் மூலம் உத்தரவிடப்படுகிறது.□

11. As rightly pointed out by the learned counsel appearing for the petitioner, the impugned award is utterly non-speaking. One can relegate the applicant to avail remedy under Section 34 of the Arbitration and Conciliation Act, 1996. If the arbitrator had adhered to set out in the statute, where the arbitral award passed by a public authority suffers from fundamental illegalities, the applicant will be justified in invoking writ jurisdiction. The award impugned in the writ petition is set aside. The matter is remitted to the file of the first



W.P(MD)No.4217 of 2015

respondent. The petitioner as well as the second respondent shall appear before the first respondent on 04.09.2023 at 03.00 pm., On the said date, both the parties will be heard by the first respondent. The award will be passed within a period of four weeks thereafter. I make it clear that I have not gone into the merits of the matter.

12. The Writ Petition is allowed. No costs.

07.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
rmi

NOTE:Issue Order Copy on 31.08.2023.

To

The Collector / The Arbitrator,
Collectorate,
Tuticorin District.



WEB COPY



W.P(MD)No.4217 of 2015

G.R.SWAMINATHAN, J.

rmi

W.P(MD)No.4217 of 2015

07.08.2023