



WEB COPY



CMA.No.1804 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CMA.No.1804 of 2021

G.Mahadevan

...Appellant

Vs.

1. The Project Director,
National Highways Authority of India,
Project implementation unit, No.54,
First Floor, Natarajapuram North Colony,
Medical College Road, Thanjavur 613 004.
2. The Competent Authority and
Special District Revenue Officer (L.A),
National Highways,
Collector Office, Villupuram.
3. The District Collector-cum-Arbitrator,
Villupuram District,
Villupuram.

...Respondents

Prayer: CMA filed under Section 37 of the Arbitration and Reconcilliation Act, 1996 as amended against the fair Order and decreetal order dated 22.01.2021 in Arb.O.P.No.183 of 2019 passed by the Principal District Judge at Villupuram.



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For Appellant : Mr.Chendur Eashwaran
For Respondents : Mr.K.Guruprasad
for R1 : for M/s.Su.Srinivasan
for RR2 & 3 : Mr.B.Tamil Nidhi, AGP

J U D G M E N T

[Judgment of the Court was delivered R.SUBRAMANIAN, J]

Challenge in this appeal under Section 37 of the Arbitration and Conciliation Act is to the order passed by the Principal District Judge, Villupuram in Arbitration O.P.No.183 of 2019 at the instance of the Project Director, National Highways Authority of India/the first respondent in this appeal. The land belonging to the appellant was acquired for the purpose of widening of the National Highway No.45C between Vikravandi and Kumbakonam. The authorised officer passed an order dated 25.07.2016 under Section 3G(1) of the National Highways Act, determining the compensation payable for the land belonging to the appellant at Rs.1,615/- per sq.mtr. The competent authority also applied a deduction of 20% towards development charges and deducted a sum of Rs.323/- from the amount fixed as compensation. Thus the final compensation arrived at by the competent authority was Rs.1,292/- per sq.mtr.



2. Not being satisfied with the award, the appellant moved the Arbitrator/District Collector under Section 3G(5) of the Act seeking enhancement. The District Collector passed a speaking award on 05.05.2018. Before the District Collector, the claim of the appellant was confined only to the legality of the deduction of 20% towards development charges. The District Collector adverted to the claim of the appellant and rejected the same vide his award dated 05.05.2018.

3. The appellant however moved an application before the District Collector seeking a review of the award contending that the deduction of 20% towards development charges is incorrect and he would be entitled to 20% also. The District Collector entertained the application, according to the first respondent without notice to it, and passed an order on 27.02.2019 concluding that the appellant would be entitled to 20% of the amount also. Aggrieved the first respondent herein viz., the Project Director, National Highways Authority of India, for whom the land was acquired filed an application under Section 34 of the Arbitration and Conciliation Act, 2016 seeking to set aside the award dated 27.02.2019.

4. The learned Principal District Judge, Villupuram exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act



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concluded that the action of the Collector in passing an order reviewing the award is beyond the scope of Section 33 of the Arbitration and Conciliation Act. The learned Principal District Judge also faulted the Collector for not having given an opportunity to the first respondent, viz., the Project Director, National Highways Authority of India before entertaining an application seeking review of the order under Section 33. On the above conclusion, the learned Principal District Judge set aside the order dated 27.02.2019. Aggrieved, the appellant has come up with this appeal under Section 37 of the Arbitration and Conciliation Act 2016.

5. We have heard Mr.Chendur Eashwaran, learned counsel for the appellant, Mr.K.Guruprasad, learned counsel representing M/s.Su.Srinivasan, learned counsel for the first respondent and Mr.B.Tamil Nidhi, learned Additional Government Pleader appearing for the respondents 2 and 3.

6. Mr.Chendur Eashwaran, learned counsel appearing for the appellant would vehemently contend that the application under Section 34 at the instance of the first respondent itself is not maintainable. According to him, an application under Section 34 can be moved only by a person,



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who is party to the award. Since the first respondent in this appeal was not a party to the proceedings before the District Collector, it should not have been allowed to maintain an application under Section 34.

7. On merits, learned counsel would contend that what has been done by the Collector is only a correction of the award, which is within his powers under Section 33.

8. Contending contra, Mr.K.Guru Prasad, learned counsel appearing for the National Highways Authority of India would submit that since the acquisition is for the National Highways Authority and its the National Highways Authority, which has to pay the compensation, the contention that the application under Section 34 at its instance is not maintainable cannot be accepted at all.

9. The learned counsel further added that what has been done by the Collector vide his order dated 27.02.2019 is clearly on excess of the powers conferred on the Collector under Section 33 of the Arbitration and Conciliation Act, 1996. Once an award was passed on 05.05.2018, the Collector had no jurisdiction to reopen the award and pass a fresh award or



review a part of the award and grant something more than what is granted under the award.

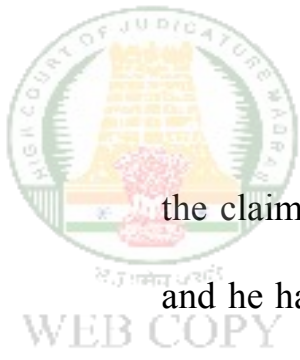
10. The learned Government Pleader would submit that since the order of the Collector is under challenge, he cannot take any particular stand.

11. We have considered the rival submissions.

12. It is clear to our mind that the exercise carried out by the Collector after 05.05.2018 resulting in an order on 27.02.2019 is clearly beyond his jurisdiction under Section 33 of the Arbitration and Conciliation Act. Once the award is passed arbitral proceedings are terminated.

13. The residual power that is conferred under Section 33 is akin to the Civil Court under Sections 152 and 153 of the Code of Civil Procedure. The power is only to correct clerical or arithmetic errors to pass additional award when there is an omission.

14. The perusal of the award of the District Collector dated 05.05.2018 clearly reveals that the District Collector has applied his mind to



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the claim as to whether the development charges could be deducted or not and he has negated the said claim. It is not in tune with the law declared by the Hon'ble Supreme Court and this Court. The Hon'ble Supreme Court and this Court had repeatedly pointed out developmental charges cannot be deducted for road projects and rural projects where there is no development of the land involved as such. The entire land that is used for the purposes of the road are for the peripheral purposes. However, since the District Collector had taken a conscious decision, the error committed by him in the award dated 05.05.2018 could have been corrected only in a proper proceeding under Section 34 and not by invoking Section 33. We are therefore, of the view that the order of the District Collector dated 27.02.2019 is beyond the jurisdiction and we cannot fault the Section 34 Court for having set aside the same. The appeal therefore fails and it is accordingly dismissed. However, in the circumstances, there will be no order as to costs.

(R.S.M.J.,) (R.S.V.J.,)
23.02.2024

Index : No
Speaking order: Yes
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To

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**R.SUBRAMANIAN, J.
and
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