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CMA.Nos.722 of 2023 and batch.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

**C.M.A. Nos.722/2023 & 1716, 1689, 1690, 1681, 1683,
1684, 1685, 1686, 1687, 1692, 1694, 1695, 1696, 1701,
1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711,
1715, 1717, 1697, 1698, 1700, 1712, 1713 & 1714/2022**

CMA No. 722/2023:

Govindhammal

... Appellant

-Vs-

1.The Special Tahsildar-Land Acquisition,
National Highways (NH 66),
Villupuram.

2.The Authorised Officer,
(District Revenue Officer),
Land Acquisition NH-66,
Villupuram.

3.The Project Officer,
National Highways Authority of India,
Vazhudareddy,
Villupuram.

4.The District Collector/Arbitrator,
Villupuram District,
Villupuram.

...Respondents



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Prayer in CMA/722/2023: Civil Miscellaneous Appeal filed under Section 37(1) of Arbitration and Conciliation Act, 1996 against the fair and decretal order of the learned Principal District Judge, Villupuram, in Ar.O.P.No.104 of 2012 dated 21/12/2020, thereby dismissing the Original Petition for setting aside the Arbitral Award.

CMA/722/2023:

For Appellant : Mr.T.Saikrishnan

For R1, R2 & R4 : Mr.B.Tamil Nidhi,
Additional Government Pleader

For R3 : Mr.Su.Srinivasan,
Standing Counsel for
National Highways

COMMON JUDGMENT

All these Civil Miscellaneous Appeals arise out of the orders, dated 10.03.2021 in Arbitration O.P.Nos.59 of 2016, etc. passed by the learned Principal District Judge, Villupuram.

2. The appellants herein moved Arbitration Original Petitions under Section 34(1) of the Arbitration and Conciliation Act, 1996 (in short, 'the Act') before the Principal District Court, Villupuram, seeking to set aside the awards passed by the 4th respondent and to direct the



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respondents to pay the enhanced compensation towards their lands acquired under the provisions of the National Highways Act, 1956 along with interest and solatium.

3. The learned Judge, having considered the contentions put forth by the appellants herein and the 1st respondent herein and having discussed all the aspects of the matter, came to the conclusion that the appellants have not fulfilled any of the grounds contemplated under Section 34(2) of the Arbitration and Conciliation Act, 1996 in order to set aside the award and further, the Act does not confer any authority or power to the Court to enhance the compensation. While observing so, the learned Judge has dismissed the Arbitration Original Petitions. Challenging the same, the appellants have come forward with the present appeals.

4. In the present appeals, apart from the grievance that no fair and just compensation has been awarded by the learned Arbitrator, the main grievance of the appellants is that while awarding the compensation, the learned Arbitrator has not awarded solatium and interest to the



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appellants/landowners towards compulsory acquisition of their lands for the purpose of National Highways.

5. The learned counsel for the appellants would raise his contentions in two fold. Firstly, the value of the lands in some cases were meagerly fixed at Rs.200 per sq.ft. whereas, the appellants have produced documents to show that the value of the lands is more than Rs.400 per sq.ft. This aspect was not taken into consideration by the learned Arbitrator while passing the Award.

6. Secondly, according to the learned counsel, the learned Arbitrator has not awarded the compensation towards solatium and interest. He submitted that solatium is a statutory right and its denial by the learned Judge definitely calls into question the award passed by him. He pointed out that though there is no provision available under the National Highways Act, 1956 for awarding solatium and interest to the landowners, still the appellants are entitled to solatium and interest in terms of Section 23(1-A) and (2) and Section 28 *proviso* of the Land Acquisition Act, 1894 inasmuch as the Hon'ble Supreme Court had struck



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down the provision of Section 3-J of the National Highways Act which excludes the applicability of provisions of the Land Acquisition Act, 1894 and declared the same as unconstitutional insofar as it relates to Section 23(1-A) and (2) and Section 28 *proviso* of the Land Acquisition Act, 1894 and these provisions were made applicable in the judgment reported in “**2019 (9) SCC Page 304 (Union of India and Another -vs- Tarsem Singh and Others)**”

7. On these two aspects, the learned counsel for the appellants would submit that the orders passed by the learned District Judge as well as the Awards passed by the learned Arbitrator are liable to be set aside and the matter requires fresh consideration in the light of the provisions of Sections 23(1-A) and (2) and Section 28 *proviso* of the Land Acquisition Act, 1894.

8. Per Contra, Mr.SU.Srinivasan, learned Standing counsel appearing for the respondent/National Highways Authority of India would submit that the learned Arbitrator has rightly passed the award after affording sufficient opportunities to the appellants and the Courts do



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not have the power to modify or vary the award passed by the Arbitrator, but can set aside the award only on the grounds enumerated under Section 34(2) of the Arbitration and Conciliation Act, 1996 and the learned Judge has rightly held that the appellants have not fulfilled any of the grounds enumerated under Section 34(2) and confirmed the Awards, which requires no interference.

9. In support of his contentions, the learned Standing counsel would rely upon the decision of the Hon'ble Supreme Court in ***Project Director, National Highways Authority versus Hakkim***” reported in 2021 (9) SCC 1, wherein, the Hon'ble Supreme Court has held that a Court sitting under Section 34 of the Arbitration and Conciliation Act, 1996, cannot modify or vary the award, but can either set aside the award or remit the matter to the Arbitrator if the circumstances mentioned under sub Sections 4 and 5 of Section 34 of the Act are available. He has also relied upon a decision of the Hon'ble Supreme Court in “***UHL Power Company Limited Vs. State of Himachal Pradesh***” reported in (2022) 4 SCC 116 and ***Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited***” reported in (2022) 1 SCC 131 and



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submitted that the Award passed by the Arbitrator may not be interfered with until the same is found to be vitiated by perversity or patent illegality. However, ultimately, he would fairly concede that the matter requires fresh consideration for grant of solatium and interest in the light of the decision of the Hon'ble Supreme Court in “*Union of India and Another -vs- Tarsem Singh and Others*” cited supra and the appellants may be given liberty to approach the learned Arbitrator only for consideration of the matter for grant of solatium and interest.

10. Heard the learned counsel for the appellants and the learned Standing counsel for Highways and the learned Addl.Government Pleader for the respondents 1, 2 and 4 and perused the materials available on record.

11. A short point that arises for consideration in these appeals is, whether the appellants are entitled to solatium and interest by virtue of the dictum of the Hon'ble Supreme Court in *Union of India and Another -vs- Tarsem Singh and Others*” cited supra.

12. Solatium is an amount, paid by the State to an unwilling land



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owner, for compulsory appropriation of his property. The word 'solatium' draws its meaning from the word solace that is comfort money given as a statutorily recognized gesture of conciliation for compulsorily depriving a land owner of his property. Therefore, the solatium is part and parcel of compensation that is payable for compulsory acquisition of land and it cannot be denied.

13. It is pertinent to note that prior to 1997, the solatium and interest were being awarded to the land owners for compulsory acquisition of their lands for the purpose of national highways under the provisions of the Land Acquisition Act, 1894. Later, on 24.01.1997, a National Highways Laws (Amendment) Ordinance, 1997 came to be promulgated by the Central Government, amending the National Highways Act, 1956 by introducing Sections 3A to 3J. Section 3J creates an embargo to the effect that the provisions of the Land Acquisition Act, 1894 would not apply to acquisitions made under the National Highways Act, 1956 and thereby, the authorities, after making acquisition of lands for national highways, stopped granting solatium and interest to the land owners since there was no provision available in the National Highways



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14. Subsequently, the constitutional validity of Section 3-J was challenged before various High Courts including our High Court and the matter went to the Hon'ble Supreme Court. The Hon'ble Supreme Court, while upholding the judgments rendered by the Karnataka, Punjab & Haryana and Madras High Courts, overruled the judgment of the Rajasthan High Court. In particular, the Supreme Court has taken note of the concession made by the learned Solicitor General in ***Chakrapani batch of cases*** and also the order passed in ***Sunita Mehra case*** [(2019) 17 SCC 672] and has observed as under:

“52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. **Ordinarily, we would have acceded to this plea, but given the fact that the**



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Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) 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 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP(C) No.9599 of 2019 is dismissed.”

(emphasis added)

15. Thus, the Supreme Court held that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act, 1956 and consequently, the provisions of 3-J was declared as unconstitutional. Therefore, by virtue of the decision in *Tarsem Singh* case (cited supra),



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the appellants whose lands are acquired by invoking the National Highways Act, 1956, are entitled to solatium and interest under section 23(2) and Section 28 of the Land Acquisition Act, 1894. Accordingly, the point is answered in favour of the appellants.

16. In the present case, the lands of the appellants were acquired in the year 2010. The learned Arbitrator passed the award in the year 2011, by that time, the provision of Section 3-J was existing and the learned counsel who appeared before the learned Arbitrator, brought his notice that Section 3-J was struck down by this Court vide order dated 04.03.2011 in W.P.No.15699 of 2008. However, the learned Arbitrator has taken note of the fact that already, Madurai Bench of this Court in another Writ Petition in W.P.No.3273 of 2004, vide order dated 08.09.2008, upheld the validity of Sections 3A to 3J of the National Highways Act, 1956 and that since there were conflicting judgments of this Court and the issue calls for the decision of larger bench, the learned Arbitrator has not considered the claim of the landowners for grant of solatium and interest.



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17.However, when the appellants challenged the awards under Section 34(1) of the Arbitration and Conciliation Act, 1996 before the learned District Judge and at the time of passing the impugned order on 10.03.2021, the constitutional validity of Section 3-J was decided and declared the same as ultra vires and extended the benefit of awarding solatium and interest to the land losers by the Hon'ble Supreme Court in *Tarsem Singh* case (cited supra). Even this fact was brought to the notice of the learned District Judge, the claim of the appellants for grant of solatium and interest was not considered since the learned Judge was of the view that concluded cases need not be opened. According to the learned District Judge, the learned Arbitrator had passed the award in accordance with the provisions of the National Highways Act, 1956 and well before the judgment rendered by the Hon'ble Supreme Court in *Tarsem Singh* case and therefore, the appellants/landowners are not entitled to the benefits.

18. The learned Standing Counsel for National Highways also contended that once settled issue cannot be re-opened since the



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acquisition proceedings were commenced on 29.08.2008 and concluded on 23.11.2015.

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19. This Court does not find any merit in the contention raised by the learned standing counsel for National Highways. In the case of *Tarsem Singh* case (cited supra), the Hon'ble Supreme Court has even extended the benefits as regards the acquisitions that were taken place under the National Highways Act both before 1997 amendment Act and after coming into force of the amended Act. Further, when the legal embargo by virtue of Section 3-J was wiped out by the Hon'ble Supreme Court, the learned Judge ought to have considered and extended the benefits of solatium and interest to the appellants. In fact, the issue has not been settled inasmuch as the appellants have been agitating their rights for just and fair compensation towards acquisition of their lands before the learned Arbitrator and thereafter before the learned District Judge and no compensation amount was received by them. Hence, it cannot be construed that the issue was settled and it is a concluded case, which requires to be reopened.



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20. Therefore, when the dictum laid down by the Hon'ble Apex Court in *Tarseem Singh* case has become the law of the land under Article 141 of the Constitution, the benefits are liable to be granted in all the pending claims for enhancement of compensation under the National Highways Act which are live on the date of declaration by the Apex Court. Unfortunately, the learned Judge has declined the same to the appellants and committed a patent illegality and therefore, the orders passed by the learned District Judge along with the Awards passed by the learned Arbitrator, are liable to be set aside.

21. Accordingly, the orders passed by the learned District Judge, Villupuram impugned in these appeals as well as the Awards passed by the learned Arbitrator are set aside.

22. In the result, all the Civil Miscellaneous Appeals are allowed. 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, Viluppuram District, within a period of two months from the date of receipt of the



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reference. The District Collector to whom the reference is to be made is directed to decide the compensation as per the provisions of the National Highways Act read with the Arbitration and Conciliation Act, 1996. This Court expects that the District Collector will follow the principles of determining the compensation as enumerated under the Land Acquisition Act, 1894, while deciding the compensation, since the acquisition is of the year 2010. 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, connected miscellaneous petitions (if any) are closed.

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KRISHNAN RAMASAMY, J.,

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