



W.A.No.2796 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.2796 of 2021

T.K.Paneerselvan (Died)

1. P.Thenmozhi

2. P.Janani

3. P.Manojkumar

... Appellants

Vs.

1. The Arbitrator cum District Collector,
Villupuram.

2. The Authorized Officer cum
Special District Revenue Officer,
National Highways (Acquisition),
Villupuram-605 602.

3. The Project Director
National Highways Authority of India
Villupuram.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 17.03.2020 made in W.P.No.35558 of 2016.

For Appellants : Mr.K.Sudhakar



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For Respondents : Mr.A.Selvendran
Special Government Pleader for R1 & R2
Mr.Su.Srinivasan
Standing Counsel for NHA for R3

J U D G M E N T

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The *lis* on hand has been instituted challenging the writ order dated 17.03.2020 passed in WP.No.35558 of 2016. The unsuccessful writ petitioners are before us. The Arbitral Award passed by the Arbitrator-cum-District Collector under Section 3G(5) of The National Highways Act was under challenge in the writ proceedings. It is not in dispute that the land belonged to the appellants were acquired for Road projects by the National Highways Authority of India. The due process contemplated were followed. Award passed and compensation determined by the Authorities. Not satisfied with the Award and by claiming Solatium, the appellants/land owners approached the Arbitrator under Section 3G(5) of the Act. The Arbitrator declined to grant solatium on the ground that some cases are pending before the High Court. However, the Arbitrator enhanced the compensation. The said Arbitral Award is under challenge in the writ petition.



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2. The learned counsel for the appellants Mr.K.Sudhakar would contend that the appellants are entitled for solatium in view of the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and another Vs. Tarsem Singh & Ors.***, in Civil Appeal No.7068 of 2019 dated 19.09.2019. The relevant portion of the order of the Apex Court in paragraph 41 reads as under:-

“41. 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 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 Section 23(1A) and (2) and



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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.”

3. Mr.Su.Srinivasan, learned Standing Counsel appearing for the National Highways Authority of India would submit that in **Tarsem Singh's** case [cited supra], the Hon'ble Supreme Court has deleted paragraph 23(1)(A) with reference to the benefit available under Section 23(1)(A) of the Land Acquisition Act. Further, it is contended that clarification petition filed by the National Highways Authority of India is pending before the Hon'ble Supreme Court of India. However, the law prevailing as on today in **Tarsem Singh's** case [cited supra] is to be followed in respect of the case on hand. The Arbitrator declined to grant Solatium on the ground that few cases are pending before the High Court. However, the Hon'ble Supreme Court of India in paragraph 41 [as stated supra] held that the land losers are entitled for solatium along with interest as provided under the Land Acquisition Act. Therefore, the said benefit cannot be denied to the appellants/land losers.



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4. Mr.Su.Srinivasan, learned counsel would raise an apprehension that the writ petitions are filed bypassing the alternate remedy contemplated under the Arbitration and Conciliation Act, 1996. Against the Arbitral Award passed by the Arbitrator-cum-District Collector, a recourse is made available under Section 34 of The Arbitration and Conciliation Act. The recourse to the Principal District Court against an Arbitral Award is entertainable and therefore, the writ petitions filed without exhausting the remedy provided under Section 34 of The Arbitration and Conciliation Act is not entertainable.

5. We are of the considered opinion that exhausting the statutory remedy contemplated under the Arbitration and Conciliation Act is of paramount importance. The disputed facts and issues between the parties are to be adjudicated based on the documents and evidences available on record. Such an adjudication cannot be done by the High Court under Article 226 of the Constitution of India. Thus, the factual findings and the issues between the parties determined by the District Court under Section 34 of the Act would be of greater assistance to the High Court for the purpose of effective exercise of the power of judicial review under Article 226 of The Constitution of India. This exactly is the reason why the Constitutional



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Courts time and again reiterated that exhausting the statutory remedy contemplated is the Rule and entertaining a writ petition is an exception. In the present case, the appellants admittedly had not exhausted the remedy contemplated under Section 34 of The Arbitration and Conciliation Act. The writ petition was filed in the year 2016 and the Writ Appeal has been filed in the year 2021. At this length of time, we are not inclined to revert back the appellants to exhaust the remedy under Section 34 of the Act. More so, the Hon'ble Supreme Court has confirmed the entitlement of Solatium along with interest in **Tarsem Singh's** case [cited supra].

6. In view of the facts and circumstances, we are of the considered opinion that the writ Court has not considered the ratio laid down by the Hon'ble Supreme Court of India in **Tarsem Singh's** case [cited supra]. The reason stated by the Arbitrator that the cases are pending before the High Court cannot be a valid reason to reject the entitlement of the land owners for Solatium along with interest.

7. For all these reasons, we are inclined to interfere with the writ order. Accordingly, the Writ order impugned dated 17.03.2020 in WP.No.35558 of 2016 is set aside and consequently, the Writ Appeal stands allowed. The respondents 2 and 3 are directed to settle the admissible Solatium along with



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interest under the Land Acquisition Act to the appellants, within a period of Six(6) weeks from the date of receipt of a copy of this judgment. It is made clear that the relief granted in the present Writ Appeal to the land owners cannot be cited as a precedent, since such aggrieved land owners are bound to approach the competent Court under Section 34 of The Arbitration and Conciliation Act for the purpose of redressal of their grievances. No costs.

[S.M.S., J.] [C.K., J.]
03.07.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes



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and
C.KUMARAPPAN, J.

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To

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