



C.M.P(MD)Nos.14864, 11775, 12759, 14871, 15032, 15033, 15194 and 15409 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Wednesday, the Twenty Sixth day of June Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice N.SESHASAYEE  
and  
The Hon`ble Mrs.Justice L. VICTORIA GOWRI

C.M.P(MD)Nos.14864, 11775, 12759, 14871, 15032, 15033, 15194 and 15409 of 2023  
in  
C.M.A(MD)SR.Nos.2094, 21728, 35582, 1670, 35576, 35581, 35579 and 11977 of 2023

THE PROJECT DIRECTOR  
NATIONAL HIGHWAYS NO.45E AND 220,  
NATIONAL HIGHWAYS AUTHORITY OF INDIA HAVING HIS  
OFFICE AT 83/1, SBI 1ST COLONY EXT.,  
(NEAR GOWRY KRISHNA HOTEL) BYE PASS ROAD,  
MADURAI - 625016.  
NOW AT PLOT NO.1, AISHWARYAM HEIGHTS  
INDIRA NAGAR, 1ST STREET SENNAMANAICKENPATTI(PO)  
THADIKOMBU ROAD,  
DINDIGUL-624 004.

... PETITIONER/ APPELLANT  
IN CMP(MD)NO.14864/ 2023

THE PROJECT DIRECTOR  
NATIONAL HIGHWAYS NO.45E AND 220,  
NATIONAL HIGHWAYS AUTHORITY OF INDIA HAVING HIS  
OFFICE AT PLOT NO.3 SURIYA TOWERS 2ND FLOOR, 1ST STREET.  
MADURAI - 625016.  
NOW AT PLOT NO.1, AISHWARYAM HEIGHTS  
INDIRA NAGAR, 1ST STREET SENNAMANAICKENPATTI(PO)  
THADIKOMBU ROAD,  
DINDIGUL-624 004.

... PETITIONER/ APPELLANT  
IN CMP(MD)NO.11775/ 2023



C.M.P(MD)Nos.14864, 11775, 12759, 14871, 15032, 15033, 15194 and 15409 of 2023

THE PROJECT DIRECTOR  
NATIONAL HIGHWAYS NO.45E AND 220,  
NATIONAL HIGHWAYS AUTHORITY OF INDIA HAVING HIS  
OFFICE AT PLOT NO.3 SURIYA TOWERS 2ND FLOOR, 1ST EAST STREET.  
K.K.NAGAR, (NEAR DR.MUTHUVELRAJAN HOSPITAL)  
MADURAI - 625020 NOW AT PLOT NO.1, AISHWARYAM HEIGHTS  
INDIRA NAGAR, 1ST STREET SENNAMANAICKENPATTI(PO)  
THADIKOMBU ROAD,  
DINDIGUL-624 004.

...PETITIONER/ APPELLANT  
IN CMP(MD)NO.12759,14871,15032, 15033, 15194 /2023

THE PROJECT DIRECTOR,  
NATIONAL HIGHWAYS NO.45 E & 220,  
NATIONAL HIGHWAYS AUTHORITY OF INDIA,MADURAI-625020.  
PRESENTLY AT  
PLOT NO.1, AISHWARYAM HEIGHTS  
INDIRA NAGAR, 1ST STREET SENNAMANAICKENPATTI(PO)  
THADIKOMBU ROAD,  
DINDIGUL 624004.

...PETITIONER/ APPELLANT  
IN CMP(MD)No.15409/2023

Vs

1 N.SYED LEVAI ROWTHER

2 THE COMPETENT AUTHORITY CUM  
SPECIAL DISTRICT REVENUE OFFICER,  
(LAND ACQUISITION OFFICER/  
NATIONAL HIGHWAY - 45E AND 220),  
THENI -625 531.

... RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.14864/2023

1. K.R.S.RAMJEYANTH,

2. THE SPECIAL DISTRICT REVENUE OFFICER/  
COMPETENT AUTHORITY FOR LAND ACQUISITION,  
NATIONAL HIGHWAY - 45E AND 220,  
COLLECTORATE BUILDINGS,  
THENI.

... RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.11775/2023



C.M.P(MD)Nos.14864, 11775, 12759, 14871, 15032, 15033, 15194 and 15409 of 2023

1. S.NASEER AHAMAED

2. THE SPECIAL DISTRICT REVENUE OFFICER/  
COMPETENT AUTHORITY FOR LAND ACQUISITION,  
NATIONAL HIGHWAYS 45E AND 220,  
COLLECTORATE BUILDINGS,  
THENI.

...RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.12759/2023

B.BALUCHAMY(DIED)

1. MAYIL

2. CHITHRA

3. POONKODI

4. JEYALAKSHMI

5. BUVANESWARI

6. MUTHUKUMAR

7. THE SPECIAL DISTRICT REVENUE OFFICER/  
COMPETENT AUTHORITY FOR LAND ACQUISITION  
(NATIONAL HIGHWAYS -45E AND 220)  
COLLECTORATE BUILDINGS,  
THENI.

...RESPONDENTS/RESPONDENTS  
IN CMP(MD)No.14871/2023

1.K.RAVEINDRAN

2 THE SPECIAL DISTRICT REVENUE OFFICER/  
CONPETENT AUTHORITY FOR LAND ACQUISITION,  
NATIONAL HIGHWAYS-45E & 220)  
COLLECTORATE BUILDINGS  
THENI.

...RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.15032/2023



C.M.P(MD)Nos.14864, 11775, 12759, 14871, 15032, 15033, 15194 and 15409 of 2023

1.A.MUMTAJ BEEVI

2 THE SPECIAL DISTRICT REVENUE OFFICER/  
COMPETENT AUTHORITY FOR LAND ACQUISITION,  
NATIONAL HIGHWAYS-45E & 220)  
COLLECTORATE BUILDINGS  
THENI.

...RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.15033/2023

1.V.RAJA

2.V.SATHISHKUMAR

3.THE SPECIAL DISTRICT REVENUE OFFICER/  
COMPETENT AUTHORITY FOR LAND ACQUISITION,  
NATIONAL HIGHWAYS-45E&220)  
COLLECTORATE BUILDINGS  
THENI.

...RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.15194/2023

1.S.MURUGESAN

2.THE SPECIAL DISTRICT REVENUE OFFICER/  
COMPETENT AUTHORITY FOR LAND ACQUISITION,  
NATIONAL HIGHWAY-45E & 220  
COLLECTORATE BUILDINGS  
THENI.

...RESPONDENTS/RESPONDENTS  
IN CMP(MD)NO.15409/2023

Prayer in CMP(MD). 14864/ 2023 :

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 1464 days in filing CMA SR No.2094 of 2023 and thus render justice.

Prayer in CMA(MD) SR No.2094 of 2023 :

To call for the records of the order made in dated 28.08.2018 bearing Arbitration O.P.No.44 of 2015 on the file of the Principal District and Sessions Judge, Theni and

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set aside and allow this C.M.A and costs.

Prayer in CMP(MD). 11775/ 2023 :

To condone the delay of 944 days in filing the CMA SR No.21728 of 2023 and thus render justice.

Prayer in CMA(MD) SR No.21728 of 2023:

To call for record and set aside the order made in Arbitration O.P.No.89 of 2015 dated 28.04.2018 on the Principal District Judge and Sessions Judge, Theni.

Prayer in CMP(MD). 12759/ 2023 :

To Condone the delay of 1621 days in filing the CMA SR 35582 of 2023 and thus render justice.

Prayer in CMA(MD) SR No.35582 of 2023:

To call for record and set aside the order made in Arbitration O.P.No.81 of 2015 dated 26.06.2018 on the Principal District Judge and Sessions Judge, Theni.

Prayer in CMP(MD). 14871/ 2023 :

To condone the delay of 220 days in filing the CMA(MD) Sr.No.1670 of 2023 and thus render justice.

Prayer in CMA(MD) SR.No.1670 of 2023:

To call for record and set aside the order made in Arbitration O.P.No.81 of 2015 dated 19.02.2021 bearing arbitration O.P.No.30 of 2016 on the Principal District Judge and Sessions Judge, Theni and set aside and allow this C.M.A and costs.

Prayer in CMP(MD). 15032/ 2023 :

To Condone the delay of 333 days in filing the CMA SR No.35576 of 2023 and thus render justice.

Prayer in CMA(MD) SR No.35576 of 2023:

To call for record and set aside the Judgment and order made in Arbitration O.P.No.15 of 2017 dated 08.10.2021 on the Principal District Judge and Sessions Judge, Theni and allow this CMA.



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Prayer in CMP(MD). 15033/ 2023 :

To Condone the delay of 850 days in filing the CMA SR No.35581 of 2023 and thus render justice.

Prayer in CMA(MD) SR No.35581 of 2023:

To call for record and set aside the Judgment and decree made in Arbitration O.P.No.77 of 2015 dated 24.08.2018 on the Principal District Judge and Sessions Judge, Theni and allow this CMA.

Prayer in CMP(MD). 15194/ 2023 :

To condone the delay of 629 days in filing the CMA.Sr.No.35579 of 2023 and thus render justice

Prayer in CMA.Sr.No.35579 of 2023 :

To call for record and set aside the judgment and decree made in Arbitration O.P.No.29 of 2016 dated 09.04.2019 on the Principal district Judge, Theni.

Prayer in CMP(MD). 15409/ 2023 :

To condone the delay of 928 days in filing the CMA.Sr.No.11977 of 2023 and thus render justice.

Prayer in CMA(MD).Sr.No.11977 of 2023:

To call for records made order in Arbitration O.P.No.41 of 2015 dated 22.03.2018 on the Principal District and Sessions Judge, Theni and set aside and allow this CMA.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.SU.SRINIVASAN, Advocate for the petitioner in CMP(MD)No.14864& 14871/2023 and MR.P.KARTHICK, Advocate for the petitioner in CMP(MD) No.11775, 12759 , 15032, 15033, 15194 & 15409 of 2023 and of MR.R.GOVINDARAJ, Advocate on behalf of the Respondent No.1 in CMP(MD)No.14864, 11775,12759 , 15032, 15033 & 15409 of 2023 and Respondents 1 to 6 in CMP(MD)No.14871 of 2023 and Respondents 1 & 2 in CMP(MD)No.15194/2023 and MR.N.MUTHUVIJAYAN, Special Government Pleader for the 2<sup>nd</sup> Respondent CMP(MD)No.14864, 11775 , 12759, 15032, 15033 & 15409 of 2023 and Respondent No.7 in CMP(MD) No.14871/2023 and Respondent No.3 in CMP(MD)No.15194/2023, the court made



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the following order:-

This batch of petitions are preferred for condonation of delay in filing appeals under Section 37 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A & C Act'), challenging the order passed by the learned Principal District and Sessions Judge in a batch of petitions filed under Section 34 of the A & C Act.

2. The facts may be briefly stated as follows:

- a) The National Highways Authority of India (NHAI), the petitioner before this Court, came out with its notification for acquisition of land under the provisions of the National Highways Act, 1956. The owners of the land were heard and awards were passed by the competent authority. Aggrieved by the perceived inadequacy of the compensation awarded by the competent authority, the claimants approached the statutory Arbitrator under Section 3G (5) of the A & C Act and they came to be confirmed by the statutory Arbitrator. Challenging the same, each of the claimants involved in this batch of cases approached the Principal District Court concerned with separate petition under Section 34 of the A & C Act and each of these cases were separately taken up by



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the Principal District Judge and were disposed of by separate orders at various points of time. The details are as below:

| Sl.No. | Name of the Claimant          | Case No.            | Date of order |
|--------|-------------------------------|---------------------|---------------|
| 1.     | N.Syed Levai Rowther          | A.O.P.No.44 of 2015 | 28.08.2018    |
| 2.     | K.R.S.Ramjeyanth              | A.O.P.No.89 of 2015 | 28.04.2018    |
| 3.     | S.Naseer Ahamed               | A.O.P.No.81 of 2015 | 26.06.2018    |
| 4.     | Legal Heirs of<br>B.Baluchamy | A.O.P.No.30 of 2016 | 19.02.2021    |
| 5.     | K.Raveindran                  | A.O.P.No.15 of 2017 | 08.10.2021    |
| 6.     | A.Mumtaj Beevi                | A.O.P.No.77 of 2015 | 24.08.2018    |
| 7.     | V.Raja<br>V.Sathishkumar      | A.O.P.No.29 of 2016 | 09.04.2019    |
| 8.     | S.Murugesan                   | A.O.P.No.41 of 2015 | 22.03.2018    |

b) One common feature in all these orders is that the learned Principal District Judge concerned has conducted a trial as if it is an original petition and replaced the reasoning of the Arbitrator with his own reasoning and enhanced the compensation payable. These orders passed by the learned Principal District Judge is now sought to be appealed. But, as there was delay in



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preferring the appeals, this batch of petitions are filed. The details are as below:

| Sl.N<br>o. | Date of order | C.M.P.No.              | Period of delay<br>(in days) |
|------------|---------------|------------------------|------------------------------|
| 1.         | 28.08.2018    | C.M.P(MD)No.14864/2023 | 1464                         |
| 2.         | 28.04.2018    | C.M.P(MD)No.11775/2023 | 944                          |
| 3.         | 26.06.2018    | C.M.P(MD)No.12759/2023 | 1621                         |
| 4.         | 19.02.2021    | C.M.P(MD)No.14871/2023 | 220                          |
| 5.         | 08.10.2021    | C.M.P(MD)No.15032/2023 | 333                          |
| 6.         | 24.08.2018    | C.M.P(MD)No.15033/2023 | 850                          |
| 7.         | 09.04.2019    | C.M.P(MD)No.15194/2023 | 629                          |
| 8.         | 22.03.2018    | C.M.P(MD)No.15409/2023 | 928                          |

and in the common affidavit filed in C.M.P(MD)No.14864 of 2023, the petitioner has given reasons and they read as below:

“17. It is respectfully submitted that the impugned order was passed by the Lower Court on 28.08.2018 and the said order was made ready on 11.10.2018 and received by the PIU on 15.10.2018. It is submitted that while the case was pending before the District Court, the Highway project was within the authority of Project Director of PIU, Madurai. In the meanwhile, the Dindigul Project Implementation Unit of NHAI was carved out Madurai PIU of NHAI and came into being w.e.f. 22.01.2018. The files pertaining to newly related Dindigul Unit



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was received from Madurai PIU in different dates of February 2018. It is further submitted for some period, as the post of Project Director, Dindigul was vacant, it was looked after by the Project Director of Nagercoil as additional charge from 22.01.2018 to 01.09.2020. Full time Project Director was appointed to the newly carved out office for PIU, Dindigul w.e.f. 02.09.2020. Similarly, the (southern) Regional Officer of NHAI post at Madurai was also vacant from 26.04.2019 to 23.08.2021. Due to all these reasons, the appeals could not be filed by the Petitioner/Appellant immediately within the prescribed period of limitation.

18. Apart from above, the Hon'ble Supreme Court also due to COVID 19, had, by various orders, suo motu and on the application by the Advocate on Record Association had extended the period of limitations for all judicial proceedings from 15.03.2020 to 28.02.2022 (719) days and granted further 90 days for filing petitions/appeals from 28.02.2022. (719+90=809 days are exempted)."

3. These petitions are strongly objected to by the claimants/respondents.

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4. The point for consideration is whether the delay must be condoned. In other words, is there sufficient reason for condoning the delay.

5. The issue as to whether Section 5 of the Limitation Act, 1963, will apply to an appeal under Section 37 of the A & C Act, has evoked different responses from the Court. A close reading of Section 37 of the A & C Act, does not indicate that Section 5 of the Limitation Act, will not apply. However, in N.V.International vs. State of Assam and others [(2020) 2 SCC 109], the Hon'ble Supreme Court has telescoped Section 34(3) of the A & C Act into Section 37 of the A & C Act, on the ground that an appeal is but a continuation of the original proceedings and therefore, what applies to an original proceedings necessarily might have to be applied to an appeal. However, this view of the Hon'ble Supreme Court came to be expressly overruled by a larger Bench of the Hon'ble Supreme Court in Government of Maharashtra vs. Borse Brothers Engineers and Contractors Private Limited [2021 6 SCC 460]. That however did not bring any consistency since different Benches of this Court in different cases in all matters that arose out of the same notification for acquisition have taken different views.

5.1. A list of authorities were circulated before this Court which dealt with the issue of application of Section 5 of the Limitation Act to an appeal filed under Section 37 of

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the A & C Act. They are : (i) C.M.P(MD)No.1848 of 2023, dated 28.04.2023 (ii)C.M.P (MD)No.6517 of 2023, dated 30.11.2023 (iii) C.M.P(MD) No. 5051 of 2023 etc., batch, dated 30.01.2024 and (iv) C.M.P(MD)Nos.9277 of 2023 etc., batch, dated 08.02.2024.

One view taken was that Borse's case would apply only to the proceedings under Commercial Courts Act, 2015 and not other matter and therefore, the dictum in N.V.International's case, will prevail. Another Bench however, has taken, a contra view and those cases where the Court have dismissed the petitions under Section 5 of the Limitation Act, are seen predominantly considering whether the petition disclosed sufficient cause for condonation of delay.

6. In the earlier occasion, a batch of Civil Miscellaneous Appeals filed by the NHAI came to be dismissed by this Bench on facts. This is view of the Hon'ble Supreme Court taken in Project Director, NHAI vs. M.Hakeem and another [2021 (9) SCC].

7. If the authority of the Hon'ble Supreme Court in Hakeem's case is carefully perused, the Hon'ble Supreme Court has not approved the method adopted by the learned District Judge in deciding the petition under Section 34 of the A & C Act. However, it also evaluated the fairness of the sum award awarded by the learned

District Judge de hors the procedural irregularities adopted by the learned District

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Judge and has decided to confirm the sum so determined by the learned District Judge. But, that is essential on the merit of the case and not one on procedure. This authority is recently followed by the Hon'ble Supreme Court in M/s.Larsen Air Conditional and Refrigeration Company vs. Union of India and others (Civil Appeal No(s).3798 of 2023, dated 11.08.2023)

8. Sufficiency of the cause which requires a forensic assessment cannot be straight-jacketed and it has to be evaluated based on the facts and circumstances of each particular case. What is significant in the case is not just sufficiency of the cause but the legality of the procedure adopted by the Court.

9. Whether the sum determined by the learned District Judge can be confirmed, notwithstanding the irregularity and illegality of the procedure adopted by the District Judge in deciding the proceedings under Section 34 of the A & C Act, clinches of the issue. Each case has to be investigated on its inherent strength. That opportunity cannot be denied to the petitioner. It is underscored that none shall benefit from illegality, and there may not be equality in illegality. But, the merit of the sum awarded by the learned District Judge still needs evaluation since Hakeem's case has provided a window to this Court to evaluate the same.



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10.1 Turning to the issue whether this Court should condone the delay on the ground stated for the delay is concerned, this Court should not adopt a hyper-technical position and try to filter the reasons stated as if it is engaged in a scientific process in a laboratory conditions. The adequacy or inadequacy of reasons cannot be left to the exclusive perception of the Court but should be appreciated in the context in which the cause for the delay is set. There is no barometer-standard wherein justness for the cause for the delay could be scientifically ascertained and each case stands on its own merit. Turning to the facts of the present case, there is no denial the project of the petitioner at Madurai is closed and merged with. There is no denial in the fact that the Office was without a project officer and someone from Kanniyakumari was entrusted in additional charge. Necessarily, someone who is permanently headquartered few 100 kms away from the project office might have missed the need to file within time. The Court may have to appreciate the grounds for delay not from its point of view but the point of the litigant.

10.2 Turning to the present case, if only the delay is not condoned, it will sanctify the award passed by the District Judge by adopting a absolutely illegal procedure, and in exercise of the power which is not vested in law. In this context, Hakeem's case

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operated in a slightly different situation. This Court does not want to legitimize what it would term as an illegal award. Article 227 of the Constitution of India grants powers to step in whenever illegality in judicial proceedings is brought to its notice. This batch of petitions fall squarely in that category.

10.3 Necessarily, then petitions have to be allowed. However, the claimants are left in uncertainty today and the reason therefor is on the petitioner. But, cost is the panacea for all procedural pains one undergoes in any proceedings before the Court.

11. Accordingly, these petitions are allowed and the delay is condoned on condition that the petitioner pays a sum of Rs.7,500/-(Rupees Seven Thousand and Five Hundred) each, to the respondents/claimants within a period of four weeks from today. On compliance, the Registry is required to number the appeals if it is otherwise in order.

sd/-  
26/06/2024

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18/07/2024  
Sub-Assistant Registrar (CS -II )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

PM



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TO

THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, THENI

COPY TO

THE SECTION OFFICER, JUDICIAL SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.GOVINDARAJ, Advocate ( SR-7053[I] dated 27/06/2024 )

+6 cc to MR.P.KARTHICK, Advocate SR NO.6973, 6972, 6971, 6970, 6969 & 6968

DATED 26.06.2024

ORDER IN

C.M.P(MD)Nos.14864, 11775, 12759, 14871, 15032, 15033,  
15194 and 15409 of 2023

in

C.M.A(MD)SR.Nos.2094, 21728, 35582, 1670, 35576, 35581, 35579 and 11977 of 2023

Date :26/06/2024

RK (18/07/2024) 16P / 10C

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