



C.M.A(MD).No.538 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 01.08.2024

CORAM:

**THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr.JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD). No.538 of 2023
and
C.M.P(MD).No.6997 of 2023

The Planning Director,
National Highways,
6, Old No.44, 1st Floor,
3rd Main Road, Ponnagar,
Trichy.

... Appellant

Vs.

1. S.P.Kamaleshwari
2. The District Revenue Officer,
(Land Acquisition) National Highways-45B
Madurai-625020.

3. The District Collector,
Madurai.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 37 (1) (2) of the Arbitration and Conciliation Act 1996, praying to set aside the order of compensation awarded by the learned Principal District Judge, Madurai in Arbitration O.P.No.21 of 2016 dated 20.09.2019 and allow this appeal.



WEB COPY



C.M.A(MD).No.538 of 2023

For Appellant : Dr.R.Rajagobal

For Respondents : Mr.K.Kumaravel

: Mr.M.Prakash,
Additional Government Pleader
for R2 & R3

JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The appeal in C.M.A.(MD).No.538 of 2023 has been filed by the National Highways Authority, challenging the Arbitration award passed in A.R.O.P.No.21/2016 dated 20.09.2019 filed by the land owner to set aside the arbitration award by the Collector/Arbitrator dated 24.04.2015.

2. The first respondent owned lands along Madurai-Trichy National Highways Road in the Survey Nos.116/3, 171/7, 173/2, 380/8A2, 380/9B, 380/13A and 388/1A situated at “Navinipatti Village”, Madurai District. The Ministry of Shipping, Road Transport and Highways (Department of Road, Transport and Highways) issued the notification dated 08.07.2004, for acquisition of an extent of 292 sq.mtr, 620 sq.mtr, 15 sq.mt, 1150 sq.mtr, 100 sq.mtr., 450 sq.mtr., 1420 sq.mtr., totally 4044 sq.mtr., of lands



C.M.A(MD).No.538 of 2023

belonging to the respondents' under Section 3(A) of the National Highways Act, 1956 (herein after called as "**NHAI Act**") for expanding and laying four way track (National Highways road from Madurai- Trichy (NH45B) under "the Golden Quadrilateral Scheme". The National Highways Authority of India, (*herein after called "NHAI"*) is the implementing authority. The land owners submitted their objection to the acquisition and the same was not considered by the Project Director under the NHAI Act. The competent authority under the "NHAI Act", namely, the "District Revenue Officer (herein after called as **CA/DRO**)" considering that the land was situated in the vital area informed the land owners about the appropriate compensation that would be determined and paid and issued the 3D notice and directed the land owners to participate in the award enquiry, after taking possession. The land owners participated and produced the documents and claimed higher price and sought to determine fair and just compensation along with solatium and interest. The competent authority/District Revenue Officer, fixed the value of the land, market value of Rs.15.56/- per sq.feet and the compensation was determined for the respondent at Rs.69,268/-. But, CA/DRO has not considered the documents produced by the landowners.



WEB COPY

2.1. Aggrieved over the same, the land owners have approached the District Collector, Madurai/Arbitrator (herein after called as “*Arbitrator/Collector*”) under the NHAI Act, by submitting the application under the Arbitration and Conciliation Act, 1996 as prescribed Under Section 3-G.(5) of NHAI Act. They submitted the relevant documents and also showed the topography of the acquired land to show the potentiality of land and sought enhancement of the compensation along with the payment of the compensation under Section 23(1)(A) and Solatium and interest as per the Land Acquisition Act 1894 (herein after called as “*Act 1894*”). The Arbitrator *simply dismissed the claim of the land holders* and hence, each land holder has preferred the arbitration original petition before the learned Principal District Judge, Madurai under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Principal District Judge, by impugned orders partly accepted the plea of the land owners and set aside the award passed by the District Collector and passed the award determining the compensation on the basis of the documents produced by both sides and granted solatium, Additional amount and corresponding interest. The Tribunal also granted solatium additional amount under 23(1)(a) of Land Acquisition Act 1894 (herein called old act 1894), considering the



C.M.A(MD).No.538 of 2023

development of law ie., that the National Highways Act section 3J was struck down by the Hon'ble Supreme Court reported in 2019 (9) SCC 304 (herein after called “Tarsem Singh case”).

2.2. Challenging the determination of the amount by the learned Principal District Judge, Madurai under Section 34(2) of the Arbitration and Conciliation Act, 1996, the National Highways Authority filed the above Civil Miscellaneous Appeal, on the grounds mentioned in the Memorandum of grounds of appeal.

3. Submission of the learned counsel appearing for NHAI, namely, Thiru.D.Rajagopal:

3.1. The learned counsel for the National Highways Authority confined their arguments to the following two grounds:

3.2. The Arbitration Tribunal, namely, the learned Principal District Judge, has no jurisdiction to determine the compensation under sec.34(2) of the Arbitration and Conciliation Act, 1996 (herein after called “A & C Act 1996”) and modify the award. According to the learned counsel, if the arbitrator has not passed the award as per the A & C Act, 1996, it is the duty



C.M.A(MD).No.538 of 2023

of the arbitration tribunal to set aside the same by assigning reasons and remand the matter back for the arbitrator to determine compensation. But, the learned Tribunal Judge himself has taken up the role of the arbitrator and determined the compensation and the same is beyond the jurisdiction as per sec.34 (4) of the Arbitration Act. Therefore they sought to set aside the same, considering the jurisdictional error and direct the arbitrator to determine compensation. To substantiate the same, he relied the following judgments of the Hon'ble Supreme Court :-

- 1) 2021 (9) SCC 1 (Hakeem Case)**
- 2) 2022 (15) SCC 1**
- 3) 2023 SCC Online SC 982**
- 4) 2024 SCC Online SC 19**

3.3. The learned counsel for the National Highways Authority further submitted that as per the clarification issued by the Hon'ble Supreme Court reported in “Tarsemcase- 2”, reported in **2021 SCC Online SC 3175**. The original paragraph No.41 of the “Tarsemcase- 1” reported in **2019 (9) SCC 304** is deleted. Therefore the landowners are not entitled for any amount under section 23(1)(A) of the Land Acquisition Act and In the said circumstances, in all the cases, the learned District judge, passed the award with the amount under Section 23(1)(a) of the Act, Which is not legally



C.M.A(MD).No.538 of 2023

maintainable.

WEB COPY

4. Submission of the learned counsel appearing for the claimant:

4.1.Per contra the learned counsel for the claimant namely landowner submitted that the judgment relied by the learned counsel for the National Highways Authority, namely in the case of “*Hakeem*” the Hon'ble Supreme Court after declaring the law that the tribunal has no power to modify the award, but, confirmed the award passed by the learned Tribunal Judge. They placed reliance on Paragraph Nos.49, 52, 59, 60 of “*Hakeem Case*”. They, further submitted that even after the decision of “*Hakeem Case*”, Larsen Case, “*Samueran Case*”, the power of Arbitration Tribunal under 34 of the A & C Act 1996 is not settled and hence, on 20.02.2024 reference was made by the Hon'ble Three Member Bench in SLP(C)Nos.15336, 15337 of 2021 “*Gayathri Vs. Balasamy*” Further, in view of the long pending dispute, relating to the powers of the Arbitration Tribunal under section 34, award also was passed. In the said circumstances, the court has no jurisdiction to set aside the same under section 37 of Arbitration and Conciliation Act 1996.



4.2. The learned Advocate for the landowner also submitted that similar question raised by NHAI was declined in number of earlier cases and requested to consider these case on merits taking into consideration the constitutional right of land losers to receive fair compensation which was not considered by the arbitrator, who, without even referring the relevant guiding factor mentioned under Section 3-G.(7) of the NHAI Act, to determine the compensation, simply dismissed the original petitions. Hence, there is a patent illegality in dismissing the arbitration original petition and the land owners are deprived of their constitution right of entitlement of fair and just compensation for the land, acquired under the National Highway Act to expand the road.

5.The learned counsel for landowner further submitted that under the National Highways Act, the land is acquired for expansion and the land after expansion, would be generating income through the collection of “toll” and hence, they are entitled to higher compensation. Therefore, through the expansion of road “NHAI” would generate income including interest for the amount invested in the scheme and hence the land loser is entitled to receive higher and proportionate compensation equal to income likely to be



generated.

WEB COPY

6.The learned counsel submitted that the usual principle applicable to the arbitration proceedings, relating to the other arbitration, which have emanated out of an arbitration agreement is not applicable to the present case for the reason that here there is a statutory reference to the arbitrator for “*determination of the market value of the land and fair compensation*”. Hence, the learned counsel stated that under Section 34 of the Act, when there is an apparent illegality and when the award was passed against public policy and also when there is perversity in the decision of the arbitrator dismissing the arbitration petition by confirming the order of CA/DRO”, the Arbitration Tribunal has power to set aside the same under 34 of the Act. According to the learned counsel for the land owners, “there is no prohibition under the present section 34 of the Act”, to determine the compensation in a statutory reference and to determine the compensation by setting aside the award in the interest of justice, equity and good conscience.

6.1. Further, the learned counsel for the landowners submitted that this Court in the *W.P.No. 15699 of 2020 namely T.Chakkrabani v. Union of*



C.M.A(MD).No.538 of 2023

India has held that the landowners are entitled under Section 23(1)(a) of the Act also. In the said circumstances, the clarification issued to the Punjab case in 2021 SCC Online SC 3175 is not applicable to the present case. Hence, they seek to confirm the award.

7. We have considered the rival submissions made by the learned counsel appearing on either side and also perused the precedents relied by the both parties and also impugned judgment under the relevant records and the relevant provision of the Arbitration Act and the National Highways Act.

8. Points for consideration:

From the submission of both the learned counsel, the following point arises for the consideration in this appeal:

8.(i). Whether the learned judge, Arbitration tribunal is correct in determining the market value of land and fair compensation on the application filed by Land owner under section 34 of the arbitration act?

8.(ii). Whether the impugned award of tribunal suffers any legal infirmities to invoke jurisdiction under section 37 of the Arbitration Act



by this court ?

WEB COPY

8.(iii). Whether the landowner is entitled to the compensation under section 23(1)(a) of the Land Acquisition Act?

9.Discussion on the question Nos.1 and 2:

9.1.The counsel appearing for the NHAI have made their primordial submission that the Learned Principal District and Sessions Judge, presiding the arbitration tribunal, has committed error in determining the market value, fair compensation by modifying the arbitration award passed by the arbitrator in utter violation of the section 34 of the Arbitration and Conciliation Act 1996. According to them, the power of the court *under Section 34 to set aside the award does not include power to modify such an award. They mainly contented on the basis of the decision of the Hon'ble Supreme Court in the case **Project Director, NHAI v. M.Hakeem and another** reported in 2021 (9) SCC 1 and submitted that power of the modification is not available under section 34 of the Arbitration Act, 1996. In the above all cases, the learned District Judge, presiding over the Arbitration Tribunal under NHAI Act “without remitting the matter to the arbitrator” determined the compensation and passed the impugned order.*



C.M.A(MD).No.538 of 2023

Therefore according to the counsel, there is error in the impugned order.

Therefore, on the basis of the technical plea, the counsel appearing for the NHAI, seek to set aside the award passed by the Learned Principal District Judge by invoking the powers under section 37 of the Arbitration and Conciliation Act.

9.2.As per Section 34 of Arbitration Act, 1996, if the arbitral Tribunal had formed opinion that the award would have to be set aside on the ground of its patent illegalities in arriving at conclusions and calculation of amounts awarded, arrival of perverse finding by ignoring or excluding relevant materials or taking into consideration irrelevant materials, an award is against justice when its shocks the conscience of the Court, lack of judicial approach in arriving fair, reasonable and objective decisions, award with finding against the fundamental policy of Indian Law in violation of statutory provisions, the Tribunal on the request of the parties, under Section 34(4) of Arbitration Act, 1996, has to place the matter before the Arbitrator to eliminate the grounds for setting aside the arbitration award. Therefore, according to the learned counsel for the NHAI, the Tribunal in all fairness should remit the matter to the arbitrator for arriving at the proper



C.M.A(MD).No.538 of 2023

conclusion by eliminating the grounds. In the considered opinion of this Court, the said submission cannot be accepted in this case for the following reasons:

9.2.1. In this case the tribunal has determined compensation much earlier to the decision of the Hakeem case dated 20.07.2021. During the course of the hearing, the learned counsel appearing for the NHAI has never raised the jurisdiction issue under section 34 of Arbitration and conciliation Act, before the Tribunal. Further, the NHAI has also not made a request under Section 34(4) of the Arbitration Act, 1996, before the Tribunal to seek the correctness of the arbitration award passed impugned. Before this court, they raise the issue of jurisdiction and pray to exercise the power under section 37 of the Act.

9.3. To decide the power under Section 34 of the Arbitration Act, 1996, conferred upon the Tribunal to pass the reasonable award without remitting the matter, this Court considers the law laid down by the Hon'ble three judges Bench of the Supreme Court in the case of ***Kinnari Mullick v. Ghanshyam Das Damani***, reported in (2018) 11 SCC 328 at page 334



WEB COPY



C.M.A(MD).No.538 of 2023

14. In this backdrop, the question which arises is : whether the highlighted portion in the operative part of the impugned judgment of the Division Bench can be sustained in law? For that, we may advert to Section 34(4) of the Act which is the repository of power invested in the Court. The same reads thus:

“34. (4)On receipt of an application under subsection (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award.”

15.On a bare reading of this provision, it is amply clear that the Court can defer the hearing of the application filed under Section 34 for setting aside the award on a written request made by a party to the arbitration proceedings to facilitate the Arbitral Tribunal by resuming the arbitral proceedings or to take such other action as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. The quintessence for exercising power under this provision is that the arbitral award has not been set aside. Further, the challenge to the



said award has been set up under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. “No power has been invested by Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in sub-section (4) of Section 34.”

9.4. From the above law laid down by the Hon'ble three judges bench of the Supreme Court, it is clear that there is no absolute law laid down by the Hon'ble Supreme Court with specific direction to the arbitration tribunal to remit the matter to the arbitrator for passing the suitable award. There is also no direction issued by the Hon'ble Supreme Court that the Tribunal has no jurisdiction to modify the award even in the case where the award is passed against the public policy and is patently illegal. Therefore, the argument of the learned counsel for NHAI that the learned Tribunal Judge would have to remand the matter to the arbitrator cannot be accepted. Before the decision of the Hakeem case, as per the law laid down by the Hon'ble Supreme Court, the Tribunal Judge has power to set aside the award



C.M.A(MD).No.538 of 2023

on the above stated circumstance. Hence submission of the counsels appearing for the NHAI without raising the said arguments before the Tribunal, canvassing the plea before this court on the basis of the judgments rendered in “Hakeem case” cannot be accepted on the principle that applicability of law decided by the Hon'ble Supreme Court is not applicable to the decision already taken.

9.5. Therefore this court declines to accept the arguments of the learned counsels appearing for the NHAI that the tribunal committed error in determining compensation without remitting back to the arbitrator to pass proper award.

10. Under the NHAI Act, at the moment, when the acquisition authority disallows the objection of the land owners, vesting of the land automatically under section 3(D) without passing award takes place. The extreme deviation from the Land Acquisition Act, is provided under the NHAI Act, to implement the road project in an expeditious way. After vesting of the land only, process of the determination of the compensation will commence. As per the scheme of NHAI, Firstly, the amount has to be



determined by the “*competent authority*”. The said determined amount if not acceptable either by the land losers or the NHAI, shall, on an application by either parties, be determined by “*Arbitrator namely collector*”. The arbitrator award is not satisfied either by the NHAI or Land Loser, they have to file application before the court, namely District Court under section 34 of the Arbitration and Conciliation Act 1996. To redress the further grievance, either party has a right to file appeal under section 37 of the Arbitration and conciliation Act 1996 before the High court. Therefore, the competent authority has to determined the fair market value of the land and compensation with more responsibility and “arbitrator” has to determine with judicial approach as “reference court”.

10.1. The competent authority *shall determine the compensation* following the guiding factors mentioned in Sub Section 3-G(7) of the NHAI 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 3-A;

.....

10.2.As per section 3(I) of the Act, *the competent authority to determine the market value can act as a Civil Court with all powers of Civil Court.* To determine the market value, no guideline is available either in the form of Rules or notification.

10.3. Hence, the principle laid down by the Hon'ble Supreme Court under the various acquisition Act, is the guiding factor to determine the market value of the acquired land.

The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired.¹ The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities.² It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential



possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about a town is developing or has prospect of development have to be taken into consideration.

³ Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality.⁴ While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner.⁵ When no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed.⁶ The



amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

<i>Positive factors</i>	<i>Negative factors</i>
(i) <i>smallness of size</i>	(i) <i>largeness of area</i>
(ii) <i>proximity to a road</i>	(ii) <i>situation in the interior at a distance from the road</i>
(iii) <i>frontage on a road</i>	(iii) <i>narrow strip of land with very small frontage compared to depth</i>
(iv) <i>nearness to developed area</i>	(iv) <i>lower level requiring the depressed portion to be filled up</i>
(v) <i>regular shape</i>	(v) <i>remoteness from developed locality</i>
(vi) <i>level vis-à-vis land under acquisition</i>	(vi) <i>some special disadvantageous factors which would deter a purchaser</i>
(vii) <i>special value for an owner of an adjoining property to whom it may have some very special advantage⁷</i>	

1 1977(1) SCC 684
2 2008(2) SCC 568
3 2008(2) SCC 568
4 2003 (12) SCC 334
5 1989 (2) SCC 329
6 1998 (2) SCC 385
7 2005 (4) SCC 789



10.4. Applying the above principles, the competent authority shall determine the market value and compensation by applying judicial mind. He can also examine the witnesses, call for the documents from the revenue side and make enquiry with revenue officials to determine fair market value and fair compensation.

10.5. Aggrieved over the said determination, either the land loser or the NHAI, may file an application before the arbitrator to be appointed by the Central Government to determine the compensation. The arbitrator so appointed shall determine the compensation as per the above stated guiding factor mentioned in Section 3-G(7) of the NHAI Act. In the process of determination, the arbitrator shall follow the provision of the A & C Act 1996 . *As per the following Section of 3-G(5) and 3-G(6) of the NHAI Act, which reads as follows:*

*(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 arbitrator 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.

10.6. From the above, it is clear that the arbitrator shall determine the compensation as per the guiding factor mentioned in Section 3-G(7) of the NHAI Act, following the procedure stated in the Arbitration Act 1996. Therefore, the substantive law is NHAI Act and the procedural law is the Arbitration Act 1996. Therefore, under the NHAI Act, the Central Government appointed the arbitrator to determine the compensation, by following the substantive provision of NHAI Act, upon applying the provision of the Arbitration Act 1996. The words “**Be determined by arbitrator**” has its own significance. Here, arbitrator has not resolved the dispute between the parties to the contract as per the terms of contract. There is no question of breach of either terms of contract or agreement and the resultant determination of the damages. As per the provision 3G(5) of NHA Act, as held by the Hon'ble Supreme Court in 2020 (15) SCC 533 decision, the land owners have no right to seek appointment of arbitrator. The appointment of arbitrator is an independent act of the Central Government. In the said process, there is no agreement between the NHAI



C.M.A(MD).No.538 of 2023

and land loser. Therefore, the duty cast upon the arbitrator to determine the compensation, is different from the ordinary arbitration dispute arising in the commercial contract matters. This type of Statutory Arbitration can not be equated with the functions of the arbitrator discharging under the agreement entered between the parties to the arbitration and the same was fortified from the following object and reasons of the amendment to the NHAI Act:

“statement of objects and reasons

One of the impediments in the speedy implementation of highways projects has been inordinate delay in the acquisition of land. In order to expedite the process of land acquisition, it is proposed that once the Central Government declares that the land is required for public purposes for development of a highway, that land will vest in the Government and only the amount by way of compensation is to be paid and “any dispute relating to compensation will be subject to adjudication through the process of arbitration.”



10.7. From the reading of the object, it is clear that the arbitrator is duty bound to adjudicate the dispute relating to the compensation and determine fair compensation. During the course of the process of adjudication and determination of the compensation, the procedure stated in the Arbitration and Conciliation Act has to be applied. In the said circumstances, the arbitrator acting as per the provision of the Arbitration and Conciliation Act would adjudicate and determine the compensation. In sum and substance, in the process of determination of the compensation, the procedure of arbitration is thrust upon the land loser without any written agreement to regulate the process of the arbitration and the terms of the right and obligations. Therefore, the arbitration proceedings relating to the determination of the compensation are not governed by the agreement to regulate the process of arbitration. The said deviation is intended to determine the compensation without driving the parties to the Court proceedings, which is mulcted with procedural complication and to avoid belated determination of the compensation. The said transformation of the process of the determination of compensation is intended for the speedy measures.

“Arbitration” as per the legal definition generally means that:-



“Arbitration is a private form of dispute resolution, however, the arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a ‘judicially’ sound and objective outcome or award”.

“The amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.”

The above words in the said section itself has its own significance.

Therefore, the arbitrator is acting as a reference authority under the old Land Acquisition Act, and he is duty bound to act as a judicial officer to determine the compensation by following the powers of the Civil Court as stated in the Section 3-I of the NHAI Act. Here, there is no reference to the arbitrator to resolve the dispute, but statutory obligation has been created to determine the compensation. Hence, there is a vast difference from the ordinary arbitration dispute arising in the commercial contract matters and this type of Statutory Arbitration to determine compensation. As a sequel, it can not be equated with the function of arbitrator discharging his functions under the agreement entered between the parties to the arbitration. Therefore, the scheme of the statutory arbitration under this NHAI Act, is different from the commercial arbitration mentioned in the Arbitration Act.



WEB COPY

11. The law requires determination of the amount payable as compensation. The said duty cast upon both the competent authority and the arbitrator, is to arrive at a fair and just compensation, in order to compensate the land losers, for the reason that they had lost their livelihood. The value of the land raises many fold and the deprivation amounts to violation of the human right to hold property. The constitutional obligation rests upon both the competent authority and arbitrator to determine the fair and just compensation to restore the life of the land losers as per the theory of restitution.

11.1. The NHAI Act itself prescribes procedure and the guidelines to follow in the process of the determination of the compensation. Therefore, only at the stage of Section 34 of the Arbitration Act, the land loser gets the first opportunity to avail judicial application of mind in determining the compensation. Therefore, the technical plea of the NHAI that the power under Section 34 of the Act is very much limited and Tribunal has to remand the matter without determining the compensation even after finding that the arbitrator had acted against the public policy and his decision



suffers from perversity and apparent illegality on the face of the award itself on account of the lack of judicial application of mind in determining the compensation, could not be accepted in this case, for the reason that the same would not only amount to miscarriage of justice and would place the land loser in the worst position to restart the litigation. Therefore, this Court placed the reliance of the following paragraph of the Hon'ble Supreme Court, in the case of **ONGC Ltd. v. Saw Pipes Ltd.**, reported in (2003) 5 SCC 705 at page 719:

14.... the settled principle of law that the procedural law cannot fail to provide relief when substantive law gives the right. The principle is — there cannot be any wrong without a remedy. In M.V. Elisabeth v. Harwan Investment & Trading (P) Ltd. [1993 Supp (2) SCC 433] this Court observed that where substantive law demands justice for the party aggrieved and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. Similarly, in Dhannalal v. Kalawatibai [(2002) 6 SCC 16] this Court observed that wrong must not be left unredeemed and right not left unenforced.



11.2. Further, even after “Hakeem case”, there are divergent views before the Hon'ble Supreme Court relating to Section 34 of the Act. The Hon'ble three bench of the Supreme Court in the case of ***Vidya Drolia v. Durga Trading Corpn.***, reported in **2021 (2) SCC 1** has held as follows:

.....Violation of public policy by the arbitrator could well result in setting aside the award on the ground of failure to follow the fundamental policy of law in India.....

One of the view of the law Courts is that there can be no interference by excising power under Section 34 of Arbitration Act 1996. The other view is that certain circumstances warrant interference. Therefore, the power of the Court under Section 34 of the Act to make the interference with the award is always a vexed subject. The same has been observed by the Hon'ble Supreme Court in the latest decision reported in **2024 (2) SCC 375** after eloquent discussion of the all the earlier decision in paragraph No.33:

33.To disentangle and balance the competing the principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a



C.M.A(MD).No.538 of 2023

particular case has not been an easy exercise.

WEB COPY

11.3.Further, the Hon'ble two member bench of the Supreme Court in the said decision has finally held as follows in paragraph No 47:

47. We have extensively analysed the award, its patent flaws and illegalities which emanate from it, like the manifest lack of reasoning in arriving at the conclusion and the calculation of amounts awarded, which, in fact, amount to double or part-double payments, besides being contradictory, etc.

11.4. In the case of ***Associate Builders v. DDA***, reported in ***(2015) 3 SCC 49***, the Hon'ble two member bench of the Supreme Court has held that if the award is against the public policy and suffers from patent illegality, the power under section 34 can be invoked.

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or



WEB COPY



C.M.A(MD).No.538 of 2023

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

11.5. From the above, as on date, there is a decision in favour of justification of the exercise of power under Section 34 of the Act to determine the compensation by the learned Judge, presiding over the arbitration Tribunal and also a contra view. In view of the said situation, the Hon'ble Supreme Court has referred the matter to the larger Bench. It is settled principle that pending reference is not a bar to decide the cases on merits. Further, in this case, the land losers have travelled a long way to get their legitimate compensation from the year 2006 onwards. In the said circumstances, “the rigour of procedure” applicable to the ordinary dispute arising out of the contract between the parties is not applicable to these type of statutory arbitration for determination of the compensation.

12. Procedure is the handmaid of the justice. The procedural technicalities can not hamper the proper determination of compensation in order to restitute the land loser.



12.1. The procedural rigour attached with the Arbitration and Conciliation Act is also some what relaxed in the applicability of limitation under Section 37 of Arbitration and Conciliation Act by the Hon'ble Three Judges Bench of the Supreme Court reported in **2021 (6) SCC 460**. Earlier, in **2020 (2) SCC 109**, the Hon'ble Two Members Bench of the Supreme Court has held that the appeal filed under Section 37 beyond the period of limitation mentioned is not maintainable. Subsequently, the Hon'ble Three Judges Bench of the Supreme Court in **2021 6 SCC 460** relaxed the said rigour and applied Section 5 of the Limitation Act. Therefore, similar deviation of the procedural requirement is a timely requirement to deal with the power of the Arbitration Tribunal to decide the application filed either by the land loser to get proper compensation or the Government Authorities to save the Government Exchequer, and also in order to protect the interest of both parties upon the principle of equity, good conscience as applied by His Lordship Thiru Justice Krishna Iyer, in the case of **Rattan Lal v. Vardesh Chander**, reported in **(1976) 2 SCC 103** at page 114, wherein he held as follows:



...The great values that bind law to life spell out the text of justice, equity and good conscience and Cardozo has crystallised the concept thus:

“Life casts the mould of conduct which will some day become fixed as law. Free India has to find its conscience in our rugged realities and no more in alien legal thought. In a larger sense, the insignia of creativity in law, as in life, is freedom from subtle alien bondage, not a silent spring nor hothouse flower.”

12.2. The said principle of equity, good conscience, was elaborated and reiterated by the Hon'ble Constitution Bench of Supreme Court in **2020 (1) SCC 1 M. Siddiq (Ram Janmabhumi Temple-5J) v. Suresh Das** paragraph Nos.1019,1020,1022.. under headings **“Justice, Equity and Good Conscience today”**

1022. The common underlying thread is that justice, good conscience and equity plays a supplementary role in enabling courts to mould the relief to suit the circumstances that present themselves before courts with the principal purpose of ensuring a just outcome. Where the existing statutory framework is inadequate



WEB COPY



C.M.A(MD).No.538 of 2023

for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case. A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law. Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties. Equity, as an essential component of justice, formed the final step in the just adjudication of disputes. After taking recourse to legal principles from varied legal systems, scholarly written work on the subject, and the experience of the Bar and Bench, if no decisive or just outcome could be reached, a Judge may apply the principles of equity between the parties to ensure that justice is done. This has often found form in the power of the court to craft reliefs that are both legally sustainable and just.



C.M.A(MD).No.538 of 2023

12.3. At this stage, this Court reminds and observes the immortal words of the *Hon'ble Chief Justice Chagla* in the case of firm *Kaluram Sitaram Vs The Dominion of India* reported in *AIR 1954 BOM 50*, that “when the state deals with a citizen it should not ordinary rely on technicalities and if the state is satisfied that the case of citizen in a just one, even the legal defences may be open it, it must act, as has been said by the eminent judges, as an honest person”.

12.4. The above said immortal words of the Hon'ble Chief Justice chagla in the case has been also reiterated by the Hon'ble Supreme Court in various judgments including the judgment reported in *2017 (16) SCC 757*, *2018 (5) SCC 430*, *2015 (14) SCC 801*.

12.5. The Hon'ble Supreme Court also in *2010 (1) SCC 512* has held that statutory authorities cannot raise frivolous and unjust objection.

12.6. In spite of that, the authorities has been raising the technical plea. It is seen from the past experience, that the Government always raised number of technicalities in order to deprive the livelihood of the persons



C.M.A(MD).No.538 of 2023

like the respondents on every occasion so as to prolong the payment of the legitimate compensation. The question of technicalities always arise in the case of adjudication between the downtrodden and the Government authorities ie., in the case of inequality. Whenever, the fight is between two groups of inequality, suppressed people become the victim of technicality. One of the said circumstance, raised by the NHAI in this case is relating to the procedural technicality which would cause serious prejudice to the land losers who have been longing for fair determination of compensation for their acquired land.

12.7.The money value is going down on day to day basis on the account of the raising inflation. In this aspect it is relevant to extract the following portion of the Hon'ble Supreme Court : In ***K.Krishna Reddy V. Collector (LA) (1988) 4 SCC 163.***

After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one-half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation....



13. *The power of compulsive acquisition has an inbuilt element of duty and responsibility upon the State to pay the compensation which is just, fair and without delay¹* . Therefore, considering the fact that the acquisition was made long back and when there is no true nature of arbitration proceedings set up in the NHAI Act, the learned Tribunal Judge should exercise the jurisdiction and determine the compensation in the interest of the land loser in order to achieve of the object of speedy disbursement of compensation.

13.1. The Hon'ble Division Bench of this Court in C.M.A.No.386 of 2016, made an elaborate discussion regarding the similar plea raised by the NHAI, has considered the pre-amendment and post-amendment provision of 34 of the Arbitration and Conciliation Act and held as follows:

*44. From the above judgment, this Court finds that the scope for modification of award had been recognized where the offending part is not severable from the rest. It is also significant to note that, in the above judgment, obviously Explanation (2) prohibiting review on merits of the dispute introduced later, is not referred to. This Court still has some reluctance to hold that the Hon'ble Supreme court, in **M.Hakeem's case (supra)**, has ruled*



*out the power to modify the award only on the basis of Explanation (2) found in Section 34(2)(b)(ii). However, there is a legislative background for introducing 2015 amendment on 31.12.2015 with retrospective effect from 23.10.2015. After the judgment of Hon'ble Supreme Court in ONGC Ltd. v. Saw Pipes Ltd. Reported in (2003) 5 SCC 705, where definition of “public policy” was expanded to include “patent illegality”, it appears that some eminent jurists expressed their concern and apprehended that the judgment in **Saw Pipes Ltd. (Supra)** might permit judicial review of arbitral awards fro error of law apparent on the face of the record. Hence, Law Commission, in its 264th report, recommended to amend Section 34(2)(b)(ii) by introducing Explanation 1 and Sub-Section 2A with proviso to Section 34 of the Act. The Law Commission, thereafter, noticed the judgment of Hon'ble Supreme Court in **oil and Natural Gas Corporation Limited v. Western GECO International Limited** reported in (2014) 9 SCC 263 permitting review of an award on merits if the decision is per se untenable resulting in miscarriage of justice. Since the Law Commission opined that such a power of reviewing an award on merits is contrary to the object of 1996 Act to minimize the judicial intervention, the Law Commission, in its*



“Supplementary” to 246th Report on amendment to Arbitration and Conciliation Act, 1996, recommended further clarification by amendment which led to the inclusion of Explanation 2 in 2015. Thus, it is evident now that the judgment of Hon'ble Supreme Court in Oil and Natural Gas Corporation Limited v. Western GECO International Limited reported in (2014) 9 SCC 263 is a binding precedent on the interpretation of Section 34 of Arbitration and Conciliation Act, 1996, before 2015 amendment and this judgement alone will prevail when we consider the scope of modification of award while challenging the award of District Collector under Section 3-G(5) of NH Act, 1956.

13.2. Even though, the Hon'ble Supreme Court in 2021 (9) SCC 1 declared law that under Section 34, the Court has no power to modify the award passed by the arbitrator, but, on facts has laid the following binding precedents:

In the case of **NHAI v. M. Hakeem**, reported in (2021) 9 SCC 1

Also, we cannot shut our eyes to the fact that the arbitrator has awarded compensation on a completely perverse basis i.e. by taking into account “guideline value” which is relevant only for stamp duty purposes,



and not taking into account sale deeds which would have reflected the proper market value of the land. Given the fact that the awards in all these cases are therefore perverse, the District Judge rightly interfered with the same.

13.3. Therefore, this Court holds that the Learned District Judge correctly interfered with the award and the same is in accordance with Section 34 of the Arbitration and Conciliation Act.

14. ***In view of the above discussion, this Court inclines to test the determination of the compensation is in accordance with law.*** Before the Tribunal, the claimant produced Ex.P3 to fix the market value of the acquired land at the rate of Rs.9480/- per cent or Rs.234.25/- per sq.mtr.,. Ex.P3, dated 15.08.2000, is prior to the notification and well within the statistical period mentioned in Section 3 G of the NH Act. In the said document, nearby the acquired land, land measuring 59 cents has been sold as a house site at Rs.3,83,000/-. Further, the claimant also produced the award passed in A.R.O.P.No.17 of 2012 dated 29.06.2018 relating to the same acquisition to show that Rs.234.25/- per sq.mtr., or at Rs.9480/-



C.M.A(MD).No.538 of 2023

per cent was fixed. There was no contra evidence adduced on the side of the appellant.

14.1.This court also perused the above documents and evidence adduced in support of the same. The competent authority in his original communication has observed that the lands are potential one. It is admitted fact also that the lands are already situated adjoining the existing Madurai - Chennai NH Road. Now the project is expansion of the existing NH road. From the evidence on record, it is seen that the the acquired lands are situated in the developed area. The claimant also produced sufficient material to prove the potentialities. Number of famous hospitals, schools, Kalyana Mandapams (famous marriage halls), existence of the Madurai Bench of Madras High Court, spontaneous development of the real estate and the development of house projects on the both side. Therefore, this Court holds that the claimants pleaded the potentiality and have established the same through evidence.

14.2. In the case of *Land Acquisition Officer, Revenue Divisional Officer v. L. Kamalamma*, (1998) 2 SCC 385 at page 387, the Hon'ble



C.M.A(MD).No.538 of 2023

Supreme Court has also held that judicial notice of the prices of land can be taken, at paragraph 6, it has been held as follows:

6. The general trend in the prices of land is on the rise and the judicial notice of the same had been taken by the High Court correctly .

Therefore this Court also takes judicial notice of the fact that the lands are located on the way to the airport from Madurai Bench of Madras High Court. On both side of the land, number of hospitals, number of hotels and various promoters are promoting house sites. There was no contra evidence on the side of the appellants. The above narrated principles laid down by the Hon'ble Supreme Court to determine the market value of the land has not been considered by the Arbitrator. The Arbitrator has not considered the sale deed produced by the claimants to prove the market value and potential value of the acquired land. As held by the Hon'ble Supreme Court in ***Suresh Kumar Vs.Town Improvement Trust*** reported in ***1989 2 SCC 329***, failing to consider the potential value of the acquired land is an error of principle. Therefore, the learned trial Judge has correctly determined the market value in accordance with law and the same requires no interference.



The various Courts including this Court had struck down the 3J of the NHAI Act and directed to pay the solatium and interest, the Arbitrator failed to grant the said amount. Hence, in all aspects, apart from the above general discussion, the Arbitrator simply dismissed the petition. Therefore, no determination of fair compensation and no award was passed in accordance with law. In the said circumstances, the learned Principal District Judge, has rightly invoked the power under Section 34 of the Arbitration Act, 1996, and determined the fair compensation.

14.3. The “NHAI” National Highways Authority of India constituted under Amended Act 68 of 1988” to the National Highways Act, 1956. “NHAI” has become implementing authority for road infrastructure development project of nation envisioned by ministry of Road Transport and Highways. Therefore, for effective implementation of programme, due to constraint of resources, the entire programme of development of road infrastructure was entrusted with private entrepreneurship. To further the implementation of infrastructure through participation of private entrepreneurship, further amendment was proposed with major change of acquisition procedures in the Amendment Act, 16 of 1997.



C.M.A(MD).No.538 of 2023

WEB COPY

14.4. After Act 16 of 1997, the Union Government passed the National Highways (Collector of fees by any person for the use of Section of National Highways /Permanent Bridge/ Temporary Bridge on national High ways) Rules 1997, The National Highways (Rate and Fee) Rules 1997 and the National Highways Fees for the use of National Highway Section and Permanent Bridge Public funded projects) Rules 1997 and prescribed rate of fee by bringing the National. Therefore, from the above scheme, NHAI recovers the Road cost through collection of “Toll Fee”. All most, in all the National Highways, the Government has taken a policy to collect “Toll Fee” and they are continuously collecting “Toll Fee”.

14.5. When NHAI is collecting more than a sum of Rs.150/- for Car, Rs. 2,250/- for a lorries as “toll fee” for single trip and when the price of the 15 kgs rice is more than Rs.700/-, the Arbitrator without considering that the market value of the nearby land is more than **Rs.30,000/-** per cent, has fixed the market value of the acquired land at the rate of Rs.15.56 per sq.mtr and the same shocks the judicial conscience of this Court.



14.6. Even though detailed guiding factors were incorporated in the

3G-(7) of NHAI to determine market value and other Damages, the Arbitrator dismissed the application without any judicial approach on the basis of the document adduced to determine the market value on the side of the claimants. *The Arbitrator simply copied the award of competent authority contrary to Section 3 G(7) of the Act. Section 3G(7) of the Act, clearly fixes the detailed obligation, on the part of the arbitrator to determine the amount by taking into consideration the market value of the land on the date of the publication of section 3(A) of the Act, and also providing damages sustained by the persons in acquiring the land and taking possession by the Land Acquisition Officer. If the landowner is compelled to change his residence or place of the business the reasonable expenses if incurred, the same should be properly compensated. This mandatory duty is cast upon both the competent authority as well as the arbitrator. If none of the above procedure is followed, then it is a case of apparent illegality on the part of the arbitrator. His decision suffers from perversity. His method of approach in determining the compensation is against known public policy. In such a situation, in numerous cases the Hon'ble Supreme Court has upheld the power exercised by the Arbitration*



C.M.A(MD).No.538 of 2023

Tribunal under Section 34 of the Arbitration Act. Therefore, the extra ordinary situation warranted the Arbitration Tribunal to determine the compensation under Section 34 of Arbitration and Conciliation Act, on the basis of material produced before it by following the precedents laid down by the Hon'ble Supreme Court:

(1) 2024 (2) SCC 375 ; (2) 2018 (11) SCC 328 ; (3) 2022 (3) SCC 237

Therefore, this Court finds no grounds to interfere in the said award under Section 37 of the Arbitration Act, 1996.

14.7. In addition to the above reasons, number of appeals filed by NHAI against the same notification were dismissed either at the stage of condoning delay or after numbering of the main case. In all the dismissal cases, they took a similar plea and the same was not accepted by this Court. Therefore, in this case, the said dismissal is binding on this Court in the present proceedings. It is settled principle, if in a group of cases arising out of the same acquisition, the technical plea was declined in one group of cases, the same would operate as *resjudicata* in the remaining cases. In C.M.A.(MD).Nos.104 of 2019 etc batch, the Project Director, National Highways 7 K.K.Nagar, Madurai Vs. R.Karuppaiah, the Hon'ble Division



Bench of this Court also accepted the said point. Therefore, this Court finds no reason to differ with the reasoning of the said ratio on factual and legal aspects for the reason that the same arose out of the same acquisition and the same issue. Therefore, on a over all assessment of the above facts, it is clear that the learned tribunal Judge correctly took into consideration of the various documents including earlier award passed relating to the same acquisition and correctly fixed the market value.

15. It is a well settled principle that jurisdiction under section 37 of the Act is very much limited and rigour attached with section 34 is also applicable to the section 37 and the same has been fortified by the Hon'ble Supreme Court in the following ratio in the case of ***Haryana Tourism Ltd. v. Kandhari Beverages Ltd.***, reported in (2022) 3 SCC 237

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid



exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable.

15.1.The competent authority and the arbitrator have not properly considered the documents filed by the land loser to fix the correct market value of the land and determine the proper compensation as per the statutory requirement. The competent authority and arbitrator, not even applied their mind to grant solatium and other statutory benefits. In the said circumstances, the learned Tribunal Judge in order to provide timely relief and in the interest of justice has correctly exercised power under Section 34 of the Arbitration Act and hence, this Court finds every justification ion the part of the learned Principal Sessions Judge, as Judge of Arbitration



C.M.A(MD).No.538 of 2023

Tribunal, in invoking power under Section 34 of the Arbitration Act, 1996 to re-determine the compensation without remanding the matter to the arbitrator and also correctly fixed the market value and awarded compensation and therefore, this Court also concurs with the finding of the learned trial judge in determining the market value of the acquired land Rs.6,067/- per cent, and there is no grounds to exercise the power under Section 37 of the Act in determining the market value of the acquired land Rs.6,067/- per cent.

16. As per the “Tarsemcase-2” reported in 2021 SCC Online S.C. 3175, the paragraph No.41 of the “Tarsemcase-1” reported in 2019 (9) SCC 304 is deleted. Therefore, the landsowners are not entitled for any amount under Section 23(1)(A) of the Land Acquisition Act, 1894. Hence, this Court is unable to concur with the decision of the learned Tribunal Judge in granting the 12% additional value of the amount as per the Section 23(1)(A) of the Land Acquisition Act, 1894, on the basis of the subsequent development of law i.e., subsequently the Hon'ble Supreme Court in 2021 SCC Online SC 3175 has clarified that the land loser is not entitled to the compensation under Section 23(1)(A) of the land Acquisition of the Act,



C.M.A(MD).No.538 of 2023

1894. Therefore, this Court inclines to set aside the award in respect of the granting of the compensation under the head of 23(1)(A) of the Land Acquisition Act, 1894, to the extent of 12% amount.

17.However, in all cases, the learned Tribunal Judge failed to grant 10% additional amount as per the 3 G of the NH Act, to the enhanced market value of the land and hence, this Court is duty bound to grant 10% additional compensation of the enhanced market value of the acquired land.

18.In view of the above discussion, this Court re-determined the compensation for the *extent* of the **4044 Sq.mtrs or 99.92 cents** land of the respondent/land looser situated in the **Navinipatti village** acquired for the expansion of NH-four way lane.

Types of authority	Total Market Value per Sq.mtrs/cents	Solatium of 30% on market value as per the judgment of the 2019 9 SCC 304 Amount awarded	12% additional value under Section 23 (1) (a) of the Land acquisition Act	10% on the sale price as per the section 3G(2) of NHA1 Act	Total compensation awarded (after deducting the amount already received)
Amount awarded by the Competent Authority	(4044x15.56) Rs.62,924				Rs.69,268



C.M.A(MD).No.538 of 2023

Amount awarded by the Arbitrator	(4044x15.56) Rs.62,924				Rs.69,268
Amount awarded by the Arbitration Tribunal	(99.92x6067) Rs.6,06,215	Rs.1,81,865	Rs.43,243		Rs.8,31,323 (-69268) = Rs.7.62.055/-
Amount awarded by this Court	(99.92x6067) Rs.6,06,215	Rs.1,81,865		Rs.60,622	Rs.8,48,702 (-69268) = Rs.7,79,434/-

Accordingly, the respondent/claimant in **Arbitration O.P.No.21/2016** is entitled to **Rs.7,79,434/-** with interest of **9%**, from the date of possession till date of deposit. The cost awarded in said Arbitration Award is hereby confirmed.

19. Suggestion:

19.1. Collector is the Arbitrator to determine the compensation. To determine the same, he has to record evidence and receive the documents as per the procedure stated in the Civil Procedure Code to determine the market value and damages. After recording the evidence, it further requires judicial appreciation of the said recorded evidence considering the submission of the land owners. Thereafter, he has to determine the quantum of the compensation and pass the award after fixing the quantum of compensation and other statutory benefits. The award must contain the



judicial reasoning for arrival. Therefore, the entire process of determining compensation amount is more like the exercise of the judicial function as a “person designata”. Therefore, the Collector requires much time to pass award. But, as we all know that the Collector is the authority acting in various capacities. There are more than 30 legislations empowering the District Collector in the Joint Secretary rank to act in various capacities statutorily. That apart the District Collector is heading the District Administration and they are also heading the revenue department of the District concerned. He is also the Chief District Protocol Officer. He has to work in tandem with the Ministers etc.,. Whenever an incident takes place in the revenue district concerned, that is to be firstly informed to the District Collector, who has to look into the matter. Any natural calamities, untoward incidents or law and order issues and communal clash take place, the same are to be brought to the notice of the District Collector cum District Magistrate, who is responsible to manage the situation, whenever such kind of contingencies arise in the district concerned. When such a heavy and burdensome job or duty is cost upon the District Collector, one cannot expect that the District Collector would determine the fair compensation, by applying his judicial mind in following the above procedure and quantify



the compensation. Therefore, sometimes miscarriage of justice takes place by way of dismissing the arbitration application filed by the land owners.

This Court perused the Arbitration orders passed by the District Collector relating to this Land Acquisition Proceedings. All the land owners' Arbitration Original Petitions were dismissed. There was total non-application of mind. Even there is no reference about the guiding factors mentioned in Section 3-G(7) of the NHA Act. He simply affirmed the order of the competent authority. The Collector is the immediate superior to “DRO” namely the competent authority. He always accompanies the Collector and hence, there is probable circumstance to interfere with his determination. In this case, all the land losers arbitration proceedings have been dismissed by simply copying the original order of DRO/competent authority.

19.2. Therefore, a miscarriage of justice has taken place. As a sequel, the land owners legitimate right of getting fair compensation is deprived. The right of receiving fair compensation is not only the statutory right, it is also the constitution obligation on the part of the Government. However, the facts remains that, these kind of the orders are passed with total non-



C.M.A(MD).No.538 of 2023

application of mind in routine and cavalier manner by the District Collector under the capacity of the Arbitrator within the meaning of Section 3-G.(5) of the NHAI Act. If this kind of violations take place continuously, that would not augment well to maintain the rule of law. Therefore, in order to streamline this system and overcome this kind of miscarriage of justice and also redress the grievance of the land losers and in some cases even the exorbitant increase of the award at the cost of the Government exchequer, when such miscarriage of justice is noticed in the determination of the fair compensation process like the present one, this Court is duty bound to sensitize and would suggest that the Central Government as a constitutional guardian of the land losers has to think of appointing a retired High Court Judge as Arbitrator to discharge the said function of determination of the compensation. Or other wise, let them follow the scheme of reference to determine the compensation mentioned in the Tamil Nadu Highways Act.



C.M.A(MD).No.538 of 2023

20. Accordingly, this Civil Miscellaneous Appeal is dismissed with the following modification of award:

The respondent/claimant in **Ar.O.P.No.21 of 2016** is entitled to **Rs.7,79,434/-** with interest of **9%**, from the date of possession till the date of deposit. The cost awarded in the said Ar.O.P., is hereby confirmed. There shall be no order as to costs.

Consequently, connected Civil Miscellaneous Petition is closed.

[V.B.S.J.] [K.K.R.K.J.]
01.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbh



C.M.A(MD).No.538 of 2023

To

1. The learned Principal District Judge,
Madurai.
2. The District Revenue Officer,
(Land Acquisition National Highways)
Collectorate Buildings,
Madurai-625020.
3. The Special Government Pleader,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD).No.538 of 2023

**V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.**

sbm

C.M.A(MD). No.538 of 2023
and
C.M.P(MD).No.6997 of 2023

01.08.2024