



C.M.A. (MD) No. 397 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2024

Pronounced on : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.397 of 2020

and

C.M.P.(MD)No.4881 of 2020

The Project Director,
National Highways Authority of India,
Madurai-20.

...Appellant

Vs.

R.Ganapathy (Late)

1. Rajathi
2. Subha
3. Suja
4. Ramaiah
5. Thottichi
6. The Competent Authority and
Special District Revenue Officer,
National Highways-7,
Virudhunagar.



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7. The Special Tahsildar (LA),
National Highways (NH-7),
Madurai-625 020.

...Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 37(1) and (2) of Arbitration and Conciliation Act, 1996, to set aside the order made in Arbitration O.P.No.48 of 2013 dated 30.08.2019 on the file of the Principal District Judge, Madurai.

For Appellant : Mr.S.Sankarapandian
for M/s.C.Arul Vadivel Associates

For R1 to R3 &
R5 : Mr.R.G.Shankar Ganesh

For R4 : No appearance

For R6 & R7 : Mr.J.Ashok
Additional Government Pleader

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in Arbitration O.P.No.48 of 2013 dated 30.08.2019 on the file of the Principal District Court, Madurai.

2. It is not in dispute that Notification came to be issued by the Ministry of Shipping, Road Transport and Highways (Department of Road, Transport and Highways) dated 11.05.2006 under the provisions of



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the National Highways Act, 1956 for acquisition of lands for formation of National Highways in Madurai District.

3. The sixth respondent/first respondent is the Land Acquisition Officer/competent authority for the National Highways and the appellant/second respondent is the beneficiary.

4. The respondents 1 to 5/applicants land situated in Survey No. 111/2A (New Sub Division No.111/2A1) measuring 2080 sq.metre or 51.396 cents of wet lands in Thuvariman Village, Madurai South Taluk, Madurai District, has been acquired.

5. It is also not in dispute that 3A(1) Notification was published on 10.08.2005 and 3D(1) declaration was published on 11.05.2006.

6. The Land Acquisition Officer has passed an award fixing Rs.36.69 per sq.metre or Rs.1485/- per cent for the wet land and by giving 10% appreciation value, has awarded total compensation of Rs.1,14,747/-. The respondents 1 to 5/applicants, after receiving the said amount under



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protest, have preferred an appeal before the District Collector/Arbitrator and the District Collector has passed an arbitral award dated 22.03.2013. Aggrieved by the arbitral award, the respondents 1 to 5/applicants have filed the above petition in Arbitration O.P.No.48 of 2013 claiming enhancement of compensation on various grounds. The appellant/second respondent and the respondents 6 and 7/respondents 1 and 3 have filed their counter statement.

7. During trial, the respondents 1 to 5/applicants have examined the first respondent/second applicant as P.W.1 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The appellant/second respondent and the respondents 6 and 7/respondents 1 and 3 have adduced neither oral nor documentary evidence.

8. The learned Principal District Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order enhancing compensation. Challenging the order enhancing compensation, the second respondent-beneficiary has preferred the present appeal.



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9. When the matter was taken up for hearing, the learned counsel appearing for the appellant as well as the respondents 1 to 3 and 5 would submit that connected awards relating to the order passed by the competent authority dated 26.03.2007 were challenged before this Court in appeals in C.M.A.(MD)Nos.437 of 2020, 442 of 2020 and 538 of 2020 challenging the order passed in Arb.O.P.Nos.45 of 2013 and 47 of 2013 dated 30.08.2019 and the order passed in Arb.O.P.No.49 of 2013 dated 22.08.2019 and the Hon'ble Division Bench of this Court along with other appeals relating to the other two Notifications dated 28.07.2006 and 09.06.2010 issued by the Department of Road, Transport and Highways has passed a common order dated 08.02.2024 dismissing the appeals filed by the State and allowing the appeals filed by the individuals and that therefore, the present appeal is also covered by the judgment of the Hon'ble Division Bench in C.M.A.(MD)Nos.104 of 2019 and batch.

10. Regarding the grant of solatium, the Hon'ble Division Bench has observed,

“19. In light of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court, we find nothing untoward in the grant of solatium under the



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impugned orders and confirm the same. Clearly, the rejection of the claim for solatium at the original stages was perverse, which perversity has been corrected under the impugned order.”

11. Now turning to the compensation, considering the stand of other side that the learned Principal District Judges are not having any power or authority to modify the award/enhance the compensation, the Hon'ble Division Bench, relying on the judgment of the Hon'ble Supreme Court in the case of ***Project Director (NHAI) Vs. Hakeem*** reported in (2021) 9 ***SCC 1***, has observed as follows:-

“33. From paragraph 49 onwards, the matter takes a dramatic turn. On merits the specific submission was, as in the present cases, was that parity in compensation awarded as between landowners covered by the same Notification must be maintained. It was noted by the Apex Court that the NHAI had not filed appeals in all matters and there were some instances where land owners had got away with higher compensation, whereas others had been awarded reduced/lower amounts.



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34. *The Court also took note of the fact that the quantification of the compensation, was itself perverse, that is, by taking into account the guideline value, which would not be relevant for determining of compensation under the Land Acquisition Act.*

35. *They say at paragraph 50 that 'the arbitral award in these cases is given by a government servant appointed by the Central Government, the result being the rubber stamping of compensation awarded on a completely perverse basis. Given the fact that, in these petitions at least, the constitutional validity of the NH Amendment Act, 1997 has not been challenged, we must proceed on the basis that grave injustice would be done if we were to interfere on facts, set aside the awards and remand the matter to the very government servant who took into account depressed land values which were relevant for purposes of stamp duty only'. This position is analogous to the present appeals as well.*

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39. *The conclusion in Hakeem's case was that the appeals of the Project Director were to be dismissed on the ground that the National Highways Authority of India had allowed similarly situated persons to receive*



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compensation at a much higher rate than awarded to other land owners and parity must be maintained in the case of similarly placed persons. They also conclude that they would not be inclined to send the matters back to be re-done afresh in view of the elapse of nearly one decade from the original awards.

....

43. The conclusion in Hakeem's case is as follows:

59. Given the fact that the NH Amendment Act, 1997 has not been challenged before us, we refrain from saying anything more. Suffice it to say that, as has been held in Taherakhatoon v. Salambin Mohammad, [(1999) 2 SCC 635] (at para 20), even after we declare the law and set aside the High Court judgment on law, we need not interfere with the judgment on facts, if the justice of the case does not require interference under Article 136 of the Constitution of India.

60. Given the fact that in several similar cases, the NHAI has allowed similarly situated persons to receive compensation at a much higher rate than awarded, and given



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the law laid down in Nagpur Improvement Trust v. Vithal Rao [(1973) 1 SCC 500], we decline to exercise our jurisdiction under Article 136 in favour of the appellants on the facts of these cases. Also, given the fact that most of the awards in these cases were made 7-10 years ago, it would not, at this distance in time, be fair to send back these cases for a de novo start before the very arbitrator or some other arbitrator not consensually appointed, but appointed by the Central Government. The appeals are, therefore, dismissed on facts with no order as to costs.

44. We have studied the judgment in Hakeem's case carefully. The relevant facts are the same as in the present cases. The subject acquisitions have all been done under the same Notifications as in that case. True there will be variations in the finer details such as, the dimensions of the lands acquired, the survey numbers, the exact locations of the lands, the defences put forth by the landowners before the original authorities and the specifics of the valuations itself.



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45. *However, the authorities who have passed the impugned orders have adverted to the facts in detail, finding rank perversity in the valuations adopted in the quantification of the compensation. No details of any sort have been produced before us by the respondents to indicate, let alone establish, that the original compensation was correct and proper and based on acceptable materials.*

46. *On the other hand in Hakeem, the Bench has specifically referred to the methodology adopted by the authorities for valuation, finding the same to be incorrect and inadequate. At the risk of repetition, we once again draw attention to that portion of the judgement in Hakeem's case extracted at paragraphs 34 and 35 of this order.*

47. *The exercise of appellate power in the matters was for the reasons adumbrated in paragraphs 59 and 60 of that judgement extracted supra. Having the benefit of those observations, we believe we would be remiss if we do not apply them to the present cases particularly seeing as the facts and circumstances in the matters are near identical. The observations in Hakeem's case in regard to the slipshod and incorrect manner of*



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quantification of compensation at the lower levels would equally apply in the present cases as well.

48. Undoubtedly, the position of law that the contours of intervention/interference in an award are severely circumscribed by the parameters under Section 34 of the 1996 Act, is too well settled now. However the concluding observations in Hakeem's case make it unambiguously and categorically clear that there has been perversity in the orders of the lower authorities in determining compensation. In a sense, one could say that the original awards of compensation were in conflict with the most basic notions of justice. This position would enable and fortify our decision to dismiss the appeals.

49. That apart, the Supreme Court also declines interference for the reason that the original awards had been passed a decade earlier. In the present cases, the awards have been passed on various dates in 2007, 2012, 2013, 2015 and 2016 and this position is thus analogous with those appeals. Even for this reason, we decline interference.

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54. Thus, the Civil Miscellaneous Appeals filed by the State stand dismissed and the Civil Miscellaneous Appeal filed by the individual stands allowed. No costs. Connected Miscellaneous Petitions are closed.”

12. Since the case on hand is also covered by the judgment of the Hon'ble Division Bench referred above, this Court has no hesitation to hold that the appeal is devoid of merits and the same is liable to be dismissed.

13. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

14. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

04.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Principal District Judge,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
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Dated : 04.06.2024