



C.M.P.(MD).No.14160 of 2023
in C.M.A.(MD).No.SR15328 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 01.08.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.P.(MD).No.14160 of 2023
in C.M.A.(MD).No.SR15328 of 2023
and C.M.A.(MD).No.SR15328 of 2023

The Project Director,
National Highways No.45 E & 220,
National Highways Authority of India having his office at 83/1,
SBI 1st Colony Ext. (Near Gowri Krishna Hotel), Bye Pass Road,
Madurai – 625 016.
Presently at:-
Plot No.1, Aishwaryam Heights,
Indira Nagar, 1st Street Sennamanaickenpatti (PO),
Thadikombu Road,
Dindigul – 624 004. ... Petitioner/Respondent

Vs.

1.M.Chandravathana

2.The Special District Revenue Officer/
Competent Authority for Land Acquisition,
National Highway – 45E & 220,
Collectorate Buildings,
Theni. ... Respondents/Respondents



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PRAYER in C.M.P.(MD).No.14160 of 2023: Civil Miscellaneous Petition

is filed under Order 5 of the Limitation Act, to condone the delay of 700 days in filing the CMA(MD).No.SR15328 of 2023.

PRAYER in C.M.A.(MD).No.SR15328 of 2023: Civil Miscellaneous

Appeal is filed under Section 37(1) & 2 of the Arbitration & Conciliation Act, 1996, to call for the record and set aside the order made in Arbitration O.P.No.42 of 2015, dated 31.01.2018 on the Principal District Judge, Theni.

For Petitioner : Mr.P.Karthick

For Respondents : Mr.R.Govindaraj for R1

Mr.D.S.Nedunchezian for R2
Government Advocate.

ORDER

This petition has been filed to condone the delay of 700 days caused in filing this appeal.

2.The facts in brief:

The first respondent herein is the owner of the properties comprised in S.No.1522/1, measuring about 11.5 cents acquired by the competent authority for Highway as per G.O.Ms.No.1132 S.01348E dated 09.06.2010. Notification under 3A1 was issued and 3A3 was published in Daily Thanthi



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on the issue dated 27.01.2010. Thereafter declaration was made under 3D1 on 08.06.2011. The land acquisition Officer fixed the compensation at the rate of Rs.19/- per square meter equivalent to Rs.769/- per cent. 10% the total compensation is Rs.26,778/-. It was received by the owner under protest.

3.It was contended on the part of the owner that the valuation for the nearby houses were not taken into account by the Land Acquisition Officer. Rs.2 lakhs was the market value per cent for the adjacent lands. He has passed the award in ROC.No.43/2010/Spl.Tahr/LA, dated 24.02.2012.

4.Against the award, the owner preferred claim petition before Arbitrator/District Collector. District Collector having passed an arbitration award in Arbitration No.96 of 2015, confirming the compensation fixed by the competent authority. Against the arbitration award, the claimant filed Arbitration O.P.47 of 2015 before the District and Sessions Judge, Theni. That petition was allowed. The award passed by the arbitration was set aside and modified, enhanced the compensation amount to Rs.4,04,898/- including 30% solatium and interest at the rate of 12% in a standard manner. The appellant/petitioner was directed to deposit the entire compensation



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amount with interest and cost within three months from the date of order.

The order was passed on 30.01.2018. Against the arbitration Original petition, civil miscellaneous appeal is filed. In filing the above said appeal, there is a delay of 700 days. To condone the delay, this petition is filed with the following averments.

5.The order was passed on 31.01.2018. The copy was made ready on 04.06.2018. The present appeal ought to have been filed within 90 days. But, it could not be filed for the reason that the project was dealt by PIU, Madurai and thereafter, the files relating to Court cases were transferred to new PIU formed at Dindigul on 21.01.2018. Because of the transfer of files there is a delay. Apart from that it is also stated that PIU, Dindigul was functioning without Full Time Project Director from 21.01.2018 to 01.09.2020. The Tamil Nadu Project Director, Nagercoil was holding the additional charge and the Regional Officer, Madurai, NHAI was also vacant from 24.06.2019 to 22.08.2021. Apart from that the Covid – 19 Pandemic period also intervened. So there is a delay.

6.Counter was filed by the respondent disputing all the allegations.

The learned counsel for the respondent would straight away draw the



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attention of this court to the order passed in the connected case in C.M.A. (MD).No.sr29654 of 2021 and C.M.P.(MD).No.5426 of 2022, C.M.P. (MD).No.10864 of 2023 and batch dated 21.03.2024., C.M.A.(MD).No.104 of 2023 and batch and would submit that in batch of matters the delay was not condoned, not only by the single Judge, but also by the Division Bench in the connected matters. Apart from that he has also relied upon the judgment of the Honourable Supreme Court in the case of ***N.V.International Vs. State of Assam and others*** reported in **(2020) 2 SCC 109** and would submit that section 34 of Arbitration and Conciliation Act, application must be filed within a maximum period of 120 days including the grace period of 30 days. So any period beyond 120 days, should not be allowed. He is referring to the following lines, which reads as follows.

“4.Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul V. Keshwar Lal Choudhuri, and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996, should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost



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despatch.

5.In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these special leave petitions on the facts of this particular case.”

7.Per contra, the learned counsel for the petitioner would rely upon the order passed in Madurai Bench of this court in similar matters in C.M.P. (MD).Nos.11300 of 2023 and 11262 of 2023, wherein, delay was condoned. The delay was condoned on the ground that the award cannot be modified by the court. Either it has to be set aside or confirmed. Here the District and Sessions Judge has modified the award and enhanced the same, which is not permissible under law. Now the above said issue is referred to the Larger Bench, as to whether such power is available to the court. Only on that ground the above said application were allowed.

8.But in view of the order passed by the Division Bench of this Court as well as the Honourable Supreme Court, any delay beyond 120 days, cannot be entertained. So without going into the merits of the main matter on the basis of the Judgment passed by the Honourable Supreme Court, since the petition filed beyond 120 days and the reasons assigned also not



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cogent, convincing as observed by Division Bench and the Single Judge in the above matters, I find no reason to differ from the above said views since the affidavit in all the matters are one and the same. The reasons assigned by the petitioner for condoning the delay in all the matters are one and the same. So this civil miscellaneous petition deserves to be dismissed.

8. Accordingly, this civil miscellaneous petition stands dismissed. Consequently, civil miscellaneous appeal is also rejected at the SR stage itself.

14.10.2024

TM

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Judge, Theni.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA, J.

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