



C.M.P.(MD).Nos.10864 of 2022 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.11.2023	Delivered on: 21.03.2024
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CMP (MD) Nos.10864, 10868 & 12878 of 2022 and
1857, 1976, 4670, 4724, 4811, 4825, 4834, 4881, 4978,
5061, 5092, 6075, 6080, 6082, 6085, 6116, 6120, 6122,
6126, 6317, 6345, 6358, 6366, 6367, 6406, 6417,
6419 & 6602 of 2023**

in

**CMA (MD) SR. Nos.45045, 45046, 66539, 66900,
81484, 10326, 66903, 66905 and 66901 of 2022
& 2091, 2089, 1678, 2022, 2085, 2087, 1568, 2093,
2014, 2010, 1718, 1716, 2013, 1571, 1714, 1672,
1674, 1680, 1685, 1684, 1682, 2097 of 2023**

C.M.P.(MD) No.10864 of 2022

The Project Director,
National Highways No.45E & 220,
National Highways Authority of India
having his office at 83/1,
Suriya Towers, 1st East Street,
K.K.Nagar, Madurai -20,
Presently at Plot No.1, Aishwaryam Heights,
Indira Nagar, 1st Street, Sennamanaickenpatti (PO),
Thadikombu Road, Dindigul – 624 004.

.. Petitioner/Appellant

Vs.

1.R.Jeyamani



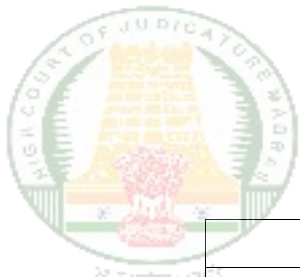
C.M.P.(MD).Nos.10864 of 2022 and batch

2.The Competent Authority cum
Special District Revenue Officer,
(Land Acquisition Officer/
National Highway- 45E & 220),
Collectorate Buildings, Theni.

.. Respondents

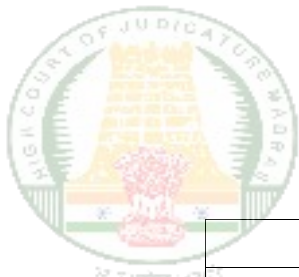
Prayer:- Civil Miscellaneous Petition filed under Section 5 of Limitation Act, 1963, to condone the delay of 1294 days in fining the CMA SR. No. 45045 of 2022.

Case No	For Petitioner	For 1 st Respondent	For 2 nd Respondent
CMP. (MD) No.10864 of 2022	Mr.SU.Srinivasan	Mr.V.Panneer Selvam	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.10868 of 2022	Mr.SU.Srinivasan	Mr.V.Panneer Selvam	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.12878 of 2022	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.1857 of 2023	Mr.SU.Srinivasan	No Appearance-R1	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.1976 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4670 of 2023	Mr.SU.Srinivasan	Mr.R.Suriyanarayanan	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.1976 of 2023	Mr.SU.Srinivasan	Mr.K.Appadurai	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4670 of 2023	Mr.SU.Srinivasan	Mr.R.Suriyanarayanan	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4724 of 2023	Mr.SU.Srinivasan	Mr.K.Appadurai	Mr.D.Gandhiraj, Special Government Pleader



C.M.P.(MD).Nos.10864 of 2022 and batch

Case No	For Petitioner	For 1 st Respondent	For 2 nd Respondent
CMP. (MD) No.4811 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4825 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4834 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4881 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.4978 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.5061 of 2023	Mr.SU.Srinivasan	Died	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.5092 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6075 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6080 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6082 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6085 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6116 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6120 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6122 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader



C.M.P.(MD).Nos.10864 of 2022 and batch

Case No	For Petitioner	For 1 st Respondent	For 2 nd Respondent
CMP. (MD) No.6126 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6317 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6345 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6358 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6366 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6367 of 2023	Mr.SU.Srinivasan	Mr.R.Govindaraj	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6406 of 2023	Mr.SU.Srinivasan	Died-R1	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6417 of 2023	Mr.SU.Srinivasan	No Appearance	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6419 of 2023	Mr.SU.Srinivasan	No Appearance	Mr.D.Gandhiraj, Special Government Pleader
CMP. (MD) No.6602 of 2023	Mr.SU.Srinivasan	Mr.M.Saravanan	Mr.D.Gandhiraj, Special Government Pleader for R2 & R3

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The petitioner in all the above Civil Miscellaneous Petitions is one and the same.

2. The Project Director, National Highways has preferred Civil



C.M.P.(MD).Nos.10864 of 2022 and batch

Miscellaneous Appeals, aggrieved by the orders in Arbitration Original Petitions passed under Section 37 (1) and 37(2) of the Arbitration and Conciliation Act, 1996 on the file of the learned District and Sessions Judge Court, modifying the Arbitral Award of the Arbitrator cum District Collector, alongwith applications to condone the delay.

3. Admittedly, after the Appeals came to be allowed by the District and Sessions Judge, modifying the award of compensation originally awarded by the District Collector, the petitioner herein accepted the verdict and did not choose to prefer any Appeal before this Court.

4. However, only much later, the above Appeals have been filed along-with Applications in each of the Appeals to condone the delay varying from 159 days to 1515 days. The affidavit filed in support of the condone delay Applications in all these petitions is substantially one and the same. The reasons assigned for the delay in not filing the Civil Miscellaneous Appeals in time are:-

(i) the impugned order the learned District Judge, is contrary to settle law of the land;

(ii) The learned District Judge had no power to modify the award of the Arbitrator;



C.M.P.(MD).Nos.10864 of 2022 and batch

(iii) Subsequent to the disposal of the Original Petitions under

Section 34 of the Arbitration and Conciliation Act, the Hon'ble Supreme Court in *Project Director NHIA Vs. M.Hakeem (batch of Appeals)* reported in *2021 SCC Online SC 473*, has held that Courts have no power to modify the award of the Arbitrator, reiterating that the power available was only to set aside the award under Section 34(2) of the Arbitration and Conciliation Act, 1996, subject to ofcourse the grounds being made out for such interference with the award.

5. The impugned order that have been appealed against was passed on 24.08.2018 and was received by the office of the petitioner on 25.08.2018 (in CMP. No.10864 of 2022) and because of Covid-19, the Appeal could not be filed in time and also due to administrative reasons, there has been a delay of 1294 days in filing the Civil Miscellaneous Appeal.

6. We have seen all the affidavits filed in support of the condone delay Applications and excepting for the number of days delay being different, the affidavits verbatim reproduce substantially, the very same averments that have been extracted hereinabove, seeking condonation of the delay.



C.M.P.(MD).Nos.10864 of 2022 and batch

7. We have heard the learned counsel for the petitioner and the learned counsel for the respondents in all these Miscellaneous Petitions.

8. It is also been brought to our notice that another Division Bench of this Court, in a batch of condone delay Applications in Civil Miscellaneous Appeals, was pleased to dismiss the condone delay Applications, by order dated 08.02.2024. In fact, even the Civil Miscellaneous Appeals that were heard as a batch also came to be dismissed by the Division Bench of this Court in the above referred batch of cases, viz., *The Project Director Vs. Karuppiah extra. (CMA. (MD). Nos.104 of 2019 etc. batch dated 08.02.2024)*.

9. The learned counsel for the petitioner in all the condone delay Applications would articulate his submissions only revolving around the points that we have already culled out herein above as reasons for seeking condonation of delay.

10. Per contra, the learned counsel for the respondents would submit that in some cases, the petitioner has already deposited the modified award amount and compensation has already been withdrawn by the claimants/respondents. In some cases, even the interest component was



C.M.P.(MD).Nos.10864 of 2022 and batch

also deposited and subsequently withdrawn. It is also contended by the learned counsel for the respondents that condonation of delay cannot be as a matter of routine and unless and until sufficient cause is shown by the petitioner seeking condonation of delay, irrespective of the length of delay, the delay should not be condoned.

11. The learned counsel for the respondents also placed reliance on the decision of the Hon'ble Supreme Court in *Basawaraj and Another Vs. Special Land Acquisition Officer* reported in (2013) 14 SCC 81 and *Majji Sannemma @ Sanyasiraovs. Reddy, Sridevi and others* reported in AIR 2022 SC 332, in support of their contentions that condonation of delay should not be entertained when claims are belated and stale and also on the ground that the delay would defeat equity.

12. Having heard the learned counsel on either side and in view of the gist of the reasons set out by the petitioner for condoning delay, varying from 159 days to 1515 days, we classify the reasons assigned in all these cases into two broad categories. Firstly, there is subsequent change in law with the verdict of the Hon'ble Supreme Court in *Hakkeem's* case, referred herein supra, and therefore, the Department has come up with the Appeals with condone delay applications, as the Hon'ble Supreme Court has held



C.M.P.(MD).Nos.10864 of 2022 and batch

that the award of arbitrator cannot be modified exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act. Secondly, the reasons assigned by the petitioner for condonation of delay is that even though, the orders were passed in 2018, etc., the orders were received within a period of maximum 2 to 3 months, but however, the Appeals could not be filed within 90 days because of intervening Covid-19 situation and also because of the administrative process in deciding to file these Appeals.

13. The first reason assigned viz., change in law is not a ground for even seeking review in the first place. Therefore, it cannot be assigned as a reason for seeking condonation of delay in filing an Appeal. Moreover, it is also noticed that in some of the cases, the amount awarded, including interest have also been not only deposited, but also withdrawn and a quietus has been given to this issue long back. Thus, at this juncture, it would be unfair and inequitable to condone the delay on the mere asking of the petitioner and put the clock back. In any event, even the reasons assigned for the delay are wholly unjustified and unsustainable. In fact, we are fortified by the decision of the Constitution Bench of the Apex Court, in *Beghar Foundation and another V. Justice K.Puttaswamy (Rtd) and others etc.*, reported in (2021) 278 Taxman 1 (SC.), where it is



C.M.P.(MD).Nos.10864 of 2022 and batch

categorically held that change in law or subsequent decisions of a constitution or larger Bench would not constitute a grounds for review.

14. We are in respectful agreement with the common order delivered by the Division Bench of this Court in the case of *The Project Director Vs. Karuppiah extra. (CMA. (MD). Nos.104 of 2019 etc. batch dated 08.02.2024)*, where this Court has found similar averments set out in condone delay Applications to be lacking in not only bonafides but also bereft of facts relevant to the cause for the delay. We see no reason to take any different view in the above matters.

15. Admittedly, most of the orders were passed in mid-2018 and Covid-19 struck only in March 2020. Though some orders were passed in 2021, there is absolutely no reason assigned in the affidavit to justify the total silence and inaction till atleast March 2020, when the Appeals could have been filed. Even insofar as appeals filed upto 2021, merely stating that administrative process caused delay is also not acceptable. Condonation of delay in such cases, especially involving compensation to land owners who have lost their valuable lands by way of acquisition, would seriously prejudice their rights and interests. In our considered view, there can be no better case where “delay would defeat equity”. Thus



C.M.P.(MD).Nos.10864 of 2022 and batch

we do not find the reasons assigned by the petitioner seeking condonation of delay showing any cause, much less sufficient cause, acceptable.

Consequently, Civil Miscellaneous Petitions are dismissed and consequently, connected petitions in CMA SR (MD) are also dismissed.

There shall be no order as to costs.

(T.K.R.J.) & (P.B.B.J)
21.03.2024

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
rkp
To

The Competent Authority cum
Special District Revenue Officer,
(Land Acquisition Officer/
National Highway- 45E & 220),
Collectorate Buildings, Theni.

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

rkp

Pre-delivery judgment in
CMP (MD) Nos.10864, 10868 & 12878 of 2022 and
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