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W.P.No.34248 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.34248 of 2024

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... Petitioner

Vs.

1.National Highways Authority Of India
Rep By Its Project Director (Nh-844),
Piu-Krishnagiri, 259/1, Salem Main Road,
Near Kakc Petrol Bunk, Krishnagiri Pin-636001

2.The Arbitrator Cum District Collector
1st Floor, Salem Main Road,
Near Superintendent Of Police Office, Dharmapuri-636 705

3.The Competent Authority And
Special District Revenue Officer(La) Nh-844,
Dharmapuri

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the entire records pertaining to the proceedings of the 2nd respondent vide his order S.R.629/2020/U2, dated 11.1.2023 and quash the same as arbitrary and illegal, consequently direct the 3rd respondent to pay the amount of compensation to the petitioner as per the law.



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For Petitioner : M/s.K.Muthukumar
For Respondents : M/s.M.R.Gokul Krishnan AGP
for R.2 & R.3
: M/s.S.R.Sumathy
for R.1

ORDER

The Writ petition has been filed challenging the Arbitral Award passed by the 2nd respondent herein who is the Statutory Arbitrator under the National Highways Act.

2. The facts are briefly set out herein below:-

3. The petitioner is the owner of an extent of 5080 sq.mt. in S.No.540/1B in Karagathahalli Village, Palacode Taluk, Dharamapuri District. The 1st respondent/National Highways Authority had acquired the said extent of land for the purpose of laying N.H-844-Hosur-Rayakottai-Dharmapuri Section-4 lane.

4. Ultimately, the 3rd respondent had awarded a compensation of a sum of Rs.1,29,49,753/- for the acquisition of the petitioner's land. Dissatisfied with the said compensation, the petitioner had preferred an



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Arbitration Petition under Section 3-G(5) of the National Highways Act before the 2nd respondent. The 2nd respondent vide his order dated 11.03.2023 had enhanced the compensation from a sum of Rs.1,29,49,753/- to a sum of Rs.1,97,27,713.75/-. Challenging this order, the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India has been invoked.

5. When the matter had come up for admission this Court had raised the issue of maintainability of the Writ Petition since under the provisions of the National Highways Act, the award passed by the Statutory Arbitrator is subject to the provisions of the Arbitration and Conciliation Act and therefore the remedy available to the petitioner is only to move an application under Section 34 of the Arbitration and Conciliation Act before the competent Civil Court. The learned counsel for the petitioner had taken time to make his submission on the ground of maintainability.

6. Today, when the matter came up, the learned counsel for the petitioner would submit that this Court has jurisdiction as it is the property right of the petitioner that has been affected and therefore a violation of Article 300(A) of the Constitution of India. He would also submit that the



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jurisdiction of this Court under Article 226 of the Constitution of India confers upon the Court a right to consider the said petition for enhancement. He would further argue that since the award was passed on 11.01.2022 and the time for filing a Section 34 Application has lapsed, the petitioner would be left without any recourse if this Court were to reject the Writ Petition.

7. He would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2022) 7 SCC 508 - Sukh Dutt Ratra and Another Vs. State of Himachal Pradesh and Others*** to support his argument that right against deprivation of the property continues to be a Constitution right under Article 300-A of the Constitution of India and fetter without due process of law or authorization of law. The Hon'ble Supreme Court in this case was considering two issues:-

(i) Whether the State on the ground of delay and laches can evade its legal responsibility towards those from whom private property has been expropriated?

(ii) Whether the order of the High Court that matter involved disputed questions of law and fact for



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determination on starting point of limitation, which could not be adjudicated in writ proceedings therefore, disposing of writ petition seeking compensation for subject land or initiation of acquisition proceedings under the Land Acquisition Act, 1894, with liberty to institute a civil suit, can be sustained?

That was a case where the State had laid a road in the petitioner's property without resorting to acquisition proceedings. Ultimately, the Hon'ble Supreme Court had held that in such cases where the land owner is deprived of his property without due process of law in such cases, the Court cannot shield itself behind the ground of delay and laches.

8. He would also reply upon an unreported judgment of the Hon'ble Supreme Court rendered in ***Civil Appeal No.13806 of 2023 – Ram Autar Singh Yadav Vs. The State of Uttar Pradesh and Others.*** This case involved a bravery award not being granted to a uniformed personnel where the Hon'ble Supreme Court held that when a litigant seeks enforcement of Fundamental Rights, the same cannot be declined on the ground of delay and laches.



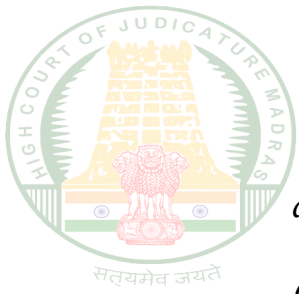
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9. Yet another judgment which has been pressed into service by the learned Counsel for the petitioner is an unreported judgment of the Hon'ble Supreme Court in ***Civil Appeal No.14473 of 2024 – Urban Improvement Trust Vs. Smt. Vidhya Devi and Others.*** It is a case where the acquisition proceedings were challenged on the grounds of delay apart from other grounds. Once again, the Hon'ble Supreme Court had held that the Right to Property which is enshrined in the Constitution requires procedural safeguards to ensure fairness and non-arbitrariness in decision making. Therefore, the delay in approaching the Court, while a significant factor, cannot override the necessity to address illegalities and protect right to property enshrined in Article 300A. The Court must balance the need for finality in legal proceedings with the need to rectify injustice. The right of an individual to vindicate and protect private property cannot be brushed away merely on the ground of delay and laches.

10. It is also submitted by the learned counsel for the petitioner that with reference to the very same acquisition proceedings the petitioner has moved the Hon'ble Supreme Court in a Civil Writ Petition No.804 of 2024 seeking the following reliefs:-

"(a) Issue a writ in the nature of Certiorari and



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declare and set aside the Impugned provisions Sections 3G (5) and (6) of the National Highways Act 1956 as violative of Article 14 and 21 of the Constitution of India; and

(b) Issue an appropriate writ or direction in the nature of Mandamus to permit the Claimants under the National Highways Act 1956 to approach the Hon'ble High Courts under Art. 226 of the Constitution of India to seek compensation and enhancement of compensation in cases where statutory remedy under the National Highways Act 1956 stands barred or foreclosed; and/or

(c) Pass any such other order(s) and/or direction (s) that this Hon'ble court may deem fit and proper in the interest of justice and equity."

11. The Hon'ble Supreme Court had issued notice in the above matter. Therefore, the petitioner sought to have the matter kept pending. However, no orders have been passed in the writ petition by the Hon'ble Supreme Court. The learned counsel for the petitioner, however, has not



addressed the issue of maintainability which has now been raised by this Court.

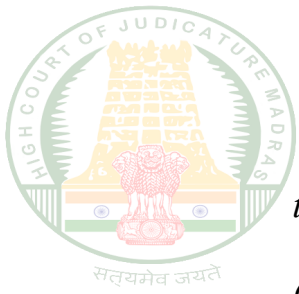
12. The learned counsel appearing on behalf of the respondents on the contrary would submit that the Writ Petition is not maintainable and the remedy available to the petitioner is to file an application under Section 34 of the Arbitration and Conciliation Act before the competent Civil Court.

13. Heard the learned counsels on either side.

14. In order to appreciate the issue on hand it would be apposite to first extract the provisions of Section 3-G(5) and 3-G(6) of the National Highways Act and Section 34 of the Arbitration and Conciliation Act.

"Section 3-G (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.

Section 3-G (6) Subject to the provisions of this Act,



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the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

Section 34 of the Arbitration and Conciliation Act.

Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

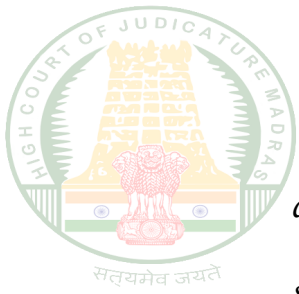
(a) the party making the application 1 [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to



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arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India

[Explanation 1.—For the avoidance of any doubt, it is



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clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

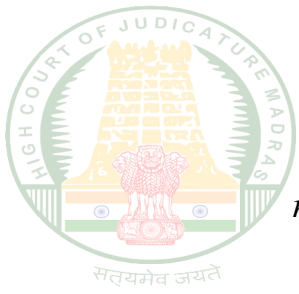
(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by



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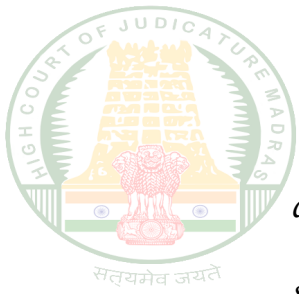
reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (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.

[(5) An application under this section shall be filed by



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a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

15. A reading of Section 3-G(6) of the Highways Act clearly provides that, in respect of every arbitration under the Highways Act, the provisions of the Arbitration Act would apply. The language of Section 3G is unambiguous. Therefore, it is clear that against the award passed under Section 3-G (5) it is only an application under Section 34 of the Arbitration and Conciliation Act to set aside the same can be filed.

16. The provisions of Section 3-G(5) of the Highways Act vis-a-vis Section 11 of the Arbitration and Conciliation Act was called into question in a judgment of the Hon'ble Supreme Court reported in **(2020) 15 SCC 161 – National Highways Authority of India Vs. Sayedabad Tea Company Limited and Others**. The question that arose for consideration



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was whether the application under Section 11 of the Arbitration and Conciliation Act 1996 was maintainable in view of Section 3-G(5) of the National Highways Act which provides for appointment of an Arbitral Tribunal. In the said case, the land owner being dissatisfied with the award of compensation determined by the competent authority under Section 3-G(1) of the Highways Act had filed an application for appointment of an Arbitrator in terms of Section 3-G(5) of the Highways Act to the Central Government. Since there was no response from the Central Government, the applicant had filed an application under Section 11(6) of the Arbitration and Conciliation Act. Thereafter, an Arbitrator was appointed. The High Court had observed that since the Central Government had refused to comply with the request of the applicant, their right to appoint an Arbitrator stood forfeited. A review application was thereafter filed bringing to the notice of the Court that as per the Highways Act the procedure for appointment of an Arbitrator exclusively vested with the Central Government under Section 3-G(5) of the Highways Act and that the application under Section 11(6) of the Arbitration and Conciliation Act is not maintainable. However, the review application was dismissed. Thus aggrieved the National Highways Authorities had moved the Hon'ble Supreme Court. The Hon'ble Supreme Court relying upon the earlier



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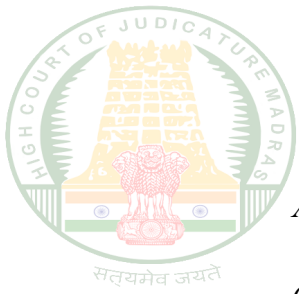
judgments of the Hon'ble Supreme Court reported in **(2020) 15 SCC 533** –

National Highways & Infrastructure Development Corpn. Ltd. Vs.

Prakash Chand Pradhan had observed as follows:-

"18. After analysing the scheme, it can be assumed that the legislature intended the 1956 Act to act as a complete code in itself for the purpose of acquisition until culmination including disbursement and for settlement of disputes and this conclusion is further strengthened in view of Section 3-J of the Act which eliminates the application of the Land Acquisition Act, 1894, to an acquisition under the 1956 Act"

"19. It is settled principles of law that when the special law sets out a self-contained code, the application of general law would impliedly be excluded. In the instant case, the scheme of the 1956 Act being a special law enacted for the purpose and for appointment of an arbitrator by the Central Government under Section 3-G(5) of the 1956 Act and sub-section (6) of Section 3-G itself clarifies that subject to the provisions of the 1956



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Act, the provisions of the 1996 Act shall apply to every arbitration obviously to the extent where the 1956 Act is silent, the arbitrator may take recourse in adjudicating the dispute invoking the provisions of the 1996 Act for the limited purpose. But so far as the appointment of an arbitrator is concerned, the power being exclusively vested with the Central Government as envisaged under sub-section (5) of Section 3-G of the 1956 Act, Section 11 of the 1996 Act has no application."

17. In another judgment of the Hon'ble Supreme Court reported in **(2022) 16 SCC 391 – National Highways Authority of India Vs. Sheetal Jaidev Vade and Others**, the Hon'ble Supreme Court was considering a issue as to whether the High Court exercising power under Article 226 of the Constitution of India was competent to execute an award passed by the Arbitrator. The learned Judges had held as follows in paragraph nos.11 and 12:-

"11. Therefore, once the original writ petitioner was having an efficacious, alternative remedy to execute the award passed by the learned Arbitral Tribunal/Court, by



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initiating an appropriate execution proceeding before the competent executing court, the High Court ought to have relegated the original writ petitioners to avail the said remedy instead of entertaining the writ petition under Article 226 of the Constitution of India which was filed to execute the award passed by the Arbitral Tribunal/Court. If the High Courts convert itself to the executing court and entertain the writ petitions under Article 226 of the Constitution of India to execute the award passed by the Arbitral Tribunal/Court, the High Courts would be flooded with the writ petitions to execute awards passed by the learned arbitrator/Arbitral Tribunal/Arbitral Court.

12. We disapprove the entertaining of such writ petitions under Article 226 of the Constitution of India to execute the award passed by the learned Arbitral Tribunal/Court, without relegating the judgment creditor in whose favour the award is passed to file an execution proceeding before the competent executing court."

18. A Division Bench of the Hon'ble Karnataka High in the case



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reported in **2024 SCC online Ker 4236 – National Highways Authority of**

India Vs. P.V.George and Others was also dealing with the maintainability of a Writ Petition challenging the decision of the Arbitrator (The issue of limitation was also an issue before the Division Bench). With reference to the limitation, the Bench had observed that the limitation would not apply in arbitration under the National Highways Act and with reference to the maintainability of the Writ Petition they had held that the remedy is to challenge the decision by invoking the provisions of Section 34 of the Arbitration and Conciliation Act.

19. The Hon'ble Bombay High Court in the judgment reported in **(2023) SCC Online Bom – 784 – Omanand Industries Vs. Secretary to the Government of Indian and Others** was considering a batch of Writ Petitions challenging the award passed by the Arbitrator under Section 3G5 of the National Highways Act (as in the instant case). The learned Judge after referring to the various judgments and after briefly touching upon the scheme of the National Highways Act relevant to the determination of the compensation, observed as follows:-

*"The mode of conducting the proceedings before
the Arbitrator, in case the claimant is not satisfied with*



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the award passed by the Competent Authority, is also governed by the provisions of Section 3-G (6) of the N.H. Act, which applies the provisions of the A & C Act, to proceedings before the Arbitrator. It is, thus, apparent that a remedy of approaching the 'Court', as defined in Section 2 (1) (e) of the A & C Act, has been provided to the claimant, against the award as may be passed by the Arbitrator under Section 3-G-(5) of the N.H. Act, which is a special Statute, governing the acquisition of lands for the National Highways."

"Thus since the National Highways Act, is a special statute and provides for a remedy, for such acquisition, by permitting the filing of an application under section 34 of the A & C Act, against the award passed by the Arbitrator under Section 3-G (5) of the N.H. Act, that remedy, was the only course of action which could have been availed of by the petitioners, for challenging the award by the Arbitrator, as held in Satyawati Tondon (supra).

20. Ultimately, the learned Judge observed that the attempt to invoke the extraordinary jurisdiction of the Court under Article 226 of the



Constitution of India was impermissible.

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21. In view of the above, the invocation of jurisdiction of this Court under Article 226 of the Constitution of India for challenging the award passed under Section 3-G(5) of the National Highways Act is not maintainable. Further, the petitioner has already availed his remedy before the Hon'ble Supreme Court and he cannot challenge the very same award before two forums.

22. Accordingly, the Writ Petition stands dismissed. However, a liberty is granted to the petitioner to revive the Writ Petition depending upon the order passed by the Hon'ble Supreme Court. No costs.

03.01.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.National Highways Authority Of India



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