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BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 27.06.2025

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P.(MD) Nos.2004 to 2009 of 2023
and
W.M.P.(MD)Nos.1783, 1784, 1786, 1772, 1775, 1778, 1766, 1768, 1769, 1770, 1774, 1777, 1779, 1780, 1781, 1771, 1773 of 1776 of 2023

Subakaran ... Petitioner in W.P.(MD)No.2004/2023

P.Saravanan ... Petitioner in W.P.(MD)No.2005/2023

S.Vaijayanthi ... Petitioner in W.P.(MD)No.2006/2023

R.Devi ... Petitioner in W.P.(MD)No.2007/2023

M.Latha ... Petitioner in W.P.(MD)No.2008/2023

P.Muthalagu ... Petitioner in W.P.(MD)No.2009/2023

Vs

1. The Arbitrator (National Highways)
   Cum District Collector, Madurai,
   Madurai District.

2. The Special District Revenue Officer (LA),
   N.H.338, Competent Authority, Madurai.

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3. The Special Tahsildar (LA),
N.H.338, Melur - Thiruppathur Unit - I,
Alagar Kovil Main Road, Melur,
Madurai District.

4. The Project Director,
National Highways Authority of India,
K.K.Nagar, Madurai, Madurai District. ... Respondents in all W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in A.P.No.6/MLR/Keelaiyur/2021/B5, dated 28.10.2022 ; A.P.No.11/MLR/Keelaiyur/2021/B5, dated 30.11.2022; A.P.No.15/MLR/Keelaiyur/2021/B5; dated 30.11.2022; A.P.No20/MLR/Keelaiyur/2021/B5, dated 01.12.2022 ; A.P.No.16/MLR/Keelaiyur/2021/B5, dated 01.12.2022; A.P.No.22/MLR/Keelaiyur/2021/B5, dated 01.12.2022 and quash the same and consequently direct the 1st respondent to conduct the fresh enquiry by following the steps mentioned in the judgment of this Court in W.P.(MD)No.3832 of 2010 dated 08.12.2011.

For Petitioners (In all W.Ps) : Mr.C.Selvaraj

For Respondents (In all W.Ps) : Mr.A.Baskaran, Addl. Govt. Pleader for R1 to R3
Mr.Arul Vadivel @ Sekar for R4

COMMON ORDER

These Writ Petitions are filed challenging the awards passed by the first respondent in an arbitral proceedings initiated under section 3G(5) of National Highways Act, 1956.

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2. Heard the arguments of Mr.C.Selvaraj, learned counsel appearing for the petitioners, Mr.A.Baskaran, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.Arul Vadivel @ Sekar, learned counsel appearing for the 4th respondent.

3. It is not in dispute that the lands belonged to the petitioners were acquired by the respondents for extension of Melur-Karaikudi section of National Highway. The second respondent passed an award fixing the compensation payable to the petitioners. Not satisfied with the compensation fixed by the competent authority, the petitioners filed an application before the first respondent seeking enhancement of compensation. In the arbitral proceedings conducted by the first respondent, the impugned awards were passed rejecting the request made by the petitioners seeking enhancement of compensation. Aggrieved by the said awards, the petitioners have invoked the Article 226 of the Constitution of India.

4. Against the awards passed by first respondent, the petitioners have got alternative remedy of filing Original Petition under section 34 of the Arbitration and Conciliation Act, 1996, before the Principal District Court.

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5. The learned counsel for the petitioners submitted that the impugned awards have been passed by the first respondent without issuing any notice and affording reasonable opportunity to the petitioners. Therefore, the same cannot be treated as an award in the eye of law. Even if there is violation of principles of natural justice, the same can be raised as a ground in the Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. Section 34 (2)(a)(iii) of Arbitration and Conciliation Act, 1996 reads as follows.

> **"*34. Application for setting aside arbitral award.***
>
> *(1)...*
>
> *(2) An arbitral award may be set aside by the Court only if—*
>
> *(a) the party making the application furnishes proof that -*
>
> *(i) ..... (ii) .....*
>
> *(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"*

Therefore, it is clear that if the party making an application was not given proper notice of appointment of arbitrator or the arbitral proceedings, he can very well invoke Section 34 of the Arbitration and Conciliation Act, 1996 and file an application to set aside the award. Therefore, when effective alternative remedy is available under the provisions of Arbitration and

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Conciliation Act, 1996, the petitioners are not entitled to invoke the writ jurisdiction of this Court.

6. The learned Additional Government Pleader appearing for the respondents 1 to 3 produced files relating to the arbitral proceedings conducted by the first respondent. A perusal of the same would establish that notice of enquiry was sent to the petitioners and the petitioners appeared before the first respondent and also filed proof affidavit. The details of the date on which notice was sent to the petitioners and the dates on which the proof affidavits were filed are given below:

S.No.	Writ Petition Number	Name of the Petitioner	Notice sent on	Proof affidavit filed on
1.	W.P.(MD)No. 2004/2023	Subakaran	06.10.2022	14.10.2022
2.	W.P.(MD)No. 2005/2023	P.Saravanan	18.10.2022	27.10.2022
3.	W.P.(MD)No. 2006/2023	S.Vaijayanthi	18.10.2022	27.10.2022
4.	W.P.(MD)No. 2007/2023	R.Devi	31.10.2022	15.11.2022
5.	W.P.(MD)No. 2008/2023	M.Latha	18.10.2022	24.10.2022
6.	W.P.(MD)No. 2009/2023	P.Muthalagu	31.10.2022	15.11.2022

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Therefore, it is clear that the first respondent issued proper enquiry notice to the petitioners and afforded reasonable opportunity to the petitioners to present their cases before him. In such circumstances, the contention raised by the learned counsel for the petitioners that the impugned orders cannot be treated as an award in the eye of law is not acceptable to this Court.

7. In view of the availability of the alternative remedy as stated supra, these Writ Petitions are dismissed with liberty to the petitioners to file Original Petitions by invoking Section 34 of the Arbitration and Conciliation Act, 1996. While calculating the limitation for filing Original Petitions, the petitioners are entitled to exclude the time taken by them in prosecuting these Writ Petitions before this Court viz., from 30.01.2023 to the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.06.2025

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Index : Yes
Internet : Yes
Neutral Citation : Yes

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S.SOUNTHAR, J.

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