



W.P.(MD)No.4462 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **04.04.2025**

Delivered on : **15.04.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.4462 of 2023

and

W.M.P.(MD)Nos.4203, 4204 and 22847 of 2023

Manilal Patel

... Petitioner

/Vs./

1. Union of India

Represented by its Secretary,
Ministry of Road, Transport and Highway,
New Delhi.

2. The Project Director

National Highways Authority of India,
Project Implementation Unit,
Plot No. 3, Surya Towers, 2nd Floor,
1st East Street, K.K.Nagar,
Madurai 625 020.

3. The Competent Authority /

District Revenue Officer,
National Highways Land Acquisition Officer,
Madurai.



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4. The District Collector
Madurai District,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in A.P.No. 35/MNT/Periyapatti/2019/P3 dated 01.03.2022 and quash the same as illegal and consequently direct the 4th respondent to reconsider the petitioner's appeal in A.P.No. 35/MNT/Periyapatti/2019 dated 04.03.2019.

For Petitioner : Mr.T.Veerakumar

For Respondents : Mr.K.Gokul for R1

: Mr.P.Karthick for R2

: Mr.M.Lingadurai
Special Government Pleader for R3 & 4

ORDER

The petitioner seeks issuance of Writ of Certiorarified Mandamus, to quash the order of the fourth respondent dated 01.03.2022 and to consequently consider the petitioner's appeal dated 04.03.2019.



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2. I have heard Mr.T.Veerakumar, learned counsel for the petitioner, Mr.K.Gokul, learned counsel for the first respondent, Mr.P.Karthick, learned counsel for the second respondent and Mr.M.Lingadurai, learned Special Government Pleader for the respondents 3 and 4.

3. The learned counsel for the petitioner would submit that the petitioner along with his brother, viz., L.Shivjilal, had jointly purchased the property in Survey No.60/2, 60/6, 61/12, 61/13 and 60/3 of a total extent of 2.76 Acres at Periyapatti Village, Madurai North Taluk, under registered sale deed bearing document No.7822/2002. The petitioner and his brother were in possession and enjoyment and had also constructed an Industrial Unit, besides securing the property by raising a compound wall. However, the first respondent initiated proceedings under the National Highways Act for acquisition of the petitioner's property and though the petitioner has made a request for deviating the proposal to exempt the petitioner's property from acquisition, the said request was rejected by the authorities by order dated 28.03.2018. Subsequently, the

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acquisition proceedings were proceeded with and the market value of the petitioners were fixed Rs.1,320/- per sq.ft. According to the learned counsel for the petitioner, the properties were worth approximately Rs.5,000/- per sq.mtr., and the value arrived at by the third respondent was ignoring the prevailing the market value in and around the legality. The petitioner has therefore approached the fourth respondent by making representation on 13.02.2019 and 04.03.2019 seeking enhancement of compensation by way of Appeal. On 28.02.2020, the fourth respondent has sent a reply to the petitioner, stating that the enquiry would be conducted, after issuing notice to the petitioner.

4. The grievance of the petitioner is that though the award amount was also fixed and deposited in the petitioner's Bank Account as early as on 06.02.2019, the application for enhanced compensation was not considered. The petitioner therefore filed Writ Petition in W.P.(MD) 13419 of 2024 and this Court directing the fourth respondent therein to consider the petitioner's application therein for enhanced compensation within a period of three months. In pursuance of the said order, the fourth respondent has rejected the appeal filed by the petitioner by the



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impugned proceedings dated 01.03.2022. The said order is challenged by the petitioner on the ground that the fourth respondent has not considered the mandate of Act 30 of 2013 and has also ignored the provisions of Sections 3G and 3H of the National Highways Act. The learned counsel for the petitioner would therefore pray for the writ petition being allowed and the fourth respondent be directed to pass to pass fresh orders on the petitioner's appeal dated 04.03.2019.

5. Per contra, Mr.P.Karthick, learned Standing Counsel for the respondents 2 and 3 would submit that the writ petition, challenging the order of the fourth respondent is not maintainable and if at all the petitioner is aggrieved by the order of the fourth respondent, the petitioner can only approach the competent civil Court invoking Section 34(2) of the Arbitration and Conciliation Act, 1996.

6. The learned Standing Counsel for the respondents 2 and 3 would place reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No. 14665 of 2015 in ***Bhaven Construction V. Executive Engineer Sadar Narmada Nigam Limited & Anr.***, dated 06.01.2021,



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where the Hon'ble Supreme Court has clearly held that writ petitions cannot be entertained as a matter of course, ignoring the fact that the aggrieved persons have an effective and alternative motive. Therefore, relying on the said decision, the learned counsel Mr.P.Karthick contended that the petitioner cannot be entitled to any relief under Article 226 of the Constitution of India.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. Admittedly, as against the order passed by the District Collector under the provisions of the National Highways Act, the petitioner has an avenue to challenge the said order, if aggrieved, by approaching the appropriate civil Court, viz., the District Judge concerned, invoking the provisions of Section 34 (2) of the Arbitration and Conciliation Act. The petitioner, in the present writ petition, challenges the rejection of the request for enhanced compensation.



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9. Therefore, as rightly pointed out by Mr.P.Karthick, the learned Standing Counsel appearing for the National Highways, the only course open to the petitioner is to invoke Arbitration proceedings and not approach this Court by way of a writ petition under Article 226 of the Constitution of India.

10. The next question that falls for consideration is that, the fourth respondent has passed the order, which is challenged in the present writ petition as early as on 01.03.2022. The time limit available for challenging the fourth respondent's order under Section 34(2) of the Arbitration and Conciliation Act has already lapsed. Therefore, the question arises to whether the in-built limitation period under the Arbitration Conciliation Act can be exempted, considering the fact that the petitioner has been agitating his rights before this Court in writ jurisdiction.

11. In this regard, I am fortified by the decision of the Hon'ble Supreme Court which had an occasion to deal with a similar issue regarding interplay of Section 14 of the Limitation Act and Section 34 of



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the Arbitration and Conciliation Act. The decision of the Hon'ble Supreme Court in the case of ***Kirbal Singh V. Government of India and others*** in Civil Appeal Nos.12849 – 12856 of 2024 by order dated 21.11.2024, held that substantive remedies under Section 34 of the Arbitration and Conciliation Act are by their very nature limited in the scope and therefore it would be necessary to interpret the limitation provisions liberally as otherwise the limited window to challenge an arbitral award will be lost and Sections 34 and 37 of the Arbitration and Conciliation Act being precious, Courts will have to keep in mind the need to secure and protect such remedy while calculating the period of limitation.

12. It is relevant to extract Section 14 of the Limitation Act, which reads as follows:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision,



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against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of alike nature.

Explanation.—For the purposes of this section,— (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;



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(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

13. In the present case, it is clear that instead of challenging the order of the fourth respondent before the District Court under Section 34 of the Arbitration and Conciliation Act, the petitioner has approached this Court and filed the above writ petition. Therefore, the said period which has been lost by the writ petitioner in prosecuting the above writ petition has to be necessarily excluded and the petitioner should be permitted to approach the District Court under Section 34 of the Arbitration and Conciliation Act and seeks relief. As the land owner, the petitioner, having lost his valuable immovable property cannot be deprived of legitimate compensation and therefore, technicalities should not come in the way to reject the claim on the ground of limitation.



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14. In view of the above, this Writ Petition is dismissed, giving liberty to the petitioner to move a petition under Section 34(2) of the Arbitration and Conciliation Act, 1996, before the District Court concerned, within a period of four weeks from the date of receipt of a copy of this order and if such O.P. is filed within the said period of four weeks then, the District Court, shall entertain the said O.P. under Section 34 of the Arbitration and Conciliation Act, without proceeding to reject it on the ground that it is time barred under the provisions of the Arbitration and Conciliation Act and shall proceed to decide the appeal in accordance with law, after hearing the parties. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
NCC : Yes / No
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P.B. BALAJI, J.

LS

Pre-delivery Order made in
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Dated:
15.04.2025