



W.P.Nos.14766 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 16.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.14766 , 14768, 14820, 14824, 14860, 21177, 21185, 21189, 21192, 21198, 21182, 21202, 21207, 21208, 21211, 21239, 21241, 21244, 21247, 21251, 21261, 21275, 21272, 21270, 21265, 17922, 17923, 17926, 17930, 17932, 17934 & 17935 of 2021

W.P.No.14766 of 2021

D. Nagarathinammal

.... Petitioner

Vs.

1. The Project Director,
National Highways Authority of India,
Project Implementation Unit – Chennai,
“SRI TOWER”, 3rd Floor, DP-34(SP),
Industrial Estate, Guindy,
Chennai – 32.

2. The Competent Authority cum
Special District Revenue Officer
(Land Acquisition),
National Highways 205,
No.3 & 4, Lal Bagadhur Sasthiri Street,
Periyakuppam Railway Station,
(Near) Thulasi Theatre,
Thiruvallur – 602 001.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to



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grant the enhanced award compensation in respect of Survey No.2/5B for an extent of 734 sq.mts as per the order passed by the Arbitrator/District Collector, Tiruvallur District dated 31.01.2020 in R.C. No.26266-2/2019/F2/Arbitration in the manner as contemplated therein within a time period as may be stipulated by this Court.

For Petitioner : Mr.N. Chandrasekaran
for Ms.MF.Shabana

For R1 : Mr.Su.Srinivasan
Central Government Standing counsel

For R2 & R3 : Mr.Yogesh Kannadasan
Special Government Pleader

COMMON ORDER

All the petitioners filed Writ Petitions for direction directing the respondents to grant the enhanced compensation in respect of their respective lands as per the order passed by the Arbitrator/District Collector, Tiruvallur District. The petitioners owned their respective lands and the said lands were acquired for the purpose of laying by-pass road for National Highways 205 under the provisions of the National Highways Act, 1956.

2. The Competent Authority-cum-Special District Revenue Officer, National Highways i.e., the second respondent herein passed an



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award and determined the value of Rs.355/- per sq.ft i.e., Rs.3,819.55/-

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per sq.mt and 10% appreciation amount under Section 3G(2) of the National Highways Act, 1956 and also awarded compensation for structural value. On several grounds, all the petitioners have filed Arbitration Petition before the Arbitrator/District Collector, Tiruvallur, to enhance the award amount passed by the second respondent. The Arbitrator/District Collector, Tiruvallur passed an Arbitration award, thereby enhanced the compensation from Rs.355/- to Rs.800/- per sq.ft i.e., Rs.3,819.55 per sq.mt to Rs.8,608/- per sq.mt with an interest at the rate of 9% per annum to be paid for excess amount determined in this order from the date of taking possession viz. under Section 3D(1) of the National Highways Act 1956, till the date of actual deposit. On various dates, the award has been passed and enhanced the compensation. Though all the petitioners approached the respondents for disbursement of compensation but of no avail. Therefore, all the petitioners sent their representation as per the Arbitration Award passed by the Arbitrator/District Collector but of no avail. Hence, they approached this Court for mandamus directing the respondents to grant enhanced compensation amount in respect of their respective property which was acquired for laying by-pass road for National Highways 205.



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3. Mr.N.Chandrasekaran, learned counsel appearing for all the petitioners and Mr.P Subba Reddy, learned counsel appearing for the petitioner in W.P.No.14860 of 2021 submitted that the respondents failed to pay the enhanced compensation amount even after nearly one year from the Arbitration Award passed by the Arbitrator/District Collector, Tiruvallur. In fact, they filed petition to set aside the Arbitration Award as contemplated under Section 34 of the Arbitration and Conciliation Act, 1996 belatedly after expiry of limitation. Therefore, it was returned for certain compliance. Again it was re-presented on 14.09.2021. The period of limitation for filing the petition to set aside the Arbitration Award is only ninety days from the date of award as per proviso to Section 34(3) and it can be filed with condone delay petition, that too, within a further period of thirty days but not thereafter. Admittedly, in all the cases, the first respondent filed petition to set aside the Arbitration Award after the period of more than six months. Therefore, the petition to set aside the Arbitration Award is not at all maintainable and barred by limitation.

4. They further submitted that even assuming that the petition filed in time as per the order passed by the Hon'ble Supreme Court of India, due to Covid-19 Pandemic circumstances, the period of limitation



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can be extended till March 2021. The first respondent shall issue a prior

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notice while filing petition to set aside the Arbitration Award and the said petition shall be accompanied by the application endorsing compliance with the said requirement as per Section 34(5) of the Arbitration and Conciliation Act, 1996. The said petition shall be disposed of within a period of one year from the date on which the notice referred in subsection 5 of the 34 of the Arbitration and Conciliation Act, 1996. Now, nearly one year already completed from the date of Arbitration Award and as such, the writ petition is very much maintainable to execute the Arbitration Award passed by the Arbitrator/District Collector, Tiruvallur.

5. They also submitted that the Arbitration Award cannot be challenged on the merits of the Award. The Court cannot correct errors of the Arbitrator. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. Therefore, the scheme of the provision aims at keeping the supervisory role of the Court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it. In support of his contention, he relied upon the Judgment reported in lot of



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Civil Appeals arising out of SLP (Civil) No.13020 of 2020 by an order

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6. Mr.Su.Srinivasan, learned Central Government Standing Counsel appearing for the first respondent vehemently contented that the writ petitions are not at all maintainable either in law or facts, when there is specific alternative remedy available under the Arbitration and Conciliation Act, 1996. As per Section 36 of the Arbitration and Conciliation Act to execute the Arbitration Award in accordance with the provisions of the Civil Procedure Code in the same manner as if it were a decree of the Court. The Arbitration Award is unreasonable, arbitrary and legally unsustainable, since the Arbitrator enhanced the award from Rs.3,819.55 to Rs.8,608/- per sq.mt. Therefore, it is challenged under Section 34 of the Arbitration and Conciliation Act, 1996 before the Principal District Judge, Tiruvallur and the same was returned for certain compliance and after rectifying the defects, it was re-presented. Now it is pending for numbering. Therefore, to enforce the Arbitral award, the writ petition is not maintainable under Article 226 of the Constitution of India and the petitioners have remedy of enforcement of the award under Section 36 of the Arbitration and Conciliation Act, 1996.



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WEB COPY 7. In support of his contention, he relied upon the following

Judgments :-

1. Judgement of this Court in *W.A.Nos.2627 to 2637 & 2641 to 2644 of 2019* in the case of *S.John Vs. Regional Officer, Chennai and others*
2. *2010 (12) SCC 210* in the case of *State of Himachal Pradesh and another Vs. Himachal Techno Engineers and another.*
3. Judgment of this Court in *W.A.No.4309 of 2019* in the case of *K.Ayyavu and others Vs.The District Collector and Sole Arbitrator, Salem and others.*
4. Judgment of this Court in *W.P.Nos.30373 & 30376 of 2019* in the case of *S.P.Anthonisamy Vs. Government of India, New Delhi and others.*
5. Judgment of the Hon'ble Supreme Court of India in *Civil Appeal No.5121 of 2021* in the case of *The Assistant Commissioner of State Tax and others Vs. M/s.Commercial Steel Limited.*
6. *2021(1) CTC 450* in the case of *Bhaven Construction through*



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authorised signatory Premjibhai K.Shah Vs. Executive engineer

WEB COPY *Sardar Sarovar Narmada Nigam Ltd & Another*

7. *2019 (16) Scale 667* in the case of *Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and another.*

8. *2018 (3) SCC 85* in the case of *Authorised Officer, State of Travancore and another Vs. K.C.Mathew.*

9. *CDJ 2015 MHC 050* in the case of *M/s.Cholamandalam Investment & Finance Company Ltd., Vs. Natarajan and another.*

8. The points arise in these writ petitions are that

(i) Whether the writ petition is maintainable to enforce the arbitral award passed by the Arbitrator ?

(ii) Whether the respondents can be directed to deposit the enhanced compensation amount as per Section 3H(5) of the National Highways Act, 1956?

9. Aggrieved by the award passed by the second respondent, the petitioners/land owners filed application before the Arbitrator/District Collector, Tiruvallur for enhancement of the award amount. The



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Arbitrator passed an award, thereby enhanced the compensation made by the first respondent from Rs.3,819.55/- to Rs.8,608/- per sq.mt.

Aggrieved by the same, the first respondent filed petition to set aside the Arbitral Award under Section 34 of the Arbitration and Conciliation Act.

Admittedly, it was filed belatedly after a period of four months and returned for want of rectifying the defects. Thereafter, it was

re-presented and it is pending for numbering before the Principal District Court, Tiruvallur. Therefore, the present writ petitions have been filed to

enforce the Arbitral Award passed by the Arbitrator. The Hon'ble

Division Bench of this Court held that aggrieved by the Arbitration Award passed by the Arbitrator/District Collector arising out of National

Highways Act, 1956 as well as the Arbitration and Conciliation Act, 1996 comes appeal remedy before the District Court and this Court has no

jurisdiction to entertain the petition under Article 226 of the Constitution of India. The Hon'ble Supreme Court of India held in the Civil Appeal

No.5121 of 2021 dated 03.09.2021 that instead of availing of the appeal remedy, filing the writ petition under Article 226 of the Constitution of

India is not an absolute bar to its maintainability. But it can be entertained in exceptional circumstances where there is a breach of

fundamental rights ; a violation of the principles of natural justice ; an



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excess of jurisdiction ; or a challenge to the vires of the statute or delegated legislation.

10. In the case on hand, the petitioners have filed these writ petitions only to enforce the Arbitral Award and not challenging the same. Whereas, the respondents rightly challenged the Arbitral Award before the Principal District Court, Tiruvallur and it is pending for numbering. Though the petition to set aside the Arbitral Award filed belatedly, the Hon'ble Supreme Court of India, in view of the Covid-19 Pandemic circumstances, passed an order dated 23.03.2020, thereby extended the limitation as prescribed under the general or special laws with effect from 15.03.2020 until further orders. Thereafter, the Hon'ble Supreme Court of India, vide order dated 08.03.2021, modified the order with regard to clarification of limitation. However, by an order dated 27.04.2021 in M.A.No.665 of 2021 in S.M.W (C) No. 3 of 2020 modified/clarified by holding that “restore the order dated 23.03.2020 and in continuation of the order dated 08.03.2021 direct the period of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders”. The period from 14.03.2021 till



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further orders shall stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribed period of limitation for instituting proceedings, outer limits (within which the Court or Tribunal can condone delay) and termination of proceedings. In view of the said order, the respondents had filed Arbitration Original Petition before the Principal District Court, Tiruvallur and it is pending for numbering.

11. The learned counsel for the petitioners relied upon the Judgment of the Hon'ble Supreme Court of India passed in Batch of Civil Appeals arising out of SLP (Civil) No.13020 of 2020 dated 20.07.2021. In the said Civil Appeals, the points for consideration arose whether the power of a Court under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside an award of an Arbitrator would include the power to modify such an award. Therefore, the said judgment is not applicable to the case on hand that whether the writ petition is maintainable to enforce the Arbitral Award. However, the petitioners are at liberty to raise those grounds as held by the Hon'ble Supreme Court in the above



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cited judgment before the Principal District Court, Tiruvallur in the

Arbitration Original Petition filed by the respondents.

12. For maintainability of the present writ petitions under Article 226 of the Constitution of India to enforce the Arbitral Award, it is relevant to extract the provision under Section 36 of the Arbitration and Conciliation Act 1996, hereunder ;

“ 36. Enforcement : (1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit,



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grant stay of the operation of such award for reasons to be recorded in writing ;

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)”

13. Accordingly, the Arbitral Award shall be enforced in accordance with the provisions of Civil Procedure Code in the same manner as if it were the decree of the Court. Further, mere filing an application to set aside the Arbitral Award under Section 34 shall not by its render that an order unenforceable, unless the Court grants an order of stay of the operation of the said Arbitral Award. The Hon'ble Supreme Court of India in the case of ***Bhaven Construction through Authorised Signatory Premjibhai K.Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr.*** in Civil Appeal No.14665 of 2015 dated 06.01.2021, held that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as “Notwithstanding anything contained in any other law for the



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time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part”. The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act. Further held that if the Courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished. Thus, it is clear that the writ petitions are not maintainable to enforce the Arbitral Award when there is a specific alternative remedy provided under Section 36 of the Arbitration and Conciliation Act, 1996.

14. Insofar as the deposit of enhanced award amount is concerned, it is relevant to extract the provision under Section 3H(5) and (6) of the National Highways Act, 1956, which is as follows ;

“(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine percent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.



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(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit. ”

15. Accordingly, the enhanced amount with interest, if any, shall be deposited by the respondents with the competent authority. In all the writ petitions, after passing an award and determining the compensation, the respondents have paid the compensation to the respective land owners. The Arbitral Award passed by the Arbitration/District Collector, Tiruvallur, enhanced the compensation amount has not been deposited so far and no records were produced to prove the same. As per the provision, the amount determined by the authority shall be deposited with competent authority before taking possession of the land. Accordingly, the petitioners were paid compensation as determined under Section 3G of the National Highways Act. However, aggrieved by the same, the petitioners filed application before the Arbitrator for enhancement of the



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award and accordingly, the compensation award has been enhanced by

WEB COPY the Arbitrator.

16. In view of the above, all the writ petitions are disposed of with the following directions ;

(1) The respondents are directed to deposit the enhanced compensation amount as per the Arbitral Award together with interest at the rate of 9% per annum from the date of taking possession under Section 3D of the National Highways Act, 1956, with the competent authority within a period of one week from the date of receipt of a copy of this order.

(2) If the respondents failed to obtain any interim order against the arbitral award in the Arbitration Original Petition on the file of the Principal District Court, Tiruvallur within a period of four weeks from the date of receipt of a copy of this order, the competent authority is directed to disburse the compensation amounts which were deposited by the respondents forthwith.

There shall be no order as to costs.

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Index : Yes/No.



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Internet : Yes/No.

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The above matters are listed today under the caption for being mentioned, at the instance of the learned counsel for the 2nd respondent.

2. When the matter is taken up for hearing, the learned Special Government Pleader appearing for the 2nd respondent would submit that in paragraph 3 of the order, dated 16.11.2021, the place of the Arbitrator has been inadvertently stated as “Tiruvallur” instead of “**Kancheepuram**” and further, in paragraph 16(2) of the order it has been stated as “(2) If the respondents failed to obtain any interim order against the arbitral award in the Arbitration Original Petition on the file of the Principal District Court, Tiruvallur within a period of four weeks from the date of receipt of a copy of this order, the competent authority is directed to disburse the compensation amounts which were deposited by the respondents forthwith.” instead of “(2) If the respondents failed to obtain any interim order against the arbitral award in the Arbitration Original Petition on the file of the Principal District Court, **Tiruvallur**



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and **Kancheepuram**, within a period of four weeks from the date of

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receipt of a copy of this order, the competent authority is directed to disburse the compensation amounts which were deposited by the respondents forthwith.

3. In the light of the above submission made by the learned Special Government Pleader, Registry is directed to incorporate the same, in the order dated 16.11.2021 and issue fresh order copy to the parties concerned.

22.03.2022

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To
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1. The Project Director,
National Highways Authority of India,
Project Implementation Unit – Chennai,
“SRI TOWER”, 3rd Floor, DP-34(SP),
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2. The Competent Authority cum
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