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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

ON THE 26th OF JUNE, 2023

WRIT PETITION No. 13266 of 2023

BETWEEN:-

SMT SARVESH RAJPUT

.....PETITIONER

(BY SHRI AKRAM KHAN- ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH COLLECTOR CUM ARBITRATOR (INDIAN NATIONAL HIGHWAYS ACT, 1956) DISTRICT GUNA (MADHYA PRADESH)
2. PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA SACHIN TENDULKAR MARG GOVINDPURI GWALIOR (MADHYA PRADESH)
3. SUB DIVISIONAL OFFICER (REVENUE) AND COMPETENT OFFICER NATIONAL HIGHWAY NO.3 (SHIVPURI DEWAS) TAHSIL GUNA DISTRICT GUNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VIVEK KHEDKAR- AAG FOR THE RESPONDENTS)

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This petition coming on for admission this day, the court passed the following:

ORDER

The present petitioner under Article 226/227 of the Constitution of India has been preferred against the order dated 18.10.2022 passed by Collector,

District Guna in Case No.04/Appeal/2022-23, whereby the application filed challenging the award dated 26.12.2012 passed by National Highways Authority of India in the land acquisition proceedings, whereby treating a diverted land to be an agricultural land, the award was passed, was rejected and, the Collector while passing the impugned order dismissed the proceedings referred to him under the provisions of Section 3 G (6) of the National Highways Act, 1956, as barred by Limitation Act. Hence the present petition.

Learned counsel for the petitioner vehemently argued that the petitioner is an owner of land bearing Survey No.2/10/ka/2/1 admeasuring 0.209 hectare situated at Patwari Halka No.23, Myana, Tehsil and District Guna. Out of the aforesaid land, 0.020 hectare i.e.2152 square feet was diverted from agricultural land to commercial land vide order dated 31.03.2006 passed in Case No.54-A-2/2004-05 by the then Commissioner, Myana, District Guna. The said diverted land admeasuring 0.009 hectare out of the land admeasuring 0.020 hectare was acquired by the National Highway Authority of India and vide order dated 26.12.2012, an award of Rs.14,850/- was passed in favour of the petitioner. It was further argued that since the correction in the revenue records was made only in the year, 2018, there was no occasion for the present petitioner to have approached the competent authority as provided under the provisions of National Highways Act, 1956 for redressal of her grievance, as admittedly the land which was diverted was treated to be agricultural land and the award passed was illegal. Only thereafter as and when the revenue entries were corrected in the year 2018, the petitioner got cause of action and in the year, 2021 as per provisions of Section 3 G (5) of the National Highways Act, 1956 within limitation, the matter was referred to Project Director. In the meantime, vide notification dated 03.01.2022, the Collector was appointed as an arbitrator

under the Provisions of Section 3 G (5) of the National Highways Act, 1956, the petitioner was directed to file a reference before the Collector and accordingly, the matter came to be filed before the Collector.

It was further argued that the cause of action which accrued to the petitioner was only after 2018 when the revenue entries were corrected and the name of the petitioner was included in the revenue records and as there is no period of limitation prescribed under the National Highways Act, 1956, the residuary Clause of Article 113/137 of the Limitation Act would be applicable for which the period of limitation is three years and as after 2018, the said reference was made within the period of three years as provided under the residuary Clause of the Limitation Act the reference was within limitation. The learned Collector while dismissing the application under Section 5 of the Limitation Act holding it to be time barred by 9 years reckoning the period of limitation from the date of the award was *per se* illegal.

It was further argued that passing of an award of the disputed land was acquired by the petitioner in the year, 2018 that the award was passed treating it to be an agricultural land, and as it came to her knowledge only in the year, 2018, therefore, as per the aforesaid residuary clause of the Limitation Act, the reference was well with limitation and the learned Collector has misdirected himself in passing the impugned order and rejected the reference on the point of limitation.

To bolster his submission reliance was place in the matter of **Ghanshyam Gupta vs. State of M.P. passed in W.P. No.13670/2021 on 21.04.2022** contending that in similar set of circumstances, the delay of one year four months four days in filing the appeal/reference under Section 3 G (5)

of the Act, of 1956 was condoned.

Per contra, Shri Vivek Khedkar, learned AAG appearing on advance copy submits that from the facts on record it is revealed that the order of diversion is of the date 31.03.2006 and the land which is said to have been diverted was acquired in the year, 2012. This fact was very well known to the petitioner, but instead of referring the matter to the arbitrator as provided under Section 3 G (5) of the National Highways Act, 1956, the petitioner kept a blissful silence and never challenged the award of land acquisition passed on 26.12.2012, whereby treating the land to be agricultural land an award of Rs. 14,850/- was passed.

It was further argued that the petitioner is reckoning the period of limitation from the date when the entries in the revenue records with regard to the diversion were made by the revenue authorities in the record and from the date when the matter was first referred to the Project Director in the year, 2021 and though there is no limitation provided under the National Highways Act, 1956, the period of limitation construed to have taken place within the period of three years, therefore, cannot be said to be sustainable as admittedly the order of diversion has been passed in the year, 2006 and at the time of passing of the award dated 26.12.2012, it was well within the knowledge of the petitioner that the land was a diverted land and the plea of the petitioner that she is an illiterate lady is of no help. It was further argued that litigants tight over on her own rights cannot take advantage of their own mistakes and, therefore, it was prayed that the petition being devoid of any substance deserves to be dismissed.

Heard the counsels for the parties and perused the record.

From the very averments made in the petition it is an admitted fact that the land admeasuring 0.009 hectares out of the land 0.020 hectare which is said

to be of the ownership of the present petitioner was diverted vide order dated 31.03.2006. It is also an admitted fact that the respondent/authority had acquired the land vide order dated 26.07.2012 and an award of Rs.14,850/- was passed treating the said land to be an agricultural land. It is also an admitted fact that law challenging the aforesaid land is provided under Section 3 G (5) and (6) of the National Highways Act, 1956 which reads as under:-

3 G . Determination of amount payable as compensation:-

(5) If the amount determined by the competent authority under Sub-Section (1) or (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.

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

From the aforesaid provisions it is very much clear that if the amount which is determined by the competent authority under sub-Section 1 and 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 and admittedly at the time when the award was passed, the Commissioner was the authority who was appointed as an Arbitrator vide notification dated 31.12.2001. It was only in January, 2022 that the said authority was changed and the Collector was made the Arbitrator.

It is not the case of the petitioner that no remedy was available to her prior to notification issue in the month of January, 2022, whereby the Collector was made the arbitrator. The only case the petitioner pleaded and advanced by

way of arguments is that since the revenue authorities had not corrected the revenue records, no right had accrued in her favour to have challenged the said award, with a further grievance that the petitioner being an illiterate lady was not having the knowledge of the law of limitation to challenge the same. The aforesaid explanation cannot be said to be a plausible explanation which could compel this court to extend a lenient view and treat the case of the petitioner sympathetically. It was for the first time in the year, 2021, that the petitioner had approached any authority challenging the order of the acquisition passed in the year, 2012, thereafter with the advent of the notification of the Government, whereby the Collector was made the arbitrator, she was referred to the Collector and for the first time the matter was kept before the Collector after the period of 9 years from passing of the award for its adjudication.

Though it is also an admitted fact that no case of limitation has been prescribed under the National Highways Act, 1956 in such cases the residuary clause as contained under Article 113/137 of the Limitation Act can be said to be applicable, wherein a period of limitation of 3 years is provided, but the aforesaid period of 3 years could be reckoned only from the date of cause of action and admittedly the cause of action to the petitioner has arisen in the year, 2012 as and when the award of land acquisition was passed and the fact of passing of the award was well within the knowledge of the petitioner.

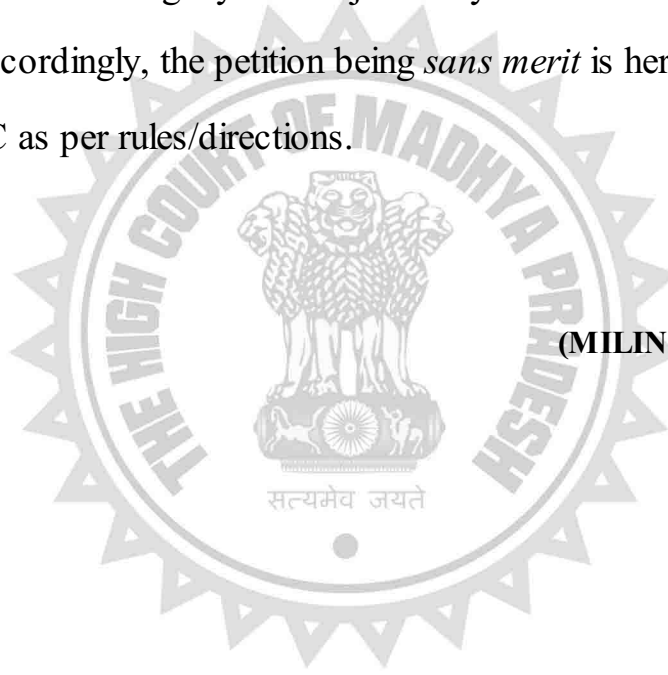
Though, the petitioner had remedy of approaching the then arbitrator as appointed under the provisions of National Highways Act as provided under Section 3G (5), the remedy available to the petitioner was not availed and it was after the lapse of 9 years that the said reference was made which cannot be said to be within the limitation. Thus, this Court comes to a conclusion that the learned Collector was right in dismissing the application filed under Section 5 of

the Limitation Act as time barred. The reference made by the learned counsel for the petitioner on the matter passed by Division Bench of this Court in the matter of **Ghanshyam Gupta vs. State of M.P.** (supra) where the Hon'ble Division Bench had held that the cause shown for delay was plausible and, therefore, as it was explained, it was condoned, no legal issue was tried therein, thus, since it is based on different consideration is not applicable to the mater. In the present case the explanation which was afforded by the petitioner since is not acceptable and plausible, the said application under Section 5 of the Limitation Act has rightly been rejected by the learned Collector.

Accordingly, the petition being *sans merit* is hereby **dismissed**.

CC as per rules/directions.

Chandni



(MILIND RAMESH PHADKE)
JUDGE