

IN THE COURT OF THE ADDL. DISTRICT JUDGE - VII
THIRUVANANTHAPURAM

PRESENT : SRI. PRASUN MOHAN, ADDL. DISTRICT JUDGE - VII

Tuesday, 31st January, 2023 / 11th Magha, 1944

OP(Arb) No. 182/2022

(Arbitration Award No. 17/2015 dtd. 19-07-2017)

PETITIONERS / APPLICANTS :

1. Balakrishnan,
aged 91 years, residing at Charuvila,
Kazhivoor. P.O., Thiruvananthapuram District.
2. Sarasamma, aged 86 years,
W/o. Balakrishnan, residing at Charuvila,
Kazhivoor. P.O., Thiruvananthapuram District.

By Advs. Jameela Prakasam & T.K. Purushothaman.

RESPONDENTS :

1. The Special Deputy Collector & Competent Authority,
Land Acquisition, National Highway-Kazhakkuttom-Karode Bypass,
District Collectorate, Thiruvananthapuram.
2. The Project Director,
Project Implementation Unit, Kazhakuttom-Karode Bypass Project,
National Highway Authority of India, T.C.36/414(5), Koyikkal Veedu,
Kavu Lane, Palkulangara, Thiruvananthapuram, PIN 695024.

By Addl. Public Prosecutor, Sri. K.L. Hareeshkumar. (For R1)
Adv. P. Balakrishnan. (For R2)

This petition having been finally heard on 31-01-2023 and the court on the same day passed the following :-

ORDER

1. This is an original petition filed by the petitioner u/s.34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as Arbitration Act) for setting aside the arbitral award of the District Collector/Arbitrator dated 19.07.2017 in Award No.17/15 for acquisition of land for the widening of National Highway Bypass connecting kazhakuttom with Karode in Thiruvananthapuram district.

2. **Gist of the facts which lead to the filing of this original petition is as follows** :- Pursuant to a notification issued by the Union of India as per S.3A of National Highways Act, 1956 and consequently published in the official Gazette of the Government of India, the Central Government decided to acquire an extent of 70.05.07 hectors of immovable property in different survey numbers of five villages namely, Kottukal, Kanjiramkulam, Thiruppuram, Chenkal and Karode villages of Neyyattinkara taluk of Thiruvananthapuram District for the purpose of the proposed Kazhakuttom-Karode National Highway bypass road. The 1st respondent is admittedly the competent authority authorized by the Union of India for going ahead with the aforesaid acquisition of land. The petitioner is none other than the owner of 0.11.30 hectors of immovable property comprised in resurvey No.269/13 in Block No.17 of Kanjiramkulam Village in Neyyattinkara Taluk, which was notified by the appropriate authority to be acquired for the construction of the aforesaid

project of the National Highway Authority of India. The Government of Kerala, vide Government Order No.37940/B1/09/RD dated 25.08.2009 already constituted a District Level Purchase Committee (DLPC) for expediting the procurement of land for the National Highway Project. District Collector is none other than the Chairman of DLPC, and this DLPC convened a meeting of the land owners of all the notified landed properties in three villages of Kottukal, Kanjiramkulam and Thiruppuram on the 9th, 10th and 11th of October 2013 for arriving at an amicable settlement with respect to the determination of land value of the properties. In consequence to those negotiations, it was mutually agreed by both sides to pay an amount of Rs.4,27,500/- per cent or Rs.10,70,000/- per Are for the acquired property of the petitioner, as the land was compulsorily acquired for completion of national highway. However, the 1st respondent unilaterally withdrew from that promise made in the meeting held with the land owners, and the arbitrator fixed a land value which was far below the land value of the respective villages. Since the District Collector himself is the Chairman of DLPC, the action of the District Collector to retract from the promise of DLPC is wholly unjustifiable and against the principles of natural justice and therefore, the action of the arbitrator/District Collector resulted in deceiving the land owners from getting their duly entitled compensation. The 1st respondent, in consequence of that arbitral award proceeded to disburse compensation which was calculated by taking into

account of a meager land value. An award was passed by the arbitral tribunal on 19.07.2017 and a copy of the same was served to the petitioner on 16.02.2018 by totally contravening the principles of natural justice and law of land. An Immovable property under the ownership of the petitioner comes under the category-C and the same would fetch a land value of Rs.10,70,000/- per Are. Since the 1st respondent back tracked from the promise made at the meeting of the DLPC, an arbitral award was passed by fixing the compensation of petitioners at Rs.6,77,115/- per Are, which was far below the agreed amount. Thus, the petitioner, a law abiding citizen was deceived by the competent authority to grant a meager compensation. When a petition was preferred by the original petitioner before the Arbitrator, it was decided by the District Collector to enhance the rate of compensation to a meager 15% over the lower rate of compensation fixed in the arbitral award dated 19.07.2017. On being highly aggrieved by the arbitral award, this original petition is preferred by the applicant on several grounds mooted therein for setting aside the arbitral award dated 19.07.2017.

3. Notices of the original petition was served on the respondents 1 and 2 and the 1st respondent didn't file any objection.

4. The 2nd respondent entered appearance and filed an objection interalia contending that the original petition is not maintainable either in law or on

facts. The 2nd respondent took a defense that the acquisition was done by the Government of India, pursuant to a project under the National Infrastructure Development programmes for widening the National Highways with service roads, fly overs, bus bays etc. Pursuant to that decision, the central government entrusted the National Highway Authority of India to construct a bypass for connecting Kazhakuttom to Karode in the National Highway passing through Thiruvananthapuram district. It is admitted that the land under the ownership of petitioner was acquired from the petitioner, and appropriate and reasonable compensation was granted to the applicant. Total amount of compensation paid to the applicant provided sufficient land value required for reasonably compensating the petitioner as provided under the law for the time being in force. All the principles laid down in National Rehabilitation and Resettlement policy 2007 read with National Highways Act, 1956 was duly followed by the respondent. Competent authority fixed a land value of Rs.6,77,115/- per Are for the land acquired from the petitioner and granted a total compensation of Rs.84,16,540/- in LAC No.350/13. In consequence, the 2nd respondent took possession of the acquired land on 06.08.2014. On being highly aggrieved by the award, the petitioner approached the arbitral tribunal and after considering the matters in detail, an award was passed by the Arbitral Tribunal to enhance the compensation by 15% of the land value fixed by the competent authority followed by the grant of interest @ 9% per

annum w.e.f. the date of taking over of possession to the date of payment as provided under Section – 3 G(7) and 3(H)(5) of National Highways Act. DLPC constituted under the Land Acquisition Act is having no right under the National Highways Act, 1956 and allegations to the contrary are denied. Competent authority appointed by the Government of India under the National Highways Act alone is having the power to fix the compensation. There are no grounds for the petitioner to be aggrieved by the decision of the Arbitral Tribunal and all the contrary averments made in the petition is unsustainable under law. Allegations that the National Highways Authority of India agreed to pay a higher compensation is incorrect and false. As far as the land acquisition is concerned, there are no violations of the provisions of law. Moreover, the passage of award by the arbitral tribunal is not against the public policy of the law of land. Any acquisitions made under the National Highways Act cannot be treated in par with those acquisitions under the Land Acquisition Act, 1894. In such circumstances, the land acquired for the bypass project will not be treated in par with the land acquired for other projects. Moreover, the grant of 10% enhancement u/s.3(G)(ii) of National Highways Act cannot be changed either by the competent authority or by an Arbitral Tribunal. Therefore, the original petition lacks bonafides and it is liable to be dismissed with costs.

5. As a part of enquiry, Ext.A1 and Ext.A2 were marked on the side of applicant and enquiry was closed. No evidence is adduced by the respondents.

6. Both sides are heard.

7. The learned counsel for the petitioner filed an argument note and also argued in tune with those contentions therein to vehemently contend that the arbitral award is liable to be set aside in the interests of justice.

8. The learned counsel for the 2nd respondent urged in tune with those contentions in the objection and pressed for disallowing the claim.

9. The learned Prosecutor appearing for the 1st respondent supported the contentions of the counsel for 2nd respondent.

10. **Points that arise for consideration in the original petition is as follows :-**

- (i) *Whether the arbitral award is liable to be set aside u/s.34 of Arbitration Act?*
- (ii) *Whether the arbitral award was passed in violation of the public policy in existence?*
- (iii) *Whether the arbitral award is passed to reasonably assess the compensation in a lawful manner?*
- (iv) *Relief and costs?*

11. Point Nos.1 to 3 :- All these points are interconnected and considered together for the sake of convenience.

12. It is specifically contended by the original petitioner that the arbitral award passed by the District Collector is wholly unjustifiable and against the provisions of law and natural justice. It is contended by the original petitioner in the petition that the arbitral tribunal back tracked from the promises made in the meeting of DLPC to grant a compensation @ Rs.4,27,500/- per cent. Thus, the original petitioner contends that the arbitral award under challenge is made by the Arbitrator in an illegal, arbitrary and capricious manner by flouting the terms and conditions in the mutual agreement made by the petitioner with DLPC and also by overlooking the public policy of the country. All the existing laws for the time being in force with respect to grant of compensation in compulsory land acquisition cases is not at all complied by the Arbitral Tribunal. In gross violations of the existing principles in Land Acquisition Act for grant of solatium, the Arbitral Tribunal granted only a solatium of 10% for the land value fixed in this case. Whenever a land is compulsorily acquired from a land owner, those principles which are required to be compulsorily be complied for granting compensation for compulsory acquisition of land as declared by the Hon'ble Supreme Court in a catena of decisions was not taken into consideration by the Arbitral Tribunal at the time of fixing the compensation payable to the applicant. The failure of Arbitral

Tribunal to award solatium @ 30% and increase @ 12% on the land value as compensation is wholly unjustifiable in an old award.

13. The observations in the impugned arbitral award that the provisions of S.23(1)(A) of Land Acquisition Act, 1894 with respect to payment of solatium @ 30% of land value and increase @ 12% is not applicable to an acquisition made under National Highways Act is an observation, which is unsustainable under law. On a comprehensive analysis and evaluation of the records, I do hold that the impugned Award is vitiated by patent irregularity and latent illegality.

14. However, the Hon'ble Apex court in a dictum reported in **AIR 2019 SC 4689, Union of India and Another V. Tarsem Singh and Others** held as follows :-

“Thus, the solatium that is paid to a land owner is on account of the fact that a land owner, who may not be willing to part with his land, has now to do so, and that too at a value fixed legislatively and not through negotiation, by which, arguably, such land owner would get the best price for the property to be sold. Once this is understood in its correct perspective, it is clear that “solatium” is part and parcel of compensation that is payable for compulsory acquisition of land”

“Para 41:- There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Sri.Divan that the impugned judgments should be set aside on the ground

that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the land owners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore, declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional".

15. Based on the principles and law laid down by the Hon'ble Supreme Court in the ruling referred above, it is crystal clear that solatium @ 30%, increase @ 12% and interest u/s. 28 of Land Acquisition Act ought to form part of the compensation to be payable to the land owners in compulsory acquisitions of land. On going through the impugned arbitral award under challenge, it is gathered that the arbitrator ordered the respondent to pay 10% solatium u/s.3(J) of National Highways Act. However, the Hon'ble Supreme court in Tarsem Singh's case (supra), declared that S.3(J) of National Highway Act is unconstitutional and struck down the same. Thus, the compensation granted by the arbitral tribunal is against the public policy and

existing laws for the time being in force for grant of solatium u/s. 23(I-A) of Land Acquisition Act. As such, the arbitral award No-17/15 dated: 19/07/2017 is illegal and this becomes a sufficient reason and ground to set aside the arbitral award u/s.34 of Arbitration Act. The petitioner is entitled to redetermine his compensation as per law within a probable time frame of six months from the date of setting aside of the award of the arbitral tribunal and receipt of records to the arbitral tribunal. Points are answered in favour of the petitioner. Question of applicability of Right to fair compensation and transparency in land acquisition, Rehabilitation and Resettlement Act, 2013(RFC TLARR Act) to this acquisition is left open to be answered by the tribunal as per law.

16. Point No.4 :- In consequence, the original petition is allowed to set aside the arbitral award dated 19.07.2017 in Award No.17/2015 of District Collector/Arbitrator, Thiruvananthapuram. On the receipt of this order, the arbitral tribunal shall take all earnest efforts to expeditiously dispose the arbitration proceedings as per law within a time frame of six months from the date of receipt of this order.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this, the 31st day of January, 2023.

Sd/-
PRASUN MOHAN
Addl. District Judge - VII

APPENDIX :

Exhibits for Applicants :

- A1 - 19-07-2017 - Copy of Arbitration Award
A2 - 19-11-2020 - Copy of Information sought and reply received under the RTI Act, 2005

Exhibits for Respondents : Nil

Witness for Applicants : Nil

Witness for Respondents : Nil

Court Witness : Nil

Id/-
Addl. District Judge - VII

(True Copy)

By Order

(Faircopy : 1; Copies : 4)
Typed by : Anusree Jayan
Compared by : Sreelekshmi

SHERISTADAR

Copy of Order in
OP(Arb) No. 182/2022
Dtd : 31-01-2023
