KAMD010041132022

IN THE COURT OF PRL.DISTRICT AND SESSIONS JUDGE AT MANDYA

PRESENT

Smt.B.G. Ramaa, B.Com., LL.B.,

PRL.DISTRICT & SESSIONS JUDGE,

MANDYA.

Dated this the day of 5th day of August, 2023

Arbitration Petition No. 31/2022

Plaintiff/ Petitioner	:	G.S. Prakash S/o Sannegowda, aged about 48 years, R/at Gejjalagere Village, Kasaba Hobli, Maddur Taluk, Mandya District. (Rep. by Sri. H.S. Prabhakar, Advocate)

\- V/s –

Defendants/ Respondents

1. The Deputy Commissioner and Arbitrator, Mandya District, Mandya.

2. The Special Land Acquisition Officer and Competent Authority, National Highway No.275, Bangalore-Mysore Division, Basavanapura, Ramanagara, Ramanagara District.

3. The Project Officer, N.H.-275, Bangalore-Mysore Division, Basavanapura, Ramanagara, Ramanagara District.

(D.1 Rep.by District Government Pleader)
(D.2 & 3 Rep by Sri.G.Sandeepkumar, Advocate)

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J U D G M E N T

This is a petition filed u/Sec.34 of Arbitration and Conciliation Act, 1996 and under order VII Rule 1 of CPC with a prayer to set aside the orders passed by the 1st respondent in LAQ/ARB (NH 275) 48/2019, dtd:22.04.2022 on the following grounds.

2. It is the case of the plaintiff that respondent No.2 acquired land in Sy.No.286/1B of Gejjalagere Village measuring 258 Sq. mtrs belonging to plaintiff for the purpose of widening N.H.-275.

3. It is contended that the 2nd respondent awarded meager compensation of Rs.29,98,353/-. Being aggrieved plaintiff sought for enhancement of compensation before respondent No.1, who without considering available materials has dismissed the reference.

4. It is the case of the plaintiff that the 1st respondent has not considered the contentions of the plaintiff properly. That the plaintiff is entitled for existing market value and enhancement of compensation. That the orders of the 1st respondent is not proper. That the property of the plaintiff is having value more than awarded and 1st respondent has not passed the order in accordance with provisions of National Highways Act. That the 1st respondent has not considered the document produced by the plaintiff and has not attached any value to the award passed earlier. That the order of the 1st respondent is illegal and against the facts and circumstances of the case, which is liable to be set aside.

5. It is the case of the plaintiff that Deputy Commissioner has converted the land of the plaintiff for industrial purposes and hence, non-consideration of the land in question as meant for commercial purposes has led to this petition. That dismissal of the petition during Covid period by the 1st respondent is not proper. That sufficient opportunity is not granted by the 1st respondent to produce

documents and instead of conducting a full fledged trial taking decision by the 1st respondent is not proper.

6. That the land of the plaintiff had market value of Rs.20,000/- Sq.feet as on date of preliminary notification. That land of the plaintiff is situated at a distance of 5 km of Maddur and in the Somanahalli industrial area. Shops were constructed in the land of the plaintiff which were let out to the tenants. That the land of the plaintiff is situated by the side of N.H.275 which has commercial and industrial potentiality. That non-awarding of compensation to the remaining land which has become useless is not proper.

7. The 2nd and 3rd respondents have resisted the above petition on the following grounds;

8. It is contended that the petition is devoid of merits and not maintainable. That the petitioner has not made out grounds to interfere with the impugned order. That no grounds as contemplated u/Sec.34 of Arbitration & Conciliation Act raised by the petitioner. That the application is contrary to records and misconceived. Petitioner has not come up with clean hands and suppressed the materials.

9. It is contended that similar contentions taken by the petitioner in A.S.26/2021 are not accepted by this Court as per orders passed on 28.02.2022. That this petition filed after lapse of 6 months from the date of passing of the award without pleading as to when the petitioner applied for certified copy and received the same is barred by limitation. That the petitioner has not made out any grounds u/Sec.34 of Arbitration & Conciliation act. That the petition in the present form and substance, deserves to be dismissed. That the relief sought by the petitioner is inconsistent and contradictory and against the provisions of law.

10. It is contended that S.L.A.O and C.A. passed award by

following the provisions of the Act and other benefits, which has been upheld by the Arbitrator. That Arbitrator has rightly passed the order that petitioner/claimant has failed to produce substantial documents for enhancement of compensation. That there are no supporting documents for enhancement of compensation. That the claimant has failed to establish before the Arbitrator that he is entitled for higher amount of compensation.

11. It is contended that subject lands were reflected as agricultural (dry) lands at column No.7 of final notification and the compensation is determined accordingly. The 2nd respondent has procured sales statistics of agricultural and non-agricultural lands for period of 3 years preceding the date of preliminary notification as well as guidance value for relevant period of Gejjalagere Village from the office of Sub-registrar, Maddur.

12. That multiplication factor is taken as 1.5 as per RFCTLARR Act and market of the subject land was fixed in accordance with law. That no conversion order is produced by the petitioner to establish that the subject lands were converted before the 1st respondent. That this Court is not empowered to go into alleged potentiality of the lands.

13. It is contended that the 1st respondent has resisted the above petition on the following grounds.

14. That the petition viewed from any angle is not maintainable. That the petition is barred by limitation and no material evidence placed to condone the delay. That the scope of Sec.34 of Arbitration & Conciliation Act is very limited and the orders passed by the 1st respondent is valid and therefore, petition deserves to be dismissed.

15. After securing the LCR and after hearing arguments on both sides case posted for judgment.

16. In view of contentions taken by both the parties, points that have arisen for consideration are :

(1) Whether the plaintiff's suit is barred by limitation?

(2) Whether the impugned award passed by the Arbitrator/Deputy Commissioner, Mandya in LAQ/ARB (NH-275)48/2019, dtd:22.04.2022 is liable to be set aside?

(3) What order?

17. In view of the arguments canvassed and the materials placed on record, the above points are answered as follows :

Point No.1 : In the Affirmative.

Point No.2 : In the Negative.

Point No.3 : As per final order, for the following :

REASONS

18. Point No.1 :- The defendants have contended that the suit is barred by limitation.

19. As per provisions of the Act petition filed after lapse of more than 3 months is barred by limitation. The other contention is that this Court cannot entertain the application after period of limitation as per Sec. 34(3) of Arbitration and Conciliation Act.

20. Perusal of materials on record disclose that the impugned award is passed on 22.04.2022 by the 1st defendant. This suit is filed by the plaintiff on 10.10.2022 i.e., beyond 90 days from the date of award passed by the 1st defendant.

21. In the light of the above contention, it is quite essential to carefully examine the provision of law relating to limitation aspect as contemplated U/Sec. 34(3) of the Arbitration and Conciliation Act, 1996 which reads thus :

> “(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

22. A simple reading of the above said provision U/Sec.34(3) of the said Act makes it abundantly clear without scope for any doubt that a suit for setting aside the award can be filed within three months from the date on which the plaintiff had actually received a copy of the arbitral award. The proviso to Sec.34(3) of the Act also makes it further clear that this time limitation can be extended for another period of 30 days if the court is satisfied that the applicant was prevented by sufficient cause from making such application within first three months but at any rate not thereafter. As such, it is very clear that such a suit can be filed within 3 months from the “date of receipt of the arbitral award” and this period can be extended for a further period of 30 days. As such, ‘the date of receiving the arbitral award’ by the party filing the suit i.e. plaintiff will be of utmost importance and also relevant in such suits. As such, the aspect of limitation in an arbitration suit seeking to set aside the award is specifically governed by Sec. 34(3) of the Arbitration and Conciliation Act, 1996.

23. It is held by the Hon'ble Supreme Court in the cases of (1) State of Maharastra and Others V/s. ARK Builders Pvt. Ltd. reported in (2011)4 Supreme Court Cases 616 and (2) Benarsi Krishna Committee and Others V/s. Karmayogi Shelters Pvt. Ltd., reported in (2012)9 SCC 496 and in view of the said decisions a signed copy of the award has to be delivered to the party by the arbitrator and delivery of such signed copy of the arbitral award sets in motion the

period of limitation.

24. The Hon'ble Apex Court in the case of Union of India V/s. Tecco Trichy Engineers and Contractors reported in (2005)4 SCC 239 has made it very clear that 'the delivery of an arbitral award under 31(5) of the Act is not a matter of mere formality. It is a matter of substance. It is only after the stage U/Sec. 31 of the Act has passed that the stage of termination of arbitral proceedings within the meaning of Sec. 31 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be received by the party'. Here is the case wherein no records of the Trial Court disclose that the signed copy of the award was delivered on the plaintiff. Materials placed on record disclose that the impugned award was not communicated to plaintiff immediately on the date of award. In other words, the copy of the award as contemplated U/Sec. 31 of the Act is/was not served on the plaintiff. Hence, the plaintiff on coming to know of the award passed, has applied for the same on 24.05.2022, received copy of the same on 01.06.2022 and filed the petition on 10.10.2022 i.e. beyond 3 months and beyond further period of 30 days as contemplated under the Act. Hence, this petition filed after 120 days from the date of service of award is beyond the period of limitation. Hence, point No.1 is answered in the Affirmative.

25. Point No.2 :- In view of findings on point No.1 considering the aspect of setting aside the impugned award does not arise. So this point is answered in Negative.

26. Point No. 3 :- In view of findings on point nos.1 and 2, I proceed to pass the following :

ORDER

Petition filed by the petitioner is hereby dismissed.

No order as to cost.

Draw decree accordingly.

Office to send back the LCR.

(Dictated to the Stenographer directly over computer, typed by him, corrected, signed and then pronounced by me in the open Court on this the 5th day of August 2023)

(**B.G.RAMAA**)
Prl. District and Sessions Judge,
Mandya.

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