

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF NOVEMBER, 2011

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.29842/2009 (GM-RES)

BETWEEN

SMT.G.JAYASHREE,
D/O LATE RAJASHEKARAI AH G.,
AGED ABOUT 46 YRS,
R/O METIKURKE, HIRIYUR TALUK,
CHITRADURGA DISTRICT. ... PETITIONER

(BY SRI B.M.SIDDAPPA, ADV.)

AND

1. THE SECRETARY,
MINISTRY OF SURFACE TRANSPORT,
GOVERNMENT OF INDIA,
DEPARTMENT OF ROAD,
TRANSPORTATION & HIGHWAYS
NEW DELHI-110011,
2. THE MEMBER (ADMINISTRATION)
NATIONAL HIGHWAYS AUTHORITY OF INDIA
MINISTRY OF SHIPPING
ROAD TRANSPORT AND HIGHWAYS
G-5 AND 6 SECTOR-10
DWARKA
NEW DELHI-110075.
3. THE CHAIRMAN,
NATIONAL HIGHWAYS AUTHORITY OF INDIA
MINISTRY OF SHIPPING
ROAD TRANSPORT AND HIGHWAYS
G-5 AND 6 SECTOR-10
DWARKA,
NEW DELHI-110075

4. COMPETENT AUTHORITY,
NATIONAL HIGHWAYS AUTHORITY OF INDIA
2275 C/1, DEJA-3
1ST FLOOR, 2ND MAIN
NURUR ROAD, COLLEGE ROAD
VIDYA NAGAR,
DAVANGERE.

5. THE PROJECT DIRECTOR,
NATIONAL HIGHWAYS AUTHORITY OF INDIA
PROJECT IMPLEMENTATION UNIT
NEAR JMIT NH-4(KM-201)
CHITRADURGA-577 502.

... RESPONDENTS

(BY SRI R.NATARAJ, CGSC FOR R1
SMT. SHILPA SHAH, ADV. FOR
M/S. SINGHANIA & PARTNERS, ADVS. FOR R2-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA. PRAYING TO QUASH THE PROCEEDINGS PENDING BEFORE THE PRL. DISTRICT JUDGE CHITRADURGA IN AC.(A) 76/07, VIDE ANN-F AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. In this writ petition, petitioner has raised a legal question regarding the jurisdiction of the District Court to entertain the petition filed under Section 34(2) of the Arbitration & Conciliation Act, 1996 by the National Highways Authority of India represented by the Project Implementation Unit, Chitradurga and also the Competent Authority for Land Acquisition, National Highways Authority of India, Davangere.



2. It is relevant to notice the following facts for the purpose of appreciating the contentions of the petitioner. The land in question bearing Sy.No.78 of Metikurke Village, Hiriur Taluk, Chitradurga District owned by the petitioner has been acquired by the Central Government for widening National Highway No.4. Preliminary Notification came to be issued on 20.11.2000, followed by Final Notification dated 23.12.2000. The Competent Authority determined the compensation on 30.12.2002. Aggrieved by the quantum of compensation, claimant moved the Arbitrator i.e. the Deputy Commissioner, Chitradurga District. The Arbitrator passed an award on 08.05.2007 enhancing the compensation payable. Being aggrieved by the enhancement, the National Highways Authority has approached the District Court, Chitradurga, under Section 34(2) of the Arbitration & Conciliation Act, 1996. At this stage, petitioner has preferred this writ petition challenging the proceedings before the District Court, Chitradurga, in Arbitration Case No.76/2007. He has also sought for a writ of mandamus against respondents 4 & 5 herein to make payment to the petitioner in terms of the award passed by the Arbitrator on 08.05.2007.



3. Learned counsel for the petitioner taking me through the provisions contained under the National Highways Act, 1956, particularly, the provisions made providing for determination of the amount of compensation under Section 3G, need for deposit and payment of amount as per Section 3H and also the Rules known as National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998, particularly, Rule 2 providing for the manner of depositing the amount with the Competent Authority, submits that the Scheme of the National Highways Act, 1956 and the provisions made thereunder read along with Rules do not clothe the National Highways Authority with a right to avail the remedy provided under Section 34 of the Arbitration & Conciliation Act against the award passed by the Arbitrator (Deputy Commissioner). He points out that the provisions contained in Sub-Clause (6) of Section 3G in stating that subject to the provisions of this Act (National Highways Act), the provisions of the Arbitration & Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act cannot be understood to make the provisions of Section 34 of the Arbitration & Conciliation Act applicable so as to



contemplate challenge to the award passed by the Arbitrator by the parties. His submission is that the expression 'subject to the provisions of this Act contained in Sub-Clause (6) of Section 3G' necessarily excludes such an exercise of resorting to the provisions under Section 34 of the Arbitration & Conciliation Act, as otherwise the land owners who have lost their land would be deprived of payment of compensation indefinitely until the proceedings under Section 34 of the Arbitration & Conciliation Act attain finality.

4. Learned counsel for the petitioner further submits that the intention of the Legislature as expressed under Section 3G & 3H of the National Highways Act and Rule 2 of the National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998 will be frustrated, if such an interpretation is adopted. He therefore contends that this Court has to step in and set aside the proceedings pending in Arbitration Case No.76/2007 before the District Judge, Chitradurga.

5. Learned counsel for the respondent – National Highways Authority, who also takes notice for respondent No.5 refutes these contentions and urges that the provisions of Section 34 of



the Arbitration & Conciliation Act are applicable to the facts of the case and the proceedings initiated by the respondent – National Highways Authority before the District Court are in accordance with law.

6. Upon hearing the learned counsel for the parties and on examination of the materials on record, I find that as this is a question that touches the jurisdiction of the District Court and as the matter is pending before the District Court since 2007, it is not appropriate for this Court to entertain the matter at this stage. But, having regard to the importance of the question raised, learned District Judge has to deal with the same and pass orders raising a preliminary issue in this regard and after hearing both the parties. Only, thereafter, the matter with regard to the merits of the case should be dealt with.

7. Therefore, this writ petition is disposed of declining to interfere in the matter, but issuing a direction to the Court below to treat the legal point raised regarding the jurisdiction of the District Court to entertain the petition under Section 34 of the Arbitration & Conciliation Act as a preliminary issue and answer the same after hearing both the parties. It is regrettable to notice that though the land is acquired in the year 2000, the



land owner is not entitled to get the amount of compensation determined in accordance with law because of the pendency of the proceedings before the Court below. Therefore, learned District Judge is directed to record his finding on the preliminary issue within one month from the date of receipt of a copy of this order and thereafter take steps to dispose of the matter as expeditiously as possible on merits depending on the answer to the preliminary issue raised.

Sd/-
JUDGE

PKS