

(2024) 04 KL CK 0236

In the High Court Of Kerala

Case No : Writ Petition (C) No.6947 Of 2024

M/s Punarnava Ayurveda Hospital Pvt. Ltd

APPELLANT

Vs

The Arbitrator For Nh 66 And District Collector

RESPONDENT

Date of Decision : 25-04-2024

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 26, 27

National Highways Act, 1956 — Section 3G, 3G(1), 3G(2), 3G(5), 3G(6)

Citation : (2024) 04 KL CK 0236

Hon'ble Judges : Viju Abraham , J

Bench : Single Bench

Advocate : M.K.Sumod, Vidya M.K., Raj Carolin V., Thushara.K

Final Decision : Disposed Of

Judgement

Viju Abraham, J.

1. The above writ petition is filed seeking to quash Ext.P11 order and for a consequential direction to the 1st respondent to re-consider Ext.P10 within a time limit to be fixed by this Court.

2. The petitioner's property was acquired for the purpose of widening of the National Highway and Ext.P2 award was passed. In Ext.P2 award the property was categorized under Category VI, even though the petitioner's property under acquisition is a dry land having commercial importance and situated adjacent to the National Highway and it is contended by the petitioner that it should have been included in Category I. Aggrieved by the same petitioner submitted Ext.P3 petition invoking Section 3G of the National Highway Act. Ext.P4 objection was also submitted by the CALA. To establish the material facts including the nature, lie and commercial importance of the land, Ext.P5 application was filed for appointing an Advocate Commissioner with a Surveyor and Technical person, for the purpose of conducting site visit and reporting the needed data for the 1st respondent to adjudicate the matter, which was rejected by Ext.P7 order by the

1st respondent. Aggrieved by the same petitioner has filed WP(C) No.29228/2023 which was also dismissed as per Ext.P8 judgment. Challenging Ext.P8, an appeal was preferred by the petitioner as WA No.1763/2023 and the same was disposed of as per Ext.P9 with the following direction:

(i) The appellant shall file an application under Section 26 of the Arbitration Act within a period of two weeks from today.

(ii) If such an application is filed, the Arbitrator, who has been appointed under the National Highways Act, 1956, shall deal with the application, without being influenced by the observations made in the earlier order dated 26.07.2023 and examine the case in its true sense, exercising his judicial power of being an Arbitrator, who is supposed to decide the true market value of the property acquired.

(iii) The said decision shall be taken as early as possible, within six weeks from the date of receipt of the application.

In compliance of the direction in Ext.P9, petitioner submitted Ext.P10 application for appointment of an expert commissioner invoking Section 26 of the Arbitration and Conciliation Act, 1996. Petitioner contend that the 2nd respondent herein have not filed any written objection to Ext.P10 and the 1st respondent heard the petitioner on Ext.P10 and adjourned the matter, and on the next posting date, ie, on 15.02.2024 petitioner was served with Ext.P11 interim order rejecting the request made by the petitioner. The reasons stated for rejecting the request as per Ext.P11 was that as per the objection filed by the authority, the land in question is located much below the level of the existing rail over bridge and after considering the commercial importance of the land, it was included under the Category-VI and therefore, no further report of the expert is seen warranted in the matter. It is aggrieved by the same, the petitioner has approached this Court.

3. The learned Government Pleader upon instructions of the 1st respondent submitted that the valuation of the land is prepared by CALA who are expert in their field and appointed by the Government for the said purpose and the calculation of value was as per the existing Act, Rules and direction of the Government. Since there is no ambiguity in the report of the Special Deputy Collector (LA), National Highway 66, (CALA), Paravur further report of the expert is not seen warranted and therefore, rejected the request. It is also stated that the petitioner did not submit any further evidence before the Arbitrator to substantiate her claim.

4. I have heard the rival contentions on both sides.

5. Section 3G deals with determination of amount payable as compensation and Section 3G(5) provides that the amount determined by the competent authority under sub section (1) or sub-section(2) or Section 3G either of the parties can file an application before the Arbitrator and going by Section 3G(6) the provisions of the Arbitration and Conciliation Act, 1966 shall apply to every

arbitration under the Act. Section 27 of the Arbitration and Conciliation Act, 1996 deals with appointment of expert by the Arbitral Tribunal. It is taking note of all these aspects that the Division Bench in Ext.P9 judgment in W.A.No.1763 of 2023 directed the petitioner herein to file an application and the respondents shall deal with the application without being influenced by the observations made in the earlier order dated 26.07.2023 (Ext.P7) and examine the case in its true sense, exercising his judicial power of being an Arbitrator, who is supposed to decide the true market value of the property acquired. Ext.P10 is the application submitted by the petitioner under Section 26 of the Arbitration and Conciliation Act, 1996 as directed in Ext.P9 judgment. In Ext.P10 the specific contention raised by the petitioner is that Category-I includes dry land having commercial importance adjacent to the National Highway and Category-VI are dry lands having Corporation road facility. Further that since the property of the petitioner under acquisition is a dry land having commercial importance and situated adjoining to NH 66 on its eastern side as per the guidelines issued the property should have been considered as one falling under Category-I, but CALA included the property under Category-VI by mistake and without taking into account the guidelines issued in this regard. In Ext.P10, the petitioner has also submitted that within 1.5 kilometre radius from the land in acquisition there are numerous commercial establishments to substantiate her contentions that the land under acquisition is situated in a place having commercial importance. The Division Bench of this Court also directed the 1st respondent Arbitrator to examine the case in its true sense, exercising his judicial power of being an Arbitrator, who is supposed to decide the true market value of the property acquired. In spite of the said specific contention raised in Ext.P10 and the specific direction issued by the Division Bench of this Court in Ext.P9, the 1st respondent rejected the request of the petitioner by Ext.P11 order without considering any of the contentions taken in Ext.P10 and direction issued by this Court in Ext.P9 judgment and rejected the same solely for the reason that going by the objection filed by the CALA the land in question is located much below the level of the existing rail over bridge and after considering the commercial importance of the land, it was included under the Category-VI and since there is no ambiguity in the report of CALA, no further report of the expert is seen warranted in the matter. I am of the view that issuance of Ext.P11 order is not in consonance with the directions in Ext.P9 judgment and the same is issued without considering the specific contentions raised by the petitioner in Ext.P10 as to its commercial importance and adjacent to the National Highway, so that the same will be included in Category No.I. This Court in *Unnikrishnan v. Arbitrator (District Collector) Collectorate, Thrissur* (2023 (4) KHC 521) held in paragraphs 5 and 6 as follows:

"5. Sub-Section(5) of S.3-G of the Act provides that if the amount fixed by the competent authority is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be decided by an arbitrator to be appointed by the Central Government. Sub-Section (6) of S.3-G of the Act provides that subject to the provisions of the Act, the provisions of the

Arbitration and Conciliation Act, 1996 shall apply to every arbitration under the Act. The only conclusion that can be drawn from the above provisions is that the role of the Arbitrator exercising jurisdiction under S.3-G(5) is akin to an Arbitrator deciding disputes under the Arbitration and Conciliation Act, 1996. An Arbitrator acting under the provisions of the Arbitration and Conciliation Act 1996 is clearly a fact – finding authority. The provisions of S.26 of the Arbitration and Conciliation Act, 1996 deal with the appointment of an expert by the Arbitrator for the purposes of making a report to it on specific issues to be determined by the arbitral tribunal. An Arbitrator under the Arbitration and Conciliation Act, 1996 may record oral evidence and the provisions of S.27 of the Arbitration and Conciliation Act, 1996 empower the arbitral tribunal to apply to the Court for assistance in taking evidence if such a situation arises during the arbitration proceedings. A combined reading of the provisions of S.26 and S.27 of the Arbitration and Conciliation Act, 1996 compels me to hold that the application filed by the petitioners for the appointment of an expert commission and the application filed by the petitioners for examination of witnesses is to be considered on its merits by the Arbitrator. The learned counsel for the petitioners is also right when he contends that the only remedy open to a person aggrieved by an award of the Arbitrator under S.3-G(5) of the Act would be to challenge that award in a petition to be filed under S.34 of the Arbitration and Conciliation Act, 1996. It is well settled that the jurisdiction of the Court, which considers a challenge to an arbitral award under S.34 of the Arbitration and Conciliation Act, 1996, is very limited, especially after the amendment to the Arbitration and Conciliation Act by the Arbitration and Conciliation (Amendment Act) Act, 2021. Therefore, it is only just and proper that a party, who seeks to let in evidence before the Arbitrator is given every possible opportunity to do so.

6. In the light of the above findings, this writ petition is allowed. The first respondent is directed to consider any application that has been made by the petitioners for appointment of an expert commission for carrying out the valuation of the acquired properties as also the applications filed by the petitioners for examination of witnesses, on its merits and decide the matter taking into consideration the observations contained in this judgment. It is clarified that the National Highways Authority will also be permitted to lead evidence in their favour if they wish to do so. It is further clarified that any report that may be placed by the expert commission before the Arbitrator will not necessarily be binding on the Arbitrator and will only be treated as a piece of evidence for the purposes of enabling the Arbitrator to reach a just and proper conclusion in the Arbitration proceedings.”

6. In view of the above facts and circumstances of the case, I am inclined to dispose of the case as follows:

(i) Ext.P11 is set aside.

(ii) The 1st respondent shall reconsider Ext.P10 after taking into consideration the specific contentions raised by the petitioner in Ext.P10 and the direction

issued by the Division Bench of this Court in Ext.P9 judgment and also the observations made by this Court in Unnikrishnan's case cited supra, and after affording an opportunity of being heard to the petitioner and take a fresh decision in the matter within an outer limit of 3 weeks from the date of receipt of a copy of the judgment.

Writ petition is disposed of as above.