
(2012) 10 KAR CK 0074

In the Karnataka High Court

Case No : W.A. No. 31066 of 2012 and 31094-96 of 2012 (GM-Res)

T. Yunis

APPELLANT

Vs

National Highways Authority of India and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 43

Limitation Act, 1963 — Article 119, 137

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

Citation : (2012) ILR (Kar) 6055

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : S.N. Ashwathnarayan, for the Appellant; Mahesh Wodeyar, AGA for R2, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Heard Sri. S.N. Ashwathnarayan, Learned Counsel for the appellant and Government Advocate for R-2. The appellant is challenging the legality and correctness of the order passed by the Learned Single Judge in WP Nos. 63881/2012 and 63913-15/2012 dated 29/8/2012, wherein, the petition filed by the appellant has been dismissed.

2. The facts leading to these appeals are as hereunder:-

The appellant's land was notified for the benefit of the National Highway Authority under sub-Section (1) of Section 3 of the National Highways Act, for widening the National Highway No. 13 at Amaravathi Village of Hospet Taluk. Preliminary notification was issued on 7/3/2011 and final notification was issued on 8/8/2011 and thereafter, the Competent Authority, respondent No. 3, determined the compensation payable to the acquired land at the rate of Rs. 2,583.6/- per sq. mtrs., by considering the lands as non agricultural land and awarded a total compensation of Rs. 78,48,976/-,

3. Thereafter, the National Highway Authority of India-first respondent herein, moved an application u/s 3G(5) of the National Highways Act 1956, to re-determine the compensation by the Arbitrator to be appointed by the Central Government. The second respondent-Deputy Commissioner-Bellary, was appointed by the Central Government for re-determining the market value as Arbitrator. The appellant appeared before the Arbitrator and raised an objections in regard to the maintainability of the application u/s 3G(5), contending that the same was barred by limitation. The Arbitrator after hearing the parties came to the conclusion that the application filed by the National Highway Authority was maintainable and not barred by limitation. Accordingly, the contention of the appellant was rejected. The appellant filed the writ petitions challenging the said order. The Learned Single Judge has dismissed the petitions on the ground that the limitation to file an application u/s 3G(5) of the Highways Act would fall under Article 137 of the Limitation Act and an application can be filed for re-determination of the market value, within a period of three years. Accordingly, petitions were dismissed. Challenging the same, these appeals are filed.

4. Mr. S.N. Ashwathnarayan, Learned Counsel for the appellant contends that the Arbitrator as well as the Learned Single Judge have committed a serious error in holding that Article 137 of the Limitation Act, would apply to the Provision of Section 3G(5) of the National Highways Act. According to him, Article 119 of the Limitation Act would apply to the facts of the case and without considering the case of the parties in a proper perspective, the Learned Single Judge has committed an error in dismissing petitions. Taking us through the Provision of Article 119 of the Limitation Act, 1963, he requests the Court to allow the appeal and set-aside the order of the Arbitrator as well as the Learned Single Judge.

5. The Learned Government Advocate contends that Article 119 of the Limitation Act 1963, would apply only if an award is filed for confirmation or for setting aside or for modification of an award passed by an Arbitrator. When there is no award and when the award is not questioned, Article 119 would not attract and as rightly held by the Learned Single Judge, Article 137 would cover the facts of this case. Therefore, he requests the Court to dismiss the appeals.

6. Having heard the Counsel for the parties, the only point to be considered by us in these appeals is whether, under the facts and circumstances. Article 119 of the Limitation Act or Article 137 would attract to consider an application filed u/s 3G(5) of the National Highways Act.

7. In order to appreciate the facts of the case, it would be appropriate for us to consider the provision of 3G(5) of the National Highways Act which reads as hereunder:

3G(5)-If the amount determined by the competent authority under sub-Section (1) or sub-Section (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.

8. By looking into sub-Section (5) of Section 3G, it is clear that any person aggrieved by the determination of the amount by the competent Authority under sub-Section (1) of 3G can make an application before the Arbitrator to be appointed by the Central Government. In other words, though the National Highway Authority is beneficiary for whose benefit the land is acquired is also entitled to make an application for re-determining the amount, determined by the competent Authority. In the circumstances, the application filed by the first respondent invoking Section 3G(5) in re-determining the amount, determined by the third respondent before the second respondent is maintainable.

9. Having held so, the question would be whether the application filed by the second respondent u/s 3G(5) was barred by the limitation or not?

10. Mr. S.N. Ashwathnarayan, the Learned Counsel for the appellant relying upon Section 3G(6) contends that the provision of the Arbitration and Conciliation Act 1996 would apply to arbitration proceedings under the National Highways Act and there is no quarrel over the aforesaid contention in view of Section 3G(6). According to him Article 119 of the Limitation Act would apply to the proceedings initiated u/s 3G(5) and he relied upon Section 43 of the Arbitration and Conciliation Act, 1996. In order to appreciate his arguments, we have to consider Section 43 of the Arbitration and Conciliation Act and Articles 119 and 137 of the Limitation Act. Section 43 of the Arbitration and Conciliation Act reads as hereunder:-

43. Limitations-(I) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set-aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

11. Even on perusal of Section 43, it is not the case of the respondent that Section 43 of Limitation Act is not applicable, but, the contention of the

respondent No. 1 is that Article 119 is not applicable and Article 137 would apply to the facts of this case. Article 119 of the Limitation Act reads as hereunder:-

12. On perusal of Article 119, we would have agreed with the arguments of the Learned Counsel for the appellant provided that the first respondent had made an application to set-aside the award or get an award remanded for reconsideration or if he had filed an appeal into Court for confirmation and if the Arbitrator has already passed an award, if the person who had no grievance with the order, the said award has to be confirmed and if the person aggrieved by the award is intending to get the award set-aside or getting the award remanded for reconsideration, then only Article 119 of the Limitation Act would apply, and therefore, contention of the appellant's Counsel that 30 days limitation would be applicable to an application filed u/s 3G(5) of the National Highways Act, cannot be accepted. Admittedly, as of now no award is passed by the Arbitrator, The amount determined by the competent Authority under the National Highways Act cannot be treated as an award passed by the Arbitrator. The contention of the appellant Counsel is to consider the amount determined by the competent Authority as award passed under the Arbitration. But, the said contention cannot be accepted by any Court of law. Therefore, the contention urged by the appellant has to be rejected. Having seen all the three Acts, no period of limitation has been stipulated to seek a reference u/s 3G(5) of the National Highways Act. In such circumstances, the only provision available to the parties is to invoke Article 137 of the Limitation Act, which provides three years from the date on which right to apply accrues. In the instant case, within a period of four months from the date of determining the value by the competent Authority, Section 3G(5) application is moved. Therefore, we do not see any merit in these appeals. Accordingly, the Appeals are dismissed.