

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 23RD DAY OF JUNE 2023 / 2ND ASHADHA, 1945

WP(C) NO. 9955 OF 2023

PETITIONER/S:

- 1 UNNIKRISHNAN
AGED 60 YEARS
S/O RAJAGOPALAN, PONATHIL HOUSE,
NATTIKA, THRISSUR, PIN - 680566
- 2 SHEEJA DEVI
AGED 53 YEARS
W/O UNNIKRISHNAN, PONATHI HOUSE,
NATTIKA.P.O., THRISSUR,, PIN - 680566
BY ADV D.ANIL KUMAR

RESPONDENT/S:

- 1 THE ARBITRATOR (DISTRICT COLLECTOR)
(APPOINTED UNDER THE NATIONAL HIGHWAY ACT, 1956),
COLLECTORATE, THRISSUR, PIN - 680003
- 2 THE PROJECT DIRECTOR
NATIONAL HIGHWAY AUTHORITY OF INDIA,
NH 66, THRISSUR, PIN - 680003
- 3 STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

BY SMT. PREETHA K K (SR GP),
SRI. LEJO JOSEPH GEORGE (SC FOR NHAI)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R

J U D G M E N T

The amount of compensation determined by the '*Competent Authority*' owing to the acquisition of land under the National Highways Act, 1956 (in short 'the Act') can be challenged before an '*Arbitrator*' to be appointed by the Central Government in terms of Section 3-G(5) of the Act. In the State of Kerala, the District Collector of each district has been appointed as the Arbitrator by the Central Government under Section 3-G(5) of the Act. The short question that arises for consideration, in this case, is whether the petitioners are entitled to seek the appointment of an expert commission to assess the value of buildings/structures and also to lead evidence before the Arbitrator to establish their claim for the award of compensation at a rate higher than what has been awarded by the competent authority.

2. The petitioners have approached this Court being aggrieved by the fact that applications filed by the petitioners for appointment of a commission for the

inspection and valuation of the property, which was acquired for the purposes of the National Highway Development, as also the applications filed by the petitioners to examine certain witnesses are not being considered by the Arbitrator in proceedings under Section 3G (5) of the Act.

3. The learned counsel appearing for the petitioners would submit that the only remedy available to the petitioners against an award passed by the Arbitrator under Section 3G (5) of the Act would be to challenge the award, as contemplated by the provisions of the Arbitration and Conciliation Act, 1996. It is submitted that the scope of challenge to an order of an Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996 is narrow, and therefore, the petitioners will be put to great prejudice if the entire evidence that is relied on by the petitioners to establish the claim for higher compensation is not considered by the Arbitrator in proceedings under Section 3G (5) of the Act. It is submitted that the Arbitrator acting under Section 3G (5) of the Act is a fact-finding authority, and the petitioners, therefore, cannot be denied the chance to seek

the appointment of an expert commission for the conduct of an inspection and valuation. It is submitted that the petitioners are also entitled to lead oral evidence in support of their claim for enhanced compensation.

4. Heard the learned Government Pleader appearing for the official respondents and the learned Standing Counsel appearing for the National Highways Authority of India. The learned Government Pleader and the learned Standing Counsel appearing for the National Highways Authority of India do not dispute the legal position that an Arbitrator acting under Section 3G (5) of the Act is a fact-finding authority and exercises jurisdiction akin to those vested with an Arbitrator appointed under the provisions of the Arbitration and Conciliation Act, 1996.

5. Sub-Section (5) of Section 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 Section 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 Section 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 Section 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 Section 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 Sections 26 and 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 Section 3-G (5) of the Act would be to challenge that award in a petition to be filed under Section 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 Section 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.

Sd/-

GOPINATH P., JUDGE

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APPENDIX OF WP(C) 9955/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE CLAIM STATEMENT FILED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT DATED 4.1.2022
Exhibit P2	TRUE COPY OF THE CLAIM STATEMENT FILED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT DATED 4.1.2022
Exhibit P3	TRUE COPY OF THE JUDGMENT DATED 23.8.2022 IN W.P.(C) NO.25157/2022 IN RESPECT OF THE 1ST PETITIONER
Exhibit P4	TRUE COPY OF THE JUDGMENT DATED 23.8.2022 IN W.P.(C) NO.25156/2022 IN RESPECT OF THE 2ND PETITIONER
Exhibit P5	TRUE COPY OF THE NOTICE ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT DATED 25.10.2022 TO THE PETITIONERS
Exhibit P6	TRUE COPY OF THE COMMISSION APPLICATION DATED 4.1.2022 IN ARBITRATION CASE IN LAC NO.E4/NAT/006254/21 AND THE LIST OF WITNESSES FILED BY THE 1ST PETITIONER BEFORE THE ARBITRATOR (DISTRICT COLLECTOR), THRISSUR
Exhibit P7	TRUE COPY OF THE COMMISSION APPLICATION DATED 4.1.2022 IN ARBITRATION CASE IN LAC NO.E4/NAT/012291/21 AND THE LIST OF WITNESSES FILED BY THE 2ND PETITIONER BEFORE THE ARBITRATOR (DISTRICT COLLECTOR), THRISSUR