

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.44427 OF 2022

Between:

1. Khodiyar Harish Kumar, S/o.Odhvaji Kara
And two others.

...Petitioners

AND

1. The State of Telangana, rep.by the Principal Secretary,
Revenue (Land Acquisition) department, Secretariat,
Hyderabad and three others.

...Respondents

JUDGMENT PRONOUNCED ON: 23.12.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

MUMMINENI SUDHEER KUMAR, J

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR**+WRIT PETITION NO.44427 OF 2022**

%Dated 23.12.2022

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And two others

...Petitioners

AND

\$ 1. The State of Telangana, rep.by the Principal Secretary,
Revenue (Land Acquisition) Department, Secretariat,
Hyderabad and three others.

...Respondents

! Counsel for Petitioners : Mr. S.Chandra Sekhar

^ Counsel for Respondent Nos.1 to 3 : Government
Pleader for
Revenue

Counsel for Respondent No.4 : Mr. Alladi Ravinder,
Standing Counsel

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2021 SCC Online SC 947
2. (2021)2 SCC 317
3. (2022)5 SCC 112

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMARWRIT PETITION NO.44427 OF 2022**ORDER:**

The short question that arises for consideration in this Writ Petition is whether the application, dated 29.11.2022 submitted by the petitioners 1 to 3 to the second respondent requesting for referring the matter for arbitration in terms of sub-Section 5 of Section 3G of the National Highways Act, 1956 ("the Act, 1956" for brevity) seeking enhancement of compensation against an Award passed by the third respondent in Award No.G/10/2017-Rebbena dated 21.11.2019 under Section 3G of the Act, 1956 is within the period of limitation of three (3) years or not?

2. The facts of the case are that the land belonging to the petitioners 1 to 3 together with structures was acquired for the purpose of National Highway No.363 and an Award dated 21.11.2019 was passed by the third respondent fixing the compensation of Rs.2,98,064/-, Rs.5,08,090/- and Rs.69,608/- for the petitioners 1 to 3 respectively. Having not been satisfied with the said compensation fixed by the third respondent, the petitioners herein submitted an application before the second respondent on 29.11.2022 requesting for determination of

compensation by arbitration under sub-Section 5 of Section 3G of the Act, 1956. As the said application is not being considered by the second respondent, the petitioners herein approached this Court by filing the present Writ Petition.

3. In terms of sub-Section 5 of Section 3G of the Act, 1956, once an application is made seeking a determination of compensation by arbitration, the respondents are under obligation to refer the same for determination of the compensation under the above said provision. There is no time limit prescribed for making such an application. The application, dated 29.11.2022 submitted by the petitioners is neither accepted nor rejected by the second respondent as on date.

4. Mr. Alladi Ravinder, learned Standing Counsel appearing for the fourth respondent, contended that the application submitted by the petitioners cannot be considered by the second respondent as the same was submitted beyond the period of three years and in terms of the clarification issued by the Government of India in F.No.NH-11011/25/2022-LA, dated 28.03.2022, the limitation period for seeking reference under sub-Section 5 of Section 3G of the Act, 1956 is three (3) years from the date of Award and in the instant case, the application

that was submitted by the petitioner is after expiry of the said limitation period of three years. The said clarification, dated 28.03.2022 reads as under:-

“The issue has been examined in the Ministry and it is hereby clarified that limitation provided under Article 137 of the Limitation Act, 1963 would be applicable in the matter of filing an arbitration Petition/Application invoking the arbitration, which is Three (3) years from the date of cause of action (the date of award by CALA in regard to land acquisition under the NH Act, 1956). This is in accordance with the statutory provisions in NH Act, 1956 and Arbitration and Reconciliation Act, 1996.”

5. As already noted above, the Award was passed by the third respondent on 21.11.2019 and the application seeking determination of compensation submitted by the petitioners on 29.11.2022 i.e. 9 days after lapse of 3 years period. Whether the clarification dated 28.03.2022 issued by the Government of India fixing the limitation of 3 years' period, in the absence of any such limitation prescribed under the Act, 1956 is valid or not is also a matter required to be considered, but in the instant case, the same need not be gone into for the following reasons and the matter is considered assuming that the said clarification is valid.

6. This Court, having taken note of the objection taken by Mr. Alladi Ravinder, learned Standing Counsel, opined that in the light of the order passed by the Hon'ble Apex Court in the case of **In Re: Cognizance for Extension of Limitation in**

Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020¹, the application of the petitioners may fall within the period of limitation as the Hon'ble Apex Court having taken note of the Covid-19 pandemic situation prevailed in the country at the relevant time excluded the period from 15.03.2020 to 02.10.2021 in computing the limitation period. Learned Standing Counsel though not disputed that the period of limitation that was directed to be excluded in terms of order of Hon'ble Apex Court in computing the period of limitation, placed reliance on the judgments of the Hon'ble Apex Court reported in **Sagufa Ahmed and Others v. Upper Assam Polywood Products Private Limited and Others**² and **Prakash Corporates v. Dee Vee Projects Limited**³.

7. In the case of **Sagufa Ahmed and Others v. Upper Assam Polywood Products Private Limited and Others** (2 supra), the Hon'ble Apex Court was considering a case where the period of limitation was expired on 18.03.2020 and having taken note of the fact that the lockdown was imposed in the country w.e.f. 24.03.2020 in the facts and circumstances of the said case declined to extend the benefit of extension of limitation holding as under:-

¹ 2021 SCC Online SC 947

² (2021)2 SCC 317

³ (2022)5 SCC 112

“But we do not think that the appellants can take refuge under the above order in *Cognizance for Extension of Limitation, In re. What was extended by the above order of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute.* The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *vigilantibus et non dormientibus jura subveniunt* which **means that the law will assist only those who are vigilant about their rights and not those who sleep over them.**”

Having held as above, the Hon’ble Apex Court finally came to conclusion that the appellant in the said case cannot claim the benefit of the order passed by the Hon’ble Apex Court dated 23.03.2020 for enlarging the period of limitation. The Hon’ble Apex Court subsequently passed order ordering for exclusion of period from 15.03.2020 to 02.10.2021 while computing the period of limitation.

6. In the case of **Prakash Corporates v. Dee Vee Projects Limited** (3 supra), the Hon’ble Apex Court, having noted the judgment in the case of **Sagufa Ahmed and Others v. Upper Assam Polywood Products Private Limited and Others** (2 supra) has distinguished the same on facts and extended the benefit of the order passed by the Hon’ble Apex Court in the case of **Cognizance for Extension of Limitation** for extension of limitation (1 supra).

7. The above two judgments of the Hon'ble Apex Court sought to be relied on by the learned Standing Counsel is of no avail in the light of the above discussion.

8. Then coming to the order passed by the Hon'ble Apex Court in the case of "cognizance" for extension of limitation, the Hon'ble Apex Court held as under:-

"Therefore, we dispose of the M.A.No.665 of 2021 with the following directions:

- I. In computing the period of limitation for any suit, appeal, application or proceeding, the period **from 15.03.2020 till 02.10.2021 shall stand excluded**. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.
- II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.
- III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
- IV. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements".

From the above, it is evident that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded and the balance period of limitation remaining as on 15.03.2020, if any, shall become available w.e.f. 03.10.2021. If that be the case, as already noted above, the Award in question was passed on 21.11.2019 and as on 15.03.2020, out of 3 years period of limitation that was available for the petitioners, only 3 months 24 days (from 21.11.2019 to 15.03.2020) have elapsed and the remaining period of two years eight months six days is available w.e.f. 03.10.2021. That means the limitation is available almost up to the month of December, 2023.

9. Whereas in the instant case, the petitioners have admittedly submitted their application on 29.11.2012. Therefore, the application submitted by the petitioners cannot be said to be the one submitted beyond the period of limitation of three years and the same is bound to be treated as the one submitted within 3 years as per the order of Hon'ble Apex Court in the case of **Cognizance for Extension of Limitation** (1 supra).

10. In the circumstances, this Court is inclined to dispose of the Writ Petition at the admission stage, without inviting

counter from the respondents and accordingly, the same is disposed of directing the respondents 2 and 3 to refer the matter for arbitration under sub-Section 5 of Section 3G of the Act, 1956 for determination of compensation in respect of the property acquired from the petitioners under Award No.G/10/2017-Rebbena dated 21.11.2019 within a period of six (6) weeks from the date of receipt of a copy of this order and on reference such proceedings shall be concluded as expeditiously as possible, at any rate within a further period of four (4) months thereafter, in accordance with law.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

(MUMMINENI SUDHEER KUMAR, J)

23rd December 2022

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