IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

WRIT APPEAL NO. 350 OF 2024 (GM-RES)

BETWEEN:

1. PUTTARANGAMMA W/O LATE KANAMAPPA
   AGED ABOUT 70 YEARS,

2. R. SOMASHEKARA S/O RANGAPPA
   AGED ABOUT 58 YEARS,

   BOTH ARE R/O MAKLURAHALLI
   HIRIHUR TALUK – 577 598.
   CHITHRADURGA DISTRICT

…APPELLANTS

(BY SRI. HANUMANTHAPPA A, ADVOCATE)

AND:

1. SPECIAL LAND ACQUISITION OFFICER
   NATIONAL HIGHWAY AUTHORITY OF INDIA
   PROJECT IMPLEMENTATION UNIT
   AEROPLANE BUILDING, VP EXTENSION
   CHITRADURGA – 577 501.

2. PLANNING DIRECTOR, NATIONAL HIGHWAY AUTHORITY
   CHITHRADURGA – 577 501.

3. DEPUTY COMMISSIONER AND HON'ARBITRATOR
   (N.H.-4), CHITRADURGA DISTRICT
   CHITRADURGA – 577 501.

…RESPONDENTS

(BY SMT RIYA JARIWALA, ADVOCATE FOR R1 & R2;
SMT. SARITHI KULKARNI, AGA FOR R3)

Digitally signed by NARAYANA UMA
Location: HIGH COURT OF KARNATAKA

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED BY THE WRIT COURT DATED 18.11.2023 IN PASSED IN WP No-17351/2021 (GM-RES) BY ALLOWING THE APPEAL WITH COST AS PRAYED IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V KAMESWAR RAO
and
HON'BLE MR JUSTICE S RACHAIAH

ORAL JUDGMENT
(PER: HON'BLE MR JUSTICE V KAMESWAR RAO)

The challenge in this appeal is to an order dated 18.11.2023 passed by the learned Single Judge in W.P.No.17351/2021 filed by the appellants herein, whereby the learned single judge has dismissed the writ petition by stating in paragraph No.11, as under:

> *11. The Apex Court, in several judgments, has clearly held that Section 34 of the Act does not give any power to the concerned Court to condone the delay beyond a period of 120 days and entertain an arbitration suit against the award of an Arbitrator. Section 37 of the Act empowers filing of an appeal against dismissal of arbitration suit. This remedy is also not availed by the petitioners. The subject petition cannot be entertained at this juncture on the plea that fundamental right of the petitioners has been taken away by acquisition of their lands and right to property being recognized as constitutional right by the Apex Court in several judgments. It is too late in the day for the petitioners to indirectly seek to achieve what they could not achieve in the arbitration suit. There are plethora of judgments rendered by the Apex Court and this Court with regard to non-condonable rigour under Section 34 of*

the Act. This is a well settled principle of law as on date. Making reference to every judgment or quoting from the said judgments any passage would only lead to the bulk of the subject order. In these circumstances, I deem it appropriate to refer to the order passed by the co-ordinate Bench rejecting the petition in ***G.S.Shankarappa****'s case (supra). The co-ordinate Bench has held as follows:*

> *"Petitioner who has lost the land in acquisition not being with the award made by the competent authority had approached the statutory arbitrator under Section 3G(5) of the National Highways Act 1956. Though marginally compensation was enhanced, he was not happy and moved the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 which did not yield fruit, the bar of limitation being the prime reason therefor. This is how now he is knocking at the doors of Writ Court.*
>
> *2. After service of notice, learned Sr. Panel Counsel appearing for the answering Respondents opposes the Petition contending that Petitioner has an alternate and equally efficacious remedy of filing an appeal to this Court as provided under Section 37 of the 1996 Act and therefore, the Writ Petition is ill-advised, consistent with a longline decisions of the Apex Court. She hastens to add that once appeal is time barred, the writ petition also does not lie inasmuch as, the right to remedy to a legal injury is conditioned by prescription of limitation period for working the same out.*
>
> *3. Having heard the learned counsel for the parties and having perused the Petition papers,*

this Court is broadly in agreement with the submission of learned Sr. Panel Counsel appearing for the NHAI and therefore, declines indulgence in the matter. The vehement submission of learned counsel for the Petitioner that where the Arbitration is statutory, there cannot be bar to the invocation of writ jurisdiction, appears to be too far fetched an argument. Merely because the arbitration is statutory, the Petitioner cannot claim to constitute a separate clause for the purpose of availing the relief at the hands of Writ Court in a time barred matter.

In view of the above, Writ Petition being devoid of merits, is liable to be rejected, costs having been made easy. However, liberty is reserved to the Petitioner to avail remedy of appeal under Section 37 of the 1996 Act and the period spent in prosecuting the writ petition is liable to be discounted while computing the period of limitation for such an appeal. All contentions in that regard are kept open."

12. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected.

Consequently, I.A.No.2 of 2022 also stands disposed."

2. The writ petition was filed by the appellants herein with prayers to call for the records of an Arbitration Case Nos. 6, 7 and 8 of 2010-11 and consequently set aside the arbitration award dated 20.06.2017 in respect of their land denying enhancement of compensation. The land of the

appellants was a subject matter of acquisition under the National Highway Authority of India Act (for short, 'NHAI' Act). The Special Land Acquisition Officer has determined the compensation. The appellants had sought enhancement of the compensation by approaching the Arbitrator under the NHAI Act. The appellants being aggrieved by the arbitration award passed by the learned Arbitrator had filed the said suit under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'A and C' Act) before the learned Prl. District and Sessions Judge, Chitradurga (for short, 'Trial Court') in A.S.No.5/2018. The said challenge was rejected by the Trial Court by holding in paragraph No. 29 onwards as under:

> *"29. Therefore, considering all these facts and circumstances of the case, I am of the clear opinion that appellants have not made out valid grounds to condone the delay of 4 months 18 days in filing the petition. Even Section 5 of Limitation Act is not applicable to the petition filed U/s 34 of Arbitration and Conciliation Act.*
>
> *With the above discussion, I answer point No.2 held in the negative and proceed to pass the following:*
>
> *ORDER.*
>
> *The petition filed by the petitioners under section 34 of the Arbitration and Conciliation Act, 1996 is hereby dismissed.*

The petitioners are entitled for compensation as per the award passed by the respondent No.3 Deputy Commissioner in ARB/CR.6/2010-11, ARB/CR.7/2010-11, ARB/CR.8/2010-11 dated 20.6.2017.

Remit LCR to the Deputy Commissioner/Arbitrator, Chitradurga.

Draw decree accordingly.

No order as to costs."

3. The final decision of the Trial Court was that the suit filed by the appellants herein under Section 34 of the A and C, Act is barred by Limitation. The appellants without availing the remedy as available under Section 37 of the A and C, Act had filed a writ petition which was dismissed by the learned single judge which has been impugned by the appellants before us.

4. The submission of the learned counsel for the appellants is that since the award was patently discriminatory inasmuch as a higher compensation was given to the land owners of the adjacent land, the appellants were within their rights to invoke the jurisdiction of this Court under Article 226 of the Constitution of India without availing the remedy under Section 37 of the Act, 1996. Though such a submission has

been made before the learned Single Judge, the same was rejected by holding in paragraph 10 as under:

> *"10. What the petitioners now call in question before this Court after having lost before every fora is the award of the Arbitrator dated 20-06-2017 by which the Arbitrator has enhanced the compensation from Rs.42/- to Rs.85/-. Today we are six years away from the order passed by the Arbitrator. The petitioners having lost their grievance before every fora cannot now contend, that too in a petition under Article 226 of the Constitution, to determine the compensation taking Vani Vilas Sugar Factory lands to be the exemplar for enhancement of compensation."*

5. We agree with the conclusion drawn by the learned single judge that the remedy for the appellants was to file an appeal under Section 37 of the A and C, Act. Admittedly, the challenge to the award was negated by the Trial Court by holding that the suit was barred by time. In the absence of any challenge to the said order passed under Section 34 of A and C, Act and the writ petition filed by the appellants herein having been rejected, surely this appeal filed by the appellants has to meet the same fate of dismissal.

6. We are of the view that the order passed by the learned single judge cannot be faulted. We dismiss the appeal being without merit.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

JS
List No.: 1 Sl No.: 52