

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.10.2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN  
AND  
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.489 of 2017  
&  
C.M.P.No.7361 of 2017

1.K.Subramani  
2.S.Tamilselvi ... Appellants/Respondents 4 & 5

Vs.

1. Minor N.Vaishinitha,  
Rep. by her Mother and Natural Guardian,  
N.Revathi, W/o.S.Nesan,  
3/119-9, Rasipuram Main Road,  
Sundaram Complex,  
Vaiyappamalai - 637 410,  
Tiruchengode Taluk, Namakkal District.  
... 1<sup>st</sup> Respondent/Writ Petitioner
2. The State of Tamil Nadu,  
Rep. by the Secretary to the Government,  
Public Works Department (Highways),  
Fort St. George,  
Chennai-600 009.
3. The Special District Revenue Officer,  
(Land Acquisition),  
Tamil Nadu Road Development Scheme 2,  
63/136, K.Gangai Street,  
Highways Department, Salem - 636 005.
4. The Collector (Land Acquisition),  
Namakkal District Collectorate,  
Namakkal - 637 003.  
... Respondents 2 to 4/  
Respondents 1 to 3

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 25.01.2017 made in W.P.No.840 of 2017, on the file of this Court, filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of

Mandamus, forbearing the respondents 1 to 3 from disbursing the sums in respect of acquisition of property bearing Survey No.103/1 and 104/1(Patta No.334) Minnampalli Village, Thiruchengode Taluk, Namakkal District to the 4<sup>th</sup> & 5<sup>th</sup> Respondents or their nominee agent or representatives.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.Perumbulavel Radhakrishnan for R1

Mr.A.N.Thambidurai  
Special Government Pleader  
for R2 to R4

O R D E R

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated 08.03.2012 made in W.P.No.840 of 2017.

2. The appellants are the respondents 4 & 5 in the Writ Petition and the first respondent is the writ petitioner.

3. Facts culled out in brief for the disposal of the writ appeal are as follows:-

3.1 The husband of Mrs.N.Revathi and father of minor N.Vaishinitha one S.Nesan is missing from their house for quite long time from 19.04.2006. An F.I.R. was also registered in Crime No.213/2014, dated 25.12.2014 on the file of the Elachipalayam Police Station and publication thereto was also given in the Tamil Daily "Dinamalar" on 21.02.2015. In the meanwhile, one Mr.Subramani, father-in-law of the Revathi and Grandfather of the petitioner, had obtained property in S.No.103/1, 103/2C and 104/1 bearing Patta No.334 situated in Minnampalli village, Thiruchengode Taluk, Namakkal District, through partition between brothers, vide Document No.1620/1995, dated 21.11.1995, on the file of the Sub-Registrar, Mallasamudram. But the said Mr.Subramani, first appellant/4<sup>th</sup> respondent in the Writ Petition has refused to part with any of the property to which her husband, S.Nesan is legally entitled. Therefore, she filed a suit for partition in respect of the said property in O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District and though the said suit was dismissed for default, an application to restore the suit was filed and the same is pending.

3.2. In the meanwhile, the third respondent herein / second respondent had issued a notice to acquire part of the suit

property by way of publication in "The New Indian Express" and "Makkal Kural" both dated 09.09.2014. Coming to know about the acquisition of the family property both the mother Revathi and her minor daughter, the first respondent herein / petitioner gave a representation to the third respondent herein / second respondent on 26.09.2014 not to disburse the Award amount quoting the pendency of the suit on the file of the Principal District Munsif, Thiruchengode. But the third respondent herein / second respondent gave a reply on 01.12.2014 informing the petitioner that the Award amount will be disbursed to the owner of the lands. Therefore, the first respondent / petitioner has filed the Writ Petition for issuance of a Writ of Mandamus forbearing the respondents 1 to 3 from disbursing the sums in respect of acquisition of the property bearing Survey No.103/1 and 104/1 (Patta No.334), Minnampalli village, Thiruchengode Taluk, Namakkal District to the 4th and 5th respondents or their nominee, agent or representatives.

4. After considering the facts and circumstances of the case, the learned Single Judge has disposed the Writ Petition and the concluding paragraph is extracted hereunder:-

"6. In the light of the above, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed. As per the proceedings, dated 13.01.2017, the respondents 1 to 3 are directed not to disburse the amount of compensation to any other parties till the disposal of the suit in O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District. It is made clear that if any compromise is reached or after the disposal of the suit, if the petitioner produced the copy of the decree, the respondents 1 to 3 are directed to act on the same."

5. Aggrieved against the order of the learned Single Judge, the appellants / respondents 4 and 5 have filed the present Writ Appeal.

6. The learned counsel for the appellants / respondents 4 and 5 would submit that the first respondent / writ petitioner filed the suit in O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District, for partition in respect of 1/6th share in the suit property and the first respondent / writ petitioner is not entitled to any share in the suit properties. The learned counsel would further submit that the third respondent acquired the properties only portion of the suit property and the first respondent / writ petitioner is not a party to the acquisition proceedings and the property stands in the name of the appellants. The learned counsel would further submit that even assuming that the first

respondent / writ petitioner has filed the suit for partition in respect of 1/6th share in the suit schedule property, the learned Single Judge has erroneously held that the disbursement of the entire compensation has been deferred till the disposal of the suit, in an arbitrary manner. The learned counsel would further submit that as per Section 21 of the Tamil Nadu Highways Act, 2001, in any event of any dispute as to the apportionment, the Collector may refer such dispute for the decision of the Court, and the said issue cannot be gone into under Article 226 of the Constitution of India. Hence, the learned counsel for the appellants / respondents 4 and 5 have prays for allowing this appeal.

7. The learned counsel for the first respondent / writ petitioner would submit that despite several demands made by the first respondent / writ petitioner, the appellants failed to give their share and therefore, she has filed the suit in O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District, for partition in respect of 1/6th share in the suit property and the same is pending before the trial Court. The learned counsel would further submit that the first respondent will be put to great hardship, if the award amounts are disbursed and the first respondent will be left to high and dry and will have to look for funds for her education and subsistence. Hence, the learned counsel for the first respondent / writ petitioner has prayed for dismissal of the appeal.

8. Heard Mr.N.Manokaran, learned counsel appearing for the appellants, Mr.Perumbulavel Radhakrishnan, learned counsel appearing for the first respondent and Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 2 to 4 and perused the materials placed on record.

9. There is no dispute that a portion of the suit schedule mentioned properties are covered in O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District, which were acquired by respondents 2 to 4 and the amount is with them. The main contention of the first respondent / writ petitioner is that she has filed the suit in O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District, against the appellants / respondents 4 and 5 for the partition of 1/6th share and if the respondents 2 to 4 deposits the amount and disburse the amount, the first respondent / writ petitioner will not get the share. The main prayer in the Writ Petition is that:-

"For issuance of a Writ of Mandamus forbearing the respondents 1 to 3 from disbursing the sums in respect of acquisition of the property bearing Survey No.103/1 and 104/1 (Patta No.334), Minnampalli

village, Thiruchengode Taluk, Namakkal District to the 4th and 5th respondents or their nominee, agent or representatives.

But, whereas on perusal of the records, the petitioner filed the suit for partition before O.S.No.169 of 2013 on the file of the Principal District Munsif, Thiruchengode, Namakkal District, for 1/6th share from the suit properties. But the acquired property is only a portion of the suit mentioned property in O.S.No.169 of 2013. The suit is initially dismissed for default and subsequently, an application is filed to restore the same and it is pending before the trial Court.

10. On perusal of the grounds of writ appeal, it is the contention of the appellants that though the first appellant got the property by way of partition from his brother, the first respondent / writ petitioner has no right in the suit properties. However, the rights of the parties as to whether the plaintiff is entitled to share in the property or not, has to be decided only by a civil Court after considering the oral and documentary evidence. But, however, the first respondent / writ petitioner has not claimed the entire property mentioned in the suit schedule property which include the acquired property. Further, in the affidavit filed by the first respondent / writ petitioner in the Writ Petition in paragraph No.11 of the affidavit she has stated as follows:-

"11. I state that I shall be put to great hardship will be caused to the minor petitioner, if the award amounts are disbursed and the petitioner will be left to high and dry and will have to look for funds for her education and sustenance. On the other hand no hardship will be caused to 4th and 5th respondents if the sum is deposited into credit of O.S.No.169 of 2013, which is pending disposal on the file of the learned principal District Munsif Court, Thiruchengode, Namakkal District."

So, according to first respondent/writ petitioner even as per the suit, she has claimed only 1/6th share and therefore, the first respondent / writ petitioner is not entitled to more than that. During the argument, the learned counsel for the first respondent / writ petitioner would submit that though the first respondent / writ petitioner has claimed 1/6 share in the suit schedule property, she will get more than that. But as on date, as per the plaint, she has claimed only 1/6th share from the suit schedule mentioned property. But, the learned Single Judge has failed to consider that the first respondent / writ petitioner herself has claimed 1/6th share in the property including the acquired property and passed an order in an

arbitrary manner restraining the respondents not to disburse the amount till the disposal of the suit.

11. Considering the facts and circumstances and suit filed by the first respondent / writ petitioner and the stand taken by both the parties, we are of the considered view that the order passed by the learned Single Judge warrants interference. In view of the above, the respondents 2 to 4 are directed to deposit 1/6 share of the award amount to the credit of O.S.No.169 of 2013, on the file of the Principal District Munsif, Thiruchengode, Namakkal District and the remaining amount shall be disbursed to the appellants. If at all any proportionate of shares is in dispute, that can be worked out in the pending civil Suit in O.S.No.169 of 2013 on the file the Principal District Munsif, Thiruchengode, Namakkal District. It is made clear that in case the first respondent / petitioner is entitled to more than 1/6<sup>th</sup> share, that can be adjusted in the property in hand. If the first respondent / writ petitioner is not entitled to any share, then, the appellants / respondents 4 and 5 can withdraw the amount, which will be lying in credit of Civil Court deposit.

12. With the above direction and modification, the Writ Appeal is disposed of. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,  
Government of Tamil Nadu,  
Public Works Department (Highways),  
Fort St. George,  
Chennai-600 009.
3. The Special District Revenue Officer,  
(Land Acquisition),  
Tamil Nadu Road Development Scheme 2,  
63/136, K.Gangai Street,  
Highways Department, Salem - 636 005.

3. The Collector (Land Acquisition),  
Namakkal District Collectorate,  
Namakkal - 637 003.

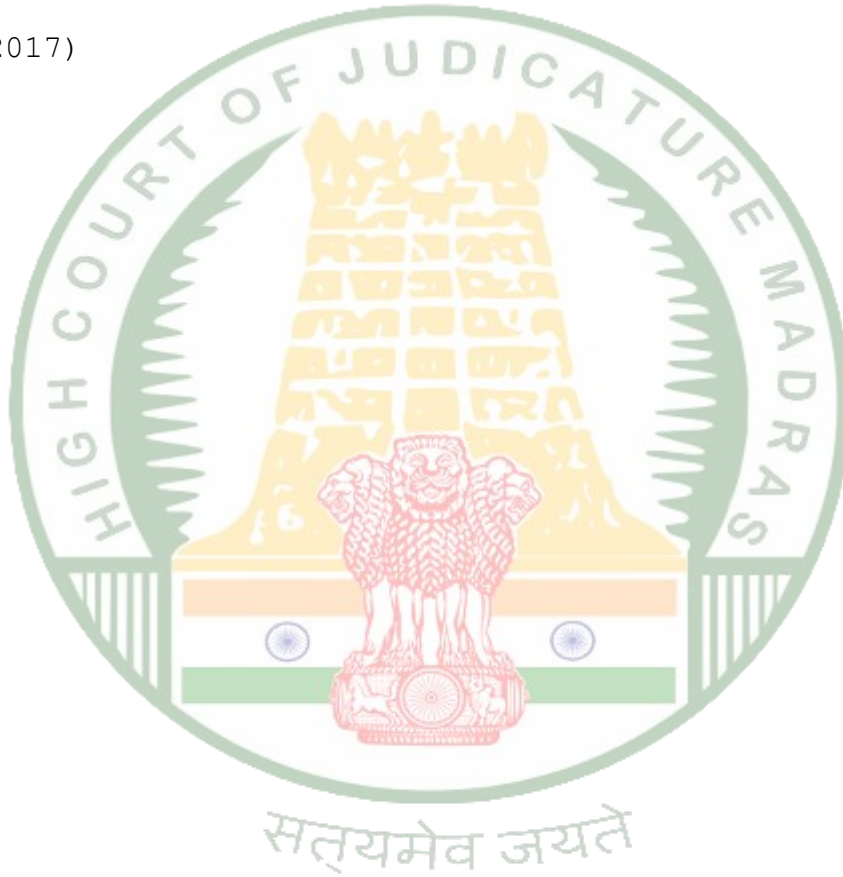
+1cc to Mr.Perumbulavel Radhakrishnan, Advocate, S.R.No.71677

+1cc to Mr.N.Manokaran, Advocate, S.R.No.71978

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&  
C.M.P.No.7361 of 2017

PPA (CO)  
CA(06/11/2017)



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