

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.11.2017**

CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**

and

THE HONOURABLE MR. **JUSTICE P.VELMURUGAN**

Review Application No.89 OF 2017

M.Eswaran
versus

: petitioner

1.The Special Tahsildar (Land Acquisition)
MRL (Now CPCL) Aromatic Project,
Saidapet, Chennai 15.

2.The Member Secretary,
MRL (CPCL)
No.552, Anna Salai,
Teynampet, Chennai 18.

3.Project Officer,
AROCHEM
No.88, Anna Salai,
Spic Centre, Guindy
Chennai 32

: respondents

Petition filed to review the order passed in A.S.No.466 of 2014 dated
07.07.2015.

For petitioner : Mr.G.Karthikeyan

For respondent : Ms.A.Srijayanthi,
Spl.G.P., for R-1

Mr.Rathinavel Pandian
for Mr.R.Senthil Kumar, for R-2

ORDER***(made by K.K.SASIDHARAN, J.)***

This review petition is filed by the first respondent in A.S.No.466 of 2014 to review the judgment dated 7 July 2015, primarily on the ground that while upholding the order passed by the Reference Court, the Division Bench failed to extend the benefits of the judgment in the connected appeal in A.S.Nos.603 to 728 of 2015, determining the land value at Rs.6,540/- per cent to the petitioner.

The facts :-

2. The Government of Tamil Nadu acquired a vast extent of land in Mathur Village, Saidapet Taluk, which was later included in Madavaram Taluk, Tiruvallur District for setting up of an aromatic complex. Notification under Section 4(1) of the Land Acquisition act was issued on 19 December 1990. The District Collector fixed the compensation at Rs.200/- per cent. The compensation was enhanced by the Reference Court to Rs.4,750/- per cent in LAOP No.1037 of 1998. The award was challenged by the Land Acquisition Officer in A.S.Nos.466 to 492, 495 to 570 and 586 to 611/2014.

3. The Division Bench rejected the contentions taken by the Land Acquisition Officer and observed that the Reference Court ought to have

adopted at least Rs.6545/- per cent at the minimum. Since there was no cross appeal at the instance of the petitioner, or other land owners, the Division Bench confirmed the award passed by the Land Acquisition Officer fixing the compensation at Rs.4,750/- per cent. The Division Bench while dismissing the connected appeals filed by the State challenging the award dated 28 October 2014, in LAOP No.150 of 1998 etc batch, fixed the compensation at Rs.6,540/- per cent. Since the benefit of the said common judgment dated 7 July 2015 fixing the land value at Rs.6,540/- was not given to the respondents and other claimants in A.S.Nos.466 to 492, 495 to 570 and 586 to 611 of 2014, which was also decided on 7 July 2015, the petitioner, who was the claimant in A.S.No.466 of 2014, has come up with this review petition.

Submissions:-

4. The learned counsel for the petitioner by placing reliance on the observation made by the Division Bench in paragraph 13 of the judgment dated 7 July 2015, submitted that having stated that the present batch of cases formed part of a huge batch, some of which had been disposed of by the Court earlier, ought not to have declined the relief on the ground that it would open a Pandora's box in respect of other cases. According to the learned counsel, the very same Division Bench by judgment dated 7 July

2015, in A.S.Nos.603 to 728 of 2015 determined the compensation at Rs.6,540/- per cent. Even though all these appeals have arisen out of the very same acquisition the petitioner and the other claimants in A.S.No.466 of 2014 were given only a lesser rate.

5. We have also heard the learned Government Pleader on behalf of the respondents.

Analysis:-

6. The land owned by the petitioner and the adjacent land owners were acquired by the Government of Tamil Nadu for the purpose of setting up an aromatic complex. The notification dated 19 December 1990 issued under Section 4(1) of the Land Acquisition Act, contain the details of the land acquired from the petitioner and other land owners. The Land Acquisition Officer fixed the compensation at Rs.200/- per cent. The Reference Court enhanced the compensation to Rs.4,750/- per cent in LAOP No.1037 of 1998 etc. batch. The Reference Court, with respect to other connected cases in LAOP No.150 of 1998 etc. enhanced the compensation to Rs.6,540/- per cent.

7. The Division Bench by judgment dated 7 July 2015 in A.S.Nos.603 to 728 of 2015, confirmed the award in LAOP No.150 of 1998, fixing the land value at Rs.6,540/- per cent. The Division Bench dismissed the connected appeals in A.S.Nos.466 to 492, 495 to 570 and 586 to 611 of 2014, by judgment delivered on the same day and confirmed the market value fixed by the Reference Court at Rs.4750/- per cent. While dismissing the appeal, the Division Bench indicated that the appellants therein are also entitled to enhancement granted in the connected appeals.

8. Paragraph 13 of the judgment dated 7 July 2016 in A.S.Nos.466 to 492, 495 to 570 and 586 to 611 of 2014 would make the position clear.

“13. Though the respondents have not come up with any appeal or cross objections for enhancement, this Court is entitled to exercise the jurisdiction conferred under Order XLI, Rule 33, CPC. But, unfortunately, the present batch of cases formed part of a huge batch, some of which had been disposed of by us earlier. Therefore, an enhancement granted now will open pandora's box in respect of other cases. Therefore, this is actually a case where the compensation awarded by the

Tribunal should be enhanced. If that is so, the Special Tahsildar cannot have any objection at least to the confirmation of the judgment and decree of the trial Court. Hence, these appeals are dismissed. No costs. Consequently, connected M.Ps. are also dismissed. The Additional Government Pleader is entitled to separate fees in respect of each of these appeals.”

9. The Division Bench declined to grant the relief to the petitioner and other land owners on the ground that there was no cross appeal. However, the Division Bench indicated the legal position that even in the absence of an appeal, it is within the powers of the Appellate Court to enhance the compensation under Order XLI Rule 33 of CPC. Since there is a likelihood of opening a Pandora's box in respect of other cases, the Division Bench declined to grant the relief to the petitioner.

10. The core question is whether this Court would be justified in enhancing the compensation by exercising the review jurisdiction.

11. The Division Bench was well ware that in the connected appeals, the land value was fixed at Rs.6,540/-. Even then, the Division Bench declined to grant the relief to the petitioners and other land owners on the ground that it would open Pandora's box in respect of other cases.

12. There is absolutely no error apparent on the face of the record for the simple reason that the Division Bench has consciously declined the relief to the petitioner and the other land owners. There is no question of reviewing the decision taken by the Coordinate Bench earlier, on merits. The remedy is only to file an appeal rather than review. The grounds set out by the petitioner would not come within the parameters of Order 47 Rule 1 of CPC. We are therefore of the view that the petitioner has not made out a case for review of the judgment dated 7 July 2015 in A.S.No.466 of 2014.

13. In the upshot, we dismiss the review petition. No costs.

(K.K.SASIDHARAN, J.) (P.VELMURUGAN, J.)

20.11.2017

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K.K.SASIDHARAN, J.

and

P.VELMURUGAN, J.

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