

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

A.S.No.22 of 2013

T.N. Ramasamy

..Petitioner

Vs.

The Collector of Madras,
Land Acquisition Officer,
Kamarajar Salai,
Ezhilagam Building,
Chennai.

..Respondent

Prayer: Appeal Suit as against the judgment and decree dated 08.10.2010 in
L.A.O.P. No. 17 of 1994 passed by the learned Additional District and Sessions Judge,
Fast Track Court No.IV, Chennai.

For Appellant :: Mr.S. Umapathy

For Respondent :: Mr.P. Gunasekaran,
Addl. Govt. Pleader (A.S.)

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JUDGMENT

The matter was listed today on noticing that an error had crept in, in so far as
the guideline value specified in the judgment dated 30.06.2017 made in A.S.No.22 of

2013.

2.The learned counsel appearing on behalf of the appellant would submit that the value of the subject property has been arrived at Rs.225.60 per sq.ft, however, Ex.C.11/Document would reveal that the actual value of land is Rs.322.30 per sq.ft. in the year 1993, during which the appellant's land was acquired.

3.Though Mr.S.Umapathy, learned counsel appearing on behalf of the appellant would submit that only the correction in the guideline value has to be carried out from Rs.225.60 per sq.ft to Rs.322.30 per sq.ft, Mr.P.Gunasekaran, learned Additional Government Pleader (AS) would submit that the appellant has to produce relevant documents to show that the actual value of the property in the year 1993 was Rs.322.30 sq.ft. and he cannot merely rely upon the guideline value prevailing during the said period.

4.The said contention raised by the learned Additional Government Pleader cannot be appreciated because when the guideline value itself was Rs.322.30 per sq.ft in the year 1993, no document would be registered by the registration authorities below the said value. Normally, in places like Chennai, the market value will be definitely higher than the guideline value and therefore, it is by and large safe to consider the guideline value of Rs.322.30 per sq.ft which was prevailing in the year 1993 for the purpose of calculating the compensation.

dated 30.06.2017 made in A.S.No.22 of 2013 only relating to the guideline value and the revised judgment, for the purpose of easy understanding is as follows:

“The concept of awarding compensation is to make good the loss sustained by a person on a particular date and in matters of acquisition, if the compensation is not determined and paid as on that date and if the amount is sought to be paid after a lapse of many years or long gap of time, the compensation determined, as on the date of loss, would not be fair and appropriate. If such a method is followed, it will add insult to the injury.

2.As far as the case on hand is concerned, the land, to an extent of 1310 sq.ft in R.S.No.1736/8 part newly sub-divided as R.S.No.1736/122 in Block No. 37, Mylapore Village was purchased by the appellant on 20.06.1984 vide document No. 1836/84 on the file of Sub-Registrar, Mylapore and by virtue of 4(1) notification dated 09.04.1986, out of the total extent, 487sq.ft was sought to be acquired for the purpose of alignment of Mass Rapid Transit System (MRTS) and by award No. 2/89 dated 05.04.1989, the Land Acquisition Officer fixed the value of the acquired land at Rs.12,368.20/- and the value of one ground was fixed at Rs.60,952/-. That is, as per the above award, the Land Acquisition Officer fixed the value (vacant)at Rs.12,368.20, house building value at Rs.1,28,083.20, totalling to Rs.1,40,451.20 and also 30% solatium, being Rs.42,135.35 and additional compensation at 12% amounting to Rs.50,470.05. In all, a sum of Rs.2,33,056.60 was fixed as compensation.

Subsequently, the appellant, who was carrying on business as a hotelier in the said

property, demolished the building existing in 487 sq.ft and handed over vacant land to the Government (Land Acquisition Officer) on 02.12.1993. Thereafter, the Land Acquisition Officer passed a revised award, vide proceedings dated 11.04.1994, for the value of the land alone at Rs.12,368.20, along with 30% solatium and 12% additional compensation for 3 years and arrived at Rs.20,531.21 as the eligible amount of compensation payable for the land and deleted the compensation amount reserved for the building as per the original award dated 05.04.1989. Assailing the modified award passed by the Land Acquisition Officer, the appellant submitted an application on 12.06.1999 seeking reference under Section 18 of the Land Acquisition Act for enhancement of compensation, which was numbered as L.A.O.P.No.17/1994 before the Civil Court. Though the appellant sought fixation of the value of the land at the rate of Rs.5,00,000/- per ground, the Reference Court dismissed the reference stating that the appellant has not proved the value of the property, as on the date of 4(1) notification by adducing positive evidence and rejected the sale deed dated 28.05.1990 relied upon by the appellant as it was subsequent to the date of 4(1) notification, namely, 09.04.1986. Challenging the same, the present appeal has been filed.

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3.Heard Mr.S.Umapathy, learned counsel for the appellant and Mr.P.Gunasekaran, learned Additional Government Pleader (A.S.) for the respondent.

4.Here is a case where the property of the appellant was acquired as early as

infrastructure building exercise, namely, for the purpose of alignment of Mass Rapid Transit System (MRTS) by invoking the Land Acquisition Act, from the appellant. Article 300 A of the Constitution of India also makes it clear that "*No person shall be deprived of his property save by authority of law*" and therefore, if the State requires any property for public purpose, by due process of law, the State is entitled to acquire the same. In the instant case, though the laudable object behind the acquisition has to be appreciated, considering the benefits rendered to the public by MRTS service, yet, the interest of the land owner, who was compelled to part with his property, for the said purpose, has to be safeguarded and he should be suitably compensated. Notwithstanding the fact that the property was acquired as early as in the year 1986 and possession was taken subsequently, the appellant has not seen the colour of the coin, as yet, that too, after the passage of 2 decades. When the land owner is compelled to give up his right over the property in his possession and still, made to run from pillar to post for getting the compensation in respect of the acquired land, it would unquestionably amount to violation of human rights. The Honourable Apex Court in *Vimala Bai Ajith Bai Patel V. Vatsala Ben Ashok Bai Patel* reported in 2008 4 SCC 649 held that right to property, though not a fundamental right, is a constitutional right and also a human right. Similar dictum has been laid down in the judgment rendered in *Karnataka State Financial Corporation V. N. Narasimhaiya* reported in 2008 5 SCC 176. When such is the position, the human rights of the appellant have been compulsorily violated by taking away the property, without making the payment due, even after the lapse of 2 decades, from the date of

acquisition. The State, which acquires the property, for public purpose, is duty-bound to compensate the owner of the property, immediately thereafter. However, it is seen in very many cases, decided by this Court, even after lapse of years together, the land owners have not been paid their compensation.

5. There is no dispute with regard to the issuance of 4(1) notification, taking of possession and passing of the award and unfortunately, it is also an admitted position that the appellant, has not, so far, been paid compensation for the land acquired from him, wayback in the year 1986, which makes it patently clear that the appellant, has not only been deprived of his property, but has also not been disbursed the compensation, for the past 20 years. This sort of slackness, on the part of the officials, makes the very concept of awarding compensation, a mockery. Besides, the appellant, whose property was acquired by virtue of 4(1) notification issued in the year 1986 and taken possession in the year 1993, cannot be paid the same compensation, as was determined on the date of 4(1) notification, even after the lapse of 2 decades, as it could, no longer, be called as reasonable compensation. When such instances of non-payment of compensation became a big issue and many agitations were conducted by farmers stating that their properties were acquired for industrial purposes and for developmental projects, without making payment of compensation, the Parliament introduced a new Act known as "*Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*" (hereinafter referred to as "the new Act") by which the market value of the property acquired has to be paid as compensation apart from

the market value as solatium in respect of urban properties as per Section 26 and I Schedule of the said Act. Section 24(2) of the Act speaks about lapse of land acquisition proceedings and the said section is extracted as follows:

"24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases: - (1)

.....

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

.....

The case of the appellant would fit in well with Section 24(2) of the Act as the compensation amount has not been paid, till date and therefore, the land acquisition proceedings are deemed to have been lapsed. If the land acquisition proceedings get lapsed, then the property could be acquired only by re-issuance of fresh notification by following the procedure contemplated under the new Act. In such an event, Section 26 of the Act would come into play, with regard to determination of the market value of land and the same is extracted hereunder:

"26. Determination of market value of land by Collector :- (1) *The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely -*

(a) *the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or*

(b) *the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or*

(c) *consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,*

whichever is higher;

Provided that the date of determination of market value shall be the date on which the notification has been issued under Section 11.

Explanation 1: The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2: For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3: While determining the market value under this section and the average sale price referred in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4: While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) *The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.*

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that -

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the land (whose lands have been acquired) as a part of compensation, for acquisition of land, such shares in no case shall exceed twenty-five percent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1);

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the

market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

As per sub-section (2) of Section 26, the market value of the land determined under sub-section (1) has to be multiplied by a factor as specified in the First Schedule and the First Schedule is extracted hereunder for useful reference:

THE FIRST SCHEDULE

[(See Section 30(2)]

COMPENSATION FOR LAND OWNERS

The following components shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in clause (c) of Section 3 in a proportion to be decided by the appropriate Government.

Serial No. (1)	Component of Compensation package in respect of land acquired under the Act (2)	Manner of determination of value (3)	Date of determination of value (4)
1.	Market value of land	To be determined as provided under Section 26.	
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.	
3.	Factor by which the market value is to be multiplied in the case of urban areas.	1 (One)	
4.	Value of assets attached to land or building	To be determined as provided under Section 30.	

5.	Solatum	Equivalent to one hundred per cent of the market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 for rural areas or serial number 3 for urban areas plus value of assets attached to land or building against serial number 4 under column (2).	
6.	Final award in rural areas	Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium mentioned against serial number 5 under column (2).	
7.	Final award in urban areas	Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 3 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium mentioned against serial number 5 under column (2).	
8.	Other component, if any, to be included		

Since the property is an urban property, as per Serial No.3 of First Schedule, the factor by which the market value is to be multiplied, is Serial No.(1), which is the market value of the land to be determined as provided under Section 26 of the Act + Solatium equivalent to 100% of the market value of the land mentioned against Serial No.1 multiplied by the factor specified against Serial No.3 for urban areas plus value of assets attached to land or building against Serial No.(4) under column (2).

6. In this regard, it is evident to note that as on date, the guideline value of the property, namely, Dr. Natesan Road of Mylapore Village, is Rs.8040/- as per the communication of Sub Registrar, Mylapore, Chennai -28 dated 12.06.2017, produced by the learned counsel for the appellant. If the provisions of the new Act are invoked, then the compensation payable along with solatium comes to around Rs.78 lakhs. If the sum of Rs.20,531/-, determined already as compensation had been paid, it would have wiped out the liability of the respondent 2 decades ago.

7. Though this Court is convinced that the appellant/land owner is entitled to an order setting aside the land acquisition proceedings, in view of provision 24(2) of the new Act, this Court is not inclined to hold that the land acquisition proceedings are deemed to have lapsed, considering the public interest involved. Furthermore, there cannot be any second opinion that the right of the appellant has been violated, by neither depositing nor paying the compensation amount, notwithstanding the fact

interest must prevail over private interest as has been held by the Honourable Apex Court in the judgments rendered in *Tarak Singh V. Jyoti Basu reported in 2005 1 SCC 201* and *Union of India V. International Trading Company, reported in 2003 5 SCC 437*.

In view of the above proposition of law and taking into consideration the purpose for which the acquisition was made, this Court is not inclined to invoke the new Act as huge loss would be caused only to the public exchequer, as the officials, who were responsible for the present situation, ie., depriving the appellant from getting his compensation in due course of time, would have retired from service, by now. Therefore, to strike a fine balance between the rights of the appellant and the public exchequer, this Court is not invoking the new Act. At the same time, the appellant cannot be allowed to go empty-handed after having given up his property for public purpose and he has to be compensated appropriately.

8. Coming to the question of compensation payable to the appellant, the possession of the land was handed over by the appellant to the Government on 02.12.1993 and the value of the land, as on 1993, was Rs.322.30 per sq.ft as per the information provided by the Registration Department regarding guideline value. Normally, as per the Land Acquisition Act, the value, as on the date of issuance of 4(1) notification has to be taken into consideration for determining the value of the property. However, even after passage of 20 years, if the very same value is determined, it would definitely prejudice the rights and interest of the appellant.

Therefore, as a departure from the usual practice, this Court takes the value, as on the date of taking possession of the property, namely, 02.12.1993. For this purpose,

this Court receives the document giving the details of guideline value of the land, as on 02.12.1993, filed by the appellant, as an additional document and the same is exhibited as Ex-C11 since this Court, as an Appellate Court, has got power and jurisdiction to appreciate evidence and also to receive additional documents, by exercising the powers, which are exercisable by the Trial Court provided under Order XLI Rule 33 CPC, which reads as follows:

"33. Power of Court of Appeal:- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection ¹²[and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Besides, the Appellate Court has power and jurisdiction to receive additional evidence by itself under Order XLI Rules 27 & 28 CPC, which read thus:

"27. Production of additional evidence in Appellate

Court:

(1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -*

(a) *the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*

⁹*[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]*

(b) *the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.*

(2) *Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

28. Mode of taking additional evidence:-

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court."

By receipt of additional document, the objections raised by the learned Additional Government Pleader (A.S.), that the said document could not be received and marked are rejected outright, in view of the above provisions of law. That apart, the document marked in only an information provided by the Government

Department regarding the value of the property and hence, the said document could

not be objected by the Additional Government Pleader.

9. Moreover, when the issue before this Court is only with regard to compensation, this Court has got power and jurisdiction to invoke Article 226 of the Constitution of India, suo motu, even in an Appeal Suit, when a statutory provision is violated or when a statutory right accrued to the appellant.

10. Though Mr. P. Gunasekaran, learned Additional Government Pleader very effectively put forth all possible objections, this Court is not in a position to agree with him.

11. Hence, for the reasons stated above, this Court re-determines the value of the property at Rs. 322.30, being the guideline value as on 02.12.1993, the date on which possession was taken and the total Compensation to be paid to the parties is calculated as follows:

(a) Value of land	=	Rs. 1,56,960.00
(b) 30% Solatium	=	Rs. 47,088.00
(c) 12% Additional Compensation for 24 years	=	Rs. 5,87,640.00
(d) Interest at 9% for one year on Rs. 5,54,163/-	=	Rs. 71,252.00
(e) Interest at 15% for 271 months on Rs. 5,54,163/-	=	Rs. 26,81,816.00
Total	=	Rs. 35,44,756.00

12.It is needless to state that the appellant would be entitled to all other statutory benefits including interest along with the compensation amount arrived at and the respondent is directed to calculate the amount payable to the appellant and disburse the same within a period 12 weeks from the date of receipt of a copy of this order, failing which the respondent shall appear before this Court.

13.As already stated, though the property was acquired in the year 1986 and possession was taken in the year 1993, till date, the amount has not been paid, which, undoubtedly, infringes the right of the appellant and therefore, exemplary costs have to be imposed on the respondent and accordingly, a sum of Rs.1,00,000/- (Rupees One Lakh Only) is imposed as cost payable by the respondent to the Appellant within a period of twelve weeks from date of receipt of a copy of this order.

14.The Appeal Suit stands allowed.”

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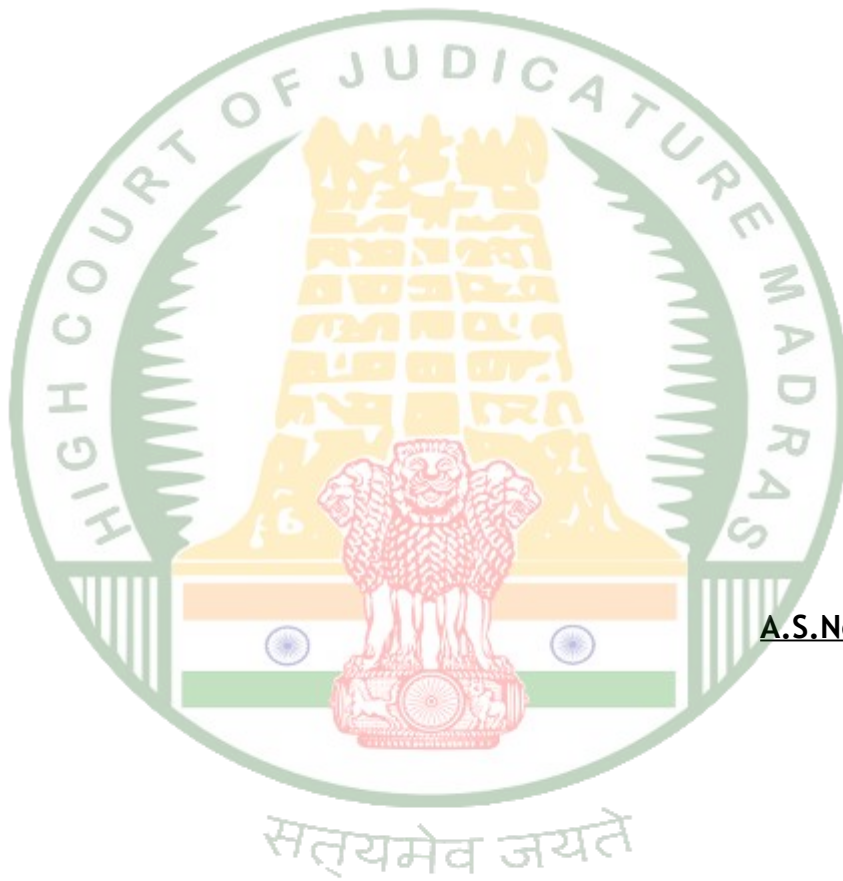
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Note: Registry is directed to issue the order dated 31.07.2017 alone, as the earlier order dated 30.06.2017 has been recalled.

N.KIRUBAKARAN, J.

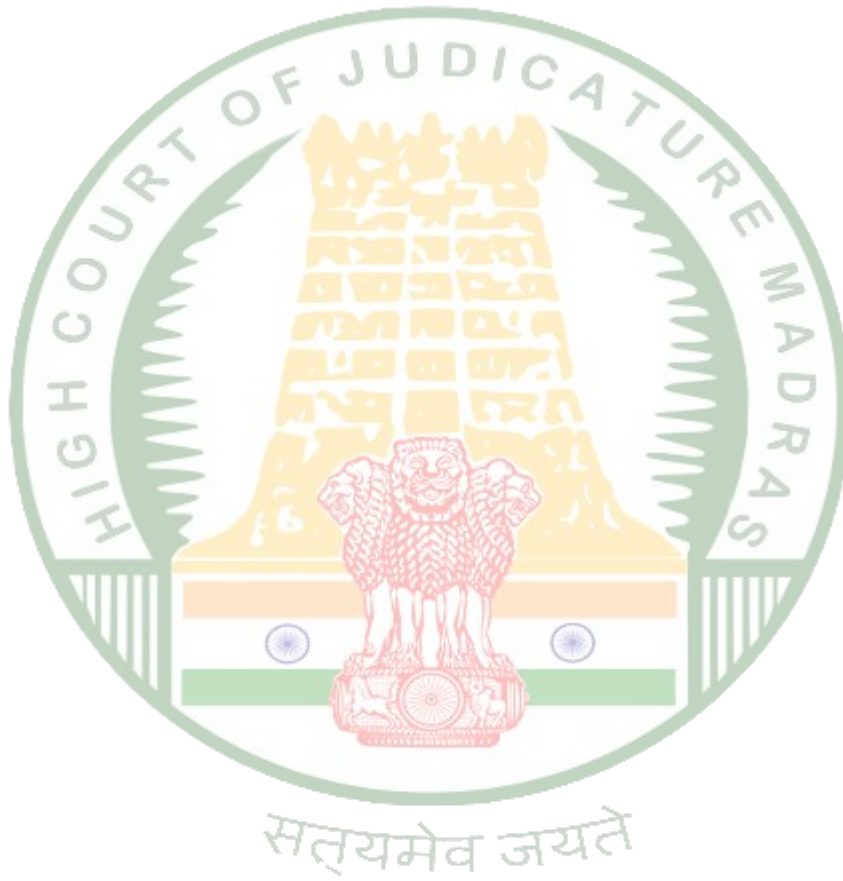
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Dated : 31.07.2017



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