

IN THE HIGH COURT OF JUDICATURE AT MADRAS

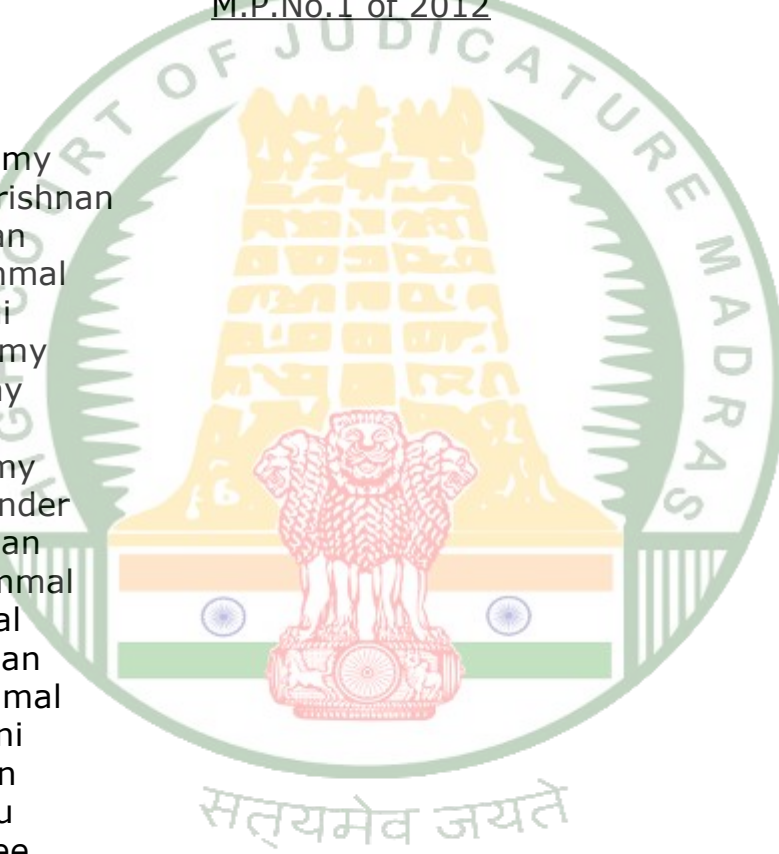
DATED : 09.08.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

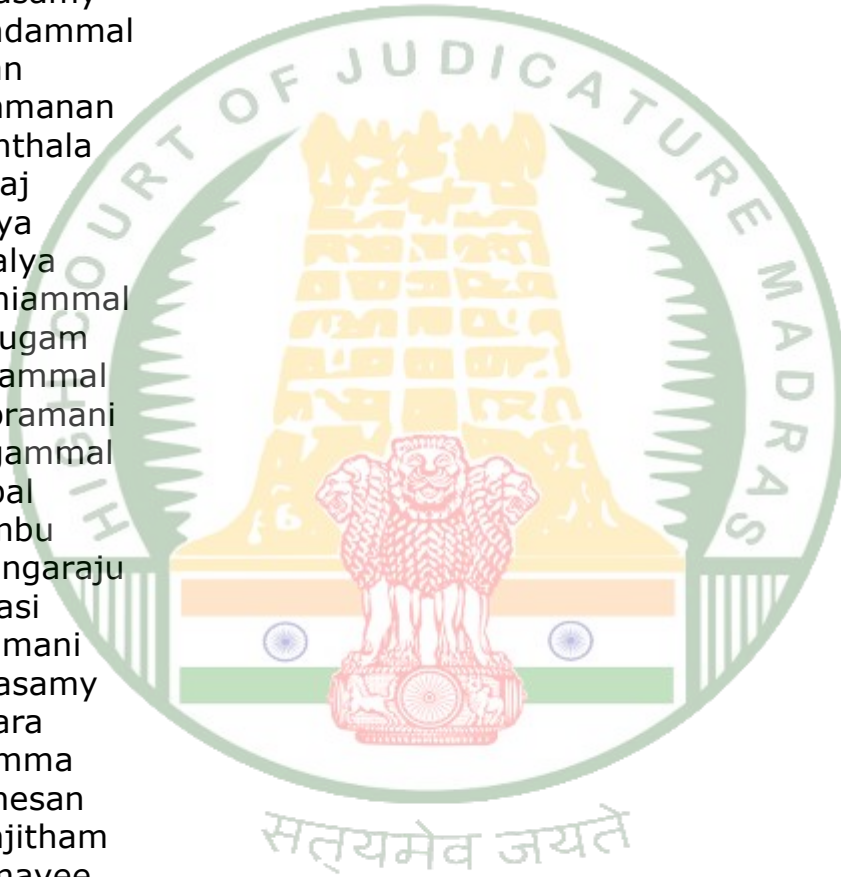
Writ Petition No.7533 of 2012 and
M.P.No.1 of 2012

1. Rajamani
2. Arayee
3. S.Ramasamy
4. R.Radhakrishnan
5. R.Govindan
6. D.Periyammal
7. S.Elumalai
8. K.Duraisamy
9. Palanisamy
- 10.Chettiar
- 11.Kandasamy
- 12.Raja Gounder
- 13.Chinnappan
- 14.Sundarammal
- 15.Angammal
- 16.Chinnappan
- 17.Kaveriammal
- 18.Subramani
- 19.Mariappan
- 20.Palanivelu
- 21.Perumayee
- 22.Indirani
- 23.Venkatachalam
- 24.Madhammal
- 25.Govindan
- 26.Dhanakodi
- 27.Veerappan
- 28.Lakshmi
- 29.Vadivelu
- 30.Sidhan
- 31.Subramani
- 32.Shanmugam
- 33.Marappan
- 34.Pachiappan
- 35.Subbaiah



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- 36.Perumayee
- 37.Palanisamy
- 38.Subramani
- 39.Alamelu
- 40.Palaniappan
- 41.Perumal
- 42.Subramani
- 43.Ponnusamy
- 44.Kandasamy
- 45.Govindammal
- 46.Raman
- 47.Lakshmanan
- 48.Sakunthala
- 49.Nataraj
- 50.Sathiya
- 51.Kousalya
- 52.Amichiammal
- 53.Arumugam
- 54.Madhammal
- 55.P.Subramani
- 56.P.Angammal
- 57.P.Gopal
- 58.P.Sambu
- 59.P.Thangaraju
- 60.Ammasi
- 61.Alagumani
- 62.Kandasamy
- 63.Sankara
- 64.Kullamma
- 65.R.Ganesan
- 66.T.Ranjitham
- 67.Perumayee
- 68.Malarkodi
- 69.A.Kandasamy
- 70.Chinnamma
- 71.Ammasi
- 72.Chinnapillai
- 73.Alamelu
- 74.S.Arumugam
- 75.A.Shanmugam
- 76.Perumayee
- 77.Dhanalakshmi
- 78.A.Subramani
- 79.Kaveri
- 80.S.Subramani
- 81.Moorthi



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82.Saraswathi
 83.A.Palanisamy
 84.Kandasamy
 85.S.Kanaga
 86.Ramasamy
 87.L.Ramakrishnan
 88.R.Ragupathi

... Petitioners

Versus

1. The Special Tahsildar
 (Land Acquisition),
 TANMAG, Salem,
 Now represented by Sub-Collector,
 Mettur.
2. Tamil Nadu Magnesite Limited
 rep. by its Managing Director,
 5/53, Omalur Main Road,
 Jagir Ammapalayam Post,
 Salem-636 302.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records in the Proceedings bearing No.L-47/2010 dated 09.01.2012 passed by the Tamil Nadu Magnesite Limited represented by its Managing Director, the 2nd respondent herein, quash the same and consequently, directing the respondents herein to deposit the amount of compensation as per the order dated 24.02.2010 passed by the Honourable Supreme Court in C.A.Nos.6240/2001 to 6248/2001 and C.A.Nos.495/2002 to 504/2002 within a time frame fixed by this Court.

For Petitioners : Mr.AR.L.Sundaresan,
 Senior Counsel
 for Mr.R.Sugumaran
 For Respondents : Mr.K.Balamurugan for R1
 Mr.Manisundar Gopal
 for M/s.G.M.Mani & Associates for R2

ORDER

The Writ Petition has been filed challenging the Proceedings bearing No.L-47/2010 dated 09.01.2012 passed by the Tamil Nadu Magnesite Limited represented by its Managing Director, the 2nd respondent herein and to quash the same and for consequential direction, directing the respondents herein to deposit the amount of compensation as per the order dated 24.02.2010 passed by the Honourable Supreme Court in C.A.Nos.6240/2001 to 6248/2001 and C.A.Nos.495/2002 to 504/2002 within a time frame fixed by this Court.

2. The petitioners in the present Writ Petition have a common grievance and claimed to have a common cause of action as their lands have been compulsorily acquired under the Land Acquisition Proceedings by the 1st respondent for the requirement of the 2nd respondent.

3. The petitioners state that an extent of 196 acres in Thathaiyangarpatty were acquired by the State for the purpose of expansion of Tamil Nadu Magnesite Limited under Section 4(1) of the Land Acquisition Act, 1984. The 1st respondent, the Authorised Officer, had fixed the value for the lands at Rs.18,000/- per acre for irrigated lands and Rs.15,000/- per acre for unirrigated lands

have received compensation under protest and a Reference was made to the Land Acquisition Tribunal under Section 18 of the Act. The Reference Court, by its judgment dated 26.04.1996 awarded enhanced compensation holding that the claimants are entitled to compensation for the lands at Rs.1,75,000/- per acre and Rs.600/- for yielding coconut trees and Rs.250/- for yielding palmyrah trees etc. with interest. Aggrieved by the same, the respondents have preferred A.S.Nos.134 to 143/1997 before this Hon'ble Court. This Court reduced the compensation from Rs.1,75,000/- to Rs.75,000/- per acre. Some of the claimants, aggrieved by the judgment and order of this Court, have preferred appeals before the Hon'ble Supreme Court in Civil Appeal Nos.6240 to 6243/2001 and 6244 to 6248/2001 and 495 to 504/2002. The Hon'ble Supreme Court also by its judgment dated 24.02.2010 after elaborately considering the documents held that the claimants are entitled to receive the compensation at the rate of Rs.1,75,000/- per acre with interest applicable. The Hon'ble Supreme Court has not only confirmed the order of the Reference Court, but, also directed the respondents to take steps to enhance the compensation to the appellants and the concerned parties.

4. It is stated by the petitioners that as per the order of the Hon'ble Supreme Court, the Principal District Judge, Salem, issued notice to the petitioners herein and directed to file necessary Cheque Application before the Subordinate Court, Salem. But, only on verification, it was found that the respondents had not deposited the compensation and other benefits to the credit of the Land Acquisition Proceedings with respect to the petitioners. Hence, a representation was sent dated 30.01.2011 to the respondents to give effect of the order of the Hon'ble Supreme Court. The respondents had compulsorily dispossessed the petitioners who have been enjoying the property from 1984 and the petitioners were deprived of the use of their lands for more than 3 decades. Since the representation of the petitioners was not considered, a Writ of Mandamus was filed in W.P.No.21397/2011. This Court had directed to consider the representation within a period of eight weeks. Subsequent to the same, the petitioners received a communication dated 09.01.2012 from the 2nd respondent refusing to accede to the request of the Revenue Divisional Officer stating that the judgment of the Hon'ble Supreme Court would apply only to those who had filed the Special Leave Petitions and not to others. When the other similarly placed persons like the petitioners are granted higher compensation, denial of the said benefit to the petitioners do not stand to reason. Hence, the above

Writ Petition has been filed challenging the proceedings of the 2nd respondent bearing No.L-47/2010 dated 09.01.2012.

5. In the counter affidavit filed by the 2nd respondent, it is stated that only those persons, who preferred appeal before the Hon'ble Supreme Court, were entitled for the compensation and the petitioners who did not join them cannot have any right to claim compensation. It was stated that when there was no request made to the Hon'ble Supreme Court to extend the benefit of enhanced compensation to the other land owners who have not preferred any appeal, they have no right to claim on par with the other claimants. The expression used by the Hon'ble Supreme Court "appellant and concerned parties" would only refer to persons claiming under the appeals and it cannot include the other claimants. Hence, the 2nd respondent contended that the claim of the petitioners is not justified and the same should be rejected.

6. The question that arises for determination in this Writ Petition is whether the petitioners, who were the co-claimants, but had not gone up to the Supreme Court are entitled to the compensation fixed by the Hon'ble Supreme Court.

7. As stated earlier, the Reference Court has fixed the compensation at Rs.1,75,000/- per acre whereas this Court on appeal had reduced the same to Rs.75,000/- per acre. When the said challenge was before the Hon'ble Supreme Court, an order was passed as follows:

"xxxx, we observe that the Reference Court rightly fixed the amount of compensation to be Rs.1,75,000/- and we are inclined to uphold the said finding. As far as the question of grant of higher compensation than what is claimed by the claimants goes, the Reference Court has observed, and in our opinion rightly so, that even before the representation before the Land Acquisition Officer, the claimants had stated that in the event of their being not satisfied with the award, they reserve the right to go before the Civil Court for determination of just and reasonable compensation.

For the reasons above, the judgment of the High Court is set aside and the order of the Reference Court is upheld. So far as the claim of the appellant(s) for solatium, interest and other benefits under the statute is concerned, we direct that the same should be governed by the principles laid down in *Sundar V. Union of India*, (2001) 7 SCC 211 and the principles laid down in para 26, page 231 of the judgment be followed. Para 26 of the judgment in *Sunder* (supra) is set out below:

"Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, than from the

plain terms of Section 28 of the Act. It would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest available under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of section 28 in terms warrant and authorise the grant of interest on solatium as well."

In so far as the enhanced compensation as determined by this Court is concerned, the same should be distributed to the appellant(s) and concerned parties by the District Judge of Salem by cheques drawn in their names as early as possible, preferably, within three months from the date of service of this order on the District Judge. The respondents are to take steps accordingly."

8. From the reading of the above order, it can be seen that the Hon'ble Supreme Court has set aside the order of this Court and confirmed the order passed by the Reference Court fixing the compensation at Rs.1,75,000/- per acre. When the judgment of this Court passed in A.S.Nos.134 to 143/97 was clearly and categorically set aside by the Hon'ble Supreme Court and the award of the Reference Court was restored automatically, the rate fixed by the High Court gets erased. Further, this Hon'ble Supreme

Court has directed that insofar as the enhanced compensation is confirmed by the Supreme Court is concerned, the same should be distributed to the appellants and the concerned parties by the District Judge, Salem, by cheques drawn in their names. The phrase appellant(s) and concerned parties referred to in the order of the Hon'ble Supreme Court would include the persons who had not appealed before the Supreme Court. Therefore, the ratio and the effect of the judgment of the Hon'ble Supreme Court is to pay the compensation to all parties concerned in the Land Acquisition Proceedings. When the appellants before the Supreme Court filed the appeal, originally, the petitioners herein were shown as parties, however, they were given up later. The respondents cannot take advantage of the fact that the claimants who had not filed the appeals against the judgment of the High Court would get a reduced market value and those persons who appeared before the Supreme Court would get the enhanced compensation. This may not be right. When the decree of the High Court has already been set aside by the Supreme Court, the question of fixation of compensation as per the order of the High Court does not arise. Incidentally, the Supreme Court also has agreed with the rate fixed by the Reference Court. Therefore, the benefit of enhanced compensation has to be extended to the petitioners also. By no stretch of imagination, the concerned parties can be related only to

the parties to the appeal and not to the other claimants as contended by the learned Counsel for the 2nd respondent.

9. The petitioners may not be entitled to claim enhanced compensation pressing into service under Section 28(A) of the Land Acquisition Act. It is well settled that the benefit of Section 28(A) of the Act is available only to the parties who had not sought for reference under Section 18 of the Act for enhancement of compensation whereas in the case on hand, the petitioners have sought for reference and also went up to the High Court. Hence, Section 28 (A) of the Act is not applicable to the petitioners who have already sought for reference under Section 18 of the Act for enhancement.

10. As stated above, the petitioners are out of possession of their lands from 1984. However, they are not paid the due compensation. The contention of the 2nd respondent that the benefit of the enhanced compensation is applicable only to those who had challenged before the Supreme Court is unacceptable. The compensation as fixed by the Hon'ble Supreme Court shall apply not only to the appellants, but also to the other land owners who may not have filed Special Leave Petitions, may be due to poverty, illiteracy or ignorance. Therefore, the enhanced

compensation as

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fixed by the Supreme Court is applicable even to the other land owners who have not filed the Special Leave Petitions.

11. Accordingly, the Writ Petition is allowed and the Proceedings of the 2nd respondent bearing No.L-47/2010 dated 09.01.2012 is set aside and the 2nd respondent is directed to pay the compensation as per the order of the Hon'ble Supreme Court made in C.A.Nos.6240/2001 to 6248/2001 and C.A.Nos.495/2002 to 504/2002, within a period of twelve (12) weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.

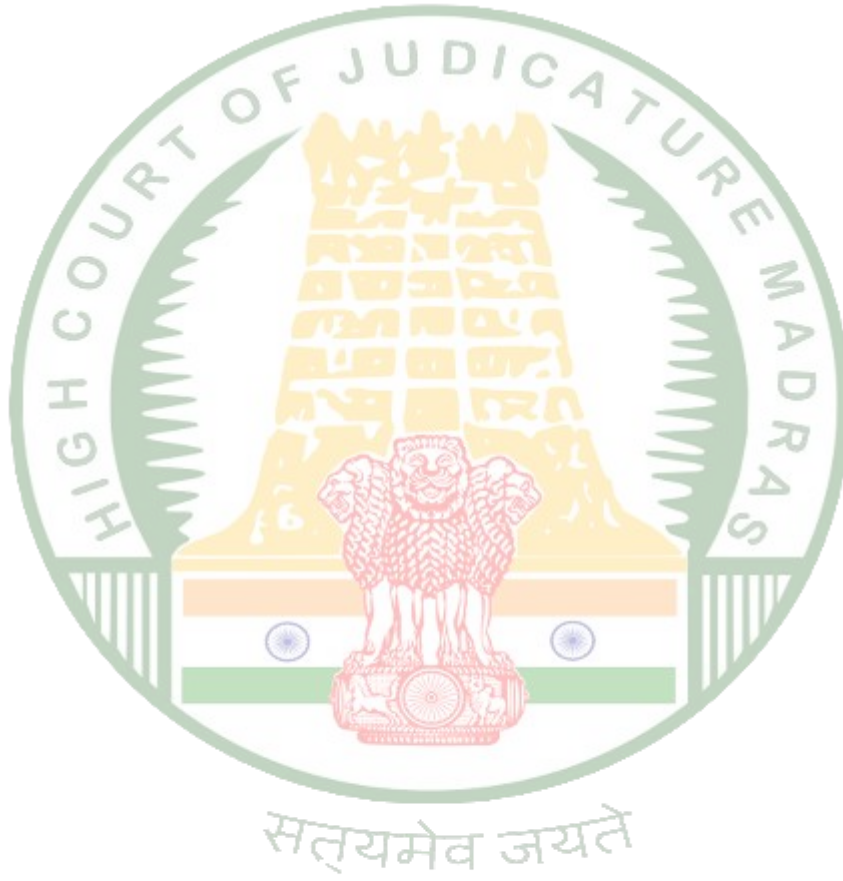
सत्यमेव जयते

09.08.2017

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To

1. The Special Tahsildar
(Land Acquisition),
TANMAG, Salem,
Now represented by Sub-Collector,
Mettur.
2. Managing Director,
Tamil Nadu Magnesite Limited,
5/53, Omalur Main Road,
Jagir Ammapalayam Post,
Salem-636 302.



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