

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.660 of 2009  
& C.M.No.1 of 2009

1.Swarnam  
2.Moorthy  
3.Srinivasan

... Petitioners

Vs.

1.The Land Acquisition Officer and  
Special Tahsildar,  
Neighbourhood Scheme, Salem-8.  
2.Karunanidhi  
3.Shanmugham  
4.Madheswarn  
5.Rangasamy  
6.Rangan Poosary  
7.Arumugham  
8.Ramu  
9.Rajendran  
10.Subramani  
11.Sarasu  
12.Jothi  
13.Sundari  
14.Malarvizhi  
15.Rangaraju  
16.Raja  
17.Dhanam  
18.Sumathi

19.The Executive Officer and  
Administrative Officer,  
Tamil Nadu Housing board,  
Salem Housing Division , Salem-8.

.. Respondents

(Respondents 2-17 given up as un-necessary parties)

against the fair and final order dated 05.04.2007 made in I.A.No.7/2006 in L.A.O.P.No.6 of 1997, on the file of the Sub-Court, Attur.

For Petitioner : Mr.T.Murugamanikkam

For Respondents : Mr.T.Jayakamaraj,  
Government Advocate, for R1  
Mr.R.Jayaseelan, for R19

### ORDER

This Civil Revision petition has been filed praying to set aside that fair and final order dated 05.4.2007 made in I.A.No.7 of 2006 in L.A.O.P.No.6 of 1997 on the file of the Sub Court, Attur.

2.The Petitioners are the respondents 24 to 26 in I.A.No.6 of 1997 in L.A.O.P.No.6 of 1997. They are the legal heirs of one Krishnan. After the death of Krishnan, a reference was made in respect of property in Survey Nos.489/4, 489/5, 489/6, 489/7, 489/9 and 489/10 in LAOP.No.6 of 1997. The first respondent filed an application in I.A.No.7 of 2006 for deletion of survey Nos.489/5, 489/7 and 489/9 in the said LAOP.No.6 of 1997, on the ground that enhanced compensation had already been paid to one Balu in L.A.O.P.No.8 of 1990 for the very same properties.

3. The first petitioner herein filed counter affidavit in I.A.No.7 of 2006 and submitted that the property in question belonged jointly to Balu and Krishnan. A reference in respect of L.A.O.P.No.8

of 1990 was made in the name of Balu and Krishnan, the husband of first respondent was not a party therein in L.A.O.P.No.8 of 1990. After the death of said Krishnan, the legal heirs of Krishnan are entitled to receive the compensation. Hence, the first respondent herein cannot seek deletion of properties in Survey Nos.489/5, 489/7 and 489/9, as no proper reference was made in L.A.O.P.No.8 of 1990. If the first respondent has wrongly paid the compensation to the said Balu, it is for him to recover the same from the said Balu. The learned Judge considering the affidavit and counter affidavit, allowed the application vide order dated 05.04.2007, and deleted the properties in survey Nos.489/5, 489/7 and 489/9.

4. Challenging the said order dated 05.05.2007, the petitioners have filed the present civil revision petition

5. Heard the learned Senior Counsel for the petitioner, the learned Government Advocate (C.S) for the first respondent and the learned counsel appearing for nineteenth respondent and perused the materials available on record.

6. From the materials on record, it is seen that it is an admitted case of the first respondent that the properties in survey Nos.489/4, 489/5, 489/6, 489/7, 489/9 and 489/10 are in the joint names of Balu and Krishnan. It is also not in dispute that reference in respect of L.A.O.P.No.8 of 1990 was made only in the name of Balu. On

coming to know that the names of some of the owners of the land were not included in the earlier reference made, subsequently, a reference was made in L.A.O.P.No.6 of 1997. By making wrong payment to one of the joint owners, the respondent cannot deprive the right of the petitioners, if they are eligible for the compensation of the land acquired, as legal heirs of Krishnan, the joint owner. The learned Judge failed to consider that Balu and Krishnan are the joint owners, and any payment made to one of the joint owners, without passing any order of apportionment, cannot be put against the other joint owner or his legal heirs. The learned judge committed an irregularity by allowing the application and deleting the properties in Survey Nos.489/5, 489/7 and 489/9 and impugned order is liable to be aside.

7. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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21.06.2017

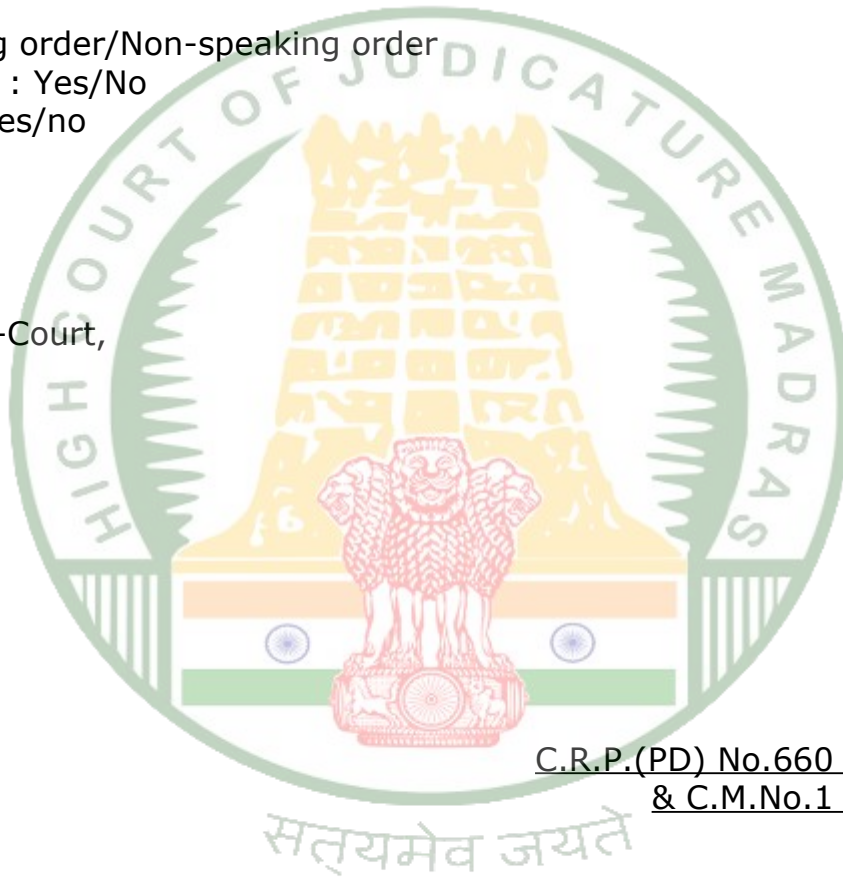
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V.M.VELUMANI, J

abr/ds

Speaking order/Non-speaking order  
Index : Yes/No  
Index: yes/no

To  
The Sub-Court,  
Attur.



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