

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Rev.Appln.No.146/2008 in AS.No.150/1997

1.Minor Rajadurai
2.Minor R.Lalitha
Both represented by their
mother and natural guardian
Mrs.Suganthamani

... Applicants /
Respondents 3 and 4

VS

1.The Sub Collector
Coimbatore.

2.The Superintending Engineer
Tamil Nadu Electricity Board
Coimbatore Electricity Distribution
Circle, Metro, Coimbatore 641012.

... Respondents
1 & 2/ Respondents 1 & 2

3.D.Ramachandran

... 3rd Respondent
/ Appellant

Prayer:- Review Application filed under Order XLVII Rule 1 read with section 114 CPC against the judgment passed by this Court dated 11.03.2008 in AS.No.150/1997.

For Petitioner : Mr.S.R.Rajagopal
For R1 : Mr.A.N.Thambidurai, Spl.GP
For R2 : Mr.S.R.Shanmugadoss

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The facts leading to the filing of the Review Application have been narrated in detail and in extenso, in the common judgment dated 11.03.2008 made in AS.Nos.150 and 704/1997 and therefore, it is unnecessary to restate the facts once again, except to narrate the relevant facts for the purpose of disposal of this review application.

2 The lands admeasuring to an extent of 6.72 acres comprised in S.Nos.522, 523, 524 and 525 at Souripalayam village, Coimbatore Taluk and District were acquired by the Government, to establish 110 K.V.Sub-Station and Staff Quarters.

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2.1 The Notification under section 4[1] of the Land Acquisition Central Act, 1894, was published on 20.04.1983 and even prior to that, the 3rd respondent herein – father of the review petitioners herein, had

delivered the possession of the lands admeasuring to an extent of 5.22 acres on 01.02.1979 to the Electricity Department through the Tahsildar, Coimbatore. The remaining extent of 1.5 acres of land was taken possession in the year 1983.

2.2 The Draft Declaration u/s.6 and 7 of the said Act were published in the Tamil Nadu Government Gazette on 20.04.1983. Since the lands were acquired for the purpose of putting up a 110-KV Sub-Station under emergency provision, the enquiry u/s.5A was dispensed with.

2.3 In the Award Enquiry, the 3rd respondent herein – father of the review petitioners, claimed a compensation for the acquired lands at the rate of Rs.50,000/- per cent and a severance compensation of Rs.25 lakhs and the 1st respondent, vide Award dated 19.09.1986, in Award No.2/1986, has fixed the compensation for the acquired lands at the rate of Rs.750/- per cent and referred the matter to the Sub Court, Coimbatore u/s.18 of the Act, as per the request made by the 3rd respondent herein.

2.4 The 3rd respondent herein, in the Claim Petition filed before the Reference Court, contended that the acquired lands were well within the limits of Coimbatore City Municipal Corporation abutting the main Avinashi Road which is a National Highway – NH47 and nearby to the lands, very many industries and places of importance are also there including PSG Group of Concerns and the lands in question are also having facility for Municipal Water Supply from Siruvani scheme and as such, fixation of compensation @ Rs.750/- per cent is wholly inadequate and prayed for enhancement of compensation @ Rs.50,000/- per cent ; however restricted his claim to Rs.42,000/- per cent without prejudice.

2.5 The 3rd respondent herein also objected to the adoption of the data sale of the land in S.Nos.20 and 21 on the ground that the said lands can be compared with the lands which were acquired for public purposes and apart from that, the 3rd respondent herein/appellant also claimed other statutory entitlements.

2.6 The Reference Court had taken into consideration the claim statement ; evidences and other materials placed before it, determined the compensation @ Rs.10,000/- per cent and further held that the claimants

were not entitled to additional amount of 12% interest and not entitled to interest over solatium.

2.7 The 3rd respondent herein / appellant – father of the review petitioners herein, aggrieved by the inadequacy of the enhanced compensation, filed AS.No.150/1997 and the Land Acquisition Officer, aggrieved by the enhancement of the compensation by the Reference Court, had filed AS.NO.704/1997 and both the appeals were taken together for final disposal.

2.8 A Division Bench of this Court, vide common judgment dated 11.03.2008, had enhanced the compensation by Rs.1000/- per cent [Rs.10,000/- + Rs.1,000/-] and further held that the appellant in AS.No.150/1997 - 3rd respondent herein [claimant] and the 1st respondent in AS.No.704/1997 preferred by the Land Acquisition Officer, is entitled to 30% solatium on the market value of the interest and further held that he is entitled to a further sum calculated @ 12% on the market value as per section 23[1-A] of the said Act from the date of Section 4[1] Notification till the date of passing of the order and further indicated that 30% solatium on the market value of the compensation shall carry an interest

@ 9% per annum for one year from the date of Award and 15% subsequent interest as per section 23 of the Act.

3 When the Review Application was listed for hearing, the matter was referred to the Lok Adalat to find out the possibility of amicable settlement and a Retired Judge of this Court, who presided over the Lok Adalat, vide order dated 17.02.2016, has taken note of the submission made by the learned counsel appearing for the review petitioners that there is no progress in settlement and also taking into consideration his further request to post the matter before this Court, directed the case to be listed before this Court.

4 Thereafter, the matter was listed before this Court on 20.10.2017 and at the request made by the learned counsel for the review petitioners as to the latest position, this Court has adjourned the matter and accordingly, the review application is listed today.

5 Mr.S.R.Rajagopal, learned counsel appearing for the review petitioners / applicants has invited the attention of this Court to paragraphs No.10 and 11 of the impugned judgment and would submit

that this Court, while arriving at the compensation had failed to appreciate the fact that the market value of the landed property in Avinashi Road is more than Rs.50 Crores per acre and even the guideline value is more than Rs.14 Crores per acre and since the acquired lands are having such a special advantages, the review applicants/petitioners – son and daughter of the 3rd respondent herein/appellant [claimants] are entitled to the compensation at fair rent of Rs.35 Crores per acre and apart from that, they are also entitled for other statutory entitlements.

6 It is the further submission of the learned counsel appearing for the review applicants / petitioners that the location advantage of the lands which were the subject matter of acquisition, have not been taken into consideration by this Court and it has enhanced the compensation merely by Rs.1,000/- per acre without properly appreciating the materials placed before it and hence, prays for reviewing the order.

7 *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondent and Mr.S.R.Shanmugadoss, learned counsel appearing for the 2nd respondent would submit that the applicants under the guise of reviewing, wants to re-agitate the appeal on

merits afresh and the same is impermissible and would further add that this Court, on a proper appreciation and consideration of the oral and documentary evidences, thought fit to enhance the compensation by Rs.1000/- more per acre and it may not be interfered with and prays for dismissal of the review application.

8 This Court has considered the rival submissions and also perused the materials placed before it.

9 AS.No.150/1997 was preferred by the 3rd respondent herein – father of the review petitioners / applicants aggrieved by the inadequacy of the compensation awarded by the Reference Court and pendency of the said appeal suit, the review petitioners / applicants herein represented by their mother and natural guardian Tmt.Suganthamani, were impleaded as parties vide order dated 15.02.2008 made in CMP.No.284/2008 in AS.NO.150/1997 and they were also represented by Mr.J.Ramakrishnan, Advocate.

10 It is also not in serious dispute that the 3rd respondent – appellant in AS.No.150/1997 as well as the review petitioners / applicants

herein, who are minors at the relevant point of time, were residing under one and the same roof.

11 It is also pertinent to point out at this juncture that the 3rd respondent herein / appellant did not come forward to review the judgment dated 11.03.2008 made in AS.No.150/1997 filed by him.

12 At the time of seeking reference as well as filing of the Appeal Suit before this Court, the 3rd respondent herein – appellant in AS.NO.150/1997 / father of the review petitioners herein, was the *Karta* of the family and he is also represented their estate. It is not even the case of the review applicants/petitioners that their father - 3rd respondent herein had acted against their interest.

13 It is a settled position of law that the review cannot be entertained unless there is an error apparent on the face of the record and mis-appreciation of evidence cannot be a ground to review the order.

14 The review cannot be treated as an appeal in disguise and the review petitioners under the guise of filing this review, seeks to re-agitate

/ re-argue afresh on merits and the same is impermissible under law. It also appears that the 3rd respondent – father of the review petitioners / applicants, without filing the review petition, utilised the services of his minor children/son and daughter to get the enhanced compensation, especially when they were represented by Mr.J.Ramakrishnan, Advocate in AS.No.150/1997 filed by their father / 3rd respondent herein [1st respondent in AS.No.704/1997-filed by the 1st respondent herein].

15 If really the review petitioners / applicants who are arrayed as the respondents 3 and 4 are aggrieved by the said judgment, the remedy open to them is to file a Special Leave Petition before the Hon'ble Supreme Court of India and admittedly, they did not prefer any petition.

16 It is also brought to the knowledge of this Court by the learned counsel appearing for the review applicants / petitioners that even the enhanced compensation awarded by this Court, has not been deposited / paid. It is always open to the review petitioners/applicants to avail appropriate remedy to get the balance of the said enhanced compensation or to take such other steps to work out their further remedy. This Court finds no merits in the review application.

17 Accordingly, the Review Application No.146/2008 stands dismissed. No costs.

(M.S.N.J.,) (N.S.S.J.,)
15.11.2017

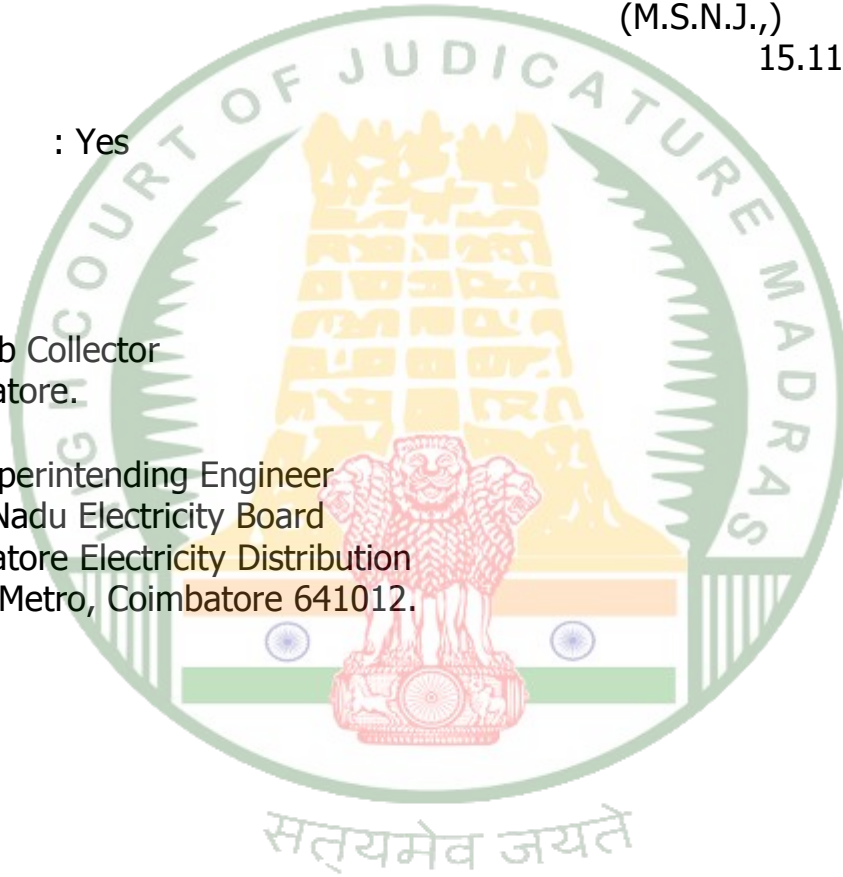
Internet : Yes

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To

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