



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.214 of 2017

and

C.M.P. (MD) No.2187 of 2017

A.Kannappan @ Veeranan

... Appellant/3rd Respondent

Vs.

1.V.Valanadu

... 1st Respondent/Petitioner

2.The Recognized Officer

Cum Special District Revenue Officer,
(Land Acquisition - National Highways),
Collectorate,
Ramanathapuram.

3.The Thasildar,

(Wing - 1) National Highways 49),
(Land Acquisition),
Melkarai,
Manamadurai,
Sivagangai District.

... Respondent 2 &3/Respondents 1 & 2

Writ Appeal filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD)No.19788 of 2016 dated 14.10.2016.

Prayer in WP(MD). 19788/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records in Na.Ka.The.Ne.49/A-1/82/2015 dated 05.10.2016 on the file of the 2nd respondent and quash the same as illegal, incompetent and against the provision of Section 3-H (4) of the National Highways Act, 1956 (Act 48/1956) and to direct the respondents 1 and 2 to refer the dispute to the Principal District Court, Sivagangai to resolve the dispute of appointment of award amount in the light of the provisions of Section 3-H (4) of the act and in consequence to direct the respondents to deposit the entire award amount on the file of the concerned District Court, Sivagangai.

For Appellants

: Mr.M.Ajmalkhan
Senior Counsel for
M/s.Ajmal Associates

For 1st Respondent

: Mr.S.Ramesh
for Mr.V.Ragavachari

For Respondents 2 & 3

: Mr.VR.Shanmuganathan
Special Government Pleader

**JUDGMENT**

(Judgment of the Court was delivered by **M.M. SUNDRESH, J**)

The writ appeal is directed against the order of the learned Single Judge, by which the order dated 05.10.2016, passed in favour of the appellant was set aside with a further direction to refer the dispute to the Principal District Court, Sivagangai.

2.From the records we could find the appellant has not been heard, though the order under challenge is in his favour. Be that as it may, the learned Senior Counsel appearing for the appellant would fairly submitted that leaving aside 2/5th share in the amount fixed as compensation, the remaining one may be directed to be received by the appellant. Affidavits have been filed to that effect by two of his daughters, namely, M.Rani w/o S.Mahadevan and S.Rama w/o K.S.Sekar.

3.The suit has been filed for partition and separate possession by one another daughter by name N.Ratha w/o. P. Navaneethan in O.S.No.56 of 2017, which is pending before the District Court, Sivagangai. The suit is one for partition and separate possession of her 1/5th share. While it is the case of the plaintiff therein and respondent No.1 herein that the suit properties are joint family properties, it is the case of the appellant that it is his self acquired property. The suit property would include the property which was subject matter of the acquisition as well as the order impugned before the learned Single Judge.

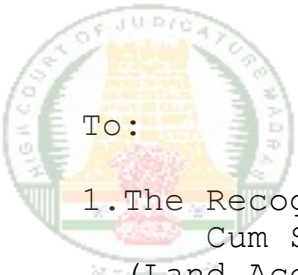
4.Thus both the plaintiff in the suit as well as the first respondent herein cannot claim more than 1/5th share each. The other two daughters of the appellant are willing to give up their proposed share in the compensation amount, even assuming that it is a joint family property.

5.In such view of the matter, the order passed by the learned Single Judge stands modified to the effect that the respondents 2 and 3 shall pay 3/5th amount of compensation fixed for the land acquired standing in the name of the appellant within a period of 8 weeks from the date of receipt of a copy of this order. The remaining 2/5th share will have to be deposited as directed by the learned Single Judge.

6.The writ appeal stands disposed of accordingly. It is made clear that all the issues are left open, including affidavits filed by the two daughters of the appellants. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Writs)



To:

1.The Recognized Officer
Cum Special District Revenue Officer,
(Land Acquisition - National Highways),
Collectorate,
Ramanathapuram.

2.The Thasildar,
(Wing - 1) National Highways 49),
(Land Acquisition),
Melkarai,
Manamadurai,
Sivagangai District.

+1cc to AJMAL ASSOCIATES in SR. No.16864
SJ
JS/SV/SAR.2/28.7.2017/3P-4C

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and
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