

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.969 of 2005
and CMP.No.19252 of 2005

D.Indira

... Appellant/26th Respondent

Vs.

1.The Land Acquisition Officer cum
Special Tahsildar
Land Acquisition - Housing Scheme
Coimbatore. ...1st Respondent/Referring officer

2.Jothi Kumar
3.D.Balasundaram
4.E.Ramakrishnan
5.Ranganayaki Ammal
6.N.Kamalammal
7.Savithri
8.Rajalakshmi
9.Santhamani
10.Subburathinam
11.Rajam Poornachandran
12.Meenakshi
13.R.Andal
14.Selvi Kalpana
15.N.Vijayalakshmi
16.G.Gurusami
17.G.Ramakrishnan
18.G.Soundirarajan
19.G.Bakkiyam
20.G.Jeyamani
21.D.Durairaj
22.D.Balasundaram
23.D.Ramachandran

24.House Owners Welfare Association
Ganapathi Colony,
Rep by its President K.Sridhara Nayar
S/o.Krishna Nayar
P-2, Vijaya Bhavan
V.K.Road, Murugan Nagar
Hutco Colony, Peelamedu
Coimbatore - 4.

25.Sarojini
26.R.Venkatesan
27.Santhamani
28.Hemalatha

..Respondents 2 to 28/Respondents 1,2,4
to 25,27 to 31.

29.The Executive Engineer
Tamil Nadu Housing Board
Coimbatore Housing Unit
Tatabad, Coimbatore.

..29th Respondent/Respondent

Prayer : First Appeal filed under Section 54 of the Land Acquisition Act, 1964 against the judgment and decree of I Additional Subordinate Judge's Court at Coimbatore dated 30.4.2003 in L.A.O.P.No.129 of 1986.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
for M/s.Sarvabhauman Associates

For Respondents : Mr.J.Balagopal
Special Government Pleader for R1
Mr.S.Saravanakumar for R22

JUDGMENT

The property of certain Duraisamy Naidu was acquired and an award was passed by the Land Acquisition Authority, and as the owners of the lands were dissatisfied with the quantum of compensation awarded, a reference was made to the Sub Court, Coimbatore and it was taken on file in L.A.O.P.No.129 of 1986.

2. Duraisamy Naidu who was referred to above, was arrayed as third respondent in the said LAOP. During the pendency of the proceedings, he died leaving behind him surviving his four children who were impleaded before the reference Court as respondents 23 to 26. Before the reference Court, 26th respondent propounded a Will of her father dated 21.08.1987. However this has not been taken into consideration by the reference Court, which in its order, has held that all the four children of Duraisamy Naidu would be entitled to the compensation determined by it.

3. Aggrieved by the findings of the reference Court, the 26th respondent, the legatee under the said Will, has preferred this appeal.

4.1 The learned Senior Counsel appearing for the appellant would submit that one of the sons of Duraisamy Naidu, [Balasundaram] who was arrayed as 24th respondent before the

reference Court, filed a suit in O.S.No.143 of 2005 on the file of I Additional District Court, Coimbatore. In that suit, the present appellant was arrayed as third defendant. She, in that suit had set-up the Will, and this came to be upheld by the trial Court and therefore an appeal was preferred by Balasundaram in A.S.No.122 of 2007 (the plaintiff in O.S.No.143 of 2005) and this Court Vide its judgment dated 30.08.2013, has confirmed the finding of the trial Court as to the genuineness of the Will. The learned counsel submitted that in view of this development, it is necessary that this Court interferes with the order of I Additional District Court, Coimbatore in L.A.O.P.No.129 of 1986 and must hold that only the appellant would be entitled to the entire compensation amount.

4.2 On 02.08.2018, the learned counsel for the appellant filed a memo stating that respondents 21 & 22 are necessary parties and hence they are required to be heard before disposal of this appeal. Today, the counsel submits that those respondents are sailing with the appellant and even produced the affidavits given by the respondents 21 and 23, wherein they have admitted that the compensation amount has to be given to the appellant and hence they have no objection in paying the compensation to the appellant.

5. The learned counsel for 22nd respondent [24th respondent before the Court below] and the plaintiff in O.S.No.143 of 2005 concurred with the submissions of the learned counsel for the appellant.

6. Taking into account the subsequent developments and passing of the decree founded on the judgement of this Court in A.S.No.122 of 2007, this Court holds that only the appellant would be entitled to claim the entire compensation amount determined by the Court below in L.A.O.P.No.129 of 1986 and to that extent the order of the Court below would stand modified. The appeal is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ds

To:

1.The I Additional Sub Judge
Coimbatore.

2.The Section Officer
VR Section,
High Court, Madras.

+1 CC to M/s. Sarvabhman Associates sr 67168.

A.S.No.969 of 2005

RSY (CO)
SP(17/10/2018)



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