

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.32788 of 2017

and

W.M.P.No.36121 of 2017

Padma

...Petitioner

Versus

1. Ettammal
2. Mohan
3. Madheswari

4. Land Acquisition Officer,
Cum Revenue Divisional Officer,
Namakkal.

5. The District Collector,
Namakkal District,
Namakkal.

(R5 - impleaded as per order dated
14.03.2018 in W.M.P.No.6772 of 2018
in W.P.No.32788 of 2017)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Mandamus directing the fourth respondent to deposit the compensation amount re-determined as per proceedings in Rc.No.2603/2016/A7 in Award No.53/2016 dated 05.08.2016 before the competent Civil Court or defer payment until decision on merits is passed in O.S.No.116 of 2017 pending on the file of Additional District Munsif Namakkal.

For Petitioner : Mr.VK.Vijayaragavan

For Respondents 1 to 3 : No Appearance

For Respondents 4 & 5 : Mr.E.Neelakandan,
Government Advocate

O R D E R

1. The case of the petitioner is that certain property in Survey No.6/126 of Karuppanar Koil Street, Muthukapatti Village, Senthamangalam Taluk, Namakkal District, was owned by his

father Kalianna Gounder, that the same was acquired and that necessary awards were passed. While so, one of the owners had moved for referring the concerned Civil Court under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "LA Act") and the said Reference was taken on file by the concerned Court in L.A.O.P.No.65/99 and the award too was passed by the Reference Court on 21.05.2011 enhancing the compensation from the one originally determined by the Land Acquisition Officer.

2. The petitioner's father Kalianna Gounder had taken a certain Ettammal as his junior wife and through her he has a son and a daughter who are arrayed as respondents 2 and 3. After the Reference Court had disposed of the aforesaid L.A.O.P.No.65/99, Ettammal had approached the Land Acquisition Authority, the fourth respondent herein with a prayer to extend parity in the matter of payment of compensation in terms of Section 28A of the LA Act. Vide his proceedings dated 05.08.2016, the fourth respondent has passed an order invoking Section 28A in favour of Ettammal. The petitioner would now file a suit for partition in O.S.No.116 of 2017 before Additional District Munsif Court, Namakkal against Ettammal and her children born through Kalianna Gounder. In the present writ petition, the petitioner essentially seeks a Writ of Mandamus directing the Authority concerned to deposit the amount payable pursuant to the proceedings of the fourth respondent under Section 28-A of the LA Act, dated 05.08.2016 in the O.S.No.116 of 2017 pending.

3. No counter affidavit is filed and the private respondents have not appeared before this Court. However, on going through the proceedings of the fourth respondent dated 05.08.2016, it becomes immediately clear that the said order is incompetent as an order under Section 28A of the LA Act can be passed only by the District Collector which implies that there may not be any direction to deposit any money based on an order which is incompetent in character.

5. Therefore, this Court chooses to modify the prayer and direct the petitioner to approach the District Collector with all necessary facts including the one pertaining to the statutory incompetency of the fourth respondent/Revenue Divisional Officer within four weeks from the date of receipt of a copy of this order, whereupon, the Collector shall dispose it on its own merit within a period of eight weeks thereafter, without reference to Limitation, since Ettammal had filed her petition for invoking Section 28-A within time but after hearing the parties, which includes Ettammal and her children, wherein after he may consider deposit such sum pending since in cases so become payable in O.S.No.116 of 2017 should the said suit still remain on file.

6. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mrr

To

1. Land Acquisition Officer,
Cum Revenue Divisional Officer,
Namakkal.

2. The District Collector,
Namakkal District,
Namakkal.

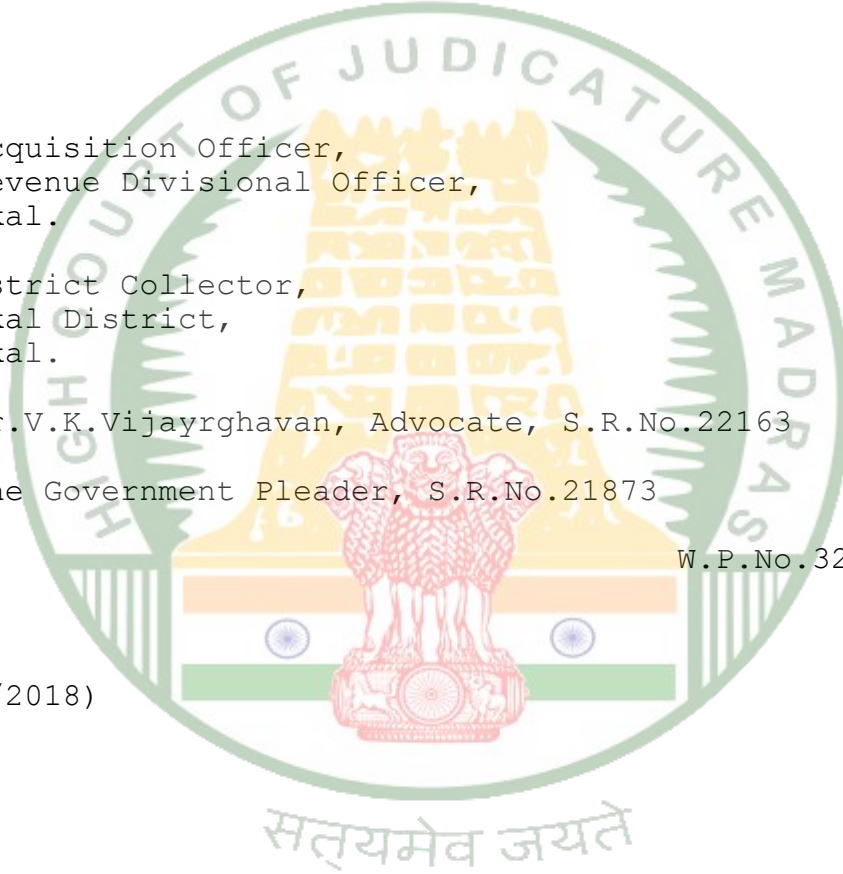
+1cc to Mr.V.K.Vijayrghavan, Advocate, S.R.No.22163

+1cc to the Government Pleader, S.R.No.21873

W.P.No.32788 of 2017

PPA (CO)

RRK (26/04/2018)



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