

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.29228 of 2016

1. Nalammal
2. Poovathal
3. Sarasthal
4. Ramasamy alias Thattukarar Chinnarasu
5. K.Saraswathi

...Petitioners

Versus

1. Competent Authority and
Special District Revenue Officer (LA),
NH 47 & 67, Coimbatore.
2. P.Sethupathy
3. The Project Director,
Project Implementation Unit,
Coimbatore, National Highways Authority of India,
No.11/1, Kongu Nagar (Backside of Appaswamy Apartments),
Ramanathapuram, Coimbatore - 641 045.

(R3 is suo motu impleaded as per order dated 01.02.2018 by NSSJ in W.P.29228 of 2016.)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in proceedings Spl.DRO.Roc.319/2010 (NH-47) dated .01.2013 and consequently the order of the first respondent in proceedings Na.Ka.319/2010 dated 12.08.2014 and quash the same as illegal, incompetent, and wholly without jurisdiction and consequently to direct the first respondent to pay the compensation to the petitioner for the lands in Survey No.727/2, Karumathampatti Village, Suler Taluk, Coimbatore District.

For Petitioners : Mr.V.Raghavachari

For Respondent -1 : Mr.Akhil Akbar Ali,
Government Advocate

Respondent - 2: Mr.J.Rajmohan
for I.Periaswamy

Respondent - 3 : Mr.Richardson Wilson
for
P.Wilson Associates

ORDER

In this case, the petitioners claim that they are co-sharers of a piece of land in Survey No.727/2 at Karumathampatti Village, Sulur Taluk, Coimbatore District, and the same was acquired under the provisions of the National Highways Act, 1956 (hereinafter referred to as "Act"). An award too was passed by the first respondent. The petitioners claim that the second respondent Sethupathy has no right, title or interest in the property acquired. But in the award passed by the first respondent, the compensation was directed to be paid to the second respondent.

2. The second respondent is a person to whom amount was directed to be paid. Broadly, in the counter affidavit filed by the second respondent he raises some serious issues as to the title of the property acquired.

3. Heard Mr.Akhil Akbar Ali, the learned Government Advocate appearing for the first respondent and Mr.Richardson Wilson, the learned counsel appearing for the third respondent and both of them in unison submitted that consequent to the award passed, the compensation amount has been disbursed to second respondent. The learned counsel for the second respondent too concedes to this fact.

4. The learned counsel for the petitioners submitted that the impugned award itself briefly narrates about the title dispute over the property between the petitioners on the one hand and the second respondent on the other hand. In fitness of things, the learned counsel submitted, the Competent Authority should have referred the matter to the concerned Civil Court under Section 3H(4) of the National Highways Act, 1956.

5. Per contra, the learned counsel for the second respondent argued that Section 3H(4) is not the sole repository of the power or duty concerning apportionment of compensation. This provision is preceeded by Section 3H(3), where, the Competent Authority himself is empowered to decide the issue. Replying the same, the learned counsel for the petitioners submitted that in such situations it is imperative for the Competent Authority to indicate why and how he preferred the second respondent over the petitioners for disbursing the amount for this point. On this award is silent, argued the petitioners' counsel.

6. Even though, the petitioners have challenged both the award and the manner of disbursement indicated therein, it finally boils down to the dispute over disbursing of the compensation. As already indicated, the Competent Authority/first respondent has directed disbursement of compensation to the second respondent. In arriving at his decision, the award itself is self-explanatory of the fact that the Competent Authority has not troubled himself to provide a reason for choosing second respondent. Nor did the award show that he has exercised his powers under Sec.3H(3) of the Act. The matter has to be decided and this view is also supported by the judgement of the Hon'ble Mr.Justice V.Ramasubramanian in W.P.No.18667 of 2006 dated 12.01.2007.

7. In the end, the Competent Authority is directed to refer the matter to the Civil Court under Section 3H(4) of the National Highways Act, whereupon, the second respondent is directed to either deposit the compensation amount he has received from the Competent Authority before the Civil Court concerned, or offer such security as may be equivalent to the amount disbursed to the second respondent to the satisfaction of the said Civil court.

8. This Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

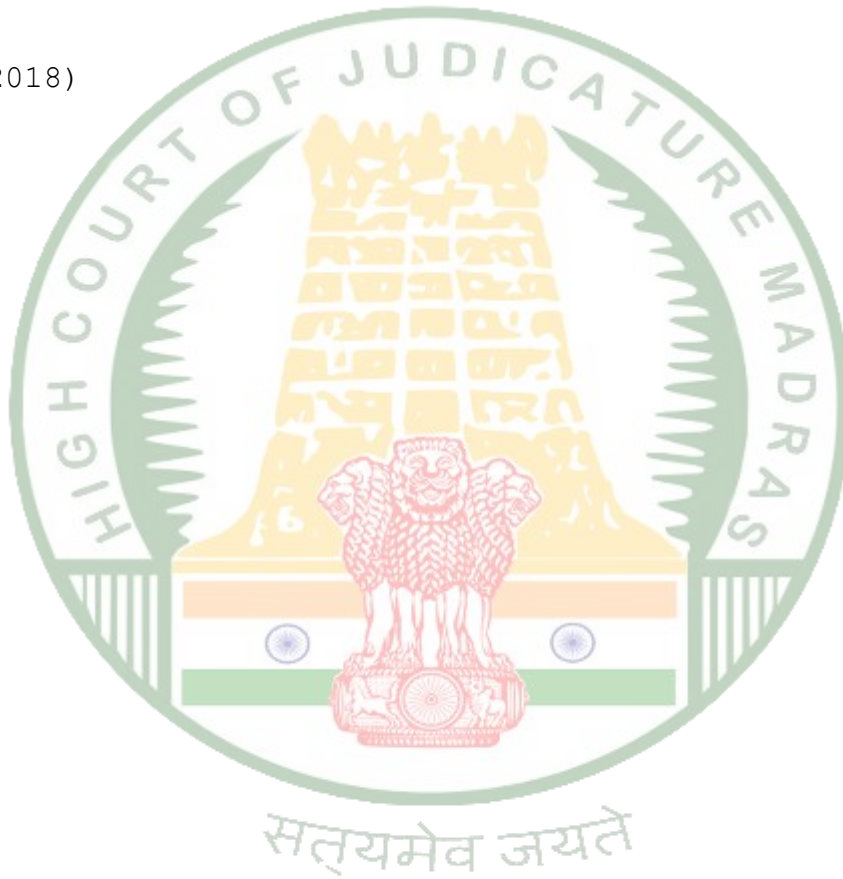
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To

1. Competent Authority and
Special District Revenue Officer (LA),
NH 47 & 67, Coimbatore.
2. The Project Director,
Project Implementation Unit,
Coimbatore, National Highways Authority of India,
No.11/1, Kongu Nagar (Backside of Appaswamy Apartments),
Ramanathapuram, Coimbatore - 641 045.

+1 CC to Mr. Ragahvachari, Advocate sr 11607.
+1 CC to Mr. Periyasamy, Advocate sr 11827.
+1 CC to Govt. Pleader sr 12884

W.P.No.29228 of 2016

SP (24/05/2018)



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