

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

CORAM : THE HON'BLE Mr.JUSTICE N.SESHASAYEE

W.P.No.31036 of 2016
and WMP.Nos.26903 & 26904 of 2016

D.Mahalingam

... Petitioner

Vs.

- 1.The Government of Tamil Nadu
Rep by the Principal Secretary to Government
Highways and Minor Ports (HW2) Department
Fort St.George
Chennai – 600 009.
- 2.The District Revenue Officer
Thiruvallur District
Thiruvallur.
- 3.The Tahsildar
Thiruvallur Taluk
Thiruvallur.
- 4.The Divisional Engineer (Highways Department)
Project Division – II
Teynampet, Chennai – 600 018.
- 5.The Assistant Divisional Engineer
(Highways Department)
Project Sub Division-4 (Addl Charge)
Chrompet
Chennai – 600 044.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the fifth respondent herein Vide his proceedings No. Nil dated 08.08.2016 under Section 6 of the Tamil Nadu Land Encroachment Act 1905 and quash the same as illegal, arbitrary,

unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to fix the compensation to the petitioner and by invoking Sections 23, 26, 27, 28, 29 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (30 of 2013) for the petitioner's lands in Survey No.490/1A4B measuring an extent of 094 sq.mtr or 1023.66 sq.ft. at Thozhur Village, Thiruvallur Taluk, Thiruvallur District.

For Petitioner : Mr.A.R.Suresh
For Respondents : Mr.M.Karthikeyan
Additional Government Advocate

ORDER

The case of the petitioner is that he owned a property ad-measuring an extent of 1852 sq.ft., in S.No.490/1A4B of Thozhur Village, Thiruvallur Taluk, Thiruvallur District and that an extent of 094 sq.mtrs. was sought to be acquired by the Acquisition Authority under the provisions of the Tamil Nadu Highways Act, 2001, for constructing a railway over bridge. The petitioner was subsequently served with a proceeding under Section 19(3) r/w. Section 19(6) of the Tamil Nadu Highways Act, 2001, (Tamil Nadu Act 34 of 2002) by the third respondent and determined the interim compensation at Rs.16,61,127/- with a direction to the petitioner to produce certain documents to facilitate transfer of funds to the petitioner's account, and that the said amount was deposited in petitioner's bank account. The petitioner contends that the respondent had issued a notice dated 08.08.2016 to the petitioner, wherein the petitioner has been termed as an encroacher and was

directed to remove the construction put up by him within a short time i.e., by 03.09.2016. The petitioner has come to this Court on the ground that in an acquisition proceeding that was commenced in the year 2010, an award was passed only in the year 2016. In the meantime, the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013(Central Act, 30 of 2013) has come into force, that as per Section 105A(2) of the said Act, the Land Acquisition Authority cannot dilute the payment of compensation or provisions regarding rehabilitation or resettlement that may be provided under the Central Act, shall not be denied to those owners of the land, whose lands were acquired under the provisions of the Tamil Nadu State Highways Act.

2. Mr.M.Karthikeyan, learned Additional Government Pleader enters appearance for the respondents, and he specifically brought to the notice of this Court that in the award itself it was mentioned as an interim award, that the entire award of compensation would be paid only in terms of the Central Act 30 of 2013, and the need to follow it is also available in the said Act. Since the interim award itself clarifies the position, nothing more is required to allay petitioner's anxiety to have the compensation worked out in terms of the Central Act, 30 of 2013.

3. As already mentioned, the interim compensation amount has already been deposited in the petitioner's account, as and when the final award is passed

consistent with the beneficial provisions of the Central Act 30/2013, the compensation now paid shall be deducted or adjusted. The possession shall not be taken unless atleast 50% of such compensation is paid based on the G.O.Ms.No.298, Revenue & Disaster Management Department (LA-I (1))/Dt.20.09.2017 and the instruction of the Additional Chief Secretary and Commissioner of Land Administration, Chennai-5, dated 13.11.2017.

4. With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.02.2018

Index : Yes/No

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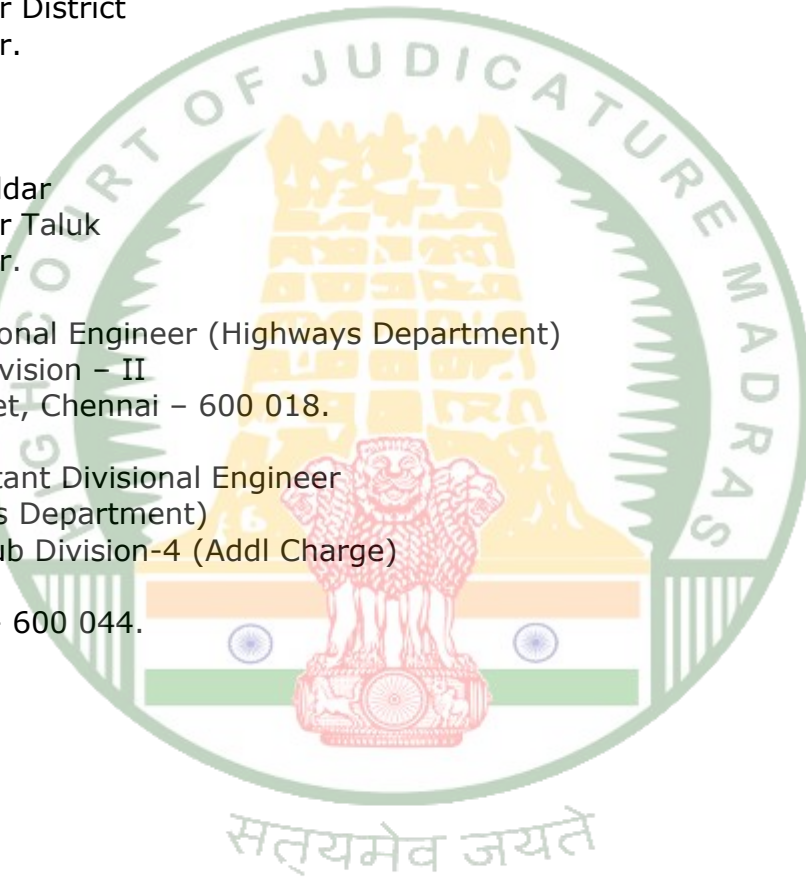
Index : Yes/No

Speaking Order /Non-speaking Order

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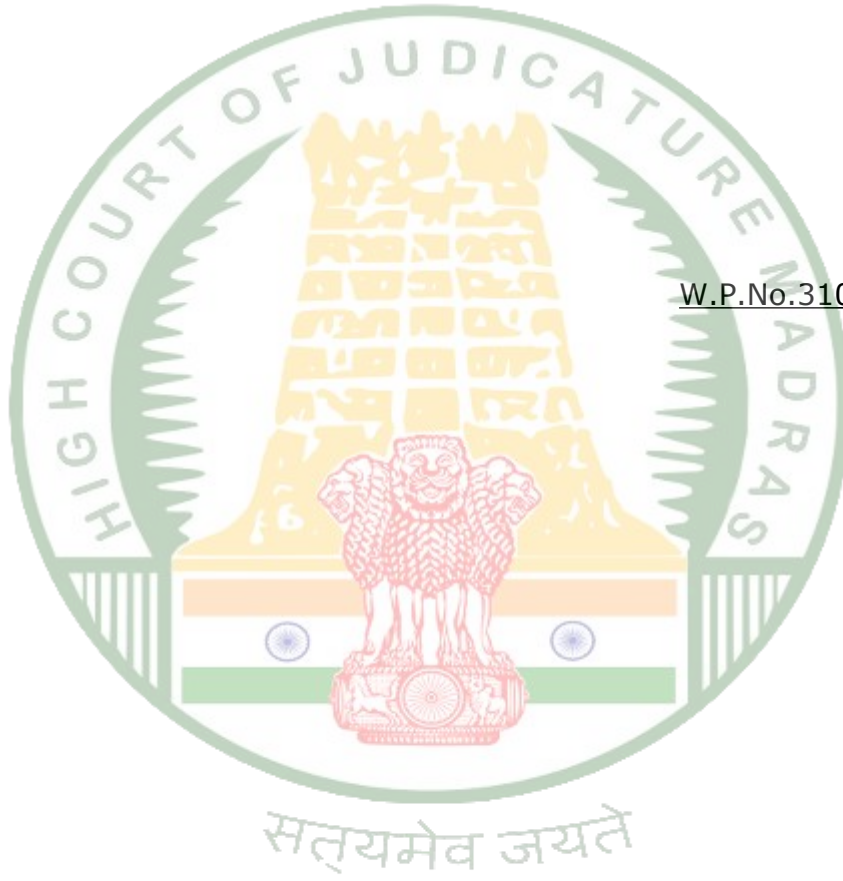
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N.SESHASAYEE, J.,

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