



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2018

CORAM

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THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

CRP (NPD) (MD) .No.19 of 2011  
and M.P. (MD) No. 1 of 2011

S.S.Kathiresan (Died)

1.K.Pushpavalli

2.S.Kalaiselvi

3.K.Balamurugan

4.K.Sangeetha

.. Petitioners/Respondents/Petitioners/  
Claimants

Vs.

Special Tahsildar,  
Land Acquisition,  
South Suburban Scheme,  
Madurai.

... Respondent/Petitioner/Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C against the fair and decreetal order passed in E.A.No.582 of 2005 in E.P.No.103 1990 in LAOP No.20 of 1986 by the First Additional Sub-Court, Madurai dated 07.09.2006.

For Petitioners : Mr.M.S.Suresh Kumar

For Respondent : Mr.A.Thiagarajan  
Government Advocate

### O R D E R

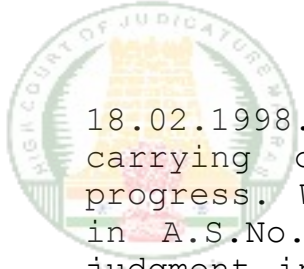
The Civil Revision Petition has been filed against the fair and decreetal order passed in E.A.No.582 of 2005 in E.P.No.103/1990 in L.A.O.P. No.20 of 1986 by the First Additional Sub-Court, Madurai dated 07.09.2006.

2. The brief facts of the case are as follows:

2.i)The legal heirs of the deceased claimant S.S.Kathiresan filed the present Civil Revision Petition against the order passed in E.A.No.582 of 2005 in E.P.No.103 1990 in LAOP No.20 of 1986. In the said L.A.O.P, order was passed awarding Rs.7000/- per Cent. Against which, the Government has filed an appeal in A.S.394 of 1993 to reduce the award amount.

2.ii)The said Kathiresan died on 02.12.1992 and the respondent/Government was aware of the death of the said Kathiresan, who is the claimant in L.A.O.P No. 20 of 1986. But, the respondent had not taken any steps to bring on record the legal heirs of the Kathiresan in the first appeal.

2.iii) The petitioners filed E.A.No.262 of 1997 in E.P.No.103 of 1990 to bring the legal heirs of the deceased Kathiresan on record and the said petition was allowed on



18.02.1998. Execution Petition was filed in the year 1990 and after carrying out the amendment, the Execution Proceedings was in progress. Whereas in the appeal filed by the respondent/Government in A.S.No.394 of 1993, the first Appellate Court has delivered judgment in the year 2001 reducing the amount to Rs.4166 per Cent from Rs.7000/-.

2.iv) In the year 2005, the respondent/Government preferred E.A.No.582 of 2005 in E.P.No.103 1990 in LAOP No.20 of 1986 to raise the order of attachment. The court below allowed the said petition. Aggreived against the same, the claimants are before this Court.

3. The learned counsel for the petitioners/claimants would mainly argue that the Special Tahsildar, being the appellant in A.S.No.394 of 1993, ought to have taken steps to bring on record the legal heirs of the deceased claimant in the appeal and without bringing the legal heirs in the appeal, the appeal was proceeded and therefore, the award granted by the learned I Additional Subordinate Judge, Madurai, in L.A.O.P.No.20 of 1986 has become final. According to the learned counsel for the petitioners, the court below has erred in allowing the petition filed for raising attachment therefore, he prays for setting aside the order passed in E.A.No.582 of 2005 in E.P.No.103 1990 in LAOP No.20 of 1986 by the First Additional Sub-Court, Madurai dated 07.09.2006.

4. The learned Government Advocate appearing for the respondent would submit that the court has rightly allowed the petition ordering attachment and there is no error in the order of the court below.

5. I have carefully considered the submissions made on both sides and perused the materials available on record.

6. On a perusal of records, it is seen that the respondent/Government, without even verifying the status of the Execution Proceedings, preferred the appeal in the year 1993. But, the petitioners/claimants filed a petition in E.A.No.122 of 2005 for obtaining police protection and police protection was ordered on 04.03.2005. After ordering police protection, the respondent/Government has filed the petition to raise attachment, which is not a fair one. The respondent/Government kept silent till police protection was ordered. After a very long period, an Execution Application has preferred by the respondent/ Government for raising the attachment. But at that point of time, the original claimant had passed away whereas in the execution proceedings, the legal heirs of the original claimant are brought on record. The execution proceedings is in fag end. The respondent/ Government had not acted even immediately after the judgment passed in the appeal in A.S.No.394 of 1993 and the respondent/ Government has preferred the Execution Application only in the year 2005 after the petitioners had taken steps for claiming the right based on the decree.



7. Without bringing the legal heirs of the deceased claimant on record, the appeal was filed by the respondent/ Government and therefore, the decree passed in that appeal is not at all binding the petitioners, who have filed Execution Petition in the year 1993 after the death of the original claimant on 02.12.1992. In my considered view, the order passed by the court below warrants interference by this Court. Accordingly, the order passed in E.A.No.582 of 2005 in E.P.No.103 1990 in LAOP No.20 of 1986 is set aside.

8. In the result, the Civil Revision petition is allowed. Consequently, connected M.P.(MD) No. 1 of 2011 is closed. Since the Execution Petition is of the year 1990, the Executing Court is directed to dispose E.P.No.103 of 1990 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To  
The I Additional Subordinate Judge,  
Madurai.

+1CC to the Special Government Pleader SR.No.56778  
+1CC to Mr.M.S.Suresh Kumar, Advocate, SR.No. 56784

C.R.P.(MD) No. 19 of 2011  
and M.P.(MD) No. 1 of 2011  
20.03.2018

CM  
AM/KKR/SAR 2/30.05.2018/3P/4C