

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.07.2019
CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P.No.15537 of 2008
and
M.P.No. 2 of 2008

The Municipal Commissioner
Sirkali Municipality
Sirkali,
Nagapattinam District.

...Petitioner

Vs.

- 1.The Revenue Divisional Officer
cum-Land Acquisition Officer
Myladuthurai Division,
Myladuthurai,
Nagapattinam District.
 2. Krishnamoorthy @ Kunju Padayachi (Died)
 3. The Principal Subordinate Judge
Myladuthurai,
Nagapattinam District.
 4. K.Jayalakshmi
 5. K.Rajendran
 6. K.Senthamizhselvi
 7. K.Ravi
 8. K.Pannerselvam
 9. K.Banumathi
 10. R.Malarkodi
 11. R.Subhashri
 12. R.Kalyanakumar
- ... Respondents
(R4 to R9 are substituted as LR's of the deceased R2 and
(R10 to R12 are substituted as LR's of the deceased 1st son of R2
Ramadoss)

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the enhancement of award passed by the Principal Sub Court, Myladuthurai the third respondent herein made in L.A.O.P.No. 55 of 2005 dated 22.10.2007, quash the same and direct the third respondent therein to proceeded with the Sec.18 reference afresh after

giving an opportunity to the requisition body namely the petitioner herein as per Section 20 of the Land Acquisition Act and pass fresh award in accordance with the law laid down by this Court in a similar case and Apex Court by a Constitutional Bench Judgment.

For Petitioner : Mr.K.Rajkumar
For Respondents : Mr.M.Elumalai, GA
Mr.S.Govindaraman
for R2.

O R D E R

The petitioner has preferred this Writ Petition to set aside the enhancement of award passed by the Principal Sub Court, Myladuthurai who is the third respondent herein in L.A.O.P.No. 55 of 2005 dated 22.10.2007 and direct the third respondent to proceed with Sec.18 reference afresh after giving an opportunity to the requisition body, viz., the petitioner as per Section 20 of the Land Acquisition Act, 1894 and pass fresh award in accordance with law, as laid down by this Court in a similar case and Apex Court by a constitutional Bench Judgment.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the Commissioner of Sirkali Municipality and the Government of Tamil Nadu, with a view to raise the level of service for up keep of Municipal Sanitation and to contain health hazard posed by the accumulation of garbage in various Municipalities, decided to form a dumping yard/compost yard in and around the urban local body limit. The petitioner's Municipality is one among the Municipalities selected for the purpose of forming dumping yard/compost yard. Accordingly a direction was issued to identify the lands for such project. The 2nd respondent lands were acquired for the said purpose, and the Acquisition Officer has passed an award in this regard. As against the award, the land owner/2nd respondent filed an application for enhancement before the Third Respondent. The said application was also allowed and the award has been enhanced by the Third Respondent vide order dated 22.10.2007. Challenging the said award, the writ petitioner has filed this Petition before this Court.

3. The learned counsel appearing for the 2nd respondent would submit that the scheme of Land Acquisition provides for filing an appeal as against the award under Section 54 of Land Acquisition Act. Without exhausting such appeal remedy, the petitioner has filed this writ petition under Article 226 of the Constitution of India, which is an unsustainable one. In support

of the contention, the learned counsel appearing for the Second Respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of the Commissioner, Mysore Urban Development Authority Vs S.S.Sarvesh reported in (2019) 5 Supreme Court Cases 144, The relevant paragraph is extracted here under;

"13. The appellant Authority instead of filing the appeal under Order 43 Rule 1(t) of the Code, filed the writ petition under Article 227 of the Constitution against the order dated 29.06.2016. It was an error on the part of the appellant Authority and the High Court should have declined to entertain the writ petition and instead either converted the writ petition into the appeal under Order 43 Rule 1(t) of the Code or permitted the appellant Authority to withdraw the writ petition with a liberty to file an appeal under Order 43 Rule 1(t) of the Code, as the case may be, in its discretion. It was, however, not noticed and the High Court dismissed the writ petition on merits."

4. On a perusal of the records, it is clear that an appeal could be filed before the Competent forum, under Section 54 of the Land Acquisition Act and in view of the decision cited supra, this Court is inclined to entertain this Petition by granting liberty to the petitioner to approach the competent forum. However, it is made clear that the period of pendency of the writ petition before this Court shall be eschewed under Section 14 of the Limitation Act by the Competent forum.

5. Accordingly, the present writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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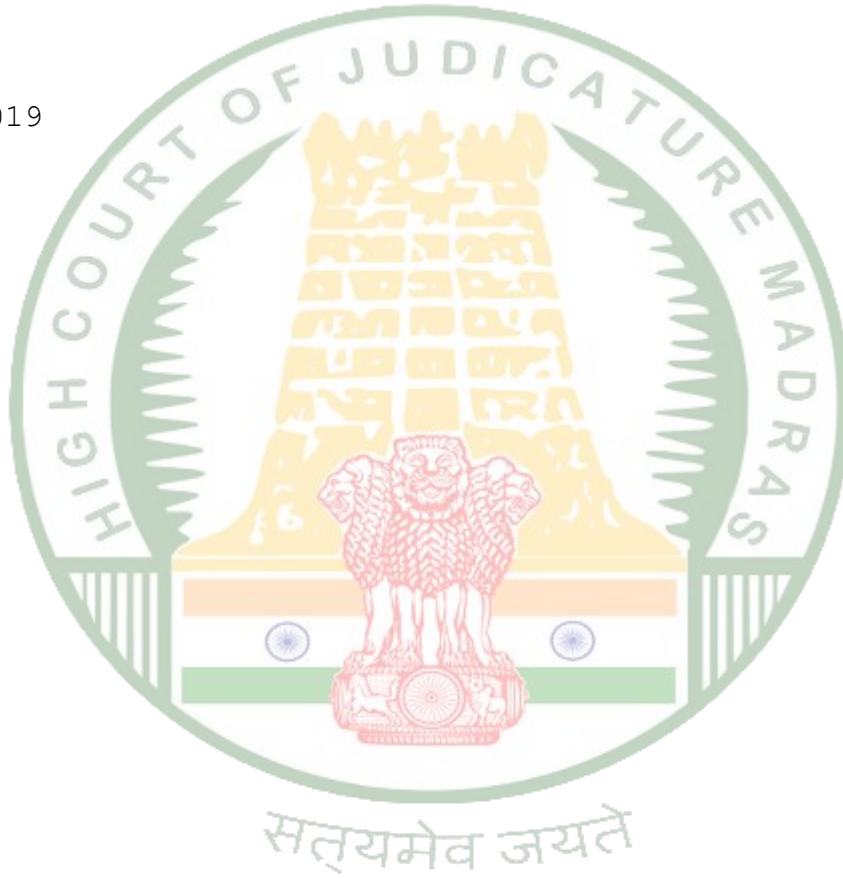
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2. The Principal Subordinate Judge
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+1 cc to M/s.K.Rajkumar Advocate sr62300
+1 cc to M/s.S.Govindaraman Advocate sr62482
+1 cc to M/s.Government Pleader High Court
Madras sr 63376

W.P.No.15537 of 2008

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