

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.08.2019

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.8589 of 2008 &
M.P.No.1 of 2008

1.Karsan Narayan Patel
2.Valji K.Patel
3.Dasarath A.Patel
4.Devsi N.Patel

Petitioners

Vs

1.The Competent Authority and
Special District Revenue Officer,
(LA) National Highways Schemes,
Kanchipuram and Tiruvallur Districts,
at Kanchipuram.

2.Ramesh K.Patel
3.Bhawan K.Patel

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the order of the first respondent passed in RC No.15/2005/A/TVR, dated 29.02.2008 in respect of S.No.1433/2B/1B to an extent of 1300 sq.mtrs. in Madhavaram Village and quash the same.

For Petitioners : Mr.M.S.Subramanian

For Respondents : Mr.I.Sathish
Additional Government Pleader for R1

Mr.R.Karthikeyan for R2 & R3

O R D E R

Heard Mr.M.S.Subramanian, learned counsel for the petitioners; Mr.I.Sathish, learned Additional Government Pleader for the first respondent; Mr.R.Karthikeyan, learned counsel for the respondents 2 and 3 and perused the materials placed on record.

2. This Writ Petition has been filed for issuance of Writ of Certiorari to call for the records pertaining to the order of the first respondent passed in RC No.15/2005/A/TVR, dated 29.02.2008 in respect of S.No.1433/2B/1B to an extent of 1300 sq.mtrs. in Madhavaram Village and quash the same.

3. According to the petitioners, a notification under Section 3A(1) of the National Highways Act, 1956 [for brevity "the Act"] was issued to acquire an extent of 24900 sq.mtrs of land in Madhavaram Village, inclusive of the petitioners land in Survey No.1433/2B, by a notification dated 04.02.2006. A Declaration under Section 3(d) was made and the same was challenged by the petitioners in W.P.No.17238 of 2006. The said Writ Petition came to be dismissed and the same was confirmed in W.A.No.1102 of 2006 on 29.08.2006.

4. The petitioners would state that after due enquiry, the Competent Authority has passed an Award in favour of the petitioners for the land in Survey No.1433/2B, measuring 4850 sq.mtrs and determined an extent of 3365 sq.mtrs has been in enjoyment of the petitioners. The petitioners received the compensation and possession of the entire 3365 sq.mtrs was surrendered to the Competent Authority on 09.03.2007. While so, by an order dated 12.04.2007, the Competent Authority directed the petitioners to remit a sum of Rs.1,07,69,330/-, in view of the rival claim made by Ramesh K.Patel, Bhawan K.Paten / respondents 2 and 3 herein, claiming right over an extent of 1300 sq.meter in Survey No.1433/2B/1B. The petitioners challenged the said order by filing a Writ Petition in W.P.No.15266 of 2007.

5. The learned counsel for the petitioners would state that in the said W.P.No.15266 of 2007, this Court having found that there was a rival claim between the petitioners and the private respondents, by a consent order, directed them to settle the dispute before the Competent Civil Court. On 25.04.2007, the petitioners were directed to deposit the amount with the first respondent. Since the petitioners already deposited the amount of Rs.1,07,69,330/-, this Court directed the amount be transferred and deposited in any one of the Nationalized Banks by the first respondent. In M.P.No.3 of 2007 in W.P.No.15266 of 2007, this Court modified the earlier order and by referring Section 3-H (4) of the Act, granted liberty to the first respondent to refer the matter before the competent Civil Court

6. The learned counsel for the petitioners would state that the acquisition proceedings were not challenged by the private respondents, but the petitioners challenged the same in Writ Petition No.17238 of 2006. According to the learned counsel, the private respondents have consented before the learned Single

Judge in W.P.No.15266 of 2007 to refer the matter to the Civil Court, but they filed an application subsequently for modification of the earlier order. According to the learned counsel, if there is any dispute between the parties, the Competent Authority has no other option, except to refer the matter to the decision of the Competent Civil Court.

7. Per contra, the learned Additional Government Pleader for the first respondent submitted that since the petitioners failed to produce any documents to substantiate their claim, the first respondent rejected the claim of the petitioners. Hence, there is no illegality in the order passed by the first respondent, which is impugned in the Writ Petition.

8. I find no force in the submission of the learned Additional Government Pleader for the first respondent for the reason that a plain reading of the Section 3-H(4) of the Act makes it clear that if any dispute arises between the parties, the Competent Authority has to refer the dispute to the decision of the Civil Court and there is no jurisdiction for them to decide whether the petitioners are having title over the property. The first respondent, without considering the earlier order passed by this Court in M.P.No.3 of 2007 in W.P.No.15266 of 2007 and without looking into the provisions of Section 3-H (4) of the Act, has passed the order impugned in the Writ Petition.

9. Taking note of the above facts, this Court is of the considered opinion that the order impugned in this Writ Petition is liable to be set aside and accordingly, it is set aside. The first respondent shall refer the dispute to the Competent Civil Court within a period of two weeks from the date of receipt of a copy of this order and the Competent Civil Court, shall dispose of the same on merits and in accordance with law within a period of one year therefrom.

10. With the above direction and observation, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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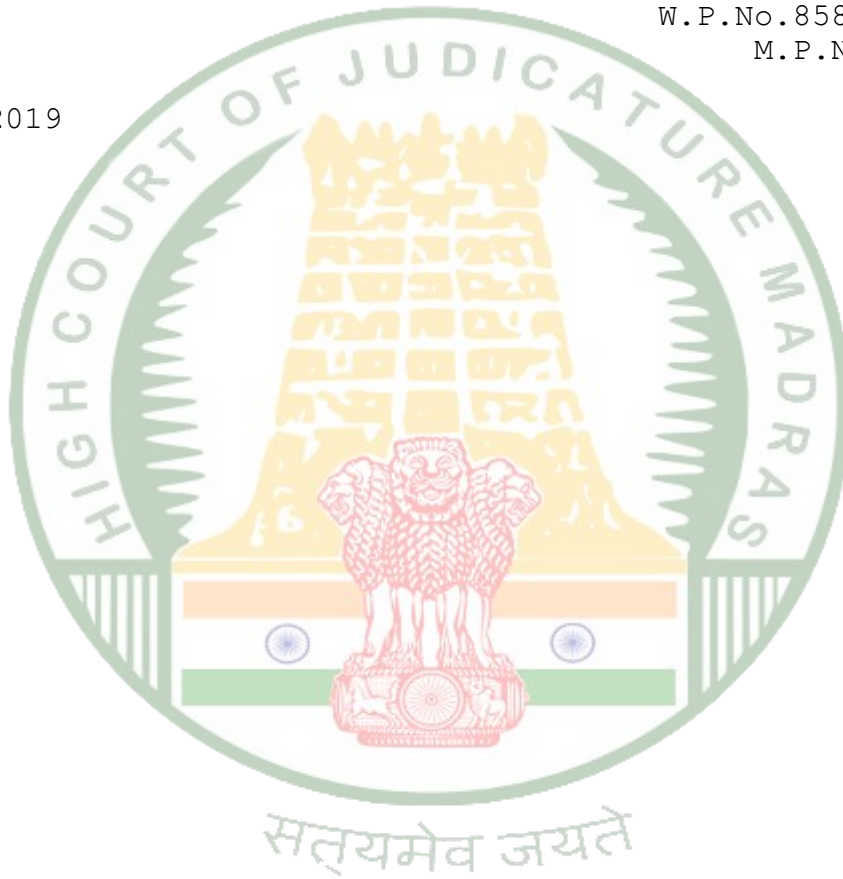
To

The Competent Authority and
Special District Revenue Officer,
(LA) National Highways Schemes,
Kanchipuram and Tiruvallur Districts,
at Kanchipuram.

+lcc to Mr.M.S.Subramanian, Advocate sr.71400
+lcc to Government Pleader sr.72133

W.P.No.8589 of 2008 &
M.P.No.1 of 2008

nr 11/10/2019



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