

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11-10-2018

Pronounced on : 30-01-2019

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Review Petition No. 98 of 2016

1. N. Ponnusamy
2. Amsaveni

... Petitioners

Versus

The Special Tahsildar
Land Acquisition
Tamil Nadu Road Sector Project
Tiruvannamalai

... Respondent

Review Petition filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the order dated 07.04.2016 passed in A.S. No. 512 of 2011 on the file of this Court.

For Petitioners : Mr. R. Viduthalai, Senior Advocate
for Ms. R. Revathi

For Respondent : Mr. Vijay Narayan, Advocate General
assisted by Mr. J. Balagopal
Special Government Pleader

ORDER

R. Subbiah, J

This review petition has been filed to review the order dated 07.04.2016 passed by the Division Bench of this Court in A.S. No. 512 of 2011.

2. The brief facts of the case which are necessary for determination of the disputes involved in this case are as follows:-

3. The Government of Tamil Nadu proposed to widen and strengthen the existing State Highways Roads *inter alia* to form new bypass roads in important Towns in the State of Tamil Nadu. For this purpose, the Government issued G.O. Ms. No.174, Highways Department dated 25.09.2001 authorising the District Collectors to acquire certain lands through private negotiations. As per the order passed by the Government, in Tiruvannamalai District, around 47 Villages located in 4 Taluks were chosen for widening the roads and 18 Villages in 3 Taluks were chosen for forming the bypass. In Tiruvannamalai Taluk itself, lands located in 8 Villages were chosen for forming bypass, including Nochimalai Village. In the aforesaid Village, the lands chosen for acquisition were located in 24 sub-divisions. Out of them, 22 sub-divisions were acquired through private negotiation. Since the land owners in respect of the remaining 2 sub-divisions did not accept the valuation fixed by the Collector under G.O. Ms. No.40, Highways Department dated 25.02.2003 during the private negotiation held on 14.03.2005, the Government decided to acquire the lands of those two persons under the provisions of the Tamil Nadu Highways Act, 2001. Hence, notice under Section 15 (2) of The Tamil Nadu Highways Act, 2001 in form A was served on the two land owners namely Ponnusamy and Amsaveni, the Review Petitioners herein on 18.08.2008 and the notice was also published in the newspapers on 22.09.2008. Thereafter, the Government issued orders in G.O. Ms. No.57, Highways dated 03.04.2009 which was also published in the Government Gazette on 22.04.2009. Subsequently, the District Collector, Tiruvannamalai passed an award in Award No.10 of 2009 dated 19.05.2009 fixing the market value for the lands acquired from the review petitioners at Rs.25.75 per square feet. Aggrieved by the award, the land owners/review petitioners sought for a reference. Hence, a reference was also

made and it was taken on file as LAOP No. 1 of 2009 on the file of Principal Subordinate Judge, Tiruvannamalai. By an award dated 09.11.2009, the Reference Court enhanced the compensation to Rs.100/- per square feet. In addition, the Reference Court also awarded compensation for severance, compensation for re-settlement and rehabilitation and compensation for certain construction, trees and fencing. By virtue of such award dated 09.11.2009, the total compensation awarded by the respondent herein at Rs.6,25,716/- was enhanced to Rs.95,83,662/-. Aggrieved by the enhancement of the compensation, the respondent – Special Tahsildar (Land Acquisition) has filed A.S.No. 512 of 2011 before the Division Bench of this Court during August 2011.

4. Even before filing of the aforesaid A.S. No. 512 of 2011, the second appellant herein namely Amsaveni has filed an application in I.A. No. 1 of 2010 in LAOP No. 1 of 2009 before the Reference Court seeking to review the award dated 09.11.2009 passed by it on the ground that the trees, overhead water tank and barbed wire fencing have not been properly valued. The Reference Court entertained the said review application in terms of Section 114 read with Order XLVII of Code of Civil Procedure and by order dated 03.02.2010, enhanced the compensation further to Rs.1,25,95,662/-. However, without reference to the order passed by the Land Acquisition Tribunal in the Review Application on 03.02.2010, the Land Acquisition Officer has filed the present Appeal Suit No. 512 of 2011 before this Court in the month of August 2011 under Section 54 of The Land Acquisition Act, along with an application for condoning the delay. The delay was also condoned and the Division Bench of this Court had taken up the appeal suit for hearing. At the time of hearing, the Division Bench of this Court noticed that the award was modified by the Reference Court on an application filed for review.

Therefore, the Division Bench raised a preliminary objection as to whether the Land Acquisition Tribunal has power to entertain an application for review. But without allowing the Division Bench to go into the question as to whether the power of review is available to the Land Acquisition Tribunal or not, the Review petitioners/land owners themselves have filed an affidavit of undertaking before this Court that they have decided to forego the enhanced award granted in I.A. No. 1 of 2010 on 03.02.2010 and they will be satisfied with the original award of Rs.95,83,662/-. Since the land owners/review petitioners themselves have given up the enhanced compensation amount awarded by the Reference Court, the Division Bench proceeded with the main appeal filed by the State by framing a question as to whether the appeal filed under Section 54 of The Land Acquisition Act, 1894 is maintainable. This question was framed by the Division Bench for the reason that the provisions of Part III of the Land Acquisition Act alone can be made applicable in respect of the proceedings initiated under Section 20 (1) of The Tamil Nadu Highways Act, 2001. Section 54 of the Land Acquisition Act is in part VIII and that part cannot be made applicable to the proceedings initiated under the Tamil Nadu Highways Act. On the contrary, a finality is attached to the order of reference under Section 20 (2) of the Tamil Nadu Highways Act, 2001. Therefore, a regular appeal filed under Section 54 of the Tamil Nadu Land Acquisition Act by the State is not maintainable. After coming to such conclusion that the appeal is not maintainable, the Division Bench has observed as follows in para Nos. 18, 19, 20 of the order under review, which reads as follows:-

18. That will take us to the next question as to whether the above appeal filed under Section 54 of the Land Acquisition Act, 1894 is maintainable, when the provisions of Part-III of the Land Acquisition Act, 1894, alone are made applicable to the proceedings under Section 20(1) of the Tamil Nadu Highways Act, 2001. The answer to this question is too obvious to state. Section 54 of the Land Acquisition Act is Part VIII and this Part is not made applicable. On the contrary, a finality is attached to the order of the

reference court under Section 20(2). Therefore, a regular appeal under Section 54 is not maintainable.

19. But unfortunately, this court has been entertaining regular appeals under Section 54 even in such matters. This is not correct. If any person is aggrieved by an award passed by the reference court under Section 20(1) of the Tamil Nadu Highways Act, 2001, he has no right of appeal. But in view of the finality attached to such award under Section 20(2), this court would certainly have the power to entertain a revision under Article 227 of the Constitution, against such awards. In other words, a party aggrieved by the award of the reference court under Section 20(1) is not left without a remedy. The reference under Section 20(1) is liable to be made to a court, as defined in the Land Acquisition Act, 1894. The expression "Court" is defined in Section 3(d) of the Land Acquisition Act, 1894, either to mean a Principal civil court of original jurisdiction or a special judicial officer named by the appropriate government. Both of them will come under the administrative as well as judicial control of the jurisdictional High Court and hence the High Court would have supervisory jurisdiction under Article 227. Therefore, a revision under Article 227 would be the appropriate remedy in respect of orders passed by the reference court under Section 20(1) of the Tamil Nadu Highways Act, 2001.

20. The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894. But, this appeal can be treated by this court as a revision under Article 227. Such an exercise may not be permissible in cases where either a question of limitation or a question of court fee may be involved. Both contingencies do not arise in this case. Therefore, we can treat this appeal as a revision and decide the issue.

5. Thus, by observing as above, the Division Bench of this Court treated the Appeal Suit filed by the State as a Civil Revision Petition under Article 227 of The Constitution of India and proceeded with the matter and ultimately reduced the compensation amount payable to the review petitioners from Rs.100/- per square feet to Rs.75/- per square feet.

6. Now, the present Review Petition has been filed mainly on the ground that when the Division Bench has come to the conclusion that the appeal is not maintainable since Section 54 of the Land Acquisition Act is not applicable to the

proceedings initiated under Section 20 (2) of The Tamil Nadu Highways Act, 2001 and only a revision petition under Article 227 of The Constitution of India will apply, the Division Bench ought to have referred the matter to the concerned Portfolio Judge dealing with the Civil Revision Petition under Article 227 of The Constitution of India at the relevant point of time. Therefore, there is an error apparent on the face of the records in entertaining the Civil Revision Petition under Article 227 of The Constitution of India while dealing with an appeal under the Land Acquisition Act, without referring it to the portfolio Judge who is dealing with the Revision Petitions at the relevant point of time. In this context, the learned Senior counsel for the petitioners relied on the decision of the Honourable Supreme Court in the case of **(Campaign for Judicial Accountability and Reforms vs. Union of India and another)** reported in **2018 (1) SCC 196** wherein it was held that *“once the Chief Justice is stated to be the Master of Rooster, he alone has the prerogative to constitute benches. Needless to say, neither a two judge Bench nor a three Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief Justice of India as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible.”* By pointing out the above decision of the Honourable Supreme Court, which was also subsequently referred in the decision of the Honourable Supreme Court in the case of *Shanti Bhushan vs. Supreme Court of India* through its Registrar and another (WP (C) No. 769 of 2018 – arising out of Diary No.12405 of 2018) dated 06.07.2018, the learned Senior counsel for the petitioners would contend that when once the Division Bench found that the appeal filed under Section 54 of The Land Acquisition of Act, in respect of the lands acquired under the provisions of The

Tamil Nadu Highways Act, 2001, is not maintainable, the Division Bench ought to have directed the appeal to be posted before the portfolio Judge, as may be allotted by the Honourable The Chief Justice of this Court. Therefore, it is contended that the order passed by the Division Bench of this Court is in excess of jurisdiction since the various issues of law and facts were gone into by the Division Bench as if it is a Court of appeal by completely overlooking the limited jurisdiction available under Article 227 of The Constitution of India and it requires to be reviewed. In this context, the learned Senior counsel for the petitioners placed reliance on the decision of the Honourable Supreme Court in the case of (**Surya Dev vs. Ram Chander Rai and others**) reported in (2003) 6 SCC 675 wherein it was held as follows:-

"26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under [Article 227](#) of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In Chandrasekhar Singh & Ors. Vs. Siva Ram Singh & Ors., (1979) 3 SCC 118, the scope of jurisdiction under [Article 227](#) of the Constitution came up for the consideration of this Court in the context of [Sections 435](#) and [439](#) of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of

earlier decisions, the three-Judges Bench summed up the position of law as under :-

- (i) that the powers conferred on the High Court under [Article 227](#) of the Constitution cannot, in any way, be curtailed by the provisions of [the Code](#) of Criminal procedure;
- (ii) the scope of interference by the High Court under [Article 227](#) is restricted. The power of superintendence conferred by [Article 227](#) is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors;
- (iii) that the power of judicial interference under [Article 227](#) of the Constitution is not greater than the power under [Article 226](#) of the Constitution;
- (iv) that the power of superintendence under [Article 227](#) of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal; the High Court cannot, in exercise of its jurisdiction under [Article 227](#), convert itself into a Court of Appeal.

28. Later, a two-judge Bench of this Court in *Baby Vs. Travancore Devaswom Board & Ors.*, (1998) 8 SCC 310, clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under [Article 227](#) of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it.

7. By placing reliance on the aforesaid decision of the Honourable Supreme Court, the learned Senior counsel for the petitioners would contend that the Division Bench, in excess of its jurisdiction, entertained the appeal filed by the State, even though it was held as not maintainable and eventually reduced the compensation amount payable to the petitioners. Further, the learned Senior counsel for the petitioners would contend that the Division Bench of this Court also overlooked the provisions contained in the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The specific provisions relating to compensation, rehabilitation and resettlement contemplated thereunder were lost sight of while disallowing the compensation awarded in respect of severance and rehabilitation. In any event, when once it was

held that the appeal is not maintainable, the Division Bench, instead of treating the appeal as a Civil Revision Petition under Article 227 of The Constitution of India, ought to have directed the matter to be posted before the concerned Portfolio Judge. Therefore, the learned Senior counsel for the petitioners would submit that the Judgment passed by the Division Bench of this Court in A.S. No. 512 of 2011 warrants a review.

8. Per contra, the learned Advocate General appearing for the respondent would contend that the Reference Court enhanced the compensation amount awarded by the Land Acquisition Officer from Rs.6,25,716/- to Rs.95,83,662/-. Aggrieved by the enhancement, the respondent has preferred the present appeal in A.S. No. 512 of 2011. In fact, the appeal in A.S. No. 512 of 2011 was filed inadvertently under Section 54 of The Land Acquisition Act without reference to the prohibition contained under Section 20 (2) of the Tamil Nadu Highways Act. However, there is no error apparent on the face of the record in the Judgment passed by the Division Bench of this Court. Hence, the Review Petition is liable to be dismissed in limine. In fact, the Division Bench of this Court consciously exercised its power to treat the appeal into one of Civil Revision Petition in the interest of justice and not to frustrate it. Thus, absolutely, there is no error apparent on the face of the record which warrants this Court to review the Judgment passed by the Division Bench of this Court in A.S. No. 512 of 2011. To lend support to this contention, the learned Advocate General also relied on the decision of the Honourable Supreme Court in **(M/s. Pepsi Foods Limited and another vs. Special Judicial Magistrate and others)** reported in **1998 (9) SCC**

749 wherein it was held as follows:-

"26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its

jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court find that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts."

9. The learned Advocate General also placed reliance on the decision of the Honourable Supreme Court in the case of **(Shalini Shyam Shetty and another vs. Rajendra Shankar Patil)** reported in **2010 (8) SCC 329** wherein parameters have been laid down for entertaining a revision under Article 227 of The Constitution of India. Useful reference can be made to para Nos. 48 and 49 of the said Judgment which reads as follows:-

48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court *suo motu* as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed as *debito justitiae* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

"49 On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

- (a) A petition under [Article 226](#) of the Constitution is different from a petition under [Article 227](#). The mode of exercise of power by High Court under these two Articles is also different.
- (b) In any event a petition under [Article 227](#) cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under [Article 227](#) and have been discussed above.
- (c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under [Article 227](#) of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.
- (d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh (supra)* and the principles in *Waryam Singh (supra)* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in *Waryam Singh (supra)*, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.
- (f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.
- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.
- (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.
- (i) High Court's power of superintendence under [Article 227](#) cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar vs. Union of India & others*, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

10. The learned Advocate General has also relied on the decision of the Honourable Supreme Court in the case of (**Mani Nariman Daruwala @ Bharucha and others vs. Phiroz N Bhatena and others**) reported in (1991) 3 Supreme Court Cases 141 wherein it was held as follows:-

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as

the power does exist and can be traced to a source available in law."

11. Therefore, in the light of the decision of the Honourable Supreme Court referred to above, according to the learned Advocate General, the Division Bench of this Court is wholly justified in converting the appeal into one of Civil Revision Petition and disposing it of after hearing both sides on merits. The exercise of revisional jurisdiction has become necessary inasmuch as the Reference Court has gone beyond its authority to determine the compensation. Therefore, according to the learned Advocate General appearing for the respondent, it cannot be said that the Division Bench of this Court converted itself into a Court of appeal and reduced the compensation payable to the petitioners. The Division Bench did not go into the issue of fact or law but only exercised its superintendence jurisdiction by keeping the Reference Court within the bounds of its authority. In such view of the matter, the learned Advocate General would contend that the Division Bench is wholly justified in reducing the compensation by assigning valid reasons for such a conclusion. There is no error apparent on the face of the record warranting reviewing the judgment passed by the Division Bench of this Court in A.S. No. 512 of 2011. By filing this review petition, the petitioners are attempting to re-argue the case. Even at the time of conversion of the appeal into a revision, the petitioners did not raise any objection and argued the case on merits. While so, review of the Judgment passed in A.S. No. 512 of 2011 is not warranted and he prayed for dismissal of the review petition.

12. We have heard the counsel for both sides and perused the materials placed on record. It is not in dispute that the petitioners herein are the owners of the lands, which are the subject matter of this Review Petition. It is also not in

dispute that such lands owned and possessed by the petitioners were acquired by the respondent by resorting to acquisition proceedings for the purpose of widening and strengthening the existing State Highways Roads *inter alia* to form new bypass roads in Thiruvannamalai District. The acquisition proceedings were initiated as contemplated under The Tamil Nadu Highways Act, 2001. Thus, the ownership of the land by the petitioners or the procedures adopted by the respondent in acquiring the lands from the petitioners are not in dispute. It is also not in dispute that the petitioners, feeling aggrieved by the quantum of compensation fixed by the Land Acquisition Officer, have sought for a reference as contemplated under Section 18 of The Land Acquisition Act and accordingly, a reference was made and it was taken as LAOP No. 1 of 2009 on the file of Principal Subordinate Judge, Tiruvannamalai. After adjudicating the rival claim, the Reference Court passed an award dated 09.11.2009 enhancing the compensation to Rs.100/- per square feet apart from compensation for severance, re-settlement and rehabilitation and also for trees and fencing. As against the award passed by the Reference Court on 09.11.2009, the respondent has filed A.S.No. 512 of 2011 before the Division Bench of this Court during August 2011. The Division Bench of this Court, while dealing with the appeal, raised the question of maintainability of the appeal under Section 54 of The Land Acquisition Act. This is more so that part III of the Land Acquisition Act alone will apply to a proceedings initiated under Section 20 (1) of The Tamil Nadu Highways Act, 2001. The appeal filed under Section 54 of The Land Acquisition Act, 1894 will come under part VIII of The Land Acquisition Act. Part VIII of the Land Acquisition Act will not apply to the proceedings initiated under Section 20 (1) of The Tamil Nadu Highways Act, 2001. On the contrary, a finality is attached to the order passed under Section 20 (2) of The Tamil Nadu Highways Act, 2001. For easy reference, Section 20 of The Tamil Nadu Highways Act, 2001 can

be quoted hereunder:-

“20. Reference to Court:-- (1) Any person aggrieved by the decision of the Collector, or the officer to whom the case was transferred, determining the amount may, within sixty days from the date of such decision, in so far as it affects him, by application to the Collector or the officer to whom the case was transferred, require that the matter be referred by him for the determination of the Court as defined in the Land Acquisition Act, 1894 (Central Act 1 of 1894) and when any such application is made, the provisions of Part III of the said Act shall *mutatis mutandis* apply to further proceedings in respect thereof.

(2) The decision of the Court on such reference and subject only to such decision, the decision of the Collector determining the amount shall be final.”

13. Therefore, in the light of the above provision of law, a regular appeal under Section 54 of The Tamil Nadu Land Acquisition Act, is not maintainable in respect of the award passed in a proceedings initiated under Section 20 (2) of The Tamil Nadu Highways Act, 2001. In such event, the proper course for challenging the award passed by the Reference Court is only to file a Civil Revision Petition under Article 227 of The Constitution of India. Even if there is a finality attached, as contemplated under Section 20 (2) of The Tamil Nadu Highways Act, 2001, a revision under Article 227 of The Constitution of India is maintainable.

14. Now, the question for our consideration is, having held that the appeal under Section 54 of The Tamil Nadu Land Acquisition Act is not maintainable, whether the Division Bench is right in treating the appeal into one as that of a Civil Revision Petition under Article 227 of The Constitution of India as the Division Bench was not vested with the portfolio to deal with Civil Revision Petitions under Article 227 of The Constitution of India. Though very many decisions have been cited by the counsel for both sides, we find that a fitting answer to the issue involved in this Review Petition has been given by the Honourable Supreme Court in the decision rendered in **Gokaraju Rangaraju vs. State of Andhra Pradesh**

reported in **AIR 1981 SC 1473** wherein it has been held as follows:-

"A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against the judgment is, of course, such a collateral attack."

15. In the light of the above, even assuming that the Judges who presided the Division Bench of this Court have not been conferred with the portfolio of dealing with the Civil Revision Petitions under Article 227 of The Constitution of India at the relevant point of time, it cannot be said that the order passed by them is without jurisdiction and the *defacto* doctrine will come into operation in such a situation. All the Judges of the High Court are having equal power and the allocation of the portfolio is the prerogative of the Chief Justice for administrative convenience. What we need to observe is that whether the order passed by the Division Bench is strictly within the parameters for exercise of limited scope and power under Article 227 of The Constitution of India. In the instant case, we find that the order passed by the Division Bench fully satisfies the scope and ambit of Article 227 of The Constitution of India. Moreover, it is not the case of the revision petitioners that when the Division Bench proceeded to dispose of the appeal by

treating it as a Civil Revision Petition, they have objected to it and inspite of such objection the Division Bench proceeded with the matter. Therefore, we are of the view that in the interest of justice, in order to give a quietus to the litigation, the Division Bench has treated the appeal into that of a Civil Revision Petition and disposed of the matter on merits.

16. At the same time, we are of the opinion that when the Division Bench of this Court was not conferred with the portfolio to deal with a revision under Article 227 of The Constitution of India, the proper course for the Division Bench of this Court is to refer the matter to the concerned portfolio Judge, however, since the matter was not placed before the concerned portfolio Judge, that by itself will not vitiate the order passed by the Division Bench of this Court. In any event, such a course adopted by the Division Bench of this Court cannot be a ground for review especially when there is no error apparent on the face of the Judgment rendered by the Division Bench of this Court.

17. Therefore, before parting with, we make it clear that as against the proceedings under Sec. 20 of the Tamil Nadu Highways Act, 2001, an Appeal under Section 54 of The Land Acquisition Act is not maintainable and if at all only a Civil Revision Petition under Article 227 of The Constitution of India is maintainable. Therefore, if any such appeal (s) is/are pending or any appeal is filed in future, the Registry shall convert it into a Civil Revision Petition under Article 227 of The Constitution of India and post it before the concerned Portfolio Judge dealing with Civil Revision Petitions under Article 227 of The Constitution of India.

18. With the above observation the Review Petition is dismissed. No costs.

(R.P.S.J.) (R.P.A.J.)

30-01-2019

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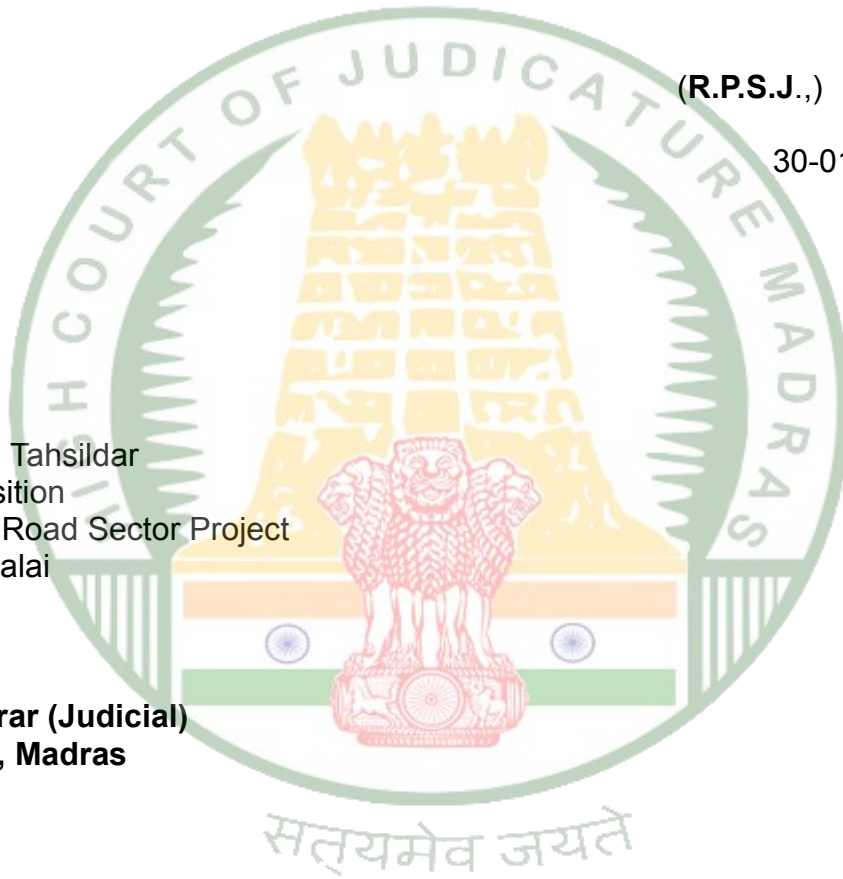
Index : Yes

To

The Special Tahsildar
Land Acquisition
Tamil Nadu Road Sector Project
Tiruvannamalai

Copy to:

**The Registrar (Judicial)
High Court, Madras**



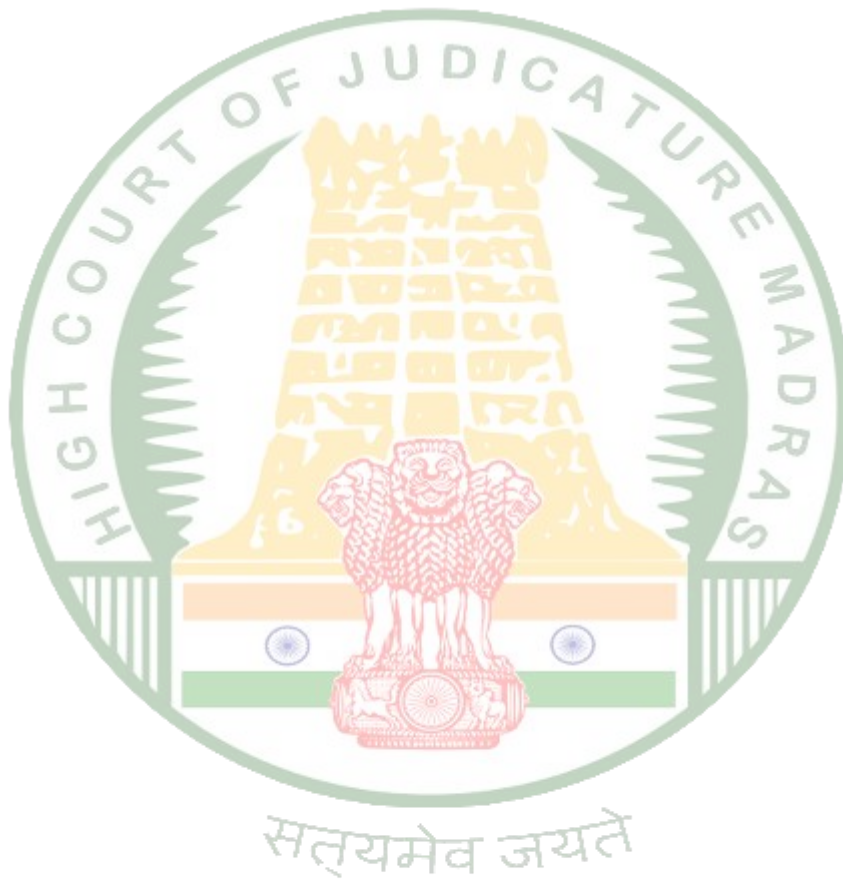
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R. SUBBIAH, J

and

R. PONGIAPPAN, J

rsh



Pre-delivery Order
in Rev.Petn No. 98 of 2016

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