

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2019

Delivered on : 04.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).Nos.4160 and 4161 of 2018 &
C.M.P.Nos.22937 and 22939 of 2018 &
C.M.P.Nos.332, 339, 6246 and 6249 of 2019

1. Canagaradjou (age 68)
2. Rajeswari @ Santha (age 72)
3. Gnanalatchoumy @ Radabaye (age 75)

Petitioners

Vs

1. The Land Acquisition Officer,
Revenue Department,
Puducherry.

2. Mr. O. Mohan

Respondents

PRAYER in C.R.P.No.4160 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the I.A.No.2074 of 2018 in L.A.O.P.No.4 of 2001 on the file of the Principal District Judge, Pondicherry.

PRAYER in C.R.P.No.4161 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the I.A.No.2073 of 2018 in L.A.O.P.No.3 of 2001 on the file of the Principal District Judge, Pondicherry.

For Petitioners : Mr. B.Kumar, SC
for Mr. D. Ravicoumar

For Respondents : Ms. Hema Sampath, SC
for R. Chithiraputhiran for R2
R1- No appearance

COMMON ORDER

The above Civil Revision Petitions are filed to strike off the interlocutory applications I.A.No.2073 of 2018 in L.A.O.P.No.3 of 2001 on the file of Principal District Judge, Pondicherry and I.A.No.2074 of 2018 in L.A.O.P.No.4 of 2001 on the file of Principal District Judge, Pondicherry.

2. Before considering the revisions, it is necessary to briefly touch upon the facts which had culminated in the filing of the interlocutory applications by the second respondent herein and which is now sought to be struck off.

3. The lands measuring an extent of 3-62-00 hectares and comprised in RS.No.17/1 belonged to one Subramani Chettiar. The petitioners herein and one P.S.Krishnaraj are the children of the said Subramani Chettiar. The said lands were acquired for the construction

of a paediatric hospital and after following the procedure contemplated under the Land Acquisition Act, the first respondent had passed an award on 10.04.2000 holding that the petitioners were the rightful owners and that though the apportionment and payment of compensation could be directly given by the 1st respondent; the 1st respondent as per the direction of the High Court was to deposit the entire compensation in the Civil Court deposit under Section 31(2) of the Land Acquisition Act. The authority had arrived at a decision to award a total compensation of Rs.6,01,93,587.80/. The amount of compensation was arrived at by fixing the value of the land at Rs.1,23,740 per acre.

4. Thereafter, the first respondent had referred the matter under section 30 of the Land Acquisition Act, herein after called (The Act) to the Principal District Judge, Pondicherry under L.A.O.P No.3 of 2001 and L.A.O.P.No.4 of 2001. The second respondent has been a party to all the above proceedings. After the matter was referred to the District Court, Pondicherry, the petitioners, second respondent and the deceased P.S.Krishnaraj had filed a statement of claim asking for an enhanced compensation. The lands acquired had very good locational

advantages. It was their case that the property was a commercial property since the adjacent properties were all used for commercial activities. There were showrooms for cars, two wheelers, etc. There was a hotel with a lodging facility east of the lands acquired and there was also a big commercial complex and therefore the area in and around acquired area was fully developed. The bus stand was hardly a kilo meter away.

5. The petitioners had filed L.A.O.P.No.3 of 2001 and deceased Krishnaraj alone had filed L.A.O.P.No.4 of 2001, since he was the owner of an extent of 0.10-0C hectors and 0-07-32 hectares in RS.17/1A and RS.No.17/1B/1 respectively of Redipalayam village.

6. It is worth mentioning that the second respondent was a party in L.A.O.P.No.3 of 2001 as well as the award enquiries where he had been described as a person interested in the property.

7. The Principal District Judge by a common Judgement and decree dated 22.02.2002 was pleased to pass the following Judgement and Decree.

In L.A.O.P.No.3 of 2001, an enhanced compensation of Rs.12,25,06,715.80/- was awarded.

In L.A.O.P.No.4 of 2001, a sum of Rs.12,35,263.35/- was awarded as enhancement.

8. Challenging the said orders, the Land Acquisition Officer had filed A.S.Nos. 60 and 61 of 2002 on the file of this Court and this Court by a Judgement and decree dated 28.03.2016 were pleased to dismiss the appeals and the compensation was increased from a sum of Rs.312 per sq.ft to 580 per sq.ft. Thereafter the decree holders viz; the petitioners herein, the 2nd respondent and P.S.Krishnaraj had filed E.P.No.98 of 2017. E.P.No.99 of was filed by Krishnaraj and on his demise, the petitioners were brought on record as his legal representatives in E.P.No.99 of 2017. In E.P.No.99 of 2017, the 2nd respondent had not been impleaded as a party. It appears that the Land Acquisition Officer, challenged the said Judgment and decree in A.S.No.60 and 61 of 2002 before the Hon'ble Supreme Court, the SLPs were dismissed and the Judgement and Decree in A.S.Nos.60 and 61 were upheld. Thereafter a review application has been filed which was also dismissed by the Hon'ble Supreme Court by order dated

9.07.2018.

9. After the dismissal of the SLP, the second respondent herein filed I.A.Nos.2073 of 2018 in L.A.O.P.No.3 of 2001 seeking permission to withdraw his half share of Rs.2,89,77,335.50/- and I.A.No.2074 of 2018 in L.A.O.P.No.4 of 2001 to withdraw the Rs.1,10,77,157/- being his half share.

10. The 2nd respondent had made his claim on the basis of an agreement dated 14.02.2000 entered into between himself and the deceased first petitioner and which was marked as Ex.P.9 before the Trial Court.

11. The agreement in question namely the agreement dated 14.02.2000 contained the following terms:

"1. Both agree that Mr. Krishnaraj and his family members jointly are entitled for a total consideration of Rs.5 crores from and out of the compensation money paid by the Govt.

2. Both agree that the amount of compensation exceeding Rs.5 crores is entitled by Mr. Mohan.

3.Both agree that the amount fixed by the Govt. is very low and agreed to approach the Court for higher compensation.

4.Both have also agreed that in the event of the Court considering their prayer and awarding an excess compensation it is agreed by both to share the excess compensation so awarded equally by P.S.Krishnaraj and O.Mohan after deducting all expenditure incurred for obtaining the excess compensation.

5.Both agree that each of individually will have equal share in additional compensation after deducting the expenditure."

Meanwhile, it is seen that the petitioners had filed E.A.No.221 of 2018 in E.P.No.98 of 2017 to transpose the 2nd respondent herein who was the 5th decree holder as the second respondent in the execution petition.

The said application has been filed on the following grounds.

a) the lands that were acquired belonged to Subramani Chettiar, the father of the decree holders 1 to 4 in the execution petition viz; the petitioners herein and the deceased P.S.Krishnaraj.

b) the 2nd respondent's name has been wrongly added in the L.A.O.P by misrepresentation and without the knowledge of the deceased first petitioner and the other petitioners.

c) There is no agreement to share the amount of compensation between the parties and further this agreement has not been disclosed in earlier proceedings.

d) the second respondent herein had cheated them and taken away the money indirectly without reference to the petitioners.

e) The petitioners had also taken out necessary applications to revoke the vakalat granted to the counsel who appeared for them and the second respondent herein since he was acting against the interest of the petitioners and was acting on behalf of the second respondent. This application has been filed after the second respondent had filed the two interlocutory applications which are the subject matter of the present revisions.

12. In their counter to the said applications, I.A.No.2073 and 2074 of 2018, the petitioners herein have raised the very same contentions raised by them in E.A.No.221 of 2018. They have further stated that it is true that initially the petitioners and the second respondent had filed E.P.No.98 of 2017 based on the common award passed in L.A.O.P.No.4 of 2001. However, the petitioners would contend that the second respondent has clandestinely filed E.P.No.99

of 2019 along with the petitioners. They would further contend that in the memo filed by the first respondent/Government, they had informed the Court that a sum of Rs.5,79,54,67 had been deposited from out of the award amount of Rs.6,13,84,096. In the said memo, the first respondent had further contended that the amounts were payable to the decree holders on production of the succession certificate so far as the legal representatives of the deceased P.S.Krishnaraj was concerned. The petitioners would contend that they are the only legal heirs of the deceased first petitioner Krishnaraj. The 2nd respondent had no right to claim a share in the amount directly from the Court. They would deny the contentions of the second respondent that the compensation amount was apportioned as per the common agreement before the Deputy Collector, Revenue; that any amount exceeding Rs.5,00,00,000/- should be given to the 2nd respondent and out of the Rs. 5,00,00,000/-, the deceased petitioner was to get a 5/8 share and the others a 1/8th share each.

13.The petitioners would further contend that no such undertaking had been given before the Deputy Collector, Revenue. They would further contend that the 2nd respondent is neither the

owner of the lands acquired nor was he the legal heir of the deceased P.S.Krishnaraj. He had not been made a party in the connected L.A.O.P.No.4 of 2001 and he had no right to enforce the compensation. The agreement dated 14.02.2000 is a unregistered document and there are no witnesses to the said agreement. Therefore the validity of the same has been challenged by the petitioners.

14.They would further contend that this agreement has not been marked in L.A.O.P.NO.4 of 2001. They had pleaded that the signatures in the various proceedings had been obtained by fraud and misrepresentation and by virtue of the active connivance of the counsel who appeared for the 2nd respondent who was the counsel for the petitioners as well. The petitioners would contend that as soon as they came to know about the collusion, they had taken steps to revoke the vakalat and the petition had also been allowed. The petitioners would contend that they have also not entered into any agreement with the second respondent for sharing the amounts involved in L.A.O.P.No.3 of 2001. They would further contend that the Land Acquisition proceedings had been initiated by issuing the Section 4 (1)

notification on 03.11.1998 and the agreement which is entered thereafter did not confer any right on the second respondent.

15.They would further contend that all along it was only P.S.Krishnaraj who had received the money and he had dispensed the amounts to the sharers. After the demise of Krishanraj, petitioners 1 to 3 herein had filed the Cheque petitions for withdrawing the amounts deposited. The petitioners would further contend that the second respondent has misrepresented that the petitioners had admitted the execution of the agreement and permitted him to withdraw the 50 per cent of the amount directly in L.A.O.P.No.3 of 2001.

16.The entire counter proceeded on the basis that the second respondent had fraudulently obtained all the signatures from the petitioners and in this he was actively helped by the counsel. Therefore, it is their contention that the amounts should not be given to the second respondent. This counter petition had been filed on 30.11.2018 and thereafter the petitioners have come forward with the present Civil Revision Petitions.

17.Mr.B.Kumar, Senior counsel appearing on behalf of the counsel for the petitioners would make the following submissions:

(a)That a reading of the first agreement dated 09.04.1994 would show that the duration of the said agreement is at Will (Article 2)

(b)That the legal expenses and other incidental expenses were to be shared by both parties equally.

(c)That the reading of the second agreement dated 14.02.2000 which is also between the deceased P.S.Krishnaraj and the 2nd respondent particularly clause 2, 4 and 5 would clearly indicate that the same is one sided and highly excessive.

(d)That the agreements dated 19.02.1994 and 14.02.2000 is ex facie invalid and is a champertous agreement which is therefore unenforceable.

(e)That the agreements are not supported by consideration and is therefore void and unenforceable.

In support of the arguments with reference to the enforceability of the agreements as being champertous the learned senior counsel would rely on the following Judgements:

(i) **Rattan Chand Hira Chand Vs. Askar Nawaz Jungh (Dead) By Lrs and others** reported in **CDJ 1991 SC 236**

(ii) **Ram Coomar Coondoo Vs. Chunder Canto Mookerjee** reported in **1876 SCC Online PC 19**

(iii) **Kunwar Ram Lal Vs. Nil Kanth and others** reported in **1893 SCC online PC 7**

(iv) **Harilal Nathalal Talati Vs. Bhailal Pranalal Shah** reported in **AIR 1940 BOM 143**

(v) **Nuthaki Veukataswami Vs. Katta Nagireddy (died) and others** reported in **AIR 1962 AP 457**

(vi) **Khaja Moinuddin Khan and others Vs. S.P.Ranga Rao and others** reported in **2000 (2) ALT 596**

(vii) **Gayabai and others Vs. Shriram and others** reported in **2005 (2) MPLJ 5**

(f) That the 2nd respondent is not a person interested as per Section 9 of the Land Acquisition Act as he is only an agreement holder in support of which he has relied in the Judgement detailed below:

ILR 1974 Kar 329 at paragraph No.7

(g)The next line of argument is that consent will not confer jurisdiction. Even if parties have agreed it will not validate the agreement. In support of this argument he has relied on the Judgement reported in:

2009 (12) SCC 280

(h)He would submit that the two agreements are void and would rely on the following Judgements:

2015 (7) SCC 601

1995 (1) Del 47

18.Per contra, Mrs.Hema Sampath, learned senior counsel arguing on behalf of the counsel for the 2nd respondent would submit that the very Civil Revision Petitions to strike out the interlocutory applications is not maintainable. She would contend that the agreement was entered into after the Land Acquisition proceedings had commenced and to the knowledge of the petitioners. She would therefore contend that the petitioners are estopped from questioning the agreements, more particularly when the 2nd respondent has been a party to all the proceedings and had participated in the enquiry

proceedings along with the petitioners and the deceased P.S.Krishnaraj. She would draw the attention of this Court to the Award enquiry where the 2nd respondent and the petitioners had participated along with the deceased P.S.Krishnaraj where the agreement in question had been filed and the apportionment had been made as per the agreement.

19. She would further contend that the Section 18 (1) reference was also made by the 2nd respondent along with the others and therefore it would not lie in the mouth of the petitioners to now contend that the 2nd respondent had clandestinely got himself impleaded in the proceedings. She would argue that he is a person interested under Section 3(b) of the Land Acquisition Act and would rely on the Judgement in ***Indo Swiss Time Limited, Dundahera Vs. Umrao and others*** reported in ***AIR 1981 P&H 213***.

20. She would further draw the attention of this Court to the evidence of P.S.Krishnaraj in L.A.O.P.No.40 of 2000, wherein he has not only spoken about the agreement, Ex.P.9, but also the apportionment of the compensation amongst himself and the

petitioners. She would also highlight the fact that summons in the Section 18 reference to the II Additional District Judge, Pondicherry in L.A.O.P.No.3 of 2001 had been addressed to the 2nd respondent and that the statement of claim in L.A.O.P.No.3 of 2001 has been signed by the 2nd respondent along with the deceased P.S.Krishnaraj and the same has been adopted by the petitioners herein. She would therefore submit that having accepted the 2nd respondent as a claimant along with them and the deceased P.S.Krishnaraj, the petitioners are estopped from denying the 2nd respondent his share as agreed. It is also pointed out that the permission to withdraw the amounts deposited and the cheque applications have been made for the 2nd respondent as well. The agreement has also been produced before the income tax authorities not only by the deceased P.S.Krishnaraj but also by the 1st petitioner herein. In the light of such overwhelming evidence, the counsel for the 2nd respondent would submit that this is not a case for striking of the petition. The 2nd respondent had participated in the proceedings right from the award enquiry up to the execution proceedings along with petitioners herein and with their knowledge. She relied on the Judgement in ***B.L.Sreedhar and others Vs. K.M.Munireddy*** reported in **2003 (2)**

SCC 355.

21.As a reply to the above arguments the learned senior counsel appearing on behalf of the petitioners would contend that the agreement, Ex.P.9, was only with reference to the S.No.17/1 and the 2nd respondent was not a party in L.A.O.P.No.4 of 2001.

22.Heard the arguments on either side and perused the papers. The issue for the consideration of this Court is whether the petitions I.A.No.2073 of 2018 and I.A.No.2074 of 2018 in L.A.O.P.No.3 of 2001 and L.A.O.P.No.4 of 2001 respectively has to be struck off at the threshold as the entire claim of the 2nd respondent is champertous and further the 2nd is neither the owner nor the person interested in the lands that have been acquired.

23.The Black's law dictionary defines the word "Champerty" as follows:

"An agreement to divide litigation proceeds between the owner of the litigated claim and a party unrelated to the law suit who supports or helps enforce the claim."

24. In the first agreement dated 19.02.1994 the deceased P.S.Krishnaraj and the 2nd respondent have entered into an agreement to plot and develop an extent of 3.62 acres in S.N.17/1. After the land acquisition proceeding were initiated, the agreement dated 14.02.2000 for apportionment of compensation and giving details of the amount due to the 2nd respondent, the deceased P.S.Krishnaraj and the petitioners was entered into.

25. The petitioners would contend that the agreement to share the proceeds is champertous and therefore void and unenforceable. The case of the 2nd respondent is that the petitioners have accepted the said agreement and have acted upon the same since the award amount deposited has been withdrawn and disbursed as per the agreed proportion. The parties have to definitely let in evidence to prove the nature of the agreement and this assumes significance as the same has been acted upon by both parties.

26. The English law of champerty is not in force in India and agreements to share the subject of litigation if recovered, are not in

themselves opposed to public policy unless it is found to be extortionate and unconscionable.

27. In the case of hand it is seen that the petitioners and P.S. Krishnaraj have admitted the agreement between the said P.S. Krishnaraj and the 2nd respondent as is evident from the statement of claim submitted by them jointly before the Deputy Collector (Land Acquisition) Pondicherry and which reads as follows:

"2. Claimants 1 to 4 approached the 5th claimant for promoting this property so that the property could be put to some useful purpose. The 5th claimant agreed to promote the property. It was only then the property was taken delivery of by the Government under the Urban Land Ceiling Legislation. Later, in view of the Writ Petitions filed by the first claimant, the proceedings initiated under the Urban Land Ceiling Legislation was dropped and thereafter the emergency provisions of the Land Acquisition were invoked and the property acquired. The 5th claimant herein has been assisting the other claimants in all the proceedings before the High Court spending his time and money and energy for the conduct of the various Writ Proceedings. The claimants 1 and 4 are quite conscious of this and

claimants 1 to 4 agreed that the 5th claimant should be compensated for all the pains he has taken in this regard. There was an agreement between the first claimant on the one hand and the 5th claimant on the other with regard to the apportionment of the compensation. Such an agreement was entered into with the full approval of claimants 2 to 4. As per the agreement, the compensation amount that may be fixed by the Land Acquisition Officer has to be shared between the claimants in the following manner. The claimants make it very clear that the compensation that is fixed is not the correct compensation and does not represent the real market value of the property. Steps will be taken for making a reference under Section 18 of the Act. So far as the compensation that is fixed by the Land Acquisition Officer at this Stage of the proceedings is concerned, it is submitted that the claimants have agreed to have the compensation apportioned in the following manner; claimants 1 to 4 are entitled to Rs.5 crores of the compensation amount. In this Rs.5 crores, first claimant is entitled to 5/8th share and the claimants 2 to 4 are entitled to 1/8th share each. Any amount which is fixed in excess of this Rs.5 crores has to be taken by the 5th claimant absolutely. This is borne out by the agreement which the claimants 1 and 5 have entered into

on 14.02.2000. This is a binding agreement and the claimants have approved of the same.

3.Claimants therefore pray that the compensation amount may be paid to the respective claimants as agreed between them and as mentioned above. In the normal circumstances, the compensation amount should have been paid by the Land Acquisition Officer himself here itself. But, in view of the order of the High Court, the compensation amount has been deposited before the Land Acquisition Court and the amount is kept in Civil Court Deposit. So, the Land Acquisition is hereby requested to make a reference to the District Judge, Pondicherry informing him that the claimants have agreed with regard to the apportionment of the compensation and they can be paid the compensation as agreed to between then."

28.Further the parties have agreed that the enhanced compensation if awarded would be shared equally by the parties.

29.In the light of the above, I am of the view that the parties have to let in evidence to prove as whether the agreement in question could be termed as a champertous agreement.

30. In the Judgement reported in **AIR 1962 AP 457 - Nuthaki Veukatasamy Vs. Katta Nagireddy (died) and others** the plaintiff was to get 3/4th of the share which the Court held to be unconscionable.

31. In the case of hand the agreement reads that in respect of the award amount the 2nd respondent was entitled to the sum over and above Rs.5 Crores fixed by the government which was a sum of Rs.1,00,68,594-. The agreement further stipulates that the any enhanced amount was to be shared equally by the deceased P.S.Krishnaraj and the 2nd respondent. In the earlier agreement dated 19.02.1994, P.S.Krishnaraj and the 2nd respondent had agreed to equally share the sale proceeds from out of the sale of the property.

32. Therefore, as already observed the parties have to let in evidence in support of their respective contentions in the two applications that are the subject matter of the revision.

33. With regard to the second contention that the 2nd respondent is not a party interested in the lis from a perusal of the proceedings right from the award enquiry it is seen that the 2nd respondent has been jointly contesting the matter right upto the Honourable Supreme Court and only now when the 2nd respondent has moved these applications the petitioners have come forward with the contention that the 2nd respondent is not a person interested. This once again has to be proved and argued by the parties.

34. In view of the above discussion, I am of the view that I.A.Nos.2073 and 2074 of 2018 in L.A.O.P.Nos.3 and 4 of 2001 respectively cannot be struck off at the threshold for the following reasons:

a) The question as to whether the agreements dated 19.02.1994 and 14.02.2000, was champertous is a question that has to be gone into by both parties letting in evidence.

b) The question as to whether the 2nd respondent can be termed a person interested is yet another issue which has to be decided after Trial.

c)The petition in question involves mixed question of fact as well as law and considering the same, the application cannot be dismissed at a very first instance.

In view of the above the Civil Revision Petitions stand dismissed. Considering the fact that the petitioners have already filed their counter in both the applications, the II Additional District Judge, Pondicherry, shall dispose off I.A.No.2073 of 2018 in L.A.O.P.No.3 of 2001 and I.A.No.2074 of 2018 in L.A.O.P.No.4 of 2001 within a period of two months from the date of receipt of copy of this order uninfluenced by the observations made by this Court. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

mrn/kan

04.06.2019

Index : Yes/No

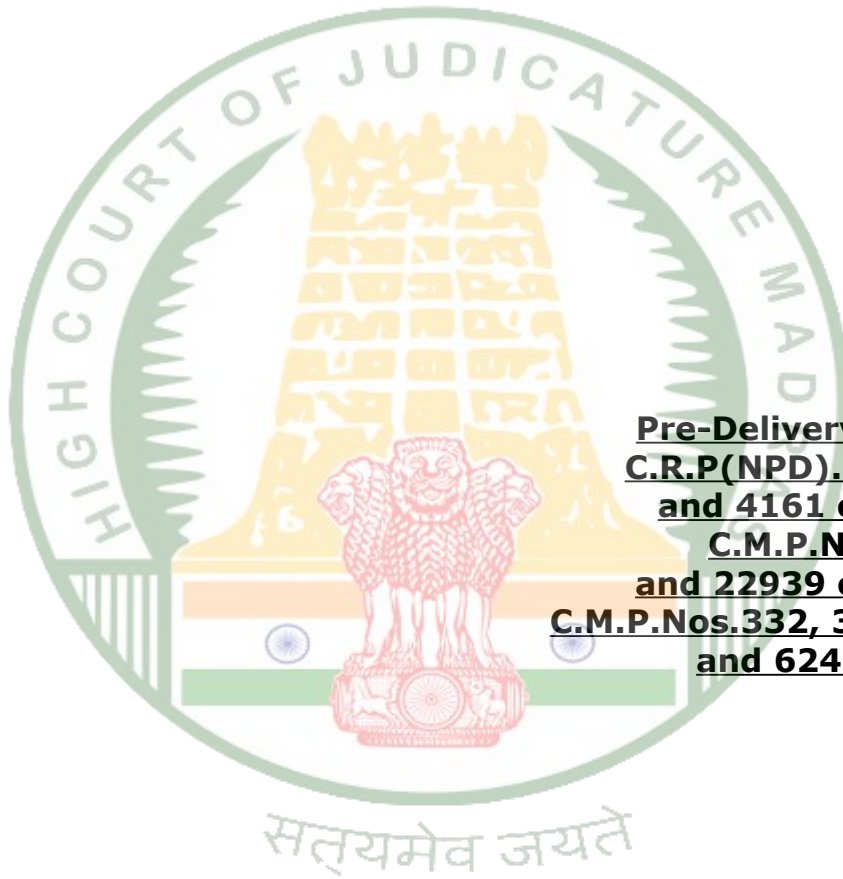
Speaking order/non-speaking order

To,

The Principal District Judge, Pondicherry.

P.T.ASHA, J.,

mrn/kan



Pre-Delivery order in
C.R.P(NPD).Nos.4160
and 4161 of 2018 &
C.M.P.Nos.22937
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