



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.09.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P. (MD)No.19153 of 2019

and

W.M.P. (MD)No.15516 of 2019

R.Gowri

... Petitioner

/Vs./

1.The Project Director,
National Highways Authority of India (NHAI),
Plot No.307, East 1st Street,
Melur Main Road,
K.K.Nagar, Madurai - 625 020.

2.The Authorized Officer and
Special District Revenue Officer,
(Land Acquisition - NHAI),
Plot No.223, Velangkanni Church Road,
Anna Nagar, Madurai - 625 020.

3.J.Bose

4.J.Ranjith Kumar ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 2nd respondent to disburse the 1/3 share of the Award amount pertaining to the lands in S.Nos.1586/10A (328 sq.mts.), 1586/10B (328 sq.mts.), 1588/4A (150 sq.mts.), 1588/4B (2850 sq.mts.) 1588/2 (700 sq.mts.), 1588/8A1 (134 sq.mts.), 1588/9A (35 sq.mts.), 1588/9B (2655 sq.mts.), 1590/1A (298 sq.mts.), 1590/1B (112 sq.mts.), 1590/2A (1400 sq.mts.), 1590/2B (930 sq.mts.) and 1590/3A (2900 sq.mts.) totaling to an extent of 12820 sq.mts. (3 Acre 17 Cents) at Katchaikatti Village, Vadipatti Taluk, Madurai to the petitioner within a time frame or to invest the entire Award Amount in a Nationalized Bank as pleased by this Court until final adjudication in the partition suit in O.S.No.115/2017 on the file of the IV Addl. District Judge, Madurai.

For Petitioner

: Mr.Maruthu Pandiyarajan



For R-1

: Mr.C.Arul Vadivel @ Sekar
Standing counsel

For R-2

: Mr.M.Rajarajan
Government Advocate

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ORDER

Mr.Maruthu Pandiyarajan, learned counsel on behalf of writ petitioner, Mr.C.Arul Vadivel @ Sekar, learned Standing counsel, who accepts notice on behalf of respondent No.1 and Mr.M.Rajarajan, learned Government Advocate who accepts notice on behalf of respondent No.2 are before this Court.

2. To be noted, while respondents 1 and 2 are official respondents, respondents 3 and 4 whom, this Court is informed are siblings or private respondents.

3. Considering the nature of the matter and considering the position that an order which will not in any manner adversely affect the private respondents 3 and 4 is proposed to be passed, with consent of aforesaid learned counsel, main writ petition is taken up and being disposed of.

4. It is not in dispute that there is a partition suit pending *inter alia* between writ petitioner and respondents 3 and 4. This Court is informed that the partition suit is O.S.No.115 of 2017 on the file of the IV Additional District Judge's Court, Madurai and that the same is now pending.

5. To be noted, writ petitioner is sole plaintiff in the said partition suit and respondents 3 and 4 in the instant writ petition are defendants 1 and 2 respectively in the said partition suit. This Court is informed that other co-defendants in the partition suit are aliens.

6. Be that as it may, subject matter of the instant writ petition pertains to certain properties which form part of the Schedule in the partition suit, more particularly, the property which forms subject matter of the instant writ petition is adumbrated as Item 3 in Schedule B of the partition suit (hereinafter referred to as 'suit property' for the sake of convenience and brevity). The said property was acquired by respondent No.2 and the acquiring authority is respondent No.1. There is no dispute or disagreement that the acquisition is under the 'National Highways Act, 1956' [hereinafter referred to as 'said Act' for the sake of convenience and brevity].



7. Writ petitioner has come up with the instant writ petition saying that she is entitled to 1/3rd of the award qua said property which has been acquired in the aforesaid manner.

8. This Court is also informed that preliminary decree has not yet been passed in the partition suit.

9. Learned counsel for second respondent, drawing the attention of this Court to Section 3-H of said Act, more particularly Sub-sections 3 and 4 of Section 3-H of said Act submits that in the event of dispute among claimants qua award, the same has to be resolved by civil Court of original jurisdiction.

10. In the light of the narrative (thus far) of this Court, this Court is of the considered view that it would be appropriate to leave it open to the writ petitioner to file suitable Interlocutory Application in the partition suit with prayer/s for disbursement/deposit of award or any other appropriate prayer qua said property which in any event forms part of the Schedule of the plaint schedule properties.

11. Learned counsel undertakes to move such application/s in the civil Court in the pending partition suit within a fortnight, from the date of receipt of a copy of this order. If such application/s is/are moved, respondents 1 and 2 herein and other official respondents who may be necessary, shall be arrayed as respondents therein and it is recorded that Section 80 of 'The Code of Civil Procedure, 1908' (hereinafter referred to as 'CPC' for the sake of convenience and brevity) requirement if any, stands waived qua the official respondents herein.

12. The application/s shall be decided by learned presiding officer of the aforesaid civil Court, on its own merits and in accordance with law after putting on notice and giving reasonable opportunity to respondents 3,4 herein and all other co-respondents in the interlocutory application/s and questions, except Section 80 CPC notice, if any (qua official respondents herein) are left open to be raised by respondents 1 and 2 in the said Interlocutory Applications. Therefore, disbursement, if any, shall not be done for a period of fortnight from date of receipt of a copy of this Court.

13. Though obvious, it is made clear that if the writ petitioner does not move the Interlocutory Applications in the aforesaid manner, it is open to the respondents 1 and 2 to proceed in accordance with law.



14. Instant Writ Petition is disposed of. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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// True Copy //

Sub Assistant Registrar (CS)

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To
The Authorized Officer and
Special District Revenue Officer,
(Land Acquisition - NHAI),
Plot No.223, Velangkanni Church Road,
Anna Nagar, Madurai - 625 020.

+1 CC to M/s.S. CHANDRA SEKARAN, Advocate (SR-84994[F] dated
04/09/2019)

+1 CC to M/s.C. ARUL VADIVEL@SEKAR, Advocate (SR-85097[F] dated
04/09/2019)

+1 CC to M/s.SPL GP (SR-85334[F] dated 05/09/2019)

Order made in
W.P.(MD)No.19153 of 2019
Dated:
04.09.2019

__KM/ (24.09.2019) 4P 5C