

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.08.2020	Delivered on 14.09.2020
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. PD.No.1920 of 2018

1. Poorasami

2. Veerasami

.. Petitioners

Vs.

1. The Special Thasildar, (L.A.)No.1,
Having his office at Neyveli.

2. The Chairman-cum-Managing Director,
NLG Limited.
Having his office at Neyveli.

3. Thiruvengadam

4. Amsapathy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 19.03.2018 passed in I.A.No.243 of 2017 in Un Numbered AS No. un numbered of 2017 on the file of the Principal District Judge, Cuddalore District.

For Petitioners : Mr.R.Muralidharan

For Respondents : Mr. Y.T.Aravind Gosh
Government Advocate for R1
Mr.N.Nithianandam, for R2
Mr.D.Baskar, for RR 3 & 4
Mr.P.H.Arvinth Pandian,
Additional Advocate General,
Amicus curie

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is at the instance of the claimants 1 and 2 in LAOP No.490 of 2013 on the file of the Special Subordinate Judge for Land Acquisition cases, Cuddalore (LAOP No. 13 of 2012 on the file of the Principal Sub Court, Chidambaram).

2. The facts leading to the proceedings are as follows:

A certain extent of land situate in R.S.No.185/1A and 185/1B of Valayamadevi Keelpathi Village, was acquired under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, (hereinafter referred to as "*the Act, 1997*"), for the Neyveli Lignite Corporation Limited. An award came to be passed in Award No.5 of 2011 on 28.02.2011 under Section 8 of the said Act, granting compensation for the lands so acquired. Since there was a dispute as to the entitlement to receive compensation a reference was made by the Land

Acquisition Officer to the Court under Section 9(2) of *the Act, 1997* (The order of reference states that it is a reference under Section 10 of the Act which is an obvious mistake). The said reference was numbered as above and disposed of by the learned Special Subordinate Judge for Land Acquisition Cases, Cuddalore on 07.07.2017. Aggrieved by the decision of the learned Trial Judge on the right to receive the compensation, the petitioners herein preferred an Appeal before the Principal District Court, Cuddalore. Since there was a delay of about 8 days in preferring the appeal, an Application in IA No.243 of 2017 was filed seeking condonation of delay.

3. This application was resisted by the third and fourth respondents viz., the rival claimants contending that the Appeal itself is not maintainable as there is no provision under *the Act*, which enables filing of an Appeal against an order or an award made in a reference under Section 9(2) of the Act.

4. The learned Principal District Judge accepted the contention of the contesting respondents 3 and 4, viz., the rival claimants and dismissed the application on the ground that the appeal itself is not maintainable. Aggrieved the petitioners have come up with this Civil Revision Petition.

5. I have heard Mr.R.Muralidharan, learned Counsel appearing for the petitioners and Mr.Y.T.Arvind Gosh, learned Government Advocate for the first respondent, Mr.N.Nithianandam, learned Counsel appearing for the second respondent and Mr.D.Baskar, learned counsel appearing for the respondents 3 and 4.

6. When the matter came up on 29.07.2020, after hearing the counsel appearing for the parties, I found the enactment in question viz., the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, does not provide for an appeal either against an order determining compensation made by the Court in a reference made under Section 8 of the Act or against an order deciding the right to receive compensation made in a reference under Section 9(2) of the said Act. Considering the importance of the question raised in the Revision, I had requested Mr.P.H.Arvinth Pandian, learned Additional Advocate General, to assist the Court as *Amicus Curiae*.

7. In response to the request made, Mr.P.H.Arvinth Pandian, had made a thorough study of the enactment in question as well as the comparable provisions

under the Land Acquisition Act, 1894 (Central Act I of 1894), and he has submitted a brief Report. Even here, I wish to place on record my sincere appreciation and gratitude to Mr. P.H.Arvinth Pandian, who had unhesitatingly come forward to assist the Court. I must record that but for his assistance, it would have been very difficult for me to decide this Civil Revision Petition.

8. The very Act to say the least is laconic. Section 7 provides for determination of the amount that has to be paid as compensation to the land owners. Sub Section 6 of Section 7 provides that in determining the amount, the Collector shall be guided by the provisions of Sections 23 & 24 and other relevant provisions of the Land Acquisition Act. Sub Section 7 of Section 7 invests the power to conduct an enquiry and to examine persons regarding the valuation of the land or persons, who are known to be interested in the land in the Collector.

9. Section 8 provides for a reference to the Court upon a request made by the owner of the land or a person interested in the land who does not accept the compensation determined by the Collector as just compensation. The said reference is required to be made to the Court has defined under the Land

Acquisition Act, and Sub Section (1) of Section 8 also makes it clear that provisions of part 3 of the Land Acquisition Act, shall *mutatis mutandis* apply to the proceedings in respect thereof. Sub Section 2 of Section 8 provides that the decision of the Court on such reference shall be final. Therefore, it is clear that applicability of Section 54 of the Land Acquisition Act, which provides for Appeals from such awards, does not apply and therefore, no appeal is provided for against an order of the Court made under Sub Section (1) of Section 8 of the Act. Section 9 of the Act provides for an apportionment of the compensation. Sub Section 2 of Section 9 requires the Collector to refer any dispute that arises as to the apportionment of compensation or as to the persons to whom the same or any part thereof is payable to a Court.

10. It should be straight away pointed out that no Appeal is provided for under the Act, against orders passed by the Court upon a reference under Section 9(2) of the Act. Section 18 bars the jurisdiction of the Civil Court, in respect of any matter which the Government or Collector is empowered by or under the Act to determine. Section 21 of the Act, prohibits application of the Land Acquisition Act, 1894, except to extent provided for, under this Act. As we already saw the provisions of part 3 of the Land Acquisition Act, 1894 i.e. from Section 18 to

28(A) are alone made applicable to references made under Section 8(1) of the Act.

11. Now the question that looms large is, as to what is the remedy of a person whose rights have been determined in a reference made under Section 9(2) of the *Act*. On a plain reading of the enactment, it appears that there is no remedy except to approach this Court by way of a Revision that too under Section 115 of the Code of Civil Procedure. But while Section 8(2) of the Act provides that a decision made under Section 8(1) regarding the quantum of compensation shall be final, there is no such finality attached to an order made by the Court upon a reference under Section 9(2). The next question would be what is the scope of the order that is made under Section 9(2). Unlike an order under Section 8(1) which only determines the compensation payable an order made in a reference under Section 9(2) determines the rights of the parties to receive such compensation, viz., a right to property.

12. I shall now look at the similar provisions under the Land Acquisition Act 1984. Section 18 of the said Act (1 of 1894), provides for a reference to the Court regarding the quantum of compensation and Section 54 of the Act (1 of 1894) provides for an Appeal against the award made under Section 18.

Section 30 provides for a reference of a dispute regarding apportionment of the compensation or any part thereof to the decision of the Court. There is no provision in the Land Acquisition Act, 1894, which provides for an Appeal or a revision against an order made in a reference under Section 30 of the said Act (1 of 1894).

13. In the Report filed by the learned *Amicus Curiae*, Mr.P.H.Arvinth Pandian, has pointed out that the question as to the finality of an order passed under Section 30 of the Land Acquisition Act, 1894, has been subject matter of at least a few decisions of this Court. He would also refer to Section 96 of the Code of Civil Procedure, which provides for an Appeal from every decree passed by any Court exercising original civil jurisdiction to the Court authorised to hear appeals from the decisions of such Court. Therefore, according to Mr.Arvinth Pandian once a decision is arrived at by a Civil Court, if the enactment under which the decision is arrived does not provide for an Appeal remedy, Section 96 would automatically apply in as much as, it is a decision of the civil Court and an appeal would lie from decisions of such Court.

14. He would also invite my attention to the judgment of the Division

Bench of this Court in *A.Mahalinga Kudumban and others v. Theetharappa Mudaliar*, reported in (1929) 29 LW 237. The appeals were sought to be filed against the orders of the Court of the Subordinate Judge, Tuticorin, made in a reference under Section 30 of the Land Acquisition Act, 1894. An objection was raised by the Registry regarding the maintainability of the Appeals. The Division Bench framed the following points for determination:

(1) Does an appeal lie against the order of the Subordinate Judge?

(2) If it does, to what Court should the appeal be presented?

The third question is not very relevant for our purposes.

15. After referring to pronouncement of the Privy Council in *Rangoon Botatoung Company, Ld. Vs. The Collector, Rangoon*, reported in *ILR 40 cal. 2*, the Division Bench after concluding that a decision made under Section 30 of the Land Acquisition Act, 1894, is not an award within the meaning of Section 54 went on to consider, as to whether, an appeal would lie against such an order made in a reference under Section 30. The Division Bench held as follows:

“In this case, the Subordinate Judge has decided that the amount is payable only to the respondent and not to the appellants. The appellants claim to a portion of the

award is a civil right and the Subordinate Judge has given a decision affecting their right. Such a decision is a decree within the meaning of Section 2, Clause (2) of the Civil Procedure Code. If it is a decree, then an appeal lies under Section 96, Civil Procedure Code.

Apart from the question whether the decision of the Subordinate Judge amounts to a decree or not, when proceedings are before a Civil Court such proceedings are governed by the usual procedure applicable to such Court. References under Section 30 are to the Court and therefore the right of appeal given by Section 96, Civil Procedure Code, unless expressly taken away, would attach to them and Section 53 which makes the Civil Procedure Code applicable to proceedings before Courts does not take away the right under the Civil Procedure Code.”

“We hold that an appeal is competent against the order of the Subordinate Judge.”

On question No.2, the Division Bench concluded that the Appeal would lie to the

Court to which the Appeal would lie against the original decree of the Court deciding the reference. Since the value of the subject matter of the appeals were less than R.5,000/-, the Division Bench concluded that the appeals would lie before the District Court and not before the High Court.

16. In *Janapareddi Venkatareddi v. Janapareddi Adhinarayana Rao*, reported in (1929) 29 LW 343, another Division Bench of this Court had practically laid down the same preposition of law as found in *A.Mahalinga Kudumban*'s case referred to supra. The Division Bench concluded that an appeal would lie under Section 96 of the Code against a decision made under Section 30 of the Land Acquisition Act. The difference in language in part 3 of the Act and the other parts was also noticed by the Hon'ble Division Bench went it concluded that an Appeal would lie against an order passed under Section 30 of the Land Acquisition Act.

17. The same issue arose before a Full Bench of this Court in *Chikkanna Chettiar @ V.S.Nanjappa Chettiar v. V.S.Perumal Chettiar and another*, reported in (1940) 51 LW 553. After referring to *A.Mahalinga Kudumban* 's case, referred to supra, the Full Bench concluded as follows:

“The Subordinate Judge who is appointed under section 3(d) of the Land Acquisition Act to decide a dispute with regard to the allocation of compensation money does not constitute a Court of record, but admittedly he does constitute a civil Court and on the strength of the decision in the National Telephone Company's case it might reasonably be argued that the proceedings before him are governed by the provisions of the Code of Civil Procedure. Support for this argument is to be obtained from the judgment of the Privy Council in Secretary of State for India -vs- Chellikani Rama Rao. There a claimant whose claim was rejected by the forest settlement officer appealed to the District Court under the Madras Forest Act, 1882, which makes no provision for a second appeal and consequently it was contended that there was no right of further appeal. Their Lordships refused to accept this contention, holding that when proceedings of this character reach the District Court that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the ordinary rules of the Code of Civil Procedure apply. It is not going much further to say that the same principle applies when an Act like the Land Acquisition Act provides for reference of dispute to the District Court and gives the Provincial Government power to substitute for the District Judge another judicial officer who

*admittedly decides the dispute as a civil Court. The argument that there is here a right of appeal is made all the stronger by the provisions of sections 53 and 54 of the Act. Any controversy, however, is settled by the decisions of the Privy Council in **Ramachandra Rao v. Ramachandra Rao**, reported in **16 LW 1**, and **Bhagwati v. Ram Kali**, reported in **50 LW 66**.*

18. In comparatively recent times, the same question arose before another Division Bench of this Court in **Loomchand Sait v. The Revenue Divisional Officer, Tiruchirapalli and others**, reported in (1975) **88 LW 207**, the Division Bench after referring to the judgments in **A.Mahalinga Kudumban**'s case, **Janapareddi Venkatareddi**'s case, and **Chikkanna Chettiar @ V.S.Nanjappa Chettiar**'s case referred to supra, concluded that an Appeal would lie against an order made in a reference under Section 30 of the Land Acquisition Act. In doing so, the Division Bench concluded as follows:

“9.Therefore, the question that arises for consideration is, under what provision of law, an appeal is available against an order made by the Court on a reference under Ss. 30 and 31(2) of the Act.

*10. That question has been considered by a Bench of this Court in **A.Mahalinga Kudumban** and*

others v. Theetharappa Mudaliar. The Bench pointed out that the decision of a Court as to the rights of the contending parties on a reference under S. 30 of the Act cannot be said to be an award, and therefore, Section 54 is not applicable to such a case. However, the Bench proceeded to hold, on general principles, that an appeal would be available. The Bench rested its conclusion on two alternative grounds. One was, though Section 26(2) of the Act itself would not apply to an order passed by a Court on a reference under Sections 30 and 31(2) of the Act, still such an order would be a decree within the meaning of Section 2(2), C.P.C. The Second was, apart from the question whether such an order amounts to a decree or not, when proceedings are before a civil court, such proceedings are governed by the usual procedure applicable to such court and as the reference under Section 30 is to the Court, the right of appeal given by Section 96, C.P.C., unless expressly taken away, would attach to such proceedings, and Section 53 which makes the C.P.C. applicable to proceedings before the Court does not take away the right under the C.P.C. The above Bench decision was followed by another Bench of this Court in *Janapareddi Venkatarreddi Adhinarayana Rao*. Though the reasoning of the Bench in *A. Mahalinga Kudumban and others v. Theetharappan Mudalliar* was dissented from by a Full Bench of this Court

in N.K.R.M. Rajagopala Chettiar v. The Hindu Religious Endowments Board, Madras, represented by its President R. Surya Rao and four others, the correctness of the said reasoning and conclusion of the Bench was restored by a subsequent Full Bench of this Court in Chikkanna Chettiar v. V.S. Perumal Chettiar and another. In view of the above decisions, it is unnecessary to consider the decisions of other Courts bearing on this point.”

19. As pointed out by the Hon’ble Division Bench in **Loomchand Sait** ‘s case, the effect of an order passed determining the rights of the parties to receive compensation in a reference under Section 9(2) of the Act, is a decision on his property rights, the Court in such a case actually decides upon a Civil Right. Such a determination made by a Civil Court would definitely fall within the definition of a decree under Section 2(2) of the Code of Civil Procedure.

20. In view of the above categorical pronouncements of at least three Division Benches as well as the Full Bench of this Court, I have no hesitation to conclude that an order made by the Sub Court, which is essentially a Civil Court in a reference under Section 9(2) of the Act, will be a decree within the meaning of Section 2(2) of the Code of Civil Procedure. Once it is held to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure, an Appeal

would automatically lie against such a decree, before the Court to which an Appeal would lie against any original decree passed by the such Court.

21. The only other aspect that is to be considered is the submission of Mr.N.Nithyanandam, learned counsel appearing for the second respondent, based on the judgment of another Division Bench of this Court in ***N.Ponnusamy and others v. Special Tahsildar, Land Acquisition***, reported in **2019 (2) CTC 777**. The said judgment arose under the Tamil Nadu Highways Act, which also provides for acquisition of land. As in this enactment the Tamil Nadu Highways Act, 2001, also provides for acquisition of land and determination of compensation. A reference to Court on the question of quantum of compensation is also made available under Section 20 of the said Act and Section 21 of the Tamil Nadu Highways Act, 2001, is in *pari materia* with Section 9 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997.

22. While dealing with an award passed under Section 20 of the said Act, fixing compensation. A Division Bench of this Court had held that an appeal would not lie against an order granting compensation in view of Sub Section 2 of Section 20, which is in *pari materia* with Sub Section 2 of Section 8 of the 1997

Act. While dealing with an appeal against an award made under Section 20, the Division Bench of this Court had concluded that an Appeal would not lie, since an award is made final under Sub Section 2 of Section 20, but however, treated the appeal as a Revision, under Article 227 of the Constitution of India and disposed of the same. A review was sought to be filed against the said order of the Division Bench primarily contending that a Revision under Article 227 should be heard and disposed of by a Single Judge and not by a Division Bench of this Court.

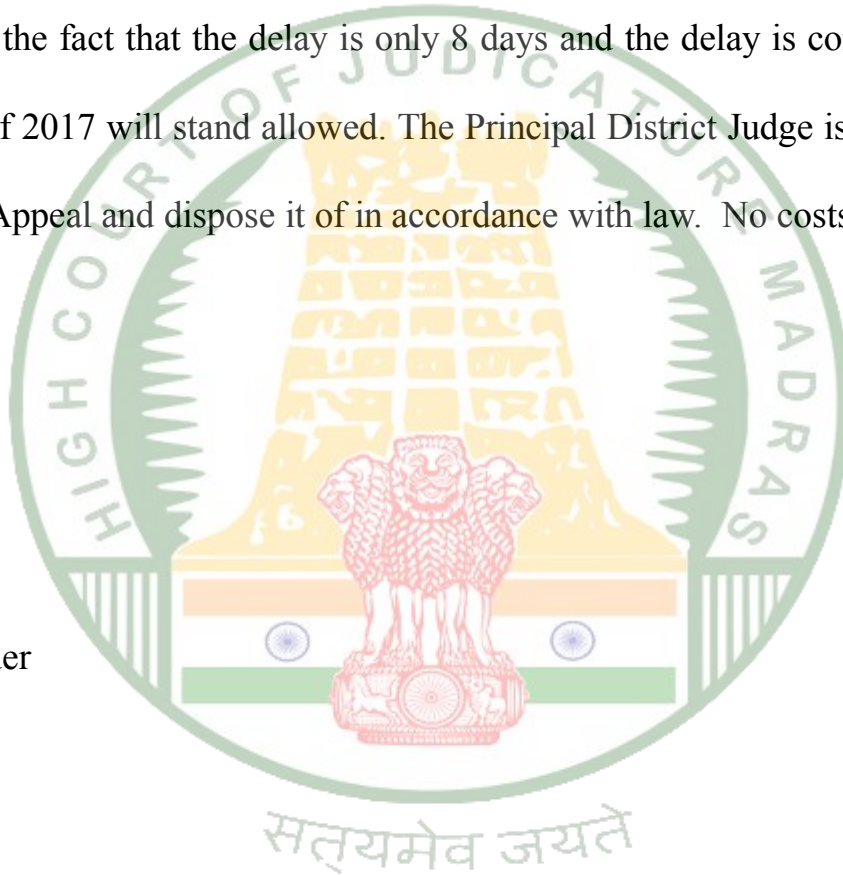
23. The Division Bench rejected the said contention and concluded that once the review petitioners had agreed for disposal of the Appeal, treating it as a Civil Revision Petition, they cannot be heard to complain that the Civil Revision Petition should have been heard by a single judge and not by a Division Bench. Either the Division Bench which decided the Review Petition or the Division Bench which converted an Appeal in to a Revision Petition did not consider the effect of an order made under Section 21 of the Tamil Nadu Highways Act, 2001, which is in *pari materia* with Section 9 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. I therefore do not think that the Division Bench Judgment would be of any help in deciding the controversy before us.

24. In view of the above discussion, I conclude that the Appeal was rightly filed before the District Judge and the District Court was in error in rejecting the appeal as not maintainable. Hence the Civil Revision Petition is **allowed**. Considering the fact that the delay is only 8 days and the delay is condoned and IA No.243 of 2017 will stand allowed. The Principal District Judge is directed to number the Appeal and dispose it of in accordance with law. No costs.

14.09.2020

jv

Index: Yes
Internet: Yes
speaking order



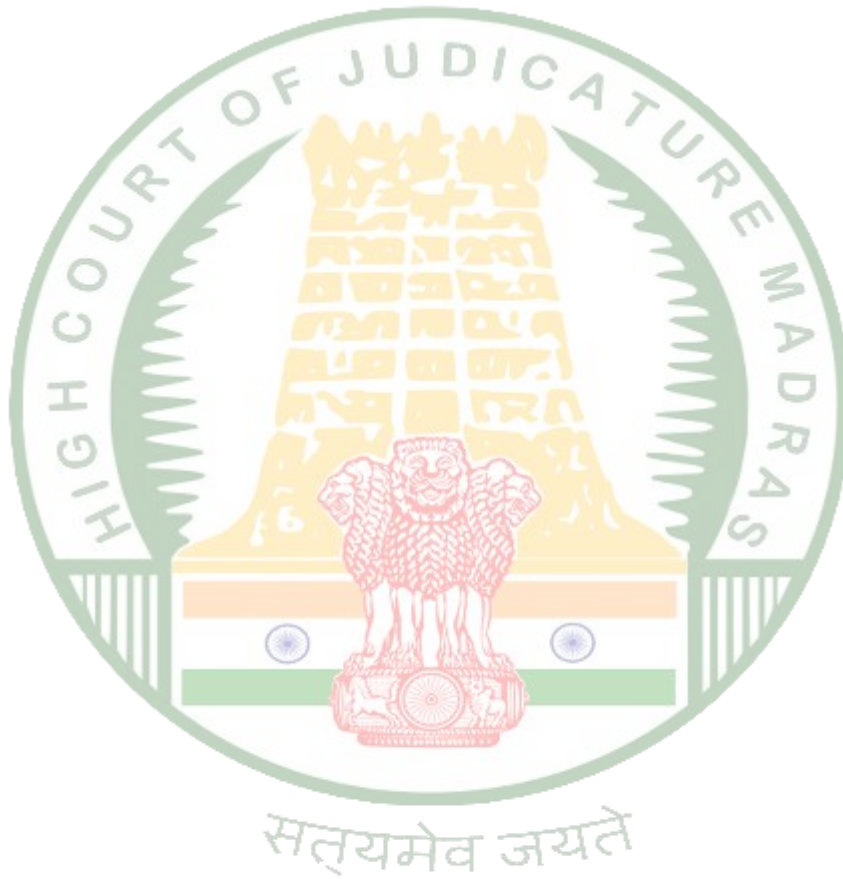
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To

1. The Principal District Judge,
Cuddalore District.
2. The Special Subordinate Judge
for Land Acquisition cases,

Cuddalore

3. The Section Officer,
V.R.Section,
High Court of Madras.

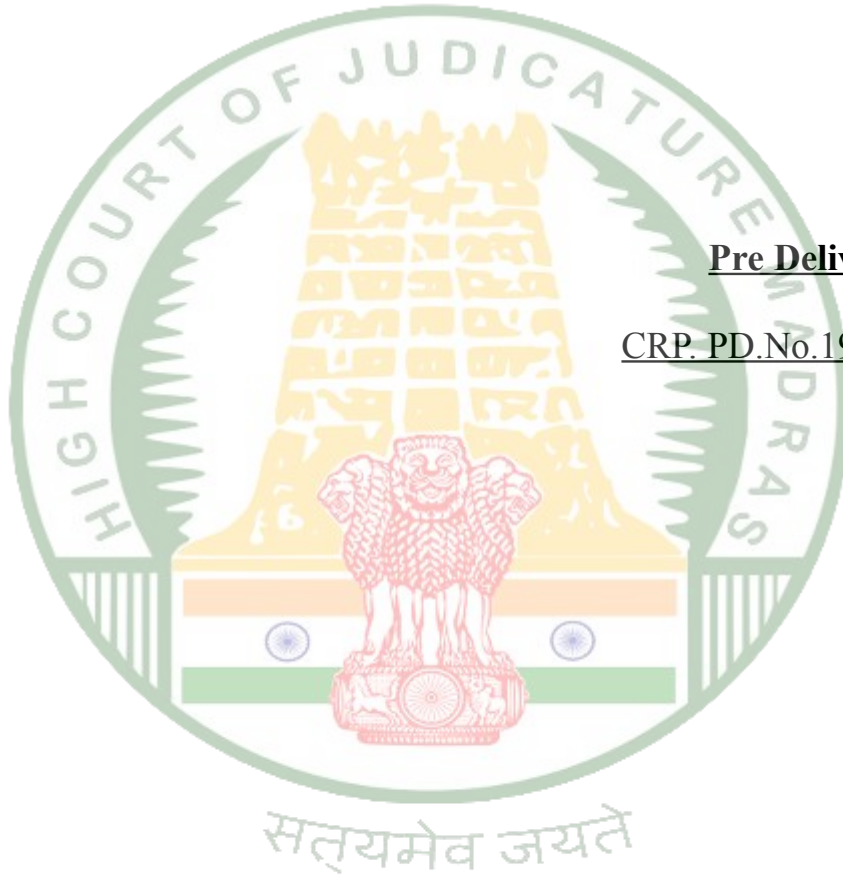


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jv



Pre Delivery Order

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