

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.A.No.918 of 2020
& CMP.No.11334 of 2020

M.Asalam Khan

..Appellant/9th Respondent

Versus

1. B.Anil Kumar @ Anil Kumar S.Mehta
2. The Government of Tamil Nadu
rep.by its Secretary to Government,
Department of Housing and Urban Development
Fort St.George, Chennai 600 009.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thazhamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
4. The District Collector,
Office of District Collector,
Thiruvallur.
5. The District Revenue Officer,
ORR Project, Phase-II,
CMDA, Koyambedu,
Chennai 600 107.
6. The Land Acquisition Officer cum Special Tahsildar (LA)
Unit VI, ORR Project,
Phase-II, CMDA, Koyambedu,
Chennai 600 107.
7. The Branch Manager,
Indian Overseas Bank,
Sowcarpet Branch,
143, NSC Bose Road,
Sowcarpet, Chennai 600 079.

8. The Branch Manager,
Indian Bank,
CMDA Branch, MMDA Towers,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

9.K.Venkatesan

...Respondents/Petitioners/
Respondents

PRAYER:- Writ Appeal filed under Clause 15 Letters Patent prays to set aside the order dated 24.09.2020 in W.P.No.31220 of 2019 of the learned Judge and allow the Writ Appeal.

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd Respondent herein to implement the 3rd respondents Award in Na.Ka.No. 12346 / ANIL / 2018 / F3 dated 22.02.2019 made pursuant to the order in W.P.No. 27320 of 2016 dated 19.02.2018 forth with and to honour the cheque bearing No.893611 dated 28.08.2019 for a sum of Rs. 8,53,54,736/- (Rupees Eight Crores Fifty Three Lakhs Fifty Four Thousand Seven Hundred and Thirty Six only) issued in favour of the petitioner on its presentation or in the alternative to issue fresh cheque in favour of the petitioner as per the above 3rd respondents award dated 22.02.2019

For Petitioner :	Mr.S.Prabhakaran Senior Counsel assisted by Mr.G.Mohana Krishnan
For R1 :	Mr.P.S.Raman, Senior Counsel assisted by Mr.S.Sathiya Seelan
For RR3,5&6 :	Mr.Karthik Rajan
For RR2&4 :	Mr.S.Kamalesh Kannan Government Advocate

JUDGMENT

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The 9th respondent in W.P.No.31220 of 2019, is the appellant herein.

2. The 1st respondent / writ petitioner filed the said Writ Petition praying for issuance of a Writ of Mandamus, directing the 2nd respondent namely, the Member Secretary, Chennai Metropolitan and Development Authority ('CMDA' in short), Chennai 600 008, to implement the Award dated 22.02.2019 passed by the 3rd respondent viz., the Collector of Thiruvallur District, made pursuant to the order dated 19.02.2018 in

W.P.No.27320/2019 and to honour the cheque bearing No.893611 dated 28.08.2019 for a sum of Rs.8,53,54,736/- issued in favour of the petitioner on its presentation or in the alternative to issue fresh cheque in favour of the petitioner as per the above said Award dated 22.02.2019. The said Writ Petition was entertained and after hot contest, it came to be allowed on a positive direction vide impugned order dated 24.09.2020. The 9th respondent in Writ Petition namely, Mr.M.Asalam Khan, aggrieved by the said order, has filed this Appeal.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned order, which is the subject matter of challenge in this Writ Appeal and for the sake of brevity, it is unnecessary to restate the facts once again, except to cull out the relevant facts for the purpose of disposal of this Writ Appeal.

3. The 1st respondent/writ petitioner, in the affidavit filed in support of the Writ Petition, would aver among things that a land admeasuring an extent of 0.06.0 Ares in S.No.87/1, as well as the land admeasuring an extent of 1.54 Ares in S.No.88/1B1B situate at Attanthangal Village, Ponneri Taluk, Thiruvallur District was absolutely owned and possessed by the Principal namely, Thiru.S.N.Vivekananda Chettiar through Partition Deed dated 13.06.1978 and he in-turn executed a registered general Power of Attorney bearing Doc.No.1053 of 2003 dated 27.11.2003 on the file of the Sub Registrar Office, Redhills, in and by which, the 1st respondent / Writ Petitioner was given all rights including the right of sale etc.,.

4. It is further averred by the 1st respondent / Writ Petitioner that the 5th respondent namely, Land Acquisition Officer cum Special Tahsildar has passed the Award dated 16.02.2009 vide Award No.01 of 2009 in respect of the land admeasuring an extent of 1.48 ares in S.No.87/1 and S.No.88/1B1B for a sum of Rs.11,81,038/-. It is pointed out by the petitioner that in respect of one of the adjacent land owners viz., Tmt.R.Saraswathi, the Reference Court in L.A.O.P.No.2 of 2011 (The Sub Court, Ponneri) has enhanced the compensation and vide, Award dated 0.12.2014 has fixed a sum of Rs.95,010/- and the petitioner had approached the 4th respondent namely District Revenue Officer, ORR Project, Phase II, CMDA, Chennai 600 107 for re-determination of land acquisition compensation through his representation dated 23.05.2016. However, the 5th respondent, vide proceedings dated 20.06.2016, has rejected the same and making challenge to the same, the petitioner has filed W.P.No.27320/2016. The Writ Petition came to be disposed of by directing the concerned official respondents to invoke Section 28-A of the Land Acquisition (Central Act), 1894 and pass appropriate orders and accordingly, the further Award came to be

passed on 22.02.2019 by fixing the compensation at Rs.8,53,54,743/-.

5. The petitioner would further state that in compliance of the same, the 3rd respondent in the Writ Petition namely, CMDA had drawn a Cheque dated 28.08.2019 in favour of the Indian Bank for the said sum and it was also credited to his account on 30.08.2019 itself and it was also reflected in the Statement of Accounts dated 05.09.2019 for the period between 01.08.2019 and 04.09.2019. However the petitioner became aware of the fact that the said credit was reversed by the 2nd respondent on the alleged objections given by the 9th respondent / appellant in this Writ Petition and came forward to file the said Writ Petition.

6. The Writ Petition was entertained and the 2nd respondent viz., CMDA has filed a counter affidavit narrating the factual aspects and dealt with the present issue in paragraph Nos.12, 13 and 15 of the same and it is relevant to extract paragraph nos.12, 13 and 15:

"12. With regard to allegations in Para no.9, it is respectfully submitted that on perusal of award no.1/2009, dated 16.02.2009 in SI No.1A and 1B, in S.No.78/1B1, lands to the extent of 0.10.0 Ares, in Survey No.83/2A, an extent of 0.83.0 Ares and s.No.84/2 an extent of 1.18.0 Hectares were acquired and stand registered in the joint name of the petitioner and Joint Commissioner (Land Reforms), Villupuram whereas in the case of village accounts and through local enquiry, it is revealed that lands measuring 2.11.0 hectares in said survey numbers involved in the acquisition are under possession and enjoyment of the petitioner. The Joint Commissioner, Land reforms, Villupuram, in his letter dated 30.11.2007 stated that the lands in S.No.83, 84 to an extent of 3.84 and 3.20 ares respectively are attracted under Tamil Nadu Land Reforms (Fixation of ceiling Act). Hence compensation was deposited in CCD under Section 30 nad 31(2) of the Land Acquisition Act. Thiru.Anilkumar has obtained compensation for Survey No.83/2 and 84/2 of Attanthangal Village, by way of common judgment delivered in L.A.O.Ps 89, 99 and 101 of 2011 on 03.09.2014, and the land value deposited in C.C.D in respect of lands measuring 0.83.0 hectares in S.Nos.83& lands measuring 1.18.0 hectares in Survey no.84/2, totalling to 2.01.0 hectares of Rs.15,41,485/- on the ground that the lands acquired in above said survey numbers are at the title rights of Joint Commissioner (VLC).

Thiru.Anil Kumar from the Sub-ordinate Judge, Ponneri on 05.11.2014 contradicting the fact that the power of attorney for survey no.83, is already conferred with Thiru Venkatesan on 10.11.2013. This Fact is supported with encumbrance certificate obtained from Sub Registrar Office, Redhills. The contention of Thiru Venkatesan with regard to Survey No.83, of Attanthangal Village is that the land measuring an extent 1.57.0 hectares is vested with him. Thiru Anilkumar, by virtue of Power of Attorney document No.12384/2013, dated 11.11.2013, executed subsequently by Thiru Venkatesan sold this land to Thiru Azharudeen, registered as Doc.No.398/2014 dated 20.01.2014 in the office of the Sub Registrar, Ponneri.

13. As regards the allegations contained in paragraph 10 to 14, it is respectfully submitted that the 5th respondent has sent a notice for enquiry to both parties by RPAD on 06.09.2018 and conducted enquiry on the objections of 6th respondent on 18.09.2019. The petitioner and counsel for the 8th respondent have attended the enquiry. During enquiry, the counsel for the 8th respondent represented that the compensation for S.No.83, ought to have been given to him based on the POA document executed on 10.11.2013 and has requested to withhold the enhanced compensation ordered in Survey No.87/1 and 88/1 on moral grounds. Further it is submitted that as per the instructions of the 2nd respondent, CMDA, the enhanced compensation amount granted to the petitioner has been returned back to the CMDA, Accounts.

15. It is respectfully submitted that the reasons stated above, the enhanced compensation ordered under Section 28(A) of the LA Act, 1894 in respect of S.No.87/1 and S.No.88/1B, is ordered to be kept under Civil court deposit under Section 30 and 31(2) of the LA Act, 1894 by the 2nd respondent. In due compliance of the order, the compensation amount has been already deposited in District court Tiruvallur as stated above. Regarding the legal entanglement in S.No.83, it is for the Principal District Judge, Tiruvallur to examine the veracity or correctness of the adjudication of its decree in LAOP No.101/2011, dated 03.09.2014 and decide the issue of enhanced compensation in respect of S.No.87/1 and 88/1B of Attanthangal Village.

7. The 9th respondent, who has not originally arrayed as a respondent, got impleaded in the Writ Petition, pursuant to the

order passed in W.M.P.No.33944 of 2019 and in the affidavit filed in support of the Writ Miscellaneous Petition, he would state that the 8th respondent, namely Mr.K.Venkatesan in pursuant to the registered Power of Attorney dated 21.01.2014 executed by the writ petitioner namely, Mr.S.Anil Kumar has sold the land admeasuring an extent of 3.88 cents in S.No.83, Attanthangal Village, Ponneri Taluk, Thiruvallur District in favour of one Mr.Azaruddin and later in favour of Mr.Arun Kumar and subsequently, the property was settled in favour of his Wife through a Registered Settlement Deed dated 20.07.2017 and from her, he got a registered Power of Attorney. The primordial grievance expressed by the 9th respondent is that in respect of the said land, the writ petitioner had fraudulently got compensation and therefore raised objections before the 2nd respondent, not to disburse the compensation in respect of the land in S.Nos.87/1 and 88/1B1B.

8. The 6th respondent namely, Indian Overseas Bank has also filed a counter affidavit stating about the bank practices and in the light of the instructions issued by the 2nd respondent namely CMDA, the reversal was given and in sum and substance it is the stand of the 6th respondent that it is a regular bank practice and it cannot be found fault with.

9. The learned Judge on an exhaustive analysis of the factual aspects and taking note of the rival submissions, in paragraph no.22 of the impugned judgment found that it is not even the case of the respondents 8 or 9 as to their right in respect of the property in S.Nos.87/1 and 88/1B1B and in the absence of any such claim as to the ownership in respect of the said lands, they are not entitled to raise objections and therefore allowed the Writ Petition and permitted the 1st respondent / writ petitioner to withdraw the compensation which was ordered to be deposited to the credit of W.P.No.31220/2019.

10. Mr.S.Prabhakaran, learned Senior Counsel assisted by Mr.G.Mohanakrishnan, learned counsel appearing for the appellant / 9th respondent has pointed out the voluminous typed set of documents and would submit that the documents unerringly pointed out the illegalities in the method adjudicated by the writ petitioner/1st respondent to get compensation in respect of a land for which, he had executed the Power of Attorney in favour of the 8th respondent and by adopting dubious method and unethical practice, he has also got the compensation in respect of land admeasuring an extent of 3.88 cents in S.No.83, Attanthangal Village, Ponneri Taluk, Thiruvallur District also and immediately on becoming aware of the same, raised objection before the CMDA. Though the 1st respondent / writ petitioner was very well aware of the same, failed to implead him as respondent in the Writ Petition. Only on the request of the 9th respondent

for impleadment, he came to be impleaded and therefore, the stand taken by the 2nd respondent CMDA is tenable.

11. It is also brought to the knowledge of this Court by the learned Senior Counsel appearing for the appellant / 9th respondent that he has also invoked the ordinary original civil jurisdiction of this Court by filing C.S.NO.256/2020 against the 1st respondent / writ petitioner and pending disposal of the Suit, filed an application in O.A.No.2283 of 2020 for Garnishee Order and notice has been ordered and the same is pending adjudication and in order to protect the interest of the plaintiff, this Court may allow the Writ Appeal and direct the Indian Bank to get the amount in deposit.

12. Per contra, Mr.P.S.Raman, learned Senior Counsel assisted by Mr..Sathiya Seelan appearing for the 1st respondent / Writ Petitioner would submit that in the light of the factual findings recorded by the learned Single Judge in paragraph no.22 of the impugned order, the appellant has no locus standi to raise any objections as to the disposal of enhanced compensation in favour of the 1st respondent / Writ Petitioner, in respect of the land in S.No.87/1, 88/1B1B and insofar as the claim of the 9th respondent for payment of compensation in respect of the land in S.No.83 owned by his wife, for which he is having Power of Attorney, he is always at liberty to workout his remedy in the pending Civil Suit No.256/2020 and would further add that the filing of the present Writ Appeal is nothing but an abuse of process of law and prays for dismissal of the same with exemplary costs.

13. The learned Standing Counsel appearing for the 2nd respondent in the Writ Petition / 3rd respondent in this Writ Appeal would submit that in the light of the objections only, the amount credited was ordered to be reverted by giving instructions to the 7th respondent in the Writ Petition and the said entity may abide by the orders to be passed in the Writ Appeal.

14. This Court has carefully considered the rival submissions and also perused the materials placed before it.

15. In page no.1 of the additional typed set of documents filed in support of this Writ Appeal, the registered general Power of Attorney bearing Doc.No.12824 of 2013 dated 11.11.2013 registered in the office of the Sub Registrar, Red Hills, executed by the 1st respondent / writ petitioner in favour of the 8th respondent is available and it is relevant to extract the schedule of property:

Schedule of Property

All that piece and parcel of vacant land (as per

patta No.2346) comprised in S.No.78/1, measuring an extent of Hec.0.32.0 Ares, survey no.83, measuring an extent of Hec.1.57.0 Ares, Survey No.84/1 measuring an extent of Hec.0.08.5 Ares, and Survey No.84/3 measuring an extent of Hec.0.03.0 Ares, in all totalling an extent of Hec.2.00.5 Ares in full extent situated at No.112, Attanthangal Village, Ponneri Taluk, Thiruvallur District and lying within the Registration District of Chennai North and Registration Sub District of Redhills.

16. The 8th respondent, arming with the said Power of Attorney, has executed a registered Sale Deed dated 20.01.2014 bearing Doc.No.398/2014 on the file of the office of the Sub Registrar, Redhills in favour of one Mr.S.Asaruthin, for the land admeasuring an extent of 1.57.0 hec (3.88 acres) comprised in S.No.83 of Attanthangal Village, Ponneri Taluk, Thiruvallur District.

17. The purchaser namely, Mr.S.Asaruthin has executed a registered Sale Deed dated 20.7.2017 bearing Doc.No.3922/2017 through his Power of Attorney namely Mr.T.Arun Kumar in favour of his wife Tmt.Iynul Fathima and his wife in-turn, has executed a general Power of Attorney in favour of Mr.Aslam Khan / 9th respondent / appellant. As rightly pointed out by the learned Judge in the impugned order, in respect of the land in S.No.87/1, 88/1B1B situate at Attanthangal Village, Ponneri Taluk, Thiruvallur District, no Power of Attorney has been executed in favour of the 8th respondent.

18. The Writ Petition pertains only to the disbursal of the compensation in respect of the land in S.Nos.87/1, 88/1B1B situate at Attanthangal Village, Ponneri Taluk, Thiruvallur District and as such, the appellant / 9th respondent cannot have any objections as to the disbursal of the said compensation in favour of the 1st respondent / writ petitioner.

19. It is the primordial submission of the learned Senior Counsel appearing for the appellant / 9th respondent that in respect of the lands purchased admeasuring an extent of 3.88 acres comprised in S.No.83 of Attanthangal Village, Ponneri Taluk, Thiruvallur District, the 1st respondent/writ petitioner managed to get compensation by deliberately suppressing/burking material facts. However this Court is not inclined to make any observations in this regard for the reason that a comprehensive Civil Suit in C.S.No.256/2020 is pending on the file of this Court and it is always open to the appellant to workout his remedy in respect of his claim in the pending Civil Suit and if he is so advised, he is also at liberty to invoke other remedies available to him under law.

20. In the light of the fact that the 9th respondent is not having any semblance of right in respect of the lands in S.No.87/1, 88/1B1B situate at Attanthangal Village, Ponneri Taluk, Thiruvallur District, the learned Single Judge has rightly reached the conclusion to allow the Writ Petition, with a positive direction.

21. This Court, on an independent application of mind to the entire materials and consideration of the rival submissions, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge in the form of positive order in favour of the 1st respondent / Writ Petitioner and finds no merits in this Writ Appeal.

22. In the result, the Writ Appeal is dismissed confirming the order dated 24.09.2020 passed in W.P.No.31220 of 2019. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

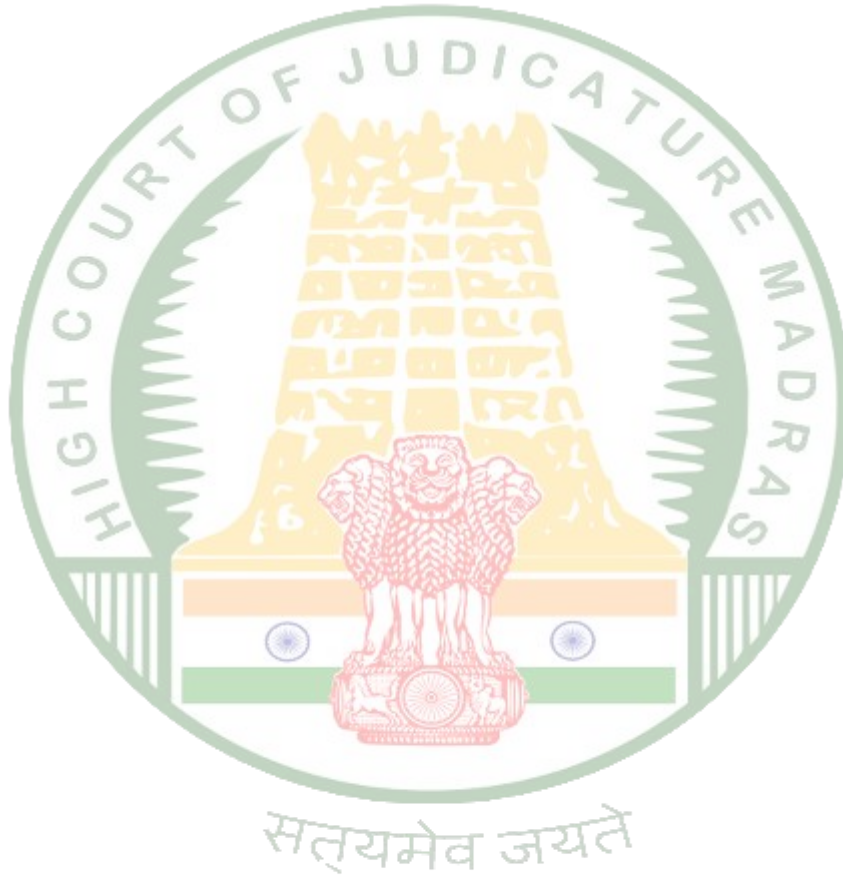
To

1. The Secretary to Government,
Department of Housing and Urban Development
Fort St.George, Chennai 600 009.
2. The Member Secretary,
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5. The Land Acquisition Officer cum Special Tahsildar (LA)
Unit VI, ORR Project,
Phase-II, CMDA, Koyambedu, Chennai 600 107.

+lcc to the Government Pleader, S.R.No.30677
+lcc to Mr.G.Mohana Krishnan, Advocate, S.R.No.34326

W.A.No.918 of 2020

KK(CO)
RV(27/11/2020)



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