

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2624 of 2018 and
CMP.No.15727 of 2018

Airport Authority of India,
Airport Director,
Coimbatore International Airport,
Coimbatore

..Petitioner

Vs.

K.Subbathal(died)

1.K.Gopal

2.K.Murugesh(died)

3.Mylathal(died)

4.N.Valumani

5.M.Loganathan

6.Nidhya

7.P.Jayasree

8.A.Harsan

(R4 & 5 brought on record as LR's the
second respondent vide order dated 23.06.2021
in CMP.Nos.20458, 20459 & 20461 of 2018 in
CRP.No.2624 of 2018)

(R6, 7 & 8 brought on record as LR's the
third respondent vide order dated 23.06.2021
in CMP.Nos.20443, 20448 & 20455 of 2018 in
CRP.No.2624 of 2018)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decretal order passed in EA.No.325 of 2013 in EP.No.155 of 2011 in LAOP.No.141 of 2000 dated 20.03.2018 on the file of the II Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.V.Ramesh

For Respondents

For R1, 4 to 8: M/s.Pavitra Venkateswaran
for Mr.K.M.D.Muhilan

ORDER

This Civil Revision Petition is filed against the the fair and decretal order passed in EA.No.325 of 2013 in EP.No.155 of 2011 in LAOP.No.141 of 2000 dated 20.03.2018 on the file of the II Additional Subordinate Court, Coimbatore, thereby dismissed the petition to review the order dated 28.02.2013 passed by the execution court.

2. The petitioner is the second respondent and the respondents are the petitioners in the land acquisition original petition in LAOP.No.141 of 2000 on the file of the Sub Court, Coimbatore. The land was acquired for the purpose of construction of airport at Coimbatore by the Government of Tamil Nadu. In pursuant to which, the petitioner passed the order. Aggrieved by the same, the respondents filed appeal for enhancement of compensation and it was allowed in their favour by award dated 29.10.2004. Aggrieved by the same, the petitioner preferred appeal suit in AS.No.132 of 2007 before this Court and the same was dismissed by order dated 02.03.2010. In pursuant to the award passed in LAOP.No.141 of

2000, the respondents filed execution petition in EP.No.155 of 2011 for execution of the decree. According to the decree, the petitioner is liable to pay a sum of Rs.5,000/- per cent and solatium at 30% and additional market value at 12% amounting to Rs.3,46,873/- apart from the interest at the rate of 15% from the date of acquisition. The respondents claimed in execution petition a sum of Rs.10,71,705/- including the value of the land, solatium and interest. However, the petitioner deposited a sum of Rs.8,29,802/- after deducting a sum of Rs.2,07,450/- towards TDS to the credit of LAOP. Without considering the said calculation of memorandum, the execution court allowed the claim in entirety by order dated 28.02.2013 and directed the petitioner to deposit the entire decree amount. Therefore, the petitioner filed petition to review the order dated 28.02.2013 and requested the court below to consider the memorandum of calculation filed by the petitioner as well as the memorandum of calculation submitted by the respondents. Therefore, the petitioner filed petition to review the order passed by the execution court under Order 47 Rule 1 r/w Section 114 of CPC.

3. The court below dismissed the petition for the reason that if the petitioner is aggrieved by the order passed by the execution court, they ought to have filed an appeal. Further stated that already

the execution court passed an order only on the basis of the award passed in the land acquisition original petition and as such the execution court has no power to review the order passed in the land acquisition original petition.

4. The learned counsel for the petitioner submitted that the petitioner never prayed to review the order passed in LAOP. The petitioner's limited prayer was that after considering the memorandum of calculation filed by the petitioner as well as the respondents and arrive to final amount. Admittedly, the execution court without considering the memorandum of calculation submitted by the petitioner as well as the respondents and passed order on 28.02.2013 and directed the petitioner to deposit a sum of Rs.11,70,386/-

5. Considering the facts and circumstances of the case, the order passed in EA.No.325 of 2013 in EP.No.155 of 2011 in LAOP.No.141 of 2000 dated 20.03.2018 on the file of the II Additional Subordinate Court, Coimbatore is set aside and this court is inclined to remand the matter back to the execution court for fresh consideration. It is made clear that the execution court is directed to reconcile memorandum of calculation submitted by the petitioner dated 06.12.2012 as well as the memorandum of calculation

submitted by the respondents and pass orders on merits and in accordance with law.

6. For the above limited purpose, EA.No.325 of 2013 in EP.No.155 of 2011 in LAOP.No.141 of 2000 is remanded back to the execution court. Further, the execution court i.e. The II Additional Subordinate Court, Coimbatore is directed to dispose of the same within a period of eight weeks from the date of receipt of copy of this Order.

7. With the above directions, this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

23.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

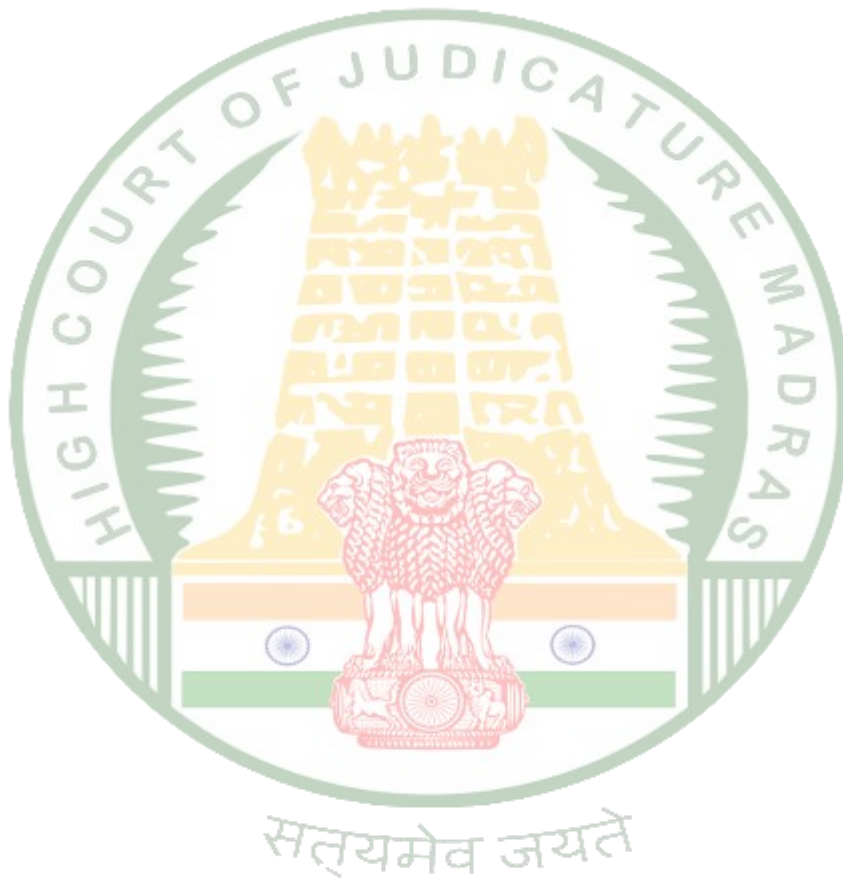
The II Additional Subordinate Court,
Coimbatore



CRP.NPD.No.2624 of 2018

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