

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.06.2021

PRONOUNCED ON: 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) Nos. 1609 to 1612 of 2020

And

**C.M.P.Nos. 2798, 2799, 2801, 2802 of 2021 & 9716, 9718, 9728, 9730,
9733, 9734, 9737 & 9738 of 2020**

Kamarajar Port Limited
Rep. by its Deputy General Manager (Civil)
No.17, Jawahar Building,
Rajaji Salai, Chennai – 600 001.

... Petitioner/proposed respondent in all Cr.Ps.

-Vs-

1. The Special Tahsildar
Land Acquisition
Thiruvottiyur – Ponneri
Panjetty Salai Scheme
Ponneri.
2. The Project Director
National Highways Authority of India
Shri Tower, 3rd Floor, DP-34(SP)
Industrial Estate,
Chennai – 32.
(Chennai-Ennore Port Connection)

... Respondent/Respondent in all Cr.Ps.

3. B.Ethiraj ... Respondent/ Claimant in all Cr.Ps.

PRAYER IN C.R.P.No. 1609/2020: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the dismissal of I.A.No. 299 of 2018 in L.A.O.P.No. 74 of 2010 on the file of Sub Court, Ponneri.

PRAYER IN C.R.P.No. 1610/2020: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the dismissal of I.A.No. 300 of 2018 in L.A.O.P.No. 74 of 2010 on the file of Sub Court, Ponneri, dated 02.02.2019.

PRAYER IN C.R.P.No. 1611/2020: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the dismissal of I.A.No. 298 of 2018 in L.A.O.P.No. 73 of 2010 on the file of Sub Court, Ponneri.

PRAYER IN C.R.P.No. 1612/2020: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the dismissal of I.A.No. 297 of 2018 in L.A.O.P.No. 73 of 2010 on the file of Sub Court, Ponneri.

For Petitioners in

all Cr.Ps.

Mr. Krishna Ravindran

For 1st Respondent in

all Cr.Ps.

Mr. A.E.Ravichandran
Government Advocate

For 2nd Respondent in
all Cr.Ps. : No appearance

For 3rd Respondent in
all Cr.Ps. : Ms. Lita Srinivasan

COMMON ORDER

C.R.P.No. 1609 of 2020 had been filed questioning the order dated 02.02.2019 in I.A.No. 299 of 2018 in L.A.O.P.No. 74 of 2010 passed by the Sub Court, Ponneri.

2. C.R.P.No. 1610 of 2020 had been filed questioning the order dated 02.02.2019 in I.A.No. 300 of 2018 in L.A.O.P.No. 74 of 2010 passed by the Sub Court, Ponneri.

3. C.R.P.No. 1611 of 2020 had been filed questioning the order dated 02.02.2019 in I.A.No. 298 of 2018 in L.A.O.P.No. 73 of 2010 passed by the Sub Court, Ponneri.

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4. C.R.P.No. 1612 of 2020 had been filed questioning the order dated 02.02.2019 in I.A.No. 297 of 2018 in L.A.O.P.No. 73 of 2010 passed by the Sub Court, Ponneri.

5. I.A.No. 299 of 2018 had been filed by the revision petitioner / proposed respondent in L.A.O.P.No. 74 of 2010 under Section 151 C.P.C., to stay all further proceedings in L.A.O.P.No. 74 of 2010 till the disposal of A.S.SR.No. J60260 to J 60268 in A.S.No. 1008 of 2015 before the High Court, Madras.

6. I.A.No. 300 of 2018 had been filed by the revision petitioner / proposed respondent in L.A.O.P.No. 74 of 2010 under Order 1 Rule 10 CPC to implead themselves as third respondent in L.A.O.P.No. 74 of 2010.

7. I.A.No. 298 of 2018 had been filed by the petitioner/proposed respondent in L.A.O.P.No. 73 of 2010 under Order 1 Rule 10 CPC to implead the petitioner as third respondent in L.A.O.P.No. 73 of 2010.

8. I.A.No. 297 of 2018 had been filed by the revision petitioner / proposed respondent in L.A.O.P.No. 73 of 2010 under Section 151 C.P.C., to stay all further proceedings in L.A.O.P.No. 73 of 2010 till the disposal of A.S.SR.No. J60260 to J 60268 in A.S.No. 1008 of 2015 before the High Court, Madras.

9. L.A.O.P.Nos. 73 & 74 of 2010 had been filed by the third respondent herein, B.Ethiraj, questioning the Award No. 5 of 2009 dated 20.04.2009 with respect to acquisition of lands under the Tamil Nadu High Ways Act 2001 with respect to lands comprised in S.No. 753/1A1 measuring to an extent of 0.05.0 Hectares and S.Nos. 751/1, 752/1 & 752/2 measuring to an extent of 0.07.5 Hectares situated at Vallur – III, Ponneri Taluk, Thiruvallur District.

10. By Award No. 5 of 2009, the compensation for the amounts in S.No. 753/1A1 was determined at Rs.3,30,833/- by fixing the land value at Rs.37/- per sq.ft. and the compensation for the lands acquired in 751/1, 752/1 & 752/2 was fixed at Rs.4,96,250/- at Rs.37/- per sq.ft. The said total compensation amount of Rs.8,27,083/- was received by B.Ethiraj under

protest and he later filed L.A.O.P.Nos. 73 & 74 of 2010 seeking enhancement of compensation.

11. A reference under Section 20(1) of the Tamil Nadu High Ways Act 2001 previously Section 18 of the Land Acquisition Act was made before the Sub Court at Ponneri. By Award dated 10.04.2015, the learned Sub Judge, Ponneri, had enhanced the compensation from Rs.37/- per sq.ft., to Rs.524/- per sq.ft.

12. Aggrieved by the said enhancement, the Special Tahsildar (Land Acquisition), Thiruvottiyur Ponneri Panchetty Salai Schemes had filed A.S.Nos. 1008 and 1009 of 2015 before the High Court, Madras. A Division Bench of this Court by Judgment dated 29.11.2016 had modified the compensation amount to Rs.485/- per sq.ft.

13. We must travel backwards in time and unravel few further facts.

14. Originally on 11.04.1997, the Government of Tamil Nadu for the purpose of use of lands for Ennore Port Trust subsequently renamed as Kamarajar Port had acquired large areas of land in Vallur Village. The 4(1) Notification under the Land Acquisition Act was issued on 11.04.1997. Among the said lands so acquired were also the lands in S.No. 751 measuring 0.07.5 hectares; in S.No. 752/1 measuring 0.03.0 hectares; in S.No. 752/2 measuring 0.02.5 hectares; in 753/1A measuring 0.14.5 hectares; totally measuring 0.27.5 hectares. Out of the said extent of lands, 0.13.0 hectares in S.Nos. 751, 751/1 & 752/2 were in the names of one Chokkalingam and others and lands in S.No. 753/1A stood in the name of one Magali. Thereafter, another individual Vidya had purchased the lands by sale deed dated 03.02.1997. After the acquisition of lands, notice was issued to all the relevant parties. There were objections and the entire amount in Award Nos. 1 of 1999 and 2 of 1999 dated 04.06.1999 and Award No. 1 of 2003 dated 05.12.2003 totally amounting to Rs.27,683/- and Rs. 19,962/- were kept under deposit. Possession of the land were handed over to Ennore Port Trust on 25.06.2002 and 08.03.2005. Mutation of the patta was not carried out till 2014. There were further encumbrances over the lands and finally, the third respondent Ethiraj purchased the lands

by Document No. 4495 of 2006 registered in the Sub Registrar Office, Thiruvottiyur on 14.07.2006. All these conveyances were subsequent to the initial acquisition of lands for Kamarajar Port Trust.

15. Be that as it may, in the meanwhile, the Tamil Nadu Government again acquired portions of the lands earlier acquired for the usage of Kamarajar Port Trust, now for the purpose of strengthening and widening of Thiruvottiyur-Ponneri- Panchetty Road Schemes under the Chennai Ennore Port connectivity project. The notification in this regard under Section 15(2) of the Tamil Nadu Highways Act 2001 for acquisition of lands measuring an extent of 1.35.0 hectares comprised in S.No. 817/1A1A etc., was published by the District Collector, Tiruvallur in the Newspapers on 09.06.2006. The following extent of land which was already acquired for the benefit of Kamarajar Port Trust were also covered in the said notification:-

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<i>Survey No.</i>	<i>Extent (In Hectares)</i>
751	0.02.0
752/1	0.03.0

<i>Survey No.</i>	<i>Extent (In Hectares)</i>
752/2	0.02.5
753/1A	0.05.0

16. The notification under Section 15(1) of the Tamil Nadu highways Act 2001 was also published in the Tamil Nadu Government Gazette – Extraordinary on 09.04.2007.

17. Since the mutation of patta had not been carried out in the name of Kamarajar Port Trust, the revenue records reflected that the patta was in the name of the third respondent herein B.Ethiraj. Subsequent to such acquisition, awards were passed as stated above at the rate of Rs.37/- per sq.ft., in favour of the third respondent herein B.Ethiraj, who later filed L.A.O.P.Nos. 73 & 74 of 2010 seeking enhancement of compensation and as stated above, the compensation had been enhanced from Rs.37/- per sq.ft., to Rs.524/- per sq.ft., by Judgment dated 10.04.2015 by the learned Sub Judge, Ponneri.

18. As stated, subsequently A.S.Nos. 1008 & 1009 of 2015 were also filed and compensation was modified to Rs.485/- by order dated 29.11.2016.

19. In the said L.A.O.P.Nos. 73 & 74 of 2010, the revision petitioner herein filed four Interlocutory Applications, namely to stay the proceedings and to implead them as proposed respondents. The orders passed in the said Interlocutory Applications are the subject matter of the present Revision Petitions.

20. It must be pointed out that the orders in the Interlocutory Applications were passed by the learned Sub Judge, Ponneri on 02.02.2019. Immediately thereafter, the first respondent, the Special Tahsildar, had deposited the entire enhanced compensation as modified by the High Court amounting to Rs.1,71,78,251/- which was the additional compensation payable. The entire amount was also permitted to be withdrawn and was paid to the third respondent herein B.Ethiraj by the Sub Court, Ponneri, dated 05.02.2019. In the meanwhile, the basis on which the application for stay and impleading were filed, namely that the revision petitioners had

filed Civil Miscellaneous Petitions in A.S.Nos. 1008 & 1009 of 2015 also fructified and the Civil Miscellaneous Petitions were taken up for consideration by a Division Bench of this Court and by order dated 11.02.2019 in C.M.P.Nos. 20668, 20669 of 2019 and 20687 and 20690 of 2018, the order passed in A.S.Nos. 1008 & 1009 of 2015 dated 20.11.2016 were set aside.

21. This development would indicate that the compensation which was enhanced from Rs.37/- to Rs.524/- and later modified to Rs.485/- was brought back to its original status of Rs.37/- per Sq.ft. This would also indicate that the third respondent was not entitled for any enhanced compensation and therefore had benefited by withdrawal of Rs.1,71,78,251/-.

22. In the common order now under question by the revision petitioner, the learned Sub Judge, Ponneri had rejected all the applications claiming that an compensation had been fixed and enhanced compensation had been awarded and that it was challenged before the High Court and that though the Kamarajar Port Trust had moved the High Court they had not

obtained stay and that the documents filed by Kamarajar Port Trust do not support their case. Holding that there were no merits in the petitions, they were dismissed.

23. The learned Sub Judge must atleast now realise the consequences of the said common order which is non est in law and which had been passed by him. As a matter of fact, he had also awarded costs. A perusal of the records show that the costs as determined by the Bill of Costs was Rs.7/-. In the decree, it had been stated that there is no order as to costs.

24. The entire common order now challenged will have to be set aside as being perverse.

25. Pursuant to this particular common order passed by the learned Sub Judge, the third respondent herein, B.Ethiraj had withdrawn a sum of Rs.1,71,78,251/- and till this date had not repaid the sum. Neither has the first and second respondents deposited the amount though there is an order to that effect by this Court. The entire amount has disappeared into thin air. It can never be recovered.

26. Mr. Krishna Ravindran, learned counsel for the revision petitioner pointed out the facts and stated that the learned Sub Judge had failed to appreciate that there were no documents filed to show that officials had actually stated that the award in favour of B.Ethiraj was non est and that he was not entitled to receive the compensation amounts. There was no reference to the documents filed by Kamarajar Port Trust and which had marked as exhibits during the enquiry.

27. Mr. A.E.Ravichandran, learned Government Advocate appearing on behalf of the first respondent informed the sequence of events and stated that the request for transfer of patta in the name of B.Ethiraj was also rejected by the Tahsildar, Ponneri and stated that owing to the non mutation in the revenue records in the name of Kamarajar Port Trust had been the basic reason why the entire confusion has arisen. The learned counsel pointed out that the revision petitioner had slept over the matter for nearly a decade and when they woke up they found that the lands had been dealt with subsequently. The learned counsel also expressed surprise to the happenings subsequent to the order of the learned Sub Judge, Ponneri, dated

02.02.2019 since within three days on 05.02.2019, a cheque for Rs.1,71,78,251/- was paid to B.Ethiraj by the Sub Court, Ponneri.

28. Ms. Lita Srinivasan, learned counsel for the third respondent, who had also filed application seeking to vacate the orders of stay passed by this Court very vehemently argued that the entire applications and the petitions have been filed out of mala fide intentions. She stated that the third respondent was actually a victim of circumstances. The learned counsel stated that the references to unnumbered applications in the petitions before the learned Sub Judge, Ponneri, were incorrect and stated they were not at all connected with A.S.Nos. 1008 & 1009 of 2015. The learned counsel pointed out that the acquired land was actually a road and stated that housing units can never be built in the said lands.

29. The learned counsel was very vociferous in her submission that the third respondent acted bona fide in receiving the compensation amount which was lawfully paid to him pursuant to a Judgement of the Division Bench of this Court. She pointed out that the Revision Petitions have become infructuous since the amounts had already been paid and therefore,

the question of stay of further proceedings before the Trial Court can never arise.

30. I have carefully considered the records and the arguments advanced.

31. The Tamil Nadu Government issued notifications under Section 4(1) of the Land Acquisition Act on 11/4/1997 for acquisition of lands measuring 19.10.5 hectares for the construction of staff quarters for Ennore Prot Trust now called Karmarajar Port Trust. On 04.06.1999 Award Nos. 1 & 2 of 1999 were passed with respect to the lands in S.Nos. 753/1A and S.Nos. 751, 752/1 & 752/2. The compensation amount was also deposited in Sub Court, Ponneri on 30.11.1999. They were later transferred to revenue deposit. In the year 2001, the High Ways Department issued a Government Order for execution of Chennai Ennore Port connectivity project. The lands were acquired and the lands that were acquired in favour of Kamarajar Port Trust were also acquired. The details are reproduced below:-

<i>Survey No.</i>	<i>Extent (In Hectares)</i>
751	0.02.0
752/1	0.03.0
752/2	0.02.5
753/1A	0.05.0

32. On 05.12.2003 Award No. 1 of 2003 was passed by the Revenue Divisional Officer confirming Award Nos. 1 & 2 of 1999. In the year 2006, more specifically on 09.06.2006 paper publication for notification under Section 15(2) of Tamil Nadu Highways Act 2001 was made for acquisition of land to an extent of 1.35.0 hectares for Chenani Ennore Port Trust connectivity project. Administrative sanction was granted on 31.03.2007. Gazatee publication was made on 09.04.2007. Award No.5 of 2009 was passed on 20.04.2009 by the District Collector, Tiruvallur and compensation amount of Rs.3,30,833/- for S.No. 753/1A and Rs.4,96,250/- for S.Nos. 751/1, 752/1, 752/2 was passed and paid to the third respondent B.Ethiraj. It must be pointed out that B.Ethiraj was purchaser of lands which was already the subject matter of acquisition in favour of the revision petitioner and his purchase was after the 4(1) notification issued. His purchase is therefore void in the eyes of law.

33. The only reason he was able to get compensation was because the revenue records had not been mutated in the names of the revision petitioner. However, the authorities particularly the first respondent had whether with ill motive or motive to make unlawful gain, had permitted compensation amount to be paid to B.Ethiraj, the third respondent herein. He not only benefited from the compensation amount as fixed by the Collector, Tiruvallur District at Rs.37/- per sq.ft., but also the compensation of Rs.485/- per sq.ft., fixed by the High Court in A.S.No. 1008 & 1009 of 2020. The person, who had no right to receive such compensation was handed over the same in a silver plate, nay, a gold plate by the officials of the first respondent and with much pain I must also state by the Sub Court, Ponneri. The learned Sub Judge, Ponneri should have applied his mind to the documents which had been filed before him in the course of enquiry in the Interlocutory Applications. The original records had been called for by this Court and it is seen that in L.A.O.P.Nos. 73 & 74 of 2010, during enquiry on 01.02.2019, Ex.P-1 the Award No. 2 of 1999, Ex.P-2 the Award No.1 of 2003, Ex.P-3 the proceedings of the Special Tahsildar, dated 30.11.1999, Ex.P-4 again the proceedings of the Special Tahsildar, dated 30.11.1999; Ex.P-5 the Award No. 5 of 2009; Ex.P-6 patta No. 1159 in

favour of Ennore Port Trust; Ex.P-7 the proceedings of the Tahsildar dated 09.03.2015; Ex.P-8 the further proceedings of the Tahsildar dated 13.06.2015; Ex.P-10 the letter of the Revenue Divisional Officer, Ponneri to the District Collector, Tiruvallur dated 13.07.2018 had been marked as documents. The learned Sub Judge, atleast out of some curiosity, should have referred to these documents particularly the patta and the correspondences between the Tahsildar and Collector which clearly indicate that the third respondent herein, on that day, did not have any right to receive any compensation. The learned Sub Judge have with much haste, immediately after arguments were advanced on 01.02.2019, on the very next day on 02.02.2019, passed orders and on 05.02.2019, a cheque was issued to the third respondent for a huge sum of Rs.1,71,78,251/-. Necessarily, this Court will have to interfere with the order of the learned Judge.

34. I am concious that the applications for stay had become infructuous and I therefore hold nothing survives in C.R.P.Nos. 1609 & 1612 of 2020. They are therefore dismissed.

35. In (2005) 11 SCC 403 [*Amit Kumar Shaw and Another Vs. Farida Khatoon and Another*], while dealing with Order 1 Rule 10 CPC, the Hon'ble Supreme Court held as follows:-

“8. On a combined reading of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, can an application for substitution by a subsequent transferee be rejected and the subsequent purchaser be non-suited altogether is the prime question for consideration in these appeals.

9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in the suit cannot be completely decided.

10. The power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.”

36. It is thus seen that the question to be addressed by the Court is also whether the right of a person may be affected if he is not added as a party. It is not sufficient to just examine whether he is a necessary party. This would indicate that if any order is passed, it must be examined whether such order would affect the party who seeks to be impleaded.

37. In this case, the order of the learned Sub Judge, Ponneri, granting compensation and rejecting the applications by a very cursory order which conveys no sense, has directly affected the interests of the revision petitioner. They are necessary parties. Therefore, I would revive

L.A.O.P.Nos. 73 & 74 of 2010 for further hearing and direct the learned Sub Judge, Ponneri, to implead the revision petitioners herein as the respondents to the said Land Acquisition Original Proceedings and issue notice to all concerned and also keeping in mind the orders of this Court by my learned predecessor dated 11.09.2020 which is as follows:-

“3. Now that, considering the factual circumstances, in order to prevent further damage, a direction is given to the respondents 1 and 2 to deposit the compensation amount to the tune of Rs.1,71,78,251/- which is due to the petitioner into the L.A.O.P account at Sub Court, Ponneri within a period of six weeks from today. After making such deposit, it is open to the respondents 1 and 2 to recovery the same from the erstwhile owner of the land, if they choose to.”

38. This order had been reiterated by another learned Single Judge wherein by order dated 07.01.2021, it had been observed as follows:-

“2. By order dated 11.09.2020, this Court has directed the respondents 1 & 2 to deposit the compensation amount of Rs.1,71,78,251/- which is

due to the petitioner herein into the L.A.O.P. account at Sub Court, Ponneri within a period of six weeks from 11.09.2020 and the matter was directed to list after six weeks for reporting compliance.

3. *When the mater is taken up today, the learned counsel for the petitioner would submit that the respondents 1 and 2 have to comply with earlier order dated 11.09.2020 of this Court. They have not taken any steps to deposit the said amount and so far, the order passed by this Court is not complied with by them.*

4. *Mr. S.Jaganathan, the learned Government Advocate (CS) appearing for respondents 1 & 2 would submit that by order dated 11.02.2019, a Division Bench of this Court set aside the Judgment and Decree passed in A.S.Nos. 1008 & 1009 of 2015 dated 29.11.2016 and the same is restored to the file for hearing. Further, letters have been sent to the authorities concerned to recover the said amount from the 3rd respondent for having complied with the order of this Court."*

39. In the aforesaid circumstances, C.R.P.Nos. 1610 & 1611 of 2020 are allowed. The learned Sub Judge may await further orders from the Division Bench of this Court in A.S.Nos. 1008 & 1009 of 2015.

40. A direction is issued to the Sub Judge, Ponneri, to revive for further hearing in L.A.O.P.Nos. 73 & 74 of 2010 and permit amendment of the petition to implead the revision petitioners herein as respondents. Therefore, this would imply that I.A.Nos. 298 and 300 of 2018 are allowed. The order of the learned Sub Judge dismissing the said application is set aside.

41. In the result,

- (i) C.R.P.Nos. 1609 & 1612 of 2020 are dismissed. No costs.
- (ii) C.R.P.Nos. 1610 & 1611 of 2020 are allowed. No costs.
- (iii) Consequently, connected Miscellaneous Petitions are closed.

06.07.2021

vsg

Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

Note:

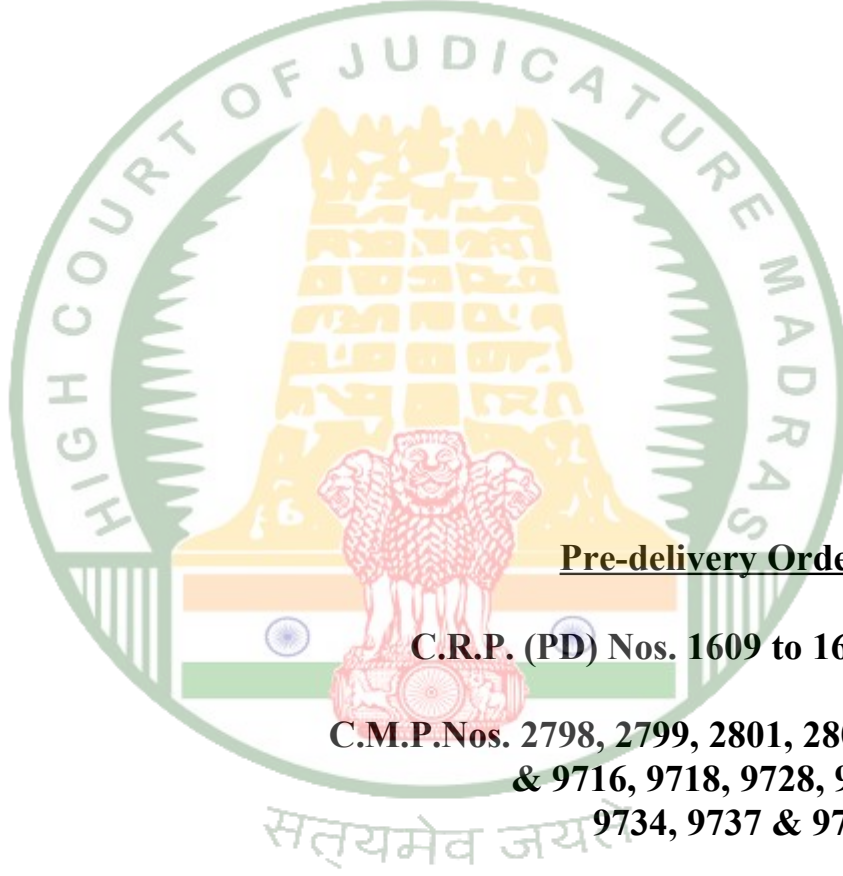
(1) Registry is directed to call for explanation from the Sub Judge, Ponneri, who pass the common order dated 02.02.2019 and in the course of his explanation, he should specifically state whether he had examined the documents filed in the course of his order; and

(2) Registry is directed to return back the original records within a

period of 10 working days from this date to the Sub Court, Ponneri.

C.V.KARTHIKEYAN, J.

vsg



Pre-delivery Order made in

**C.R.P. (PD) Nos. 1609 to 1612 of 2020
And
C.M.P.Nos. 2798, 2799, 2801, 2802 of 2021
& 9716, 9718, 9728, 9730, 9733,
9734, 9737 & 9738 of 2020**

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