

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : **23.03.2021**

PRONOUNCING ORDERS ON : **25.03.2021**

CORAM

THE HONOURABLE **JUSTICE MR.N.ANAND VENKATESH**

Rev.Appln.No.56/2020 in W.P.No.35530/2019
and W.P.No.9385/2020 and Cont.P.No.569/2020 and
Sub.Appln.No.287/2020 and WMP.No.11469 of 2020

Rev.Appln.No.56/2020

- 1.The Secretary,
Union of India,
National Highways Authority of India,
New Delhi,
- 2 THE CHAIRMAN
The National Highways Authority of India,
G-5 and 6 Sector, 10 Dwarka,
New Delhi 110 015.
- 3 THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
Rep. by its Regional Officer
Sir tower 3rd Floor,
DP. 34 (SP) Industrial Estate,
Guindy,
Chennai 600 03

4 THE PROJECT DIRECTOR (NH 4)
National Highways Authority of India,
PIU-Kancheepuram,
Sri Tower 3rd Floor,
DP.34(SP),Industrial Estate,
Guindy,
Chennai 600 032.

..Petitioners

.Vs

1. S.Venu
2. The District Collector
Collector Vellore District.
3. The Competent Authority &
The Special District Revenue officer (L.A.N.H)
Collectors office Complex,
Vellore 9
Vellore District.
4. The Competent Authority &
The Special District Revenue Officer (L.A)
National Highways Kancheepuram.

..Respondents

Prayer : Review Application filed under Order XLVII, Rule 1 & 2
r/w Sec.114 of C.P.C., 1908, to review the order passed by this
Honourable Court in W.P.No.35530 of 2019 dated 10/03/2020.

W.P.No.9385 of 2020

The Project Director,
PROJECT IMPLEMENTATION Unit kancheepuram
National Highways Authority of India,
No.7/16 Govindarajan street,
Tambaram West - 600 045,
Chengalpattu District.

..Petitioner

.Vs

1. The Additional chief secretary to Government,
Revenue and Disaster Management Department,
Secretariat Chennai-9.
2. The Principal Secretary To Government,
Highways and Minor Ports Department
Secretariat, Chennai-9.
3. The District Collector,
Vellore District.
Vellore,
4. The District Collector
Ranipet District,
Ranipet.
5. The Competent Authority and
Special District Revenue Officer (la-nh)
Collector office Complex,
Vellore-9,
Vellore District.

6.R.Ashokan

7. S.Venu

8.N.Kasi

9.D.Nanthakumar

10. C.K.Munisamy

11. N.SANKAR

12. U.GUNASEKARAN

13. T.KUMARASAMY

14. R.GULASEKARAN

15.T.VASUDEAN

16.ANGU

17.P.Vallyammal

18.J.KAVITHA

19. P.G.KANNIYAPPAN

20. K.NAGAPPAN

21.A.RAVI

22. K.SAMU

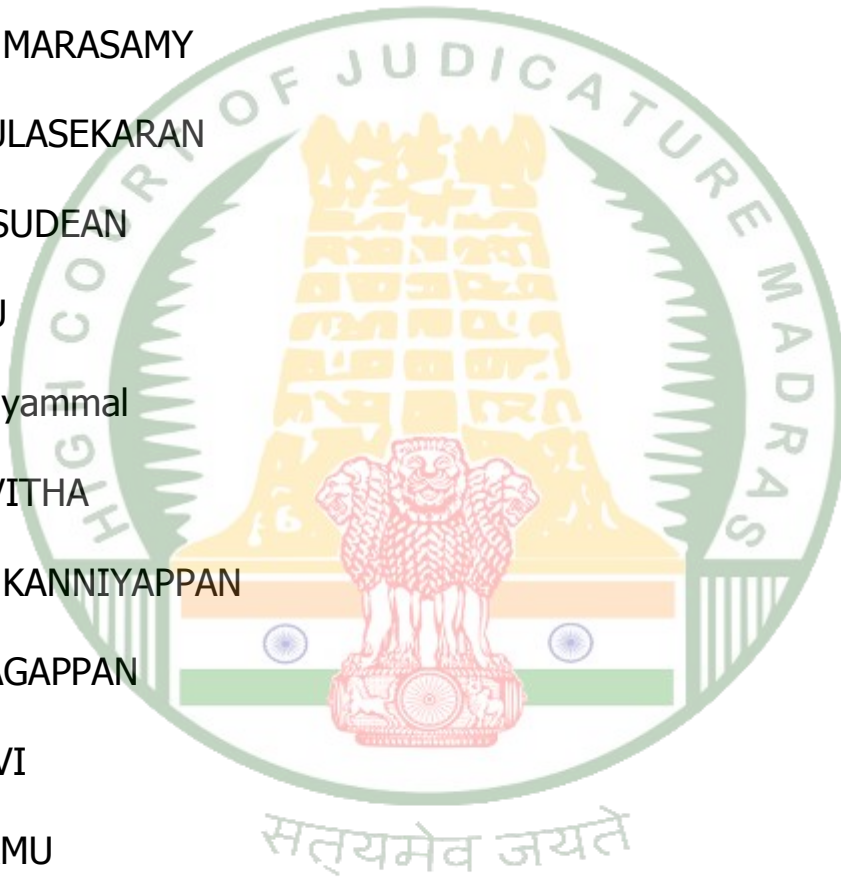
23.G.ARUL

24.M.KARUNAKARAN

25. M.REX AMULRAJ

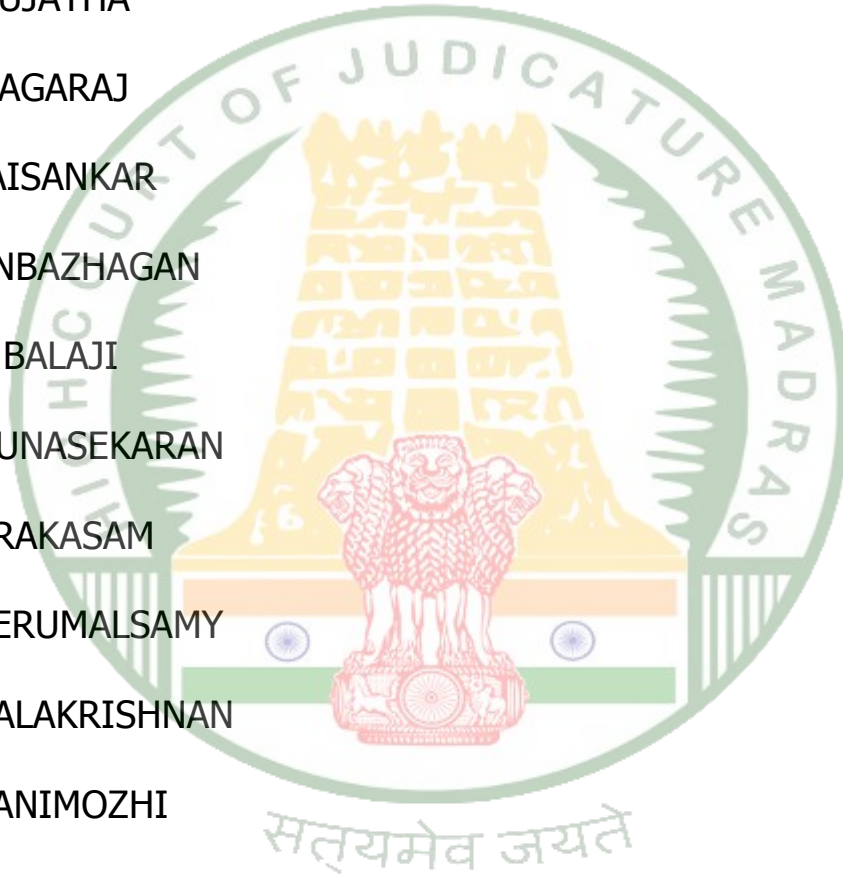
26 V.PERUMAL

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- 28 E.SELVAKUMAR
29 SUGUNAKUMARI
30 A.MURALI
31 M.SUJATHA
32 D.NAGARAJ
33 P.JAISANKAR
34 P.ANBZHAGAN
35 C.S.BALAJI
36 K.GUNASEKARAN
37 R.PRAKASAM
38 V.PERUMALSAMY
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41 S.KANIMOZHI
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45 P.SAKUNTHALA



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46 S.RAJI C.S.SESHADHRI

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49 K.KAMALAKANNAN

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51 S.SANTHA

52 P.CHINNA PAIYAN

53 G.PITCHANDI

54 SEKAR

55 P.VELU

56 D.SUMATHI

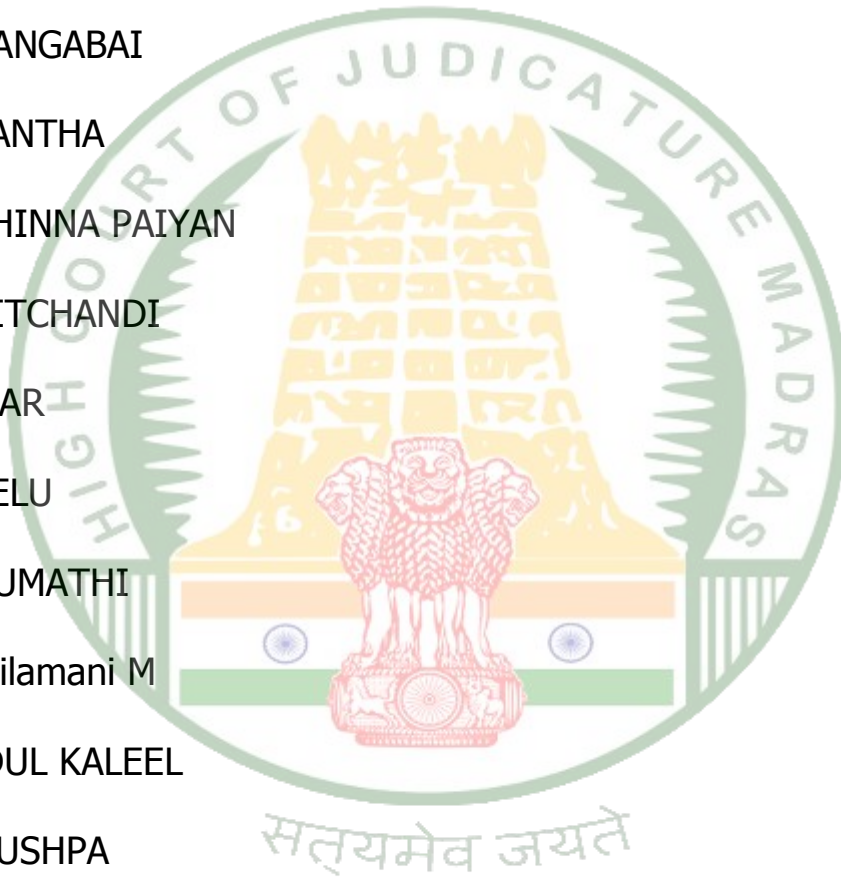
57 Masilamani M

58 ABDUL KALEEL

59 M.PUSHPA

60 M.BABY

61 T.BACKIALAKSHMI



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PRAYER in W.P.No.9385 of 2020: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Award

passed by the 5th Respondents herein in RC. G4/2/2016 dated 23.4.2019 and quash the same.

: Mr.G.Karthikeyan
Asst. Solicitor General

(for Petitioner in Rev.Aplw.56/2020 & W.P.9385/2020)

(for Respondent in Cont.P.No.569/2020)

: M/s.C.Turibius Beski
(for petitioner in Cont.P.No.569/2020)

: Mr.AR.L.Sundaresan
Senior Counsel
for Mr.S.Sivashanmugam

(for R 1 to R 4 in Rev.Apl.No.56/22020 &
R 6 to R 61 in W.P.No.9385/2020)

: Mr.SR.Rajagopal
Additional Advocate General
Asst by: सत्यमेव जयते
Mr.V.Anandamoorthy
Additional Government Pleader

(for R 1 to R 5 in W.P.No.9385 of 2020)

COMMON ORDER

The issues involved are common and hence they are

taken up together, heard and this common order is passed.

2.For the sake of convenience, the rank of the parties will be identified in line with the ranking given in W.P. No. 9385 of 2020.

3.The 7th Respondent in this Writ Petition filed W.P. No. 35530 of 2019 before this Court for the issue of Writ of Mandamus directing the National Highways Authority of India (hereinafter referred to as "NHAI") to pay the compensation as per the award passed by the 5th Respondent through proceedings dt. 23.04.2019. This Court disposed of the Writ Petition by an order dt. 10.03.2020. The relevant portions in the order are extracted hereunder:

"8. A careful reading of the award passed by the 6th respondent dated 23.04.2019 shows that 6th respondent had invited the objections from the owners of the property and considered the claim along with the documents submitted and has fixed the compensation amount for each of the owner. The name of the petitioner

is also found in Serial No.5 of the award. Even in the tabulation that was annexed along with the award, the name of the petitioner is shown as owner for Survey Nos.W.P.No.35530 of 2019 Nos.37/1 & 38/1 and compensation amount has been fixed for these properties. The nature of the award that has been passed by the 6th respondent finally determines the compensation that has to be paid to the respective owners. If the respondents are aggrieved by the amount that has been fixed as compensation, the 6th respondent cannot be again asked to redo the entire exercise. The only remedy that is available under the National Highways Act, 1956, is to refer the dispute to the arbitrator under Section 3-G(5) of the Act. The provision specifically states that either of the parties can resort to this remedy.

9. In the considered view of this Court, a final award has been passed by the 6th respondent by fixing the compensation amount. Therefore, it does not lie in the mouth of the 6th respondent to file a counter to the effect that the award is only a draft award since the rate fixed by the 6th respondent was objected by the Highways Department. The Act does not contemplate a draft award and final award and there is only one award that has been provided under the Act, which has been passed by the 6th respondent. The Act itself provides for a mechanism to agitate the issue, if in case either of the parties are not satisfied with the value fixed for the

property. Without resorting to the same, the 6th respondent cannot be asked to redo the entire exercise and that is something which is beyond the scope of the National Highways Act.

10. In view of the above, the petitioner is entitled for the compensation that is payable to him by virtue of the award passed by the 6th respondent. Accordingly, the petitioner is directed to make a afresh representation to the 4th respondent claiming for the compensation amount fixed by the 6th respondent by award dated 23.04.2019 and the 4th respondent shall consider the same in line with the present order and pay compensation amount to the petitioner, if he is otherwise entitled to receive the same, within a period of 12 weeks, from the date of receipt of copy of this order. It goes without saying that if the National Highways Department is not satisfied with the value fixed by the 6th respondent, they should independently agitate the same before the arbitrator. With the above observation, the Writ Petition is disposed of. No costs.

4. The 6th Respondent has filed Contempt Petition No. 569 of 2020 on the ground that the NHAI has failed to comply with the order. The NHAI has filed Review Petition No. 56 of 2020 to review the order passed in W.P. No. 35530 of 2019. This

Review Petition was entertained by an order dt. 14.09.2020 and the same is extracted hereunder:

"Mr.S.Sivashanmugam, learned counsel takes notice for the 1st respondent. Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.Anandamoorthy, learned counsel takes notice for RR2 to 4.

2.This Review Petition has been filed to review the final order passed by this Court on 10.03.2020 in W.P.No.35530 of 2019.

3.Mr.G.Karthikeyan, learned Assistant Solicitor General of India, submitted that final orders were passed by this Court on the ground that the proceedings of the competent authority dated 23.04.2019 is an award. The learned Assistant Solicitor General brought to the notice of this Court the relevant rules regarding the manner of depositing of the amount and the requisite funds made available to the competent authority to be paid to the land owners. The learned Assistant Solicitor General submitted that the rules contemplates the draft award being forwarded to the National Highways Authority of India and only after it is accepted and confirmed, the competent authority can pass a final award and till then it will only have the status of draft award.

3.Mr.S.R.Rajagopal, learned Additional Advocate General,appearing on behalf of respondents 2, 3 and 4 also reiterated the stand taken by the learned Assistant Solicitor General. The learned Additional Advocate General submitted that unless the compensation is agreed and the amount is deposited, no final award will be passed and till then the possession will not be taken from the concerned land owners.

4.A *prima facie* case has been made out pointing out an error apparent on the face of the order passed by this Court and hence it is admitted.

5.Post this Review Petition along with W.P.No.9385 of 2020 after six weeks.

5.The NHAI has also filed W.P. No. 9385 of 2020 challenging the award passed by the 5th Respondent dt. 23.04.2019.

6.This Court heard the submissions made on either side and reserved for judgement on 23.02.2021. The learned Additional Government Pleader made a mention on 24.02.2021

and requested this Court to reopen and hear the case on certain subsequent developments that had taken place in this case.

7.This Court posted the case under the caption 'for being spoken to' on 26.02.2021. This Court passed the following order on that day.

"This Court had reserved the orders after hearing the counsel appearing on either side. The learned Additional Government Pleader made a mentioning on 24.02.2021 by bringing to the notice of this Court that there is a subsequent development which needs to be brought to the notice of this Court and therefore requested this Court to post the case under the caption for "Being Spoken to". Accordingly, the matter is posted today under the caption for "Being Spoken to".

2.When the matter was taken up, the learned Standing Counsel appearing on behalf of the National Highways and the learned Additional Government Pleader appearing on behalf of the Special District Revenue Officer, submitted that the earlier award that was passed has been withdrawn

and fresh proceedings are going to be conducted by giving opportunity to the parties and revised award will be passed. Therefore, it was submitted that this Court should take into consideration the subsequent development that has taken place in this case.

3.Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the petitioner in the Contempt Petition submitted that everything has happened behind the back of the land owners and they have no notice with regard to the withdrawal of the earlier award passed and even the communication that was sent by the Special District Revenue Officer to the Highways Department has not been brought to the notice of the counsel. The learned Senior Counsel submitted that till any proceedings are brought to the notice of the land owners, this Court has to pass orders based on the available materials and what has already been submitted on either side. The learned Senior Counsel vehemently opposed the attitude of the respondents in bringing about the change in circumstances, more particularly, after the orders were reserved by this Court.

4. In the considered view of this Court, if the earlier award has been withdrawn, the same to be immediately communicated to the concerned land owners in order to enable them to decide on the future course of action. This has to be done immediately by the concerned Department. That apart, this Court also wants to glance through the proceedings of the Authority withdrawing the earlier award passed, before coming to any conclusion in these petitions.

5. Post these petitions under the caption on 05.03.2021 at 2.15 p.m."

8. The matter was taken up for hearing today i.e. 23.03.2021. The learned Additional Government Pleader by placing reliance upon the additional typed set of papers, submitted that the Special District Revenue Officer who had passed the award in this case, had committed a fraud and hence disciplinary action has been initiated against him under the Tamil Nadu Pension Rules, 1978. The learned Additional Government Pleader further submitted that the concerned officer had fixed the guideline value

which contained a lot of discrepancies and the officer did not follow the National Highway Rules which mandated the authority to raise a demand to NHAI before publishing any award. The learned Additional Government Pleader further submitted that the officer, for extraneous consideration gave an impression to the land owners as if an award was passed and whereas, the award in question is only a draft award which becomes final only after the amount is deposited by the Highways Department.

9.The learned Additional Government Pleader further submitted that disciplinary action has also been initiated against the concerned District Registrar by the IG of Registration, for having violated the Rules and furnished enhanced guideline values to the land acquisition officer. It was further submitted that IG of Registration has initiated disciplinary proceedings even against the Junior Assistant working in the Department.

10.The learned Additional Government Pleader submitted that the misfeasance and malfeasance on the part of

the delinquent officers would have caused huge revenue loss and even otherwise, the award was not enforceable since it was only a draft award.

11. The learned Additional Government Pleader submitted that the matter is now under the direct supervision of the Additional Chief Secretary and already the competent authority has issued fresh notices to all the land owners calling them for inquiry to fix the compensation and the entire process will be completed within the time limit fixed by this Court.

12. Mr. G. Karthikeyan, learned Assistant Solicitor General, appearing on behalf of the NHAI submitted that the concerns raised by the NHAI has now been proved to be right and therefore, the competent authority can be directed to complete the award enquiry and a demand can be raised by the competent authority with NHAI for deposit of the award amount and thereafter the award can be published. The learned counsel therefore submitted that in view of the subsequent developments,

nothing remains to be decided in the review petition and the writ petition filed by NHAI.

13. Mr. A.R.L.Sundaresan, learned Senior Counsel appearing on behalf of the land owners submitted that the authorities are trying to rake up the same issue that was already decided by this Court in W.P. No. 35530 of 2019. The learned Senior Counsel submitted that once the award is published, the same cannot be withdrawn and any person aggrieved by the award either the land owner or the NHAI, can only initiate arbitration proceedings questioning the award under Section 3G (5) of the National Highways Act, 1956 (hereinafter referred to as "NH Act"). The learned senior counsel submitted that the lands are already vested with the Central Government under Section 3D (2) of the NH Act, and therefore, the landowners cannot even deal with the property, even though they are in possession of the property. The learned senior counsel submitted that the official Respondents are indirectly trying to achieve what they were not able to directly achieve when this Court decided W.P. No. 35530 of

2019. The learned Senior Counsel therefore, concluded his arguments by submitting that the Writ Petition and the Review Petition filed by NHA I is liable to be dismissed and NHA I must be directed to pay the compensation failing which, contempt action must be initiated against the concerned officers.

14. This Court has carefully considered the submissions made on either side and materials available on record.

15. When this Court disposed of W.P. No. 35530 of 2019, this Court proceeded on the basis that a final award has been passed by the 5th Respondent and if the NHA I is aggrieved by the same, they should only initiate arbitration proceedings under Section 3G (5) of the NH Act.

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16. The disciplinary proceedings that has been initiated against the delinquent officers shows that there is something more than what meets the eye in the present case. It is true that the

NH Act does not contemplate any draft award. However, Rule 3 of the National Highways Rules, 2019 specifically mandates a demand to be made to the NHA for deposit of the amount, to be paid as compensation to the land owners and only thereafter, the competent authority can announce the award. Curiously, the 5th Respondent assumed the office only on 14.03.2019 and he retired on 30.04.2019, and within these 48 days, he is alleged to have announced the award for extraneous consideration, on 23.04.2019. This allegation cannot be brushed aside since, the total compensation fixed by the 5th Respondent is in the range of whopping Rs.497.85/- crores. The 5th Respondent announces this award even without following the Rule and retires 7 days after this award was announced.

17. The fact that the matter has been taken up very seriously and disciplinary proceedings have been initiated against all the concerned officers, shows that all is not well in the manner in which the entire award proceedings had taken place in the

present case. This Court cannot turn a blind eye to such serious allegations in fixing of the compensation amount, and in the end this huge amount is only going to be paid from the public exchequer. The private interest of the landowners must yield to the larger public interest, and more particularly where the entire award proceedings is said to be vitiated by fraud. It is not as if the landowners will be left high and dry. The competent authority has already initiated proceedings by issuing fresh notice to the landowners and calling them for an inquiry, and it is undertaken that the award proceedings will be completed within the time stipulated by this Court.

18. In view of the above, this Court has to necessarily take into consideration the subsequent developments that have taken place in this case. This Court will be very hesitant in enforcing an award which is alleged to be tainted with fraud. In view of the same, the order passed by this Court in W.P. No. 35530 of 2019, dt. 10.03.2020, is hereby withdrawn and the same is held to be not enforceable. The so-called award passed by the

5th Respondent through proceedings dt. 23.04.2019, is declared to be *non est*, and as a result, no further orders are required to be passed in the Writ Petition filed by the NHAI in W.P.No.9385 of 2020, and the Contempt Petition is also closed. The Review Petition filed by the NHAI is also disposed of on the above terms. No costs. Consequently, the connected applications/petitions are closed.

19. This decision will not cause any serious prejudice to the landowners, since there is only a short postponement in the payment of compensation, and whereas, if the award alleged to have been vitiated by fraud is implemented, it will cause grave prejudice to public interest. In order to ensure that the payment of compensation to the landowners is not delayed, there shall be a direction to the competent authority, namely the Special District Revenue Officer to immediately issue notice to the landowners and call them for an inquiry, and the entire award proceedings shall be completed on or before 31.07.2021.

25.03.2021

Index : Yes
Internet : Yes
Speaking Order/Non Speaking Order
KP



To

1. The District Collector
Collector Vellore District.
2. The Competent Authority &
The Special District Revenue officer (L.A.N.H)
Collectors office Complex,
Vellore 9
Vellore District.

3. The Competent Authority &
The Special District Revenue Officer (L.A)
National Highways Kancheepuram.
4. The Additional chief secretary to Government,
Revenue and Disaster Management Department,
Secretariat Chennai-9.
5. The Principal Secretary To Government,
Highways and Minor Ports Department
Secretariat, Chennai-9.
6. The District Collector,
Vellore District.
Vellore,
7. The District Collector
Ranipet District,
Ranipet.

8. The Competent Authority and
Special District Revenue Officer (la-nh)
Collector office Complex,
Vellore-9,
Vellore District.

9. The Public Prosecutor,
High Court, Madras.



N.ANAND VENKATESH, J.

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Pre-Delivery Common Order in
Rev.Appln.No.56/2020 in W.P.No.35530/2019

and W.P.No.9385/2020 and Cont.P.No.569/2020 and
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25.03.2021

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