

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.15344 of 2014

and

MP. Nos.2 & 3 of 2014 and 1 of 2015

1.B.Sivaraman

2.B.Krishnamurthi

3.B.Thyagarajan

.....Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai – 600 034.

3.The Executive Officer,
A/M.Selva Vinayagar &
Kothandaramar Temple,
West Tambaram, Chennai 600 045.

4.The Special Revenue District Officer,
Land Acquisition,
National Highways Schemes,
Kanchipuram and Tiurvallur Districts,
Kanchipuram.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certioraified Mandamus to call for the records of the 2nd respondent passed in her proceedigs Se.Mu.Na.Ka.No.1993/2014/A1 dated 09.05.2014 and quash teh same and direct the 4th respondent herein to pay the compensation amount of Rs.1,33,45,948/- to the petitioners herein in respect of the ownership of the subject property situated at No.55, G.S.T.Road, Survey No.5, Irumpuliyur Village, Tambaram Taluk, (West Tambaram) for the purpose of extension of National Highways 45.

For Petitioners : Mr.Rajarajan

For Respondents : Mr.NRR.Arun Natarajan,
Government Advocate for R1 to R3
Mr.TNC.Kaushik,
Government Advocate for R4

ORDER

The petitioner, through their father Mr.A.Balasundara Mudaliyar (deceased), are absolute owners of the property admeasuring 35 cents comprised in S.No.178/2A. The title of the petitioners is supported by patta, chitta, adangal and other relevant documents. An extent of 62 cents S.No.178, Irumpuliyur Village (erroneously mentioned at 0.62 cents), had been originally purchased by the petitioners' grandfather, one Sri.Venkatakrishna Mudaliar, in which, an idol of Vinayagar has

been installed in the year 1923. The family had engaged in carrying out poojas and rituals to the deity ever since they have been in possession.

2. Proceedings for acquisition were initiated by the Special Revenue District Officer, Land Acquisition, National Highways, arrayed as R4, in respect of 250 sq.ft of the land in question. . Compensation was fixed at a sum of Rs.1,33,45,948/- and the petitioners were called upon to produce all relevant records to establish their claim to ownership of the aforesaid property. The petitioners appeared before the authority and produced all the necessary documents to establish their ownership. Since there is a Vinayagar Temple in the premises, notices were issued to the Hindu Religious and Charitable Endowments Department as well. This was the trigger for the Department to appoint an Executive officer for the temple, which, by then had been demolished on account of the acquisition. As such, an Executive Officer was appointed to manage a non existing temple.

3. Be that as it may and since the HR & CE Department had staked its claim to the property, this Court had directed that the compensation be deposited in an interest bearing bank account and an order of status quo granted on 16.06.2014. The sale consideration remains with R4 as on date.

4. Mr.Arun Natarajan, learned Government Advocate appears for the HR & CE Department, on oral instructions, has fairly conceded to the position that the HR & CE Department has no claim in, or interest whatsoever, in the land in question. He undertakes to file a memo to this effect.

5. In light of the aforesaid admitted position that the HR & CE has no claim in the property in question, the consideration for acquisition is liable to be handed over by R4 to the petitioners, for which R4 seeks no objection of the HR & CE Department. Seeing as a categoric no objection has been conveyed by the Assistant Commissioner, HR & CE Department, the compensation shall be paid over to the petitioner within a period of four (4) weeks from today. The impugned order is quashed.

6. The writ petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

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19.07.2021

rkp/ska

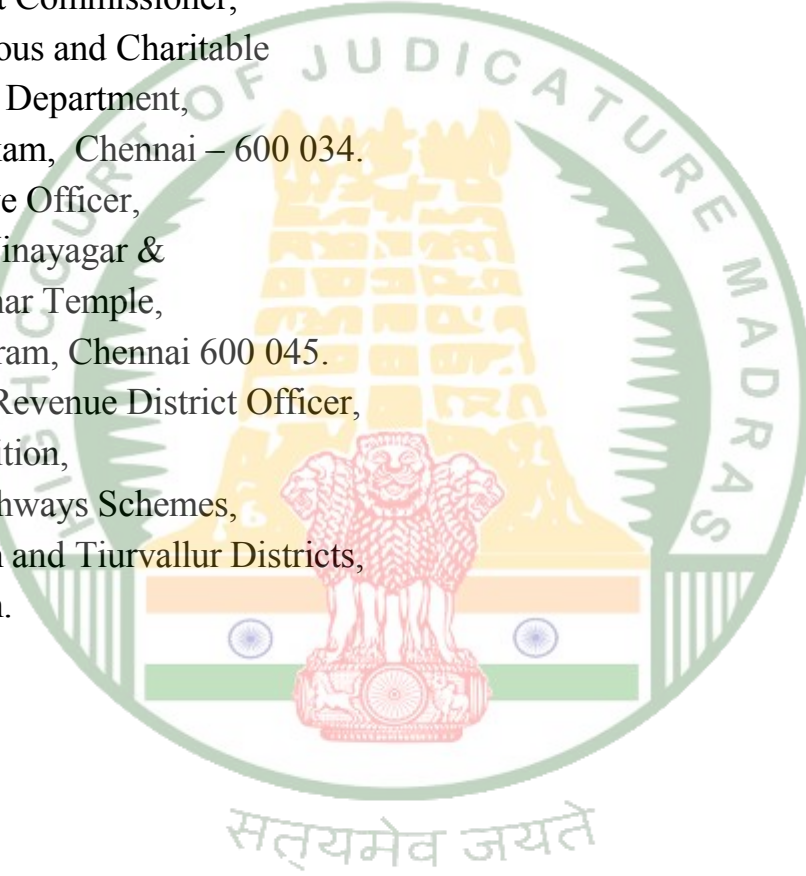
Index: Yes/No

Speaking order/Non Speaking Order

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To

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai – 600 034.
2. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai – 600 034.
3. The Executive Officer,
A/M.Selva Vinayagar &
Kothandaramar Temple,
West Tambaram, Chennai 600 045.
4. The Special Revenue District Officer,
Land Acquisition,
National Highways Schemes,
Kanchipuram and Tiruvallur Districts,
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rkp



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DR. ANITA SUMANTH, J.

This matter is listed today under the caption 'for clarification'.

2. This matter was allowed on 19.07.2021. The Hindu Religious and Charitable Endowments Department was required to file a memo as undertaken by Mr.N.R.R.Arun Natarajan, learned Government Advocate to the effect that the Department has no claim in regard to the amount of compensation to be received by the petitioner consequent upon the acquisition proceedings.

3. The memo was not received till 09.08.2021. Hence, the matter was listed for clarification today and the parties were heard.

4. Order dated 19.07.2021 is reiterated and the following paragraphs are added to the order in the light of the memo now filed:

7. In memo dated 09.08.2021, the learned Government Advocate after setting out the entire facts in issue referred to a direction issued by this Court to ascertain if the 2nd respondent i.e. Assistant Commissioner, had participated in the proceedings for acquisition before the Special Revenue District Officer and whether any documents

have been produced by him claiming ownership of the land in which the temple in question was located.

8. At para 10, the learned Government Advocate refers to the instructions conveyed to him by Mr.Shivakumar, the Executive Officer to the effect that no documents were produced by the Assistant Commissioner claiming ownership of the land on which the temple stood.

9. At para 10, the memo states as follows:

10. The Writ Petition was again listed for final disposal on 19.07.2021 and during the hearing, Mr.Shivakumar, the executive Officer of Arulmigu Selva Vinayagar and Kothandaramar Temple, West Tambaram, Chennai, the 3rd Respondent herein was physically present before me with the connected records at the Government Pleader Office since the hearing was conducted through Video conferencing. Mr.Shivakumar after perusing the files, categorically mentioned that the 2nd Respondent did not produce any documents to claim ownership of the land and temple during the proceedings before the 4th Respondent. During the hearing on 19-07-2021 before this Hon'ble Court, I had conveyed the oral submission of Mr.Shivakumar. This Hon'ble Court recorded my oral submission and proceeded to pass the order dated 19.07.2021 allowing the Writ Petition. On the request made by me to file written instructions in this regard, this Hon'ble Court directed the 2nd Respondent to file written instructions to the effect that the 2nd Respondent had not produced any documents claiming ownership of the land in which Arulmigu Balasundara Vinayagar Temple was located prior to its demolition by the Highways Department. The fact that the 2nd Respondent had not produced any documents before the 4th Respondent to claim ownership of the land in which Arulmigu Balasundara Vinayagar Temple was located, is categorically admitted in the Counter Affidavit filed by the 4th Respondent.

10. As to the delay in filing of the memo, it appears that the Assistant Commissioner had been transferred and the incumbent had not cooperated in filing of the memo. This position is stated in para-11, as follows:

11. The delay in filing of the present memo was due to the fact that the existing 2nd Respondent was transferred and on 26-07-2021, a new officer took charge as the 2nd Respondent and he has also refused to file the written instructions. From 19.07.2021 to till date, I have constantly followed with the 2nd and 3rd Respondent to file the written instructions as per the directions of this Hon'ble Court. However, the Respondents 2 and 3 have refused to file the written instructions despite Respondents 2 and 3 have refused to file the written instructions despite during the hearing on 19.07.2021, Mr.Shivakumar, the Executive Officer of the 3rd Respondent who was Physically present before me had categorically mentioned to me that the 2nd Respondent did not produce any documentary proof before the 4th Respondent to claim ownership of the land and Arulmigu Balasundara Vinayagar Temple. This position is reiterated and re-enforced in the Counter Affidavit filed by the 4th Respondent which states as follows:

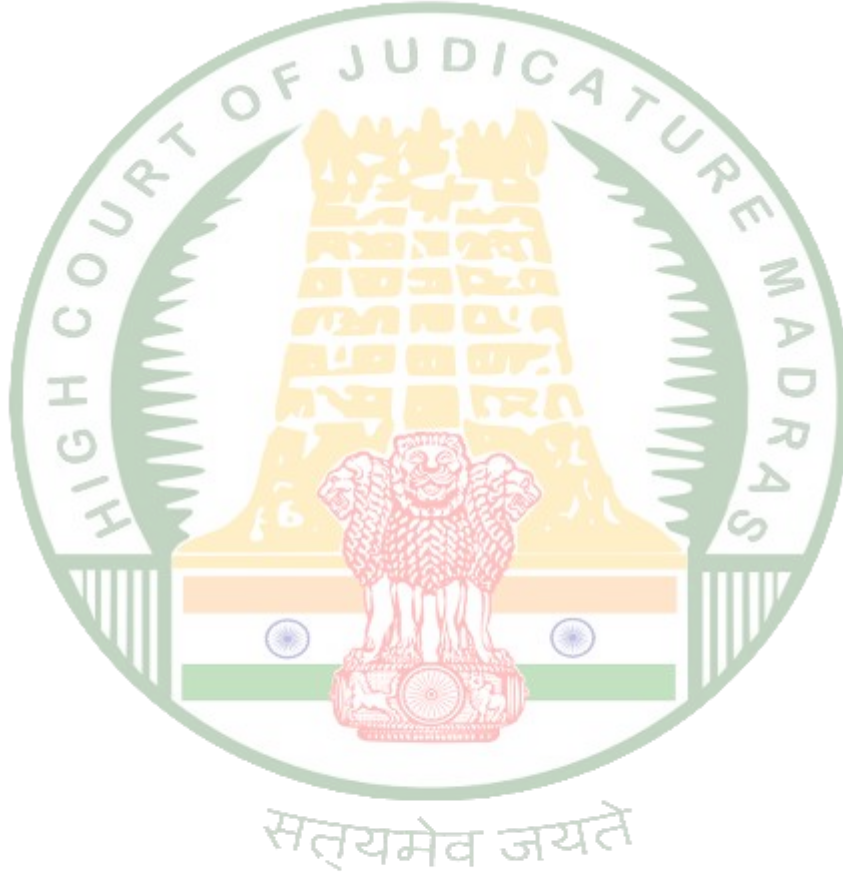
"5..... Further the Assistant Commissioner HR & CE, Chennai-34, has not sent any claim for payment of compensatin along with documentary evidences for the ownership of the land and temple."

11. The non-cooperation as recorded by the Government Advocate is not appreciated. It was incumbent upon R2 to have been fair, not just to the Court, but also to the Government Advocate and translate into writing the oral instructions that had been made by the Executive Officer after all the question as to whether the HR&CE Department had any claim of land is one of fact and one which has been

ascertained by the Executive Officer of the Temple from the records. It thus does not behove well for the Officer to have delayed the proceedings on this account.

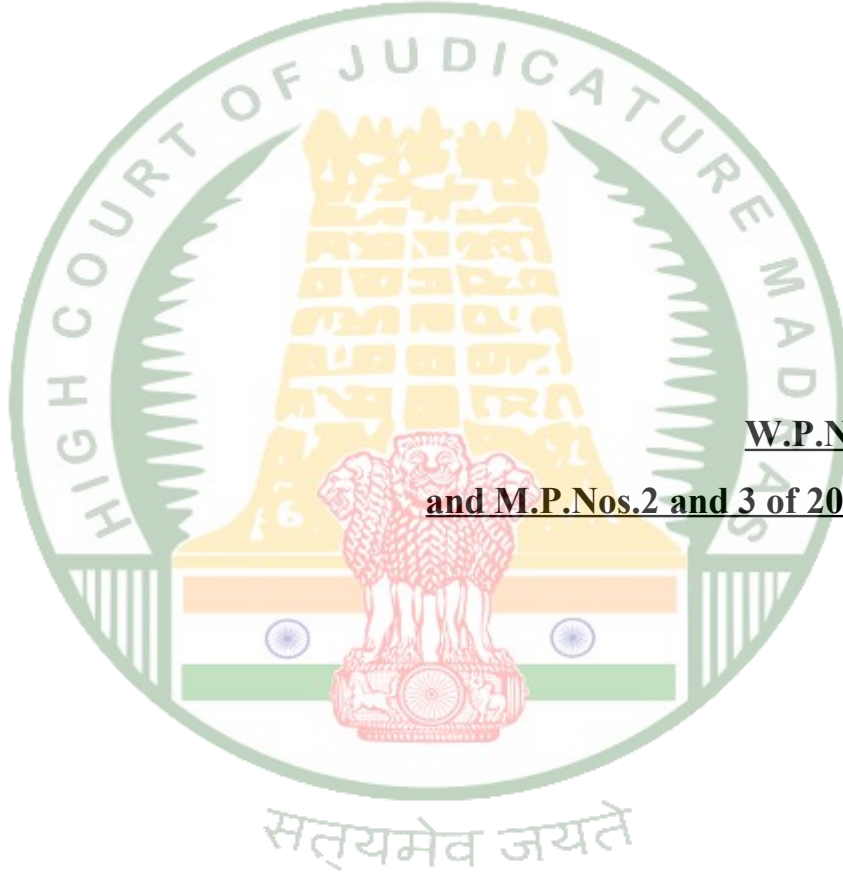
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