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WP(MD)No.26401 of 2019 and 7918 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :19.07.2021
PRONOUNCED ON : 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**
W.P. (MD)Nos.26401 of 2019 and 7918 of 2021

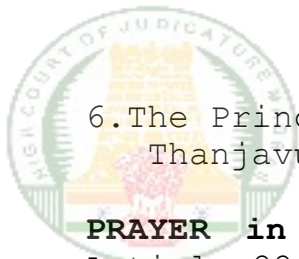
and

W.M.P(MD).No.6043 of 2021

- 1.T.S.Balasubramanian ...1st Petitioner in W.P.(MD).No.26401 of 2019
- 2.B.Sekar ...1st 2nd petitioner in WP(MD). No.26401 of 2019 and petitioner in W.P.(MD).No.7918 of 2021
- 3.Dr.B.Vasuki ..2nd 3rd petitioner in WP(MD). No.26401 of 2019 and petitioner in W.P.(MD).No.7918 of 2021

Vs.

- 1.The Principal Secretary to Government,
Ministry of Defence,
Government of India,
101-A, South Block,
New Delhi-110 011. ...R1 in both the petitions
- 2.The District Collector,
Thanjavur District,
Collectorate Complex,
Coimbatore-Nagapattinam Highway,
Thanjavur -613 005. ...R2 in both the petitions
- 3.The Commanding Officer,
Thanjavur Air Force Station,
InayathukkanPatti,
Thanjavur-613 005. ...R3 in both the petitions
- 4.The Defence Estate Officer,
Defence Estate's Office,
Madras Circle,
No.307, Anna Salai,
Teynampet,
Chennai-600 018. ...R4 in W.P.(MD).No.7918 of 2021
- 5.The Station Commander,
Air Force Station,
Pudukottai Road,
Thanjavur. ...R5 in W.P.(MD).No.7918 of 2021



6.The Principal District Judge,
Thanjavur.

...R6 in W.P(MD).No.7918 of 2021

PRAYER in WP(MD).No.26401 of 2019 : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the second respondent in R.C.1466/2016/11 dated 12.11.2019 an award was passed under number 01/2019 and quash the same and consequently direct the respondents to pay the fair compensation payable to the petitioner for acquisition of the land measuring 6.70 acres in S.No.161/2 Nanjikottai Village, Thanjavur District as per Act 2013 with interest from the date of final declaration on 11.12.2015 till the date of payment.

Prayer in WP(MD). 7918/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Mandamus, calling for the records of the 2nd respondent herein in Rc. No.1466/2016/11 dt 22.12.2020 in respect of R.S.No.161/2 of an extent of 2.71.0 hectares in Nanjikottai Village, Thanjavur Tk, quash the same and consequently direct the 2nd respondent herein to award compensation under the provision of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 with interest from 11.12.2015 to till the date of payment

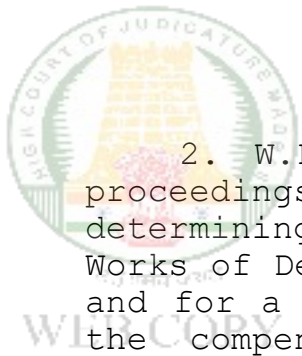
For Petitioners in both cases	:	Mr.A.R.L.Sundareshan Senior Counsel for Mr.A.L.Gandhimathi
For Respondent No.2 in both cases	:	Mr.R.Shanmugasundaram Advocate General Assisted by Mr.M.Lingadurai, Government Advocate

For RR1 & 3 in both cases and R5 in W.P(MD).No.7918 of 2021.	:	M/s.L.VictoriaGowri, Additional Solicitor General Assisted by Mr.R.Senthil Kumar Central Government Standing Counsel
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Assisted by
Mr.H.Velavadhas
Central Government Standing
Counsel(In WP(MD).No.26401/19)

COMMON ORDER

The issue involved in these writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.



2. W.P.(MD).No.26401 of 2019 has been filed challenging the proceedings of the District Collector, Thanjavur dated 12.11.2019, determining the compensation payable to the petitioners under the Works of Defence Act, 1903 [hereinafter called as 'the Defence Act'] and for a consequential direction to direct the respondents to pay the compensation to the petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter called as 'the New Act'].

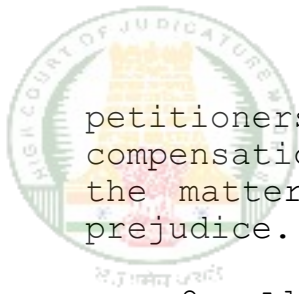
3. W.P(MD).No.7918 of 2021 has been filed challenging the proceedings of the District Collector, Thanjavur referring the award under Section 18(1) of the Defence Act to the Principal District Judge, Thanjavur, based on the request made by the sixth respondent and for a consequential direction, to direct the second respondent to award compensation to the petitioners under the New Act.

4. The petitioners are the owners of the subject property. An Air Force Station came to be operational at Nanjikottai Village, Thanjavur District. The second respondent issued a notification dated 11.12.2015 under Section 3(2) of the Defence Act imposing restrictions from putting up any buildings or structures or planting of trees within the limits of 100 meters from the crest of the outer parapet of Air Force Station, Thanjavur. The lands belonging to the petitioners also fell within the purview of the notification.

5. The petitioners submitted application seeking for compensation and an order came to be passed by the second respondent on 10.08.2018 wherein the second respondent came to a conclusion that no compensation is payable to the petitioners. The same became a subject matter of challenge in a writ petition filed before this Court in W.P.(MD).No.19307 of 2018. This writ petition came to be allowed by an order dated 30.11.2018 and this Court interfered with the order passed by the second respondent and remitted the matter back to the file of the second respondent to determine the issue afresh and pass orders on merits and in accordance with law.

6. The matter got remitted to the file of the second respondent and the parties were issued notice. Ultimately, an order came to be passed by the second respondent on 12.11.2019 determining the total compensation payable to the petitioners as Rs.2,43,41,090/-. This order has been put to challenge by the petitioners on the ground that the second respondent ought to have determined the compensation under the New Act.

7. In the meantime, a request came to be given by the sixth respondent to the second respondent to refer the matter to the Civil Court under Section 18(1) of the Defence Act on the ground that the compensation determined by the second respondent is not acceptable to the Air Force. This order has been put to challenge by the petitioners on the ground that the main issue that has been raised by the



petitioners on the applicability of the New Act for determining the compensation is pending before this Court and in the meantime, if the matter is referred to the Civil Court, they will be put to prejudice.

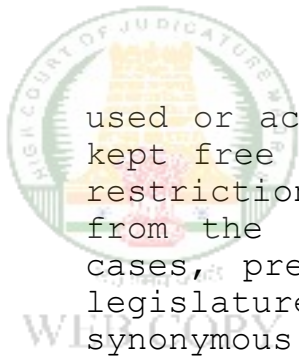
8. All the respondents have filed counter affidavits. The Central Government and the Air Force have taken a stand that the lands belonging to the petitioners have not been acquired and hence, the New Act will not have any application in determining the compensation and that the compensation has to be determined only under the Defence Act. A further plea has been raised in the counter affidavit to the effect that the second respondent has determined an exorbitant compensation under the Defence Act. Hence, it is well within the rights of the Air Force Station to seek for a reference under the Defence Act to the Competent Civil Court. Therefore, the reference made by the second respondent cannot be put to challenge in the writ petition.

9. The second respondent has also filed a counter affidavit and has supported the stand of the Air Force Station, insofar as the non-applicability of the New Act is concerned.

10. Heard, Mr.A.R.L.Sundareshan, learned Senior Counsel appearing for the petitioners in both the cases and Mr.R.Shanmugasundaram, learned Advocate General appearing for the second respondent assisted by Mr.M.Lingadurai, learned Government Advocate in both the cases, M/s.L.VictoriaGowri, learned Additional Solicitor General appearing for RR1 & 3 in W.P.(MD).No.26401 of 2019 and RR1, 3 to 5 in W.P.(MD).No.7918 of 2021, assisted by Mr.R.Senthil Kumar, learned Central Government Standing Counsel.

11. The main issue that arises for consideration in the present case is as to whether the lands belonging to the petitioners over which restriction has been imposed on construction of buildings/planting of trees can be construed to fall within the purview of Section 2(i)(a) of the New Act and consequently, the petitioners are entitled for award of compensation as per the New Act? The answer for this question will ultimately decide the second writ petition, wherein the reference made under Section 18(1) of the Defence Act has been put to challenge. If the main issue is answered in favour of the petitioners, the reference will have to automatically fail, since the award itself will be interfered with. If the answer is in the negative, there will be no ground to interfere with the reference made to the Civil Court.

12. The Works of Defence Act, 1903 was enacted to statutorily authorize the imposition of restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such lands be kept free from buildings and obstructions. Section 3, in Part II, authorizes the Central Government to issue a declaration imposing



used or acquired for any such work, in order that such land may be kept free from buildings and other obstructions. That imposition of restrictions under the Act do not amount to an acquisition is clear from the fact that a notification under Section 3 may, in some cases, precede an acquisition. It is, therefore, clear that the legislature had not treated the imposition of restrictions as being synonymous with an acquisition.

13. Sections 4 and 6 set out the powers available to the Government post the issuance of the declaration. The nature of restrictions which the statute authorizes is then set out in Section 7. In order to compensate the landowner for the inconvenience caused on account of the imposition of restrictions, a statutory scheme for compensation is envisaged under Chapter II. Section 9 contemplates issuance of notices to all interested parties, followed by an inquiry and an award under Section 12. Before passing an award, the Collector would be required to determine, inter alia, the nature of the said obstructions from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7, and the apportionment of the compensation among the persons interested. Section 18 provides a remedy for those affected persons who do not accept the award to seek a reference before the Court for re-determination of compensation. The taxonomy of the Works of Defence Act, 1903 follows a well-known pattern found in the Land Acquisition Act, 1894.

14. The similarity is striking if one were to make a comparison of the two Acts. The result can be tabulated thus:

<u>Provision in the Land Acquisition Act, 1894</u>	<u>Provision in the Works of Defence Act, 1903</u>
Section 9 - Notice to persons interested	Section 9- Notice to persons interested
Section 10 - Power to require and enforce the making of statements as to names and interests	Section 10 - Power to require and enforce the making of statements as to names and interests
Section 11 - Inquiry and Award	Section 12 - Inquiry and Award by the Collector
Section 12 - Award of Collector when to be final	Section 13 - Award of Collector when to be final
Section 13 - Adjournment of enquiry	Section 14 - Adjournment of enquiry
Section 14 - Power to summon and enforce attendance of witnesses and production of documents	Section 15 - Power to summon and enforce attendance of witnesses and production of documents



Section 15 - Matters to be considered and neglected	Section 16 - Matters to be considered and neglected
Section 18 - Reference to Court	Section 18 - Reference to Court
Section 19- Collectors Statement to the Court	Section 19- Collectors Statement to the Court
Section 20- Service of Notice	Section 20- Service of Notice
Section 21 - Restriction on the Scope of Proceeding	Section 21 - Restriction on the Scope of Proceeding
Section 22 - Proceeding to be in Open Court	Section 22 - Proceeding to be in Open Court
Section 23 - Matters to be considered in determining compensation	Section 23 - Matters to be considered in determining compensation
Section 24- Matters not to be considered in determining compensation	Section 24- Matters not to be considered in determining compensation
Section 25 -Rules as to amount of compensation	Section 25 -Rules as to amount of compensation
Section 26- Form of Awards	Section 26- Form of Awards
Section 27- Costs	Section 27- Costs
Section 28- Collector may be directed to pay interest on excess compensation.	Section 28- Collector may be directed to pay interest on excess compensation.

15. Part IV and Part V of the Land Acquisition Act, 1894 and Part IV and Part V of the Works of Defence Act, 1903 are also in *pari materia*. These similarities apart, what cannot be lost sight of is the fact that the Works of Defence Act, 1903 does not deal with the subject matter of acquisition at all, which is completely dealt with under the provisions of the Land Acquisition Act, 1894. What the legislature did, in effect, was to replicate the then existing procedural scheme for determination and payment of compensation towards acquisition of land under the Land Acquisition Act, for determining and paying compensation towards imposition of restrictions upon the use and enjoyment of land in the vicinity of any work of defence under the Works of Defence Act, 1903. What follows is that the "*imposition of a restriction*" under the 1903 Act, cannot be equated with an "*acquisition*" under the 1894 Act, for that would clearly amount to rendering the entire scheme of the Works of Defence Act, 1903 superfluous. An interpretation which attributes redundancy to the legislature has to be avoided. (See **Manik Lal Majumdar v Gouranga Chandra Dey**, 2004 12 SCC 448).

16. It has, however, been sought to be argued that the effect



of imposing restrictions under the Works of Defence Act, 1903 virtually amounts to an acquisition as the owner is deprived of a valuable right with the result that the provisions of the New Act relating to acquisition must, perforce, apply to determine compensation under the Works of Defence Act, 1903.

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17. The New Act was enacted to provide for just and fair compensation for persons whose lands were acquired or were proposed to be acquired in exercise of the State's power of eminent domain. Section 2 of the Act deals with the applicability of the Act and runs thus:

"2. Application of Act

(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government **acquires land for its own use, hold and control**, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:-

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:-

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and 1. 1st January 2014, vide notification No. 3729 (E), dated 19th December, 2013, see Gazette of India, Extraordinary, Part II, sec. 3(ii). 7 manufacturing zones, as designated in the National



Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament; (c) project for project affected families; (d) project for housing for such income groups, as may be specified from time to time by the appropriate Government; (e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas; (f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

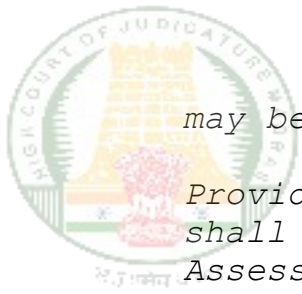
(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:—

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1); (b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for—

(i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as



may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4: Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas. (3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where, -

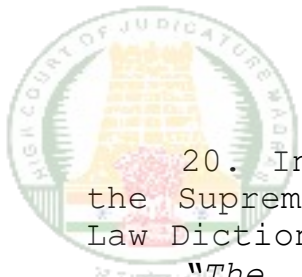
(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government, through private negotiations with the owner of the land in accordance with the provisions of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose: Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land"

18. A reading of Section 2 (1) would, at once, demonstrate that the provisions of the Act stand attracted only in case of an acquisition. The expression "when the appropriate Government acquires land" appearing in Section 2(1) is qualified by the conjunction "for" indicating that the purpose of the acquisition may be for its own use, hold and control. However, the jurisdictional fact for the application of the Act is, nevertheless, an acquisition of land by the appropriate Government.

19. In **R.L. Jain v. DDA, (2004) 4 SCC 79**, a three judge bench of the Supreme Court examined the meaning of the term "acquisition" in the context of the Land Acquisition Act, 1894 and observed as under:

"Acquisition means taking not by voluntary agreement but by authority of an Act of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title to the property vests in the State. The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the landowner."



20. In **State of Kerala v. Koliyat Estates**, (1999) 8 SCC 419, the Supreme Court approved the following passage from the Black's Law Dictionary:

"The word "acquisition", which according to Black's Law Dictionary means the act of becoming the owner of certain property. The statutory process by which the State becomes the owner of the property cannot, therefore, be understood as different from acquisition made by the State. "

21. As has been pointed out by the Supreme Court, the effect of an "acquisition" in exercise of the power of eminent domain, is to divest the owner of his title over the property, and vest the same in the State. This is something which the Works of Defence Act, 1903 does not and cannot do. The effect of vesting, which is a central element in land acquisition, was explained by the Supreme Court in **Fruit and Vegetable Merchants Union v The Delhi Improvement Trust**, AIR 1957 SC 344, wherein it was observed as follows:

"19. ...In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of Government without any condition or ; limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration."

22. The concept of divesting title and vesting the same in the State is alien to the scheme of the Works of Defence Act, 1903. Thus, the imposition of restrictions under the Act cannot be equated to an acquisition of land under the New Act for the purposes of computing compensation under the latter Act. This conclusion is also fortified by a recent judgment of the Supreme Court in **Ajay Kumar v Kewal Kumar Jaggi** (Civil Appeal 2360 of 2021, decided on 06.07.2021). In that case, land had been notified under the Works of Defence Act, 1903. The Collector of Jabalpur had invoked the provisions of the New Act, 2013 for determining compensation. The Supreme Court held that the course adopted by the Collector was erroneous and observed thus:

"The respondents, again alleging non-compliance, filed the second Contempt Case No. 2959 of 2018 on or about 23.10.2018, a copy of which is not available on record. The appellants, in response to the contempt petition filed affidavits stating that vide letter dated 24.08.2018 they had requested the Collector, Jabalpur to intimate the amount of compensation to be paid to the owners for the restrictions imposed. This was followed by



the Ministry's letter dated 13.09.2018 to the Chief Secretary, Government of Madhya Pradesh to issue directions to the Collector to take necessary action for computation of the compensation and payment. The Collector, Jabalpur, however, incorrectly invoked provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and asked the local military authority to deposit more than Rs.10.55 crores. It is obvious that the determination was erroneous."

"The appellants thereupon were compelled to approach the revenue authorities once again stating that the compensation should be determined in terms of Sections 23 and 24 of the 1903 Act and not under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Thereafter, several letters were exchanged between the appellants and the local authorities. On 03.08.2019, the Collector, Jabalpur, informed the appellants that total cost of the land on the said date was valued at Rs.16,39,35,000/- and that the compensation amount payable was Rs.6,06,92,170/-. The appellants once again protested vide letter dated 09.08.2019 to the Collector stating that the compensation should not be computed on the actual cost of the land, but determined in terms of provisions of Sections 23 and 24 of the 1903 Act. Finding merit in the said objection, the Collector undertook fresh exercise and determined the compensation vide his award dated 27.09.2019 fixing it at Rs.1,96,97,200".

23. It must also be noticed that the constitutional validity of the Works of Defence Act, 1903 has not been called into question. Therefore, the argument that the imposition of a restriction is akin to an acquisition is really beside the point. In the absence of any direct challenge, the Court must proceed on the footing that the Act is an "existing law" within the meaning of Article 366(10) of the Constitution, whose continuance is sanctioned by the provisions of Article 372. Resultantly, in the teeth of Section 2(1) of the New Act it would be wholly impermissible to by-pass the statutory scheme for determination of compensation set out in the 1903 Act and instead apply the provisions of the New Act.

24. The contention raised by the learned Senior Counsel appearing on behalf of the petitioners urging this Court to disjunctively read the words "hold and control from the word "acquisition", will be causing violence to the plain meaning to be ascribed to Section 2(1) of the New Act. The fact that the Legislature has used the word "for" clearly indicates that both



Court is not in agreement with the contention raised by the learned Senior Counsel appearing for the petitioners.

25. In view of the above discussion, this Court holds that the petitioners are entitled to be paid compensation only under the Defence Act and not under the New Act. The issue is answered accordingly.

26. During the course of arguments, the learned Senior Counsel appearing for the petitioners also touched upon the merits of the compensation determined by the second respondent. It is not necessary for this Court to go into this issue and if the petitioners are aggrieved by the compensation fixed by the second respondent, it is always left open to them to seek for a reference under Section 18(1) of the Defence Act to a Competent Civil Court.

27. In view of the above finding, there is no ground to interfere with the order of reference passed by the second respondent which has been put to challenge in W.P.(MD).No.7918 of 2021.

28. In the result, both the writ petitions are dismissed. If the petitioners are aggrieved by the compensation determined by the second respondent and are seeking for enhancement of compensation, they shall make a request to the second respondent to make a reference under Section 18(1) of the Defence Act to the Civil Court within a period of two weeks from the date of receipt of a copy of this order. This period is fixed, since Section 18(1) of the Act stipulates a time period for making the request and that time period has expired by virtue of the pendency of the writ petitions wherein the award itself has been put to challenge. Therefore, the period during which these writ petitions were pending must be necessarily excluded and the petitioners must be given an opportunity to question the compensation determined by the second respondent. On the petitioners making request for reference within the stipulated time fixed by this Court, the second respondent shall make a reference to the Civil Court immediately. The Competent Civil Court shall thereupon decide the reference made both by the Air Force Station and the petitioners and pass final orders as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

ssb

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ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Principal Secretary to Government,
Ministry of Defence,
Government of India,
101-A, South Block,
New Delhi-110 011.

2.The District Collector,
Thanjavur District,
Collectorate Complex,
Coimbatore-Nagapattinam Highway,
Thanjavur -613 005.

3.The Commanding Officer,
Thanjavur Air Force Station,
InayathukkanPatti,
Thanjavur-613 005.

4.The Defence Estate Officer,
Defence Estate's Office,
Madras Circle,
No.307, Anna Salai,
Teynampet,
Chennai-600 018.

5.The Station Commander,
Air Force Station,
Pudukottai Road,
Thanjavur.

6.The Principal District Judge,
Thanjavur.

+4 CC to M/s.AL.GANDHIMATHI, Advocate (SR-23482[F] dated 22/07/2021,23481

+1 CC to Mr.R.Senthil Kumar,Advocate, SR.No.23910/26.07.2021

W.P (MD) Nos.26401 of 2019 and 7918 of 2021 and
W.M.P (MD) .No.6043 of 2021
22.07.2021

MJ(CO)

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