



W.P. No.16391/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.10.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.16391 OF 2022

Saraladevi

.. Petitioner

- Vs -

1. The Chairman-cum-Managing Director
Tamil Nadu Housing Board
493, Anna Salai, Nandanam
Chennai – 35.

2. The District Collector
Master Plan Complex
Collectorate, Villupuram 605 103.

3. The Executive Engineer &
Administrative Officer (E)
Tamil Nadu Housing Board
Villupuram Housing Unit
Maharajapuram, Villupuram 605 602.

4. The Land Acquisition Officer &
Special Tahsildar (LA)
Tamil Nadu Housing Board Scheme
Salamedu Limit, Villupuram
Cuddalore.



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5. The Special Tahsildar
(Adi Dravidar Welfare) LA (I/C)
Tamil Nadu Housing Board, Cuddalore. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to pay compensation for acquiring the petitioner's housing plot No.39 measuring an extent of 2088 sq.ft. comprised in Survey No.43/2pt from its total extent of 0.48 cents covered under Award No.7/94 dated 03.09.1994 as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, alternatively to allot a housing plot/flat treating the petitioner as land loser category.

For Petitioner : Mr. V.Srinivasa Babu

For Respondents : Mr. U.Bharanidharan, AGP

ORDER

Assailing the acquisition of the land of the petitioner without paying compensation, the petitioner, while claims compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013'), on the basis of the said



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acquisition, in the alternative pleaded for allotment of a housing plot/flat under the land loser category by filing the present writ petition.

2. It is the case of the petitioner that a vacant housing plot No.39, which is the subject land, measuring an extent of 2088 sq.ft., comprised in Survey No.43/2pt out of a total extent of 0.48 cents in Jayaraj Nagar, Salamedu Limit, Villupuram, Cuddalore District, was purchased by the petitioner through a registered sale deed dated 23.11.1987 from one Manivel @ Mayavan. The larger extent was developed by the father of the petitioner's vendor comprised in Survey No.43/2 and 42 into housing layout and sold of which the petitioner had bought Plot No.39 measuring the aforesaid extent.

3. It is the further case of the petitioner that in the year 1991, the respondents issued notification u/s 4 (1) for acquisition of the lands, which included the lands of the petitioner, for the purpose of formation of Neighbourhood Scheme by the Tamil Nadu Housing Board/3rd respondent. The petitioner participated in the enquiry u/s 5-A and filed his objections stating that the petitioner is not possessed of any other residential land and, therefore,



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requested the authorities to drop the proceedings insofar as the acquisition of the land of the petitioner. However, inspite of the petitioner regularly following up with the respondents, the petitioner was not made aware of the acquisition proceedings. However, out of the blue, in the year 1992, the petitioner was informed that the lands have been acquired and possession of the same has been taken as early as in 1992 itself and that award has also been passed on 3.9.1994.

4. It is the further case of the petitioner that upon verification of the revenue records, it stood revealed that subdivisions were made by the 4th respondent and that Survey No.43/2B stands in the name of the Tamil Nadu Housing Board. It is the further case of the petitioner that her land is still vacant and has not been allotted to any third parties and it stands unutilized.

5. It is the further case of the petitioner that no notice was issued by the respondents to the petitioner about the award enquiry nor the compensation amount was paid till date, which prompted the petitioner to seek information under the Right to Information Act through representation dated 13.2.2020 and



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13.6.2020, to which reply was provided by the Public Information Officer vide communications dated 8.6.2020 and 18.6.2020 and the copy of the award in Award No.7/1994 was provided to the petitioner.

6. It is the further case of the petitioner that for the land measuring 0.01.74 hectares of the petitioner, the compensation was fixed by the 4th respondent at Rs.4.480 per sq.ft., totaling to Rs.8,388/=. However, inspite of the fact that the compensation has been deposited into the account of the 4th respondent, yet the compensation was not paid to the petitioner nor deposited in Court as per Section 31 of the Land Acquisition Act, 1894, though the amount was deposited in the account of the 4th respondent prior to the passing of the award. However, inspite of direction given by the 2nd respondent to the 4th respondent to take immediate steps to pay the compensation, yet the 4th respondent has not paid the compensation amount due to the petitioner.

7. It is the further case of the petitioner that neither the compensation amount has been paid by the 4th respondent nor any action on the representation of the petitioner and, therefore, the petitioner filed another



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representation dated 20.10.2021 to the 4th respondent. In spite of the fact that the petitioner is a senior citizen and has been fighting to receive the compensation for the land, which has been acquired almost three decades back, the petitioner was made to run from pillar to post to get the compensation, thereby, the fundamental rights guaranteed under Article 300-A of the Constitution stood grossly violated.

8. It is the further case of the petitioner that since the representation of the petitioner failed to evoke any response, the petitioner was constrained to file W.P. No.27230/2021 in which this Court directed the respondents, vide order dated 23.12.2021, to dispose of the petitioner's representation within a prescribed period. Pursuant to the said order, the 3rd respondent conducted personal hearing and directed the petitioner to approach the 5th respondent with a direction to contact the 4th respondent if compensation amount has not been received.

9. Thereafter, the petitioner submitted a representation to the 5th respondent as well as the other respondents on 8.6.2022 for disbursement of



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compensation as per Act, 2013. Though the said representation was received by the respondents and acknowledged receipt, but for the 3rd respondent directing the petitioner to approach the 5th respondent once again for receipt of compensation, after a period of 28 years, the present petition has been filed.

10. Learned counsel appearing for the petitioner submitted that the petitioner is a senior citizen, whose only property, a residential land, bought for the purpose of putting up construction for self dwelling, was acquired by the respondents for which compensation has not been provided till date, inspite of passage of about three decades. It is the further submission of the learned counsel that neither compensation has been paid nor possession has been taken and, therefore, the rigours of Section 24 (2) of Act, 2013, would stand squarely attracted and the acquisition proceedings would stand lapsed. It is the alternate submission of the learned counsel that the acquisition having been made for the purpose of providing house sites to landless poor, the said acquisition should be made from persons, who own vast extent of lands and taking from one person, a piece of property and making the said person a landless poor, another landless poor ought not to be provided with the said housesite, which is not the purpose



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of the establishment of the Tamil Nadu Housing Board and, therefore, he prays that in the alternative, the 1st respondent may be directed to provide an alternate house site to the petitioner, who is equally a landless poor due to the act of the 1st respondent in proceeding with the acquisition.

11. Per contra, learned Addl. Government Pleader appearing for the 1st respondent, on instructions, submitted that the petitioner is not entitled to invoke Act, 2013 as award has been passed way back in the year 1994 and possession of the land has also been taken and, therefore, the Section 24 (2) of Act, 2013, would not in any way accrue to the benefit of the petitioner. It is the further submission of the learned Addl. Government Pleader that with regard to providing of alternative house sites to persons, whose lands have been acquired, which was the subject matter of appeal in W.A. No.780 of 1999, a Division Bench of this Court has clearly held that there is no provision available for making allotment either under ex-land owner category or to reconvey the acquired land and in the absence of such a provision, the request of the petitioner for allotment of alternative house site cannot be considered favourably.



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12. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13. Before proceeding to address the issue on merits, it is but necessary to record certain facts, which would have a bearing on the acquisition being made by the Tamil Nadu Housing Board.

14. The main objects and reasons for the enactment of the Tamil Nadu Housing Board Act is for the purpose of providing housing and improvement schemes and for establishment of State Housing Board. Section 40 of the Act details the types of schemes that can be undertaken by the Housing Board and Section 43 pertains to rehousing and rehabilitation scheme. From the above it is evident that while it is the duty of the Housing Board to cater to the needs of housing for the landless, it is also required to take up rehousing and rehabilitation for those persons, who have been displaced due to the acquisition.



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15. In the case on hand, it is not in dispute that the petitioner was in possession of the land, which is a residential accommodation, which has since been acquired by the respondents for the provision of houses to the landless persons for the formation of the neighborhood scheme. In fact, even according to the petitioner, she has purchased the land from her vendor, whose father had developed a layout of which a portion was sold to the petitioner. From the above it is clearly evident that it is not a vast packet owned by a single individual, which is acquired for the formation of the neighbourhood scheme, but it is from a layout, which are residential plots, to be sold to individuals for the purpose of putting up houses.

16. In the aforesaid background, not only the case of the petitioner needs to be looked into but the acquisition of the lands for the neighborhood scheme vis-à-vis the status of the petitioner post acquisition requires introspection at the hands of this Court.

17. It is not disputed by the respondents that the petitioner has other residential lands, which could be utilized for the purpose of making her shelter.



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It is the stand of the petitioner that the only residential plot available to the petitioner has been acquired by the respondents and that she has been thrown to the streets by the respondents, whose main object is to provide house site to persons, who do not have any house sites. At the same time, it is also the duty of the respondents to see that a person is not robbed of his house site under the garb of acquisition so as to provide the same to another person, who is not having any land.

18. There is no quarrel that in view of Section 40 of the Tamil Nadu Housing Board Act, the lands could be acquired by the respondents for the purpose of providing house sites, but at the same time, the respondents should also be conscious of Section 43 of the Tamil Nadu Housing Board Act, which provides for rehousing and rehabilitation of the displaced persons, whose lands have been acquired. Therefore, necessarily, land which is acquired from any individual, who is in possession of only the particular piece of land for use for his/her residential needs, in the larger public interest the said lands could be acquired, but the individual from whom the said land is acquired should not be left in lurch and necessarily the benefit of Section 43 of the Tamil Nadu Housing



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Board Act should be given to the said individual and rehousing/rehabilitation should be provided.

19. The Tamil Nadu Housing Board Act is a benevolent piece of legislation, which is not intended to strip a person of his residential land to provide the same to another person, but it is only for the purpose of providing residential accommodation to all persons, so that no person is without a shelter. In effect, the said legislation is not to make a person, who owns a single piece of land a landless individual by stripping the said individual of the said land to provide the same to another person, who does not own any land and make him a self-sufficient individual.

20. Only to the achieve the above said purpose so that persons like the petitioner are not deprived of their right to object to the acquisition, the Land Acquisition Act provides for an enquiry before acquisition at which point of time objections relating to acquisition are raised by the land owners and based on the weight of the objections, the same is considered by the acquisitioning authority. It is not an empty formality, but it is a purposeful procedure provided to



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safeguard the interest of the land owners and at the same time vests control with the acquisitioning authority to negate claims, which do not merit acceptance.

21. In this backdrop, it is to be pointed out that the petitioner herein had participated in the enquiry u/s 5-A and submitted her objections. But the manner in which it has been considered, in the light of the aforestated facts desire a lot to be said, but this Court refrains from proceeding any further on this aspect. It is not the case of the respondents that the petitioner is holding other lands and would not be a landless person if the subject land is acquired. That being the case, the necessity for the acquisitioning authority to consider the objection of the petitioner in more detail assumes significance.

22. Be that as it may. In the present petition, it is the pointed case of the petitioner that neither compensation has been paid nor possession of the lands have been taken till date and, therefore, the acquisition proceedings stood lapsed in view of Section 24 (2) of Act, 2013, the said Act, 2013, having come into force on 1.1.2014.



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23. Section 24 (2) of Act, 2013 has been pressed into service by the petitioner to contend that where an award u/s 11 of Act, 1894, has been made five years or more prior to the commencement of Act, 2013 and neither physical possession of the land has been taken nor compensation has been paid, the said proceedings shall be deemed to have lapsed. For better appreciation, Section 24 (2) of Act, 2013, is quoted hereunder :-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land



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has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

24. In the case on hand, admittedly, compensation has not been paid to the petitioner, which has been admitted by the respondents and is also evident from the various communications, which has emanated from the respondents as also the orders passed by this Court in the petitions filed by the petitioner on the earlier occasions. In fact, for receiving the compensation the petitioner has knocked the doors of the various respondents only to be relegated to the door of another respondent, but in vain, which prompted the petitioner to approach this Court before. Though certain directions were given, yet the compliance has resulted in another stalemate for the petitioner, as the petitioner has been asked



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to go before another respondent to receive the compensation. Therefore, in reality, though the lands of the petitioner had been acquired and the revenue records mutated in the name of the 1st respondent almost two decades back, yet the fruits have not been enjoyed by the petitioner in the form of receiving the compensation. The lands having been acquired by invoking the provisions of Act, 1894, but compensation having not been paid, by then, Act, 2013 has come into force and still the petitioner has not received the compensation.

25. Be that as it may. It is the stand of the respondents that possession has been taken, but it is contended on behalf of the petitioner that the lands have not been allotted to any one and the land is still vacant. The land lying vacant without any allotment cannot be the ground to hold that possession has not been taken; however, it is for the respondents to establish that possession has been taken in the manner known to law. However, the respondents have not produced any iota of material in the form of panchanama to establish taking physical possession of the land from the petitioner. In the absence of any material document to establish that possession of the acquired land has been, inference cannot be drawn that possession has been taken.



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26. In the aforesaid backdrop, the Hon'ble Apex Court in the decision in ***Indore Development Authority – Vs – Manoharlal & Ors. (2020 (8) SCC 129)***, had occasion to deal with the ambit of Section 24 (2) of Act, 2013 and the consequences thereof and in the said context held as under :-

“366. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word or used in Section 24(2) between possession and compensation has to be read as nor or as and. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not



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been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation,



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cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of



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compensation in the treasury instead of court to invalidate acquisition.”

(Emphasis Supplied)

27. The Hon’ble Supreme Court in the aforesaid decision has categorically held that deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, neither possession of land has been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse. From the above, it is evident that there should be satisfaction of either of the limbs of the acquisition proceedings, viz., either taking of possession or payment of compensation in which circumstances, the acquisition proceedings would not get lapsed.

28. In the same breath, the Hon’ble Apex Court has also held that manner in which possession has to be taken and the mode of taking possession under the



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Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2). However, in the case on hand, as aforesaid, there is no material in the form of inquest report/memorandum or panchanama to show that following the due process of law, possession has been taken. In such a scenario, the possession, alleged to have been taken, as claimed by the respondents is nothing but a paper possession, which does not satisfy all the ends of law and, therefore, the said possession cannot be said to be possession in the eye of law.

29. In the aforesaid backdrop, neither compensation has been paid nor possession has been taken in the manner known to law, definitely the acquisition proceedings insofar as the lands of the petitioner stands lapsed on the basis of the ratio laid down in *Indore Development Authority case (supra)*.



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30. Though the acquisition proceedings, as held by this Court above, stands lapsed, necessarily, the land has to revert back to the petitioner. But it is also to be noticed that the lands have been acquired for a public purpose almost three decades back. Though it is the stand of the petitioner that the land of the petitioner is still to be utilized and is lying vacant, the same has not been contradicted by the respondents. However, the respondents are also not clear in their submission as to whether the land of the petitioner is lying vacant or any allotment has been made. In such circumstances, necessarily, the petitioner cannot be left in lurch once this Court has held in favour of the petitioner. Definitely, the scales of justice tilts in favour of the petitioner and in the aforesaid circumstances, this Court has to necessarily invoke its inherent jurisdiction under Article 226 of the Constitution to grant extraordinary relief, as otherwise, not only justice will be defeated, but this Court would be a party to an unjust act perpetrated by the respondents by keeping its hands tied irrespective of the fact that law had given all the safeguards to the petitioner and this Court, being the custodian of the same, had failed to protect it.



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31. It is to be pointed out that the petitioner is a senior citizen, who has been running from pillar to post for almost three decades to get the amount due to her on account of the acquisition for a land, which had been purchased by her to put up a dwelling unit in which she could spend her aged old days in simplicity and peacefulness. But for the act of the respondents in acquiring the lands, without properly considering the objections raised by the petitioner at the time of enquiry, the petitioner's life has been pushed into doldrums making the petitioner to fight her way out of the calamitous situation in which she has been pushed in. Therefore, necessarily it is the duty of this Court to ensure that either the lands of the petitioner are returned back to her as the acquisition proceedings have lapsed or in the alternative provide the petitioner with an alternative land in the same place as it is the duty of the respondents to take necessary steps u/s 43 of the Tamil Nadu Housing Board Act to rehouse/rehabilitate the petitioner.

32. In the aforesaid backdrop, this Court, invoking its inherent and exercising its extraordinary jurisdiction vested in it under Article 226 of the Constitution of India, is inclined to pass the following orders :-



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- i) *The writ petition is allowed and the acquisition proceedings relating to the lands of the petitioner stands lapsed in view of non-compliance of the provisions of Section 24 (2) of Act, 2013;*
- ii) *If the land of the petitioner is unutilized and lying vacant, the land is directed be handed over to the petitioner forthwith and the 1st respondent is directed to take necessary steps for mutating the entries in the revenue records so as to reflect the name of the petitioner as the owner of the land;*
- iii) *In case the land of the petitioner has already been allotted to any other person or common area, the 1st respondent, as an alternative to the land of the petitioner, is directed to provide an equivalent extent of land in the very same neighbourhood scheme to the petitioner in lieu of the land that has been taken over from the petitioner;*



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- iv) *The 1st respondent is directed to complete the aforesaid exercise of allotment of land to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.*

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Internet : Yes / No

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Chennai – 35.
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Collectorate, Villupuram 605 103.
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5. The Special Tahsildar
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