



AS.No.524 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.524 of 2013
CMP.No.19422 of 2018

R.Krishnan

Appellant

Vs

1. Sousila
2. Union of India, by its Secretary to Government
Government of Pudhucherry
3. The Sub Collector (Revenue) (North)
Cum Land Acquisition Officer, Pudhucherry
Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the order, dated, 14.08.2013, made in LAOP.No.27 of 2011, by the III Additional District Judge, Pudhucherry.

For Appellant : Mr.AR.L.Sundaresan, SC for Mr.R.Kumar

For Respondents : Mr.S.Parthasarathy, SC for
Mr.L.K.Manjunath-R1

Dr.B.Ramaswamy, AGP (Pondy)-RR2&3

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. This Appeal Suit has been filed, against the order dated, 14.08.2013, made in LAOP.No.27 of 2011, by the III Additional District Judge, Pudhucherry, in



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a reference under Section 30 of the Land Acquisition Act (herein after referred to as the Act).

2. The brief facts, which are leading to filing of this appeal and necessary for disposal of this appeal, are as follows:-

a) An extent of 00.61.00 hectares at Vaithikuppam Hamlet, Pudhucherry, was acquired by the Government of Pudhucherry. The Appellant herein was shown as the owner of the land as per the revenue records. The Appellant herein appears to have entered into a sale agreement, dated 25.08.1994, in respect of the property along with other properties with one A.Govindasamy @ Rangasamy and others, who are some of the legal heirs of one Appavoo Gramani. It is relevant to mention that the said Appavoo Gramani is indisputably the original owner of vast extent of properties, including the property, which is the subject matter of the acquisition.

b) It is admitted before this Court and before every other proceedings, pending in relation to the properties of Appavoo Gramani that Appavoo Gramani died in the year 1936, leaving behind his four sons, namely, (1) Natesa Gramani, (2) Rangasamy @ Govindasamy Gramani, (3) Rathinavel Gramani and (4) Ramachandra Gramani. Natesa Gramani died in the year 1965, Rangasamy @ Govindasamy Gramani died in 1997 and Rathinavel Gramani died in the year 1969. The contesting 1st Respondent herein in this appeal is the daughter of Ramachandra Gramani, who died in the year 1966.



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- c) From the pleadings and evidence, it is seen that the agreement in favour of the Appellant was executed by A.Govindasamy @ Rangasamy and other legal heirs of two brothers, namely, Natesan Gramani and Rathinavel Gramani. It is admitted that the 1st Respondent herein is not a party to the sale agreement even though the agreement was executed in respect of the whole property. It is also to be noted that the sale agreement was executed as if the vendors, who are parties to the agreement, are the only legal heirs of Appavoo Gramani. Based on the agreement, the Appellant filed a suit in OS.No.241 of 1995, before the Principal Sub Court, Pudhucherry, against the other legal heirs of Appavoo Gramani, who are parties to the agreement. The suit is for specific performance of the agreement of sale. The suit was decreed by a judgement and decree dated 11.04.2001 in favour of the Appellant. A sale deed, dated 19.04.2005 was also obtained from the Principal Sub Court, Pudhucherry in execution of the decree for specific performance. Therefore, it is stated by the Appellant that he became the exclusive owner of the property, which is acquired by the Government of Pudhucherry. In the course of evidence, the Appellant has produced patta in respect of the suit property in the name of the Appellant.
- d) It is admitted that the land was acquired by issuing a notification under Section 4(1) of the Act on 22.02.2006. After publication of declaration under Section 6 of the Act, on 02.03.2006, an enquiry was also fixed on 26.07.2006. It is admitted that the enquiry under Section 5A of the Act



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was dispensed with as the Government of Pudhucherry invoked urgency clause under Section 17(4) of the Act. After issuing notice to the Appellant, the award was passed, fixing the compensation for the land acquired on 03.11.2006. After passing of the award, the 1st Respondent herein appears to have submitted a representation to the Land Acquisition Officer, claiming 1/4th share in the property acquired and seeking to disburse prorata compensation to her as a co-owner of the property. The Land Acquisition Officer, however, passed an order, on 19.12.2006, rejecting the representation of the 1st Respondent herein.

- e) Thereafter, the 1st Respondent filed a Writ Petition in WP.No.2533 of 2007, challenging the order of the Land Acquisition Officer, dated 19.12.2006 and to direct the Respondents 2 to 4 therein to refer the dispute to a competent Civil Court under Section 30 of the Act for apportionment of compensation payable for the acquired land, measuring 0.66.05 hectares, which is the subject matter of the present appeal. The 1st Respondent herein also filed another Writ Petition in WP.No.8752 of 2008, for issuance of a Writ of Mandamus, directing the 4th Respondent therein to implead the 1st Respondent herein as a claimant/owner of the property, which is the subject matter of acquisition.
- f) This Court, after going through the entire records, considered the scope of reference under Section 30 of the Act and the 1st Respondent's plea that she is the co-owner of the property as the only daughter of Ramachandra Gramani, who is also one of sons of Appavoo Gramani.



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This Court specifically found that the decree in the suit for specific performance in OS.No.241 of 1995 is not binding on the 1st Respondent or her share in the suit property. Taking note of the fact that the Land Acquisition Officer proceeded with the enquiry before passing the award without considering the representation of the 1st Respondent, the impugned order, namely, the order rejecting the representation of the 1st Respondent, was held to be in violation of principles of natural justice.

- g) It is pertinent to mention that the learned counsel for the Appellant has specifically raised a legal plea that a Writ of Mandamus do not lie to direct the Land Acquisition Officer to exercise a discretion in a particular way especially when the order making a reference under Section 30 of the Act, is just a discretion. It was also submitted before this Court that the 1st Respondent should establish her right in the Civil Court after a full pledged trial in the suit for partition in OS.No.26 of 2006 on the file of II Additional District Court, Pudhucherry.
- h) One of the points raised before this Court is that the family of Appavoo Gramani owns vast extent of lands and that equity can be worked out without affecting the rights of the 1st Respondent. Another plea is also raised by the Appellant that the 1st Respondent has filed a petition seeking a reference under Section 30 of the Act only at the instance of the judgement debtor, who suffered a decree for specific performance in OS.No.241 of 1995.
- i) After considering all the arguments advanced by the learned counsel for



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the Appellant and the materials, this Court found that the Appellant, who purchased from three branches, can only step into the shoes of his vendors and that he cannot claim in excess of the rights of his vendors by executing the sale deed in favour of the Appellant. This Court also observed that the property acquired by the Government of Pudhucherry being valuable, the Appellant cannot insist upon the 1st Respondent herein to seek allotment and get her share by working equity along with others. In this regard, a specific finding was also referred to by the Division Bench that the Appellant cannot dictate terms to the 1st Respondent to seek allotment of her share from other items of the properties. Finding that the Official Respondents in the Writ Petition have shown haste in disbursing the compensation amount to the Appellant, this Court quashed the impugned order, by which the 1st Respondent's claim for reference under Section 30 of the Act was rejected. This Court observed that making a reference under Section 30 of the Act is a statutory duty and that therefore, the Land Acquisition Officer was directed to refer the dispute to a Civil Court under Section 30 of the Act for apportionment of the compensation amount. This Court allowed the Writ Petition with the following directions:-

“45. WP.No.2533 of 2007:-

In the result, the impugned order dated 19.12.2006 is set aside and the Writ Petition is allowed with the following directions:-

- The Respondents 2 to 4 are directed to make the reference to the competent civil Court under Section 30 of the Land Acquisition



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Act for apportionment of compensation payable for the land measuring 0.66.05 hectares in TS.No.85 (RS.No.192/4) in Pudhucherry Revenue Village.

- Enhanced compensation awarded in LAOP.No.127 of 1997 on the file of the III Additional District Court, Pudhucherry, is ordered to be kept in a fixed deposit in any one of the nationalised banks till the determination of the proceedings under Section 30 reference.
 - Consequently, connected MP.No.1 of 2008 is closed
 - No costs.”
- j) Since the 1st Respondent's claim was only in respect of 1/4th share in the total compensation, this Court permitted the Appellant to file necessary application, claiming his share from and out of the enhanced compensation in the appeal preferred by the Government. The Appellant herein, as against the order in WP.No.2533 of 2007, filed an appeal in WA.No.149 of 2009. The Division Bench of this Court by order dated 7.2.2011 dismissed the appeal in the following lines:-

“5. The land comprised in TS.No.85/2, measuring an extent of 0.61.0 hectares in Pudhucherry revenue village was acquired by the Government of Pudhucherry under the provisions of the Land Acquisition Act for construction of houses to Tsunami victims. The Appellant herein claims title in respect of the said property. The first Respondent herein made a representation to the third Respondent claiming 1/4th share in the acquired property as well as for apportionment of 1/4th share in the total award amount. But however an award came to be passed under Section 11 of the Land Acquisition Act. According to the first Respondent, for taking a decision regarding her share as well as regarding apportionment, the dispute must be referred to a competent civil Court under Section 30 of the Land Acquisition Act. The learned Single Judge, on the basis of the materials available on record, set aside the impugned order dated 19.12.2006 passed by the fourth Respondent. The learned Judge also gave a direction to Respondents 2 to 4 to make a reference to the civil Court under Section 30 of the Land Acquisition Act for apportionment of compensation payable for the land



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measuring an extent of 0.66.05 hectares in TS.No.85 (RS.No.192/4) in Pudhucherry revenue village and to keep the enhanced compensation awarded in LAOP.No.127/1997 on the file of the III Additional District Court, Pudhucherry, in a fixed deposit in any one of the nationalised banks till the determination of the proceedings in the reference to be made under Section 30 of the Land Acquisition Act. From a perusal of the materials available on record, we find that the order passed by the learned Judge cannot be interfered with in any manner. Therefore, while confirming the order under challenge and dismissing the writ appeals, we direct Respondents 2 to 4 to refer the dispute to a competent civil Court under Section 30 of the Land Acquisition Act within a period of two weeks from the date of receipt of a copy of this order.”

- k) Simultaneously, as against the award of the Land Acquisition Officer, fixing the compensation at the rate of Rs.200/- per sq.ft. for the acquired lands, the Appellant filed a Petition under Section 18 of the Act, seeking a reference to a Civil Court to fix higher compensation. On the application of the Appellant, the matter was referred to the Civil Court in LAOP.No.127 of 2007, before III Additional District Court, Pudhucherry. It is admitted that the Reference Court enhanced the compensation from Rs.200/- per sq.ft. to Rs.800/- per sq.ft. The order of the Reference Court was, therefore, challenged by the Appellant in AS.No.655 of 2008 for enhancement and the Government of Pudhucherry also filed an appeal in AS.No.22 of 2009, challenging the enhancement by the Reference Court. It is now admitted before this Court that the appeal filed by the Government of Pudhucherry in AS.No.22 of 2009 was partly allowed and this Court fixed the market value at Rs.451/- per sq.ft. for the acquired lands upon appreciation of evidence. Therefore, the compensation payable for the land acquired is at the rate of Rs.451/- per



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sq.ft. with other statutory benefits.

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l) It is also submitted by the learned counsel for the Appellant before this Court that when the matter was pending before the Reference Court, an application was filed by the 1st Respondent herein to implead herself as a party to the proceedings. It is further stated that the said application was dismissed by the Reference Court and that the CRP.No.1147 of 2008 filed by the 1st Respondent was also dismissed. However, it is pointed out by the learned counsel for the 1st Respondent herein that the order of the Reference Court dismissing the petition filed by the 1st Respondent was not interfered with, as the Civil Revision Petition became infructuous by then, by virtue of the final order that was passed by the Reference Court in LAOP.No.127 of 2007.

m) The III Additional District Court, Pudhucherry entertained the reference under Section 30 of the Act in LAOP.No.27 of 2011 and the claim of the 1st Respondent for 1/4th share was upheld by the Reference Court and it was held that the 1st Respondent is entitled to apportionment of the compensation as she is entitled to 1/4th share in the property. Therefore, the claim petition filed by the 1st Respondent was allowed. Aggrieved by the order of the Reference Court in LAOP.No.27 of 2001, the above appeal is preferred by the Appellant herein, who is the purchaser of the property from the remaining heirs of Appavoo Gramani.

3. This Court heard the submissions of the learned counsel on either side.

4. The learned senior counsel for the Appellant, in the course of arguments,



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made several submissions, which had already been considered by this Court earlier, while disposing of the Writ Petitions.

5. The learned counsel for the Appellant has raised the following grounds, while challenging the impugned order, allowing the claim of the 1st Respondent herein:-

- a) The plea of the Appellant before the Reference Court was not considered.
- b) The Reference Court carried away by the order of this Court in WA.Nos.149 and 150 of 2009, as if this Court finally upheld the claim of the 1st Respondent, ignoring the fact that the observations made by this Court in the Writ Petition are only for the purpose of considering the claim of the 1st Respondent, as contemplated under Section 30 of the Act.
- c) The claim of the 1st Respondent is unsustainable, as the 1st Respondent has never claimed any right in the suit property, which was acquired by the Government of Pudhucherry.
- d) The 1st Respondent, who is a party to the partition suit, has not filed a petition to include the property, which is acquired and to claim any share in the property.
- e) The claim of the 1st Respondent for 1/4th share is barred by Order 2 Rule 2 of CPC.
- f) The 1st Respondent is not the Plaintiff in the earlier suit. In a partition suit, the Defendant shall also be treated as the Plaintiff and therefore,



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the 1st Respondent, who has not come forward with a plea to include all the properties, including the properties which are acquired by the Government of Pudhucherry, cannot seek for reference under Section 30 of the Act.

6. The learned counsel for the Appellant spent enormous time, by referring to various proceedings to point out that the 1st Respondent never made any claim at any point of time before any forum. The learned counsel's argument though is not by referring to the Limitation Act, he submitted that the Court in equity should accept the case of the Appellant that the 1st Respondent acquiesced with the right of the Appellant's vendors, who had dealt with the property as the exclusive owner of the suit property.
7. The learned counsel for the Appellant then submitted that the suit for partition in OS.No.26 of 2006 is pending as on date and that therefore, the 1st Respondent can get her right established as against the other legal heirs of Appavoo Gramani. In substance, the learned counsel wanted this Court to permit the Appellant to get the entire compensation for the land acquired and permit the 1st Respondent to work out her right in equity as against the vendors of the Appellant in the suit. The learned counsel also relied upon the evidence of the 1st Respondent's husband and tried to convince the Court that the 1st Respondent is not interested in making a claim against the other properties, including the property, which is the subject matter of this appeal.
8. Per contra, the learned senior counsel for the contesting 1st Respondent



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submitted that the Appellant has purchased the property from the other heirs of Appavoo Gramani, who are only entitled to 3/4th share. From the suit filed by the Appellant for specific performance, he pointed out that the other legal heirs of Appavoo Gramani had sold the property, suppressing the right of the 1st Respondent, who is entitled to 1/4th share as the daughter of Ramachandra Gramani, one of the sons of Appavoo Gramani. Since the 1st Respondent is a victim of fraud, the same cannot be taken advantage of by the Appellant to claim any equity to deprive the 1st Respondent of her legitimate share in the property. The learned counsel then pointed out that this Court, while disposing of the Writ Petition and the appeals, had already considered all the points raised by the Appellant and rejected the contention of the learned counsel for the Appellant that the remedy of the 1st Respondent is to work out in the suit for partition, pending at the instance of the legal heirs of one of the sons of Appavoo Gramani.

9. The learned senior counsel for the 1st Respondent further submitted that the Appellant's vendors have no defence to deny the 1/4th right of the 1st Respondent in the property, as they have admitted the right of the 1st Respondent, who is the 10th Defendant in the suit for partition. The learned counsel referred to the fact that Appellant had admitted the relationship and the fact that the 1st Respondent is also an heir of Ramachandra Gramani, who died in 1966, in paragraph 4 of the counter affidavit. Though the learned senior counsel for the 1st Respondent referred to several aspects, this Court is not inclined to elaborate every other submissions, as this Court



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is fully convinced that this is an unwanted and vexatious appeal by the greedy Appellant, who has successfully prevented the 1st Respondent from taking her due share in the compensation, which could have been paid to the 1st Respondent about 16 years back.

10.This Court, while disposing of the Writ Petitions and the Writ Appeals, had specifically rejected the contentions of the Appellant that the remedy of the 1st Respondent should be in the final decree proceedings and that she should get her remedy, worked out by getting allotment of other properties, as against the other heirs of Appavoo Gramani. However, same was the crux of the arguments before this Court in the above appeal. Therefore, the main issue that is raised by the Appellant is barred by the principles of res-judicata.

11.The submission of the learned counsel for the Appellant that the 1st Respondent is not entitled to any share in the property, in view of her silence for a long time, has no legal consequence. First of all, it is not the case of the Appellant's vendors that there was a partition in the family, whereby the 1st Respondent was given sufficient properties of Appavoo Gramani. Though an attempt was made at every stage, this Court is unable to find any specific pleading or evidence with regard to any prior partition or relinquishment of her share by the 1st Respondent in favour of the Appellant or their vendors.

12.As pointed out by the learned senior counsel for the 1st Respondent , the Appellant's vendors entered into an agreement suppressing the 1/4th share of



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the 1st Respondent, being the only daughter of one of the four sons of Appavoo Gramani, namely, Ramachandra Gramani. Therefore, the 1st Respondent, as a matter of fact, is a victim of fraud, either in collusion with the Appellant or by the vendors of the Appellant, while executing the agreement and submitting to the decree for specific performance. In such a situation, this Court is unable to countenance the arguments of the learned senior counsel for the Appellant that the 1st Respondent should be directed to work out her remedy in the final decree proceedings.

13.The claim of the 1st Respondent, as a daughter of Ramachandra Gramani, is admitted by the Appellant even in the counter affidavit filed by the Appellant in the Writ Petition. This Court is unable to find any substance in the argument of the learned counsel for the Appellant that the Appellant is a bona fide purchaser for value. The learned counsel for the Appellant though pointed out that the 1st Respondent has not agitated as against the quantum of compensation by the Land Acquisition Officer, this Court is convinced with the fact that the 1st Respondent did not have any notice of the acquisition proceedings. As and when the 1st Respondent came to know about the acquisition, she filed an application to get herself impleaded in the proceedings before the Reference Court, where the dispute regarding compensation was entertained by the Court under Section 18 of the Act.

14.This Court noticed that the application filed by the 1st Respondent to implead herself as a party to the proceedings in LAOP.No.127 of 2007 was dismissed, without even numbering it. However, it is also brought to the



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notice of this Court that another application in IA.No.10 of 2013 in LAOP.No.127 of 2007 was filed by the Appellant for issuance of a cheque for a sum of Rs.1,93,59,221/- in favour of the Appellant with accrued interest. Strangely, this application was filed without impleading the 1st Respondent and without disclosing the order and directions of this Court made in the Writ Petitions filed by the 1st Respondent in WP.No.2533 of 2007 and 8752 of 2008. Unfortunately, the impleading application was dismissed by the Reference Court. Therefore, the conduct of the Appellant, at every stage of the proceedings, shows his intention to misappropriate the entire compensation amount, even by going to the extent of suppressing various orders and the claim of the 1st Respondent at various stages of the proceedings.

15.The submission of the learned counsel for the Appellant that the present application is barred by Order 2 Rule 2 of CPC is absurd. First of all, the 1st Respondent is not the Plaintiff in the suit for partition. The Plaintiff has not alleged any cause of action to file a suit. Being a party to the suit for partition, she can file a petition to include any other property at any time. It appears that the 1st Respondent being the daughter of one of the sons of Appavoo Gramani, there appears to be a denial of her legitimate share by other heirs taking advantage of her disabilities. However, that would not affect her legitimate share in every property left by Appavoo Gramani. Now, the property is acquired by the Government and it is not available for partition.



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16. In all the proceedings, the Appellant as well as his vendors have admitted the fact that the properties, which are the subject matter of the suit for partition as well as the property which is now acquired by the Government of Pudhucherry, are the properties of Appavoo Gramani. Nowhere in the pleadings, the vendors of the Appellant claimed any exclusive right under different sources of title. In the said circumstances, the Appellant also appears to have colluded with his vendors to obtain the sale deed from the Court, by suppressing the legitimate share of the 1st Respondent. In such circumstances, this Court is unable to apply the principles under Order 2 Rule 2 of CPC, as a reason to deprive the legitimate right of the 1st Respondent to get 1/4th of the amount that is payable by the Government of Pudhucherry, as compensation for the acquired land. Having regard to the facts and cause of action and the relief prayed for in the suit, by showing the 1st Respondent as one of the Defendants, the question of applying the principles of Order 2 Rule 2 of CPC does not arise in this case. The learned senior counsel for the Appellant failed to notice that the Appellants are also parties to the suit for partition as purchasers.

17. The learned senior counsel for the Appellant submitted that by applying the doctrine of acquiescence, this Court should reject the claim of the 1st Respondent. This Court already seen that the 1st Respondent is entitled to 1/4th share in the property being the only daughter of Ramachandra Gramani. A title cannot be conferred by acquiescence. Acquiescence is a doctrine, that was developed from the principles of estoppel, which is always



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recognised as a rule of evidence. Even by admission, title cannot be conferred. Even for applying the principles of estoppel, there must be essential ingredients. There must be a representation and the person, who makes the representation should make the others to believe and alter their position to their disadvantage. In the present case, absolutely there is no dealings between the Appellant and the 1st Respondent in relation to the property. Therefore, even the principles of estoppel or acquiescence does not arise in this case to support the argument of the Appellant.

18. Since this Court considers every argument advanced by the learned counsel for the Appellant as unreasonable and made with greedy object to deprive the legitimate share of the 1st Respondent, this Court is of the view that this appeal is liable to be dismissed with costs.

19. The 1st Respondent was deprived of her legitimate share in the compensation that was determined ultimately by this Court in the appeal in AS.No.22 of 2009, by the judgement and decree dated 25.01.2012. The 1st Respondent is prevented from getting her 1/4th share out of the total compensation amount. It is admitted that the Appellant has withdrawn his entire 3/4th share in the compensation. It is also admitted that a sum of Rs.1.23 crores and odd is available with accrued interest and not less than Rs.1.90 crores, as on date, is lying to the credit of LAOP.No.127 of 2007. The 1st Respondent is entitled to get the said sum of Rs.1.90 crores and odd. Had this amount been paid to the 1st Respondent immediately after the determination of the award by Official Respondents, the 1st Respondent



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would have withdrawn the entire amount about 10 years back. Therefore, this Court directs the Appellant to pay a sum of Rs.1,00,000/- towards costs to the 1st Respondent. The entire amount with accrued interest now lying to the credit of LAOP.No.127 of 2007 shall be withdrawn by the 1st Respondent on proper application being filed by the 1st Respondent. The Reference Court shall, considering the long delay and injustice caused to the 1st Respondent, disburse the amount without any further delay, preferably, within a period of two weeks from the date of making such an application.

20.In the result, with the above directions, this appeal is dismissed with a cost of Rs.1,00,000/- (Rupees one lakh only) payable by the Appellant to the 1st Respondent. Consequently, the connected MP is closed.

(S.S.S.R.J.) & (A.A.N.J.)
10.01.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The III Additional District Judge, Pudhucherry.
2. The Record Keeper, VR Section, Madras High Court



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S.S.SUNDAR, J.
and
A.A.NAKKIRAN

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