



Second Appeal No.909 of 2008

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

Second Appeal No. 909 of 2008

1.Kaveri

S/o.Perumal

2.Kaliammal

D/o. Perumal

3.Thulasi Ammal

W/o. Govindan

4.Chinnasamy

S/o.Govindan

...Appellants

Versus

1.The District Collector

Dharmapuri District

Office of the Collector

Dharmapuri.

2.The Special Tahsildar (Land Acquisition)

Adi Dravidar Welfare

Dharmapuri.

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3.Amaravathi
D/o.Perumal
Nallampalli & Post
Dharmapuri District.

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the Judgment and Decree made in A.S.No. 62 of 2004, dated 31.03.2008, on the file of Subordinate Judge, Dharmapuri, confirming the Judgment and Decree made in O.S.No.335 1995, dated 30.09.2004 on the file of District Munsif Court, Dharmapuri.

For Appellants : Mr.V.R.Anna Gandhi
For RR1 & 2 : Dr.S.Suriya
Additional Government Pleader
For R3 : No Appearance

JUDGMENT

This Second Appeal has been filed against the Judgment and Decree made in A.S.No. 62 of 2004, dated 31.03.2008, on the file of Subordinate Judge, Dharmapuri, confirming the Judgment and Decree made in O.S.No.335 1995, dated 30.09.2004 on the file of District Munsif Court, Dharmapuri.



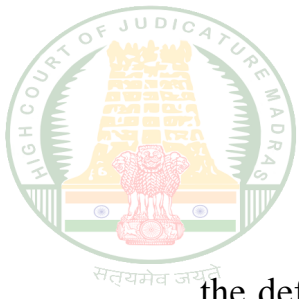
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2. The first appellant is the 3rd plaintiff, the second appellant is the 4th plaintiff, the third appellant is the 6th plaintiff, the fourth appellant is the 7th plaintiff, the respondents 1&2 herein are the defendants 1&2 and the third respondent herein is the 5th plaintiff in the Original Suit in O.S.No.335 of 1995 before the Trial Court.

3. Heard Mr.V.R.Anna Gandhi, learned Counsel appearing for the appellants and Dr.S.Suriya, learned Additional Government Pleader appearing for the Respondent Nos.1 & 2 and perused the materials available on record.

4. On perusal of the records, it reveals that the appellants/plaintiffs filed the suit in O.S.No.335 of 1995 before the District Munsif Court, Dharmapuri, for the relief of mandatory injunction directing

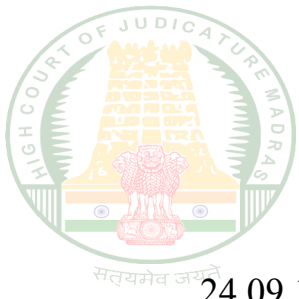


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the defendants to make a reference under Section 18 of Land Acquisition Act No.1 of 1897 in respect of Award No.1/88-89. The defendants 1 and 2 filed written statement denying all the averments made in the plaint. After perusing the records, the Trial Court dismissed the Original Suit by Judgment and Decree dated 30.09.2004. Aggrieved by the same, the Appellants/Plaintiff Nos.3, 4, 5, 6 and 7 preferred an appeal in A.S.No. 62 of 2004 before the Sub-Court, Dharmapuri, and the same was dismissed by Judgment and Decree dated 31.03.2008. Challenging the same, the plaintiffs have filed the present Second Appeal before this Court.

5. It is also seen that the appellants/plaintiffs received the compensation amount and the second respondent was duty bound to make a reference under Section 18 of the Land Acquisition Act, 1894 and to consider the fact that the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act (Act 31 of 1978) came into effect from



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24.09.1977 has no application, since the acquisition was under the Central Act 1 of 1894. The contention of the appellants is that the Courts below have failed to consider the fact that the appellants are all illiterate, hailing from remote villages and they have no knowledge about the legal proceedings to be initiated and the Courts below have erred in holding that the suit is not maintainable either in law or on facts. The Courts below have erred in law in holding that there is no jurisdiction to entertain the present suit and that this Court alone has jurisdiction. The respondents 1&2 had acquired the plaintiffs' land without any proper notice to them, and therefore, appellants pray to allow the above appeal.

6. It is further seen that only the written statement was filed by the respondents/defendants and there is no oral and documentary evidence on the side of the respondents/defendants to substantiate their defence before the Courts below. The First Appellate Court held that the Land

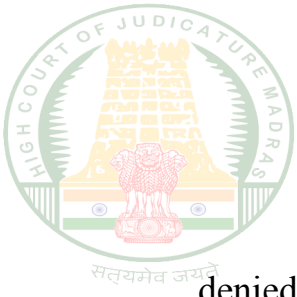


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Acquisition Act No.1 of 1894 under Sections 4, 17 and 5A, Acquisition of part of land for construction of Government Office, while construction of office and compound wall some more area occupied by the Government-Suit by the owner of land – mandatory injunction issued by the Court for demolition of compound wall and to resettle possession to owner – Exercise of power of eminent domain and issuance of notification under Section 4(1) in respect of disputed land can neither be said to be colourable exercise of power nor an arbitrary exercise of power – There being a public purpose exercise of power under Section 17(4) invoking urgency clause and dispensing with inquiry under Section 5A was proper.

7. It is further seen that the agricultural land measuring a total extent of 2.10 acres was acquired by the Government, but no notice was issued to the appellants/plaintiffs and no proper enquiry was conducted by the Land Acquisition Officers. However, the respondents/defendants

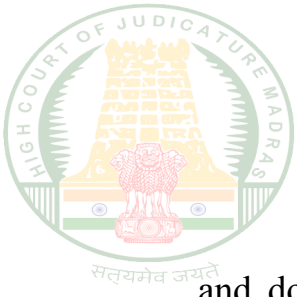


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denied the allegations of the appellants/plaintiffs. Though sufficient opportunities were granted to the appellants/plaintiffs, they failed to appear before the Land Acquisition Officers.

8. Considering the submissions made by the learned counsel on either side and on perusal of the Judgment and Decree of the Trial Court as well as the First Appellate Court, it reveals that on the side of the appellants/plaintiffs alone evidence was adduced and there is no oral and documentary evidence on the side of the respondents/defendants. The respondents/defendants did not prove to substantiate their defence and no proper notice was issued to the appellants/plaintiffs before acquiring the subject land. However, the courts below concluded that no proper notice was issued to the appellants/plaintiffs based upon the pleadings. The property of the plaintiffs was acquired by the Government without issuing any notice/intimation before acquiring the subject land and there is no oral

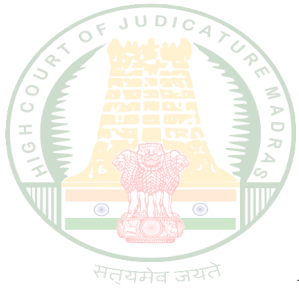


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and documentary evidence on the side of the defendants to substantiate their contentions. Therefore, this Court is inclined to remand the matter back to the Trial Court.

9. While that being the case, this Court directs the Trial Court to record the evidence on both sides after issuing proper notice to the parties concerned and affording sufficient opportunities to them and to decide the issues afresh. Furthermore, the District Collector, Dharmapuri, as well as the learned Government Pleader are also directed to appear before the Trial Court by producing the relevant records in respect of “subject land” to prove their defence. Moreover, the Trial Court shall complete the trial, preferably, within a period of three months from the date of receipt of a copy of this judgment.



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10. Accordingly, this Second Appeal is dispose of. Considering the relationship between the parties, there shall be no order as to costs.

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Index:Yes

Speaking order: Yes

Neutral Citation: Yes

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T.V.THAMILSELVI, J

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To

- 1.The Subordinate Judge, Dharmapuri.
- 2.The District Munsif Court, Dharmapuri.
- 3.The Section Officer,
VR Section, High Court of Madras.

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