



C.R.P.(NPD)No.136 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.136 of 2023

and

C.M.P.No.1166 of 2023

Executive Engineer & ADO,
Tamil Nadu Housing Board,
Erode Housing Unit,
Erode – 638011

.. Petitioner

Vs.

1.Arthanari Gounder (Died)

2.The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Erode

3.A.Loganathan

4.A.Ravichandran

.. Respondents

(R1 died. Respondent
Nos.3 & 4 are brought
on record as LRs of the
deceased R1 viz.
Arthanari Gounder vide
Court order dated



C.R.P.(NPD)No.136 of 2023

11.07.2024 made in
C.M.P.Nos.14383,14386
& 14388 of 2024 in
C.R.P.(NPD)No.136 of
2023 by VLNJ)

Prayer : The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the attachment docket order, dated 05.08.2022, passed in E.P.No.13 of 2016 in L.A.O.P.No.32 of 1987 by the learned I Additional Subordinate Judge at Erode.

For Petitioner : Mr.C.Kalaichelvan

For R2 : Mr.T.Arunkumar
Additional Government Pleader

For R3 and R4 : Mr.N.Subramanian

R1 : Died

ORDER

The present Civil Revision Petition arises against an order of the learned I Additional Subordinate Judge at Erode in E.P.No.13 of 2016 in L.A.O.P.No.32 of 1987 dated 05.08.2022.

2. The facts leading to the revision are that the petitioner as the



C.R.P.(NPD)No.136 of 2023

requisition body acquired an extent of 0.86.5 hectares of land in Periasemur Village at Erode Taluk, Erode District. The Land Acquisition Officer passed an Award in Award.No.2 of 1986, dated 11.08.1986, fixing the compensation at Rs.1,38,786/-. He arrived at this amount by fixing the compensation for the land at Rs.0.78/- per Sq.ft.

3. Aggrieved by the same, the predecessor, in interest of the private respondent, namely one Arthanari Gounder, objected to the value that has been so fixed. Therefore, the Collector referred the matter in terms of Section 18 of the Land Acquisition Act. The learned I Additional Subordinate Judge enhanced the compensation from Rs.0.78/- per Sq.ft. to Rs.9.11/- per Sq.ft.

4. Aggrieved by the said fixation, an appeal was preferred to this Court in A.S.No.55 of 1992. A Division Bench of this Court reduced the compensation from Rs.9.11/- per Sq.ft. to Rs.6.25/- per Sq.ft. The said decree passed by the appellate Court has become final.

5. The plea of the Tamil Nadu Housing Board is that pending the litigation, they deposited 50 % of the amount pursuant to the direction in



C.R.P.(NPD)No.136 of 2023

C.M.P.No.1300 of 1992. Subsequent to the disposal of the case, they paid the balance amount of Rs.48,741/- on 18.12.2020. The private respondent/ Arthanari Gounder calculated the compensation on the basis of interest on solatium and an additional interest that is payable in terms of the Land Acquisition Act, and presented the proceeding in E.P.No.13 of 2016. In the said proceeding, he claimed that the Housing Board has to pay the differential amount of Rs.25,60,903/-. In default thereof, he sought attachment of the movables in the office of the District Collector.

6. To this execution petition, notice was issued to the respondents including the civil revision petitioner. They received the notice. The civil revision petitioner filed a memo of calculation before the Court stating that all that they are liable to pay is only a sum of Rs.48,000/- and they resisted the payment of interest on solatium and the additional interest on the ground that whatever was required to be paid had already been paid. The learned executing Judge was not satisfied with this plea.

7. After arguments, from the records, it is clear that the Housing Board had undertaken to pay a sum of Rs.1,50,000/- in partial discharge of



C.R.P.(NPD)No.136 of 2023

the decree amount. Since that amount too was not paid, the learned Judge ordered an attachment.

8. Aggrieved by the same, the Executive Engineer of Tamil Nadu Housing Board has preferred this civil revision petition before this Court.

9. Notice was ordered in the application. Pending the proceeding, the 1st respondent/claimant/Arthanari Gounder passed away and his legal representatives have been brought on record as respondent Nos.3 and 4. Mr.N.Subramanian has entered appearance on behalf of respondent Nos.3 and 4.

10. Heard Mr.C.Kalaichelvan, appearing on behalf of the petitioner, Mr.T.Arun Kumar, learned Additional Government Pleader, appearing on behalf of the 2nd respondent and Mr.N.Subramanian, appearing on behalf of respondent Nos.3 and 4.

11. The position of law has been settled by the judgment of the Supreme Court in *Sunder vs. Union of India [(2001) 7 SCC 211]*. The



C.R.P.(NPD)No.136 of 2023

Constitution Bench affirmed the liability of the acquisition/requisition body to pay the interest on solatium and the additional interest in terms of the Land Acquisition Act. The benefit of the amendment was given in favour of the land owner, and the arguments placed before the Supreme Court, same as those placed by Mr.C.Kalaichelvan before me, were rejected by the Supreme Court. When this was pointed out by Mr.N.Subramanian, Mr.C.Kalaichelvan submitted that whatever compensation that has to be paid had already been paid and nothing remains to be satisfied in terms of the Award passed in L.A.O.P.No.32 of 1987 as confirmed by this Court in A.S.No.55 of 1992 dated 17.10.2003.

12. According to the position of law laid down by the Supreme Court, the claimant is entitled to interest on solatium and additional interest at the rate of 9 % and 15 %. Apart from that, whatever payments had been made would have to be adjusted first against the costs, then against the interest and only thereafter, against the principal.

13. Mr.C.Kalaichelvan's argument that since the Housing Board had paid all the amounts payable under the Award, they are not liable to pay any



C.R.P.(NPD)No.136 of 2023

further sum is contrary to the views taken by the Supreme Court in the **Sunder's** case. Unless and until the decree so directs, the claimant is entitled to adjust the amounts paid paid in terms of the aforementioned proportionality, namely as against the costs first, interest later and the principal thereafter. The memo of calculation filed by the claimant which is enclosed at Page Nos.127 and 128 of typed set of papers makes it very clear that after adjustment of the amount of Rs.48,741/- paid during pendency of execution petition, the balance of Rs.25,60,903/- remains unpaid. Therefore, the order of attachment passed by the learned executing Judge for the default committed by the civil revision petitioner as well as by the 2nd respondent herein cannot be found fault with.

14. Taking into consideration that the institution is a public institution, I called upon Mr.C.Kalaichelvan to state on the affidavit as to how long it will take the Housing Board to satisfy the decree. This is because, it is not the private fund that is being operated by the Executive Engineer for the Tamil Nadu Housing Board, but he is paying interest at the rate of 15 % per annum from and out of the public funds placed at his disposal. Apart from that, the original claimant also passed away, the



C.R.P.(NPD)No.136 of 2023

acquisition proceeding was initiated atleast four decades ago, and the claimants are yet to see the colour of the coin.

15. In pursuance to this direction, Mr.C.Kalaichelvan has filed an affidavit stating that the Housing Board will clear the compensation amount within a period of 90 days from the date of disposal. I find that the period of three months is reasonable to clear the entire arrears which include the amount awarded by the Court, the interest on solatium and the additional amount as well as the subsequent interest from the date of presentation of the execution proceeding till the date of payment of the entire amount by the Housing Board.

16. At this stage, Mr.N.Subramanian would submit that as the land was acquired in the year 1987, and since the compensation has not been paid till date, this Court should order further compensation. He would also point out that the Revenue Divisional Officer had given a calculation as to the liability of the Housing Board to discharge the decree and till now, the Housing Board did not discharge the same. He would state that this is an abuse of process of Court and therefore, cost must be imposed on the



C.R.P.(NPD)No.136 of 2023

Housing Board.

WEB COPY

17. Insofar as Mr.N.Subramanian's first plea is concerned, I am sitting under the revision against the order of the executing Court. If I were to pass an order ordering additional compensation, then it will amount to rewriting the Award which, unfortunately, I cannot do so. This is a revision against an order passed by the executing Court and in such a revision, I cannot go behind the decree and enhance the compensation. Therefore, the first submission of Mr.N.Subramanian deserves rejection and it is, accordingly, rejected.

18. Insofar as his 2nd plea about imposition of cost on the Housing Board is concerned, I notice that the acquisition had taken place in the year 1987 and within a few months of acquisition, the Housing Board had alienated the property in favour of third parties and had profited from the acquisition proceedings. After having profited by way of alienating the property, it does not lie on the mouth of the Housing Board to deny the rightful compensation that the land owner is entitled to. On their specious plea that they had already paid the entire compensation, the Housing Board



C.R.P.(NPD)No.136 of 2023

had dragged on the matter. The civil revision petitioner is well aware of the judgment of the Supreme Court because the Government referring to the said judgment had also issued an Order directing the requisition body to satisfy the Awards in terms of **Sunder's** case. Despite the fact that the Government Order had been issued years ago, the Housing Board is still litigating the matter which had been settled atleast two decades ago.

19. Therefore, the following orders are passed in the revision :

(i) the Civil Revision Petition stands dismissed.

(ii) the undertaking affidavit, filed by the Executive Engineer of the Tamil Nadu Housing Board stating that she will discharge the entire due within a period of three months from today, is recorded.

(iii) cost of Rs.25,000/- (Rupees Twenty Five Thousand only) is imposed on the Tamil Nadu Housing Board for having filed this revision.

20. With the above observations, the Civil Revision Petition stands dismissed. Consequently, connected Civil Miscellaneous Petition is closed.



WEB COPY



C.R.P.(NPD)No.136 of 2023

22.07.2024

mkn2

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No

V. LAKSHMINARAYANAN, J.

mkn2



C.R.P.(NPD)No.136 of 2023

To

The learned I Additional Subordinate Judge,
Erode

C.R.P.(NPD)No.136 of 2023
and
C.M.P.No.1166 of 2023

22.07.2024