

CMA(MD).Nos.104 of 2019 & batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 29.09.2023

Pronounced on : 08.02.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CMA(MD)Nos.104, 839, 912 & 12274 of 2019
& 437, 399, 442, 535, 538 & 566 of 2020
& 515 of 2017 & 515, 444, 447, 554 & 553 of 2023

&CMP(MD)Nos.9277, 11633, 10460, 1936, 1941, 1937, 2274, 1939, 8197,
8501, 8511, 8675, 8728, 9011, 9243, 9736, 9738, 10323, 11247, 11257, 11272,
11250, 11295, 11275, 11258, 12285, 863, 864, 11980, 12283, 11263, 11317,
11631, 11632, 7200, 570, 5588, 5607, 7415 & 7201 of 2023
& 11057, 12255&916 of 2019, 10621 of 2021
& 4883, 5155, 5162, 5562, 5624 & 5892 of 2020
in CMA(MD) Sr.Nos.21734, 21737, 16272, 21736, 2020, 2023, 2021, 2024,
21735, 21727, 30707, 30708, 15336, 25398, 25396, 21733, 25395, 35578,
35577, 25397, 25401, 25402, 21732, 21729 & 21726 of 2023
& 66748, 66751, 66749, 81482, 66750 of 2022

CMA(MD).No.104 of 2019

The Project Director
National Highways No.7,
National Highways Authority of India,
83/1, S.B.I. First Colony extension,
(Near Gowri Krishna Hotel)
Bye pass road, Madurai-16
And now
Plot No.3, Surya Towers 2nd Floor,
1st East Street, K.K.Nagar,
Madurai 625 020.

... Appellant



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VS.

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1.R.Karuppiah

2.The District Revenue Officer/
Competent Authority for Land Acquisition,
(National Highways-7)
Collectorate Building,
Madurai – 625 020.

... Respondents

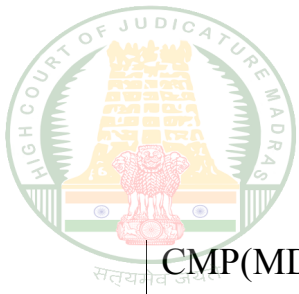
Prayer:Civil Miscellaneous Appeal filed under Section 37(1) and (2) of Arbitration and Conciliation Act, 1996 to set aside the order made in Arbitration O.P.No.3 of 2013 dated :17.09.2018 on the file of the Principal District Judge, Madurai.

Case No.	For petitioner	For respondents
CMP(MD).No.9277 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.11633 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.10460 of 2023	Mr.S.Krishakan For S.Sankarapandian	Mr.N.Palanisamy
CMA(MD).No.104 of 2019	Mr.C.Arul Vadivel @ Sekar, Senior counsel for M/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).No.839 of 2019	Mr.C.Arul Vadivel @ Sekar, Senior counsel for M/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).No.912 of	Mr.C.Arul Vadivel @	Mr.R.Govindaraj



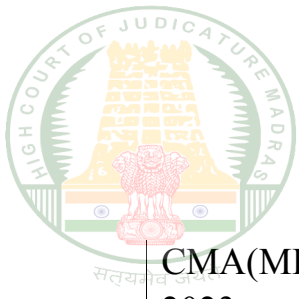
CMA(MD).Nos.104 of 2019 & batch

2019	Sekar, Senior counsel forM/s.C.Arulvadivel Associates	
CMA(MD).No.916 of 2019	Mr.C.Arul Vadivel @ Sekar, Senior counsel forM/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).Nos.437 & 399 of 2020	Mr.C.Arul Vadivel @ Sekar, Senior counsel forM/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).No.442 of 2020	Mr.C.Arul Vadivel @ Sekar, Senior counsel forM/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).No.535 of 2020	Mr.C.Arul Vadivel @ Sekar, Senior counsel forM/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).No.538 of 2020	Mr.C.Arul Vadivel @ Sekar, Senior counsel forM/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMA(MD).No.566 of 2020	Mr.C.Arul Vadivel @ Sekar, Senior counsel forM/s.C.Arulvadivel Associates	Mr.R.Govindaraj
CMP(MD).Nos.1936, 1941, 1937, 2274 & 1939 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD).No.8197 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.8501 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj



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CMP(MD).No.8511 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD).Nos.8675 & 8728 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD).No.9011 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.9243 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).Nos.9736 & 9738 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.10323 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).Nos.11247, 11257 & 11272 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).Nos.11250, 11295 & 11275 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).Nos.11258, 12285, 11980 & 12283 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMA(MD).Nos.863 & 864 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.11263 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.11317 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.11631 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMP(MD).No.11632 of 2023	Mr.P.Karthick	Mr.R.Govindaraj
CMA(MD) No.515 of 2017	Mr.R.Govindaraj	Mr.C.Arul Vadivel @ Sekar, Senior counsel for M/s.C.Arul Vadivel Associates

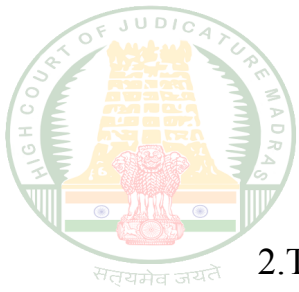


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CMA(MD) No.444 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMA(MD) No.447 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMA(MD) No.444 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMA(MD) No.447 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMA(MD) No.554 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMA(MD) No.553 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD)No.7200 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD)No.570 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD)No.5588 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD)No.5607 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD)No.7415 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj
CMP(MD)No.7201 of 2023	Mr.Su.Srinivasan	Mr.R.Govindaraj

COMMON ORDER

This is a batch of 18 Civil Miscellaneous Appeals (CMAs) and 32 Miscellaneous Petitions for condonation of delay in filing CMAs. The issue that arises for consideration in both the appeals as well as the CMPs and the arguments that have been put forth are common. Hence, a consolidated order is passed disposing the batch.

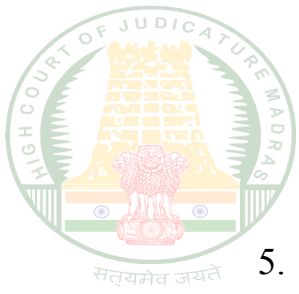


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2.The challenge relates to the awards passed by thePrincipal District and Sessions Judge, Theni, Principal District Judge, Madurai and The Special District Revenue Officer/Competent Authority for Land Acquisition (National Highways – 45 – E & 220), Theni under Section 34 of the Arbitration and Conciliation Act, 1996 (in short ‘1996 Act’) granting compensation for acquisition of lands belonging to the private respondents (herein after referred to as ‘land owners’/’individuals’) under the provisions of the National Highways Act, 1956. The lands covered under this batch of CMAs are situated in three Districts i.e. Theni, Dindigul and Madurai.

3. In the batch of 18 appeals, 7 appeals relate to Dindigul, 10 to Madurai and one appeal is by an individual from Theni whose lands have been acquired wherein he seeks enhanced compensation/solatium on par with other persons who are similarly placed (C.M.A.No.515 of 2017).

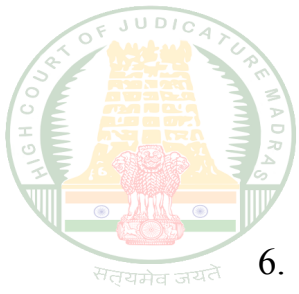
4.Mr.Govindarajan, learned counsel appears for all the individuals, barring one matter i.e. CMP(MD)No.10460 of 2023 in which Mr.N.Palanisamy, learned counsel appears. Mr.Su.Srinivasan and Mr.P.Karthick, learned counsel appear for the Project Directors of Theni and Dindigul and Mr.C.Arul Vadivel, learned Senior counsel appears for M/s.Arul Vadivel Associates for the Project Director, Madurai and detailed submissions have been heard.



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5. Three Notifications were issued by the Ministry of Shipping, Road Transport and Highways (Department of Road, Transport and Highways) dated 11.05.2006, 28.07.2006 and 09.06.2010 under the provisions of the National Highways Act, 1956 (in short 'NH Act') for acquisition of lands for building (widening/four-laning etc.), maintenance and management and operation of

- i) National Highway No.7, including the bypass, on the stretch of land from Km 41.000 to KM 91.200 (Madurai – Kanniyakumari Section) in the district of Virudhunagar in the State of Tamil Nadu
- ii) National Highway No.7 on the stretch of land from Km 409.000 to KM 427.000 (Bangalore-Salem-Madurai Section) in Madurai District, in the State of Tamil Nadu
- iii) National Highway No.45, Extension on the stretch from Km 37.800 to Km 73.400 and National Highway No.220 on the stretch of land from Km.215.500 to Km.273.600 (Project Chainage) (Dindigul to Theni and Kumuli Section) in District Theni, in the State of Tamil Nadu.



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6. All individuals who are parties in this batch of Civil Miscellaneous Appeals are owners of lands coming within the schedule to the Notifications as aforesaid. The petitioners had filed their objections upon the publication of the Notifications for acquisition of land upon consideration of which, the Special District Revenue Officer had rejected the same, instead awarding compensation in respect of the lands acquired and for the loss of infrastructure thereupon, including immovable property and trees.

7. In computing the compensation to be awarded, the competent authority had, in all cases adopted the guideline value of awarding compensation along with 10% appreciation as per Section 3(g)(2) of the NH Act. Appeals were filed before the District Collector in terms of Section 3(g)(5) of the NH Act.

8. The appeals were to be decided applying the provisions of the NH Act of which Section 3(g)(7) states that the competent authority or the Arbitrator while determining the amount of compensation shall take into consideration the market value of the land on the date of publication of the Notification.

9. The authority rejected the appeals in all cases confirming the order of the competent authority. The request for solatium was rejected on the ground that the Act only provides for appreciation of 10% as per Section 3(g)(2) and hence, the claimant was not entitled to any other component of compensation.



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As against the orders of the District Collector, further appeals were filed under

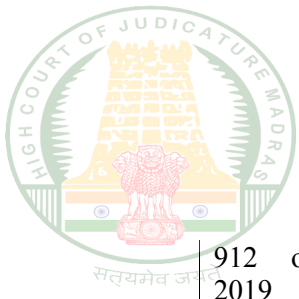
Section 34 of the Act culminating in the orders impugned before us.

10. The land owners have provided particulars in regard to the sale price of lands in the vicinity to illustrate that the market value of the lands was far higher than the guideline value based upon which enhanced compensation has been granted. The impugned orders have been passed re-quantifying the compensation and also granting solatium and interest from date of Notification till date of deposit.

11. The questions that arise for consideration relate to the entitlement of the respondents to additional consideration on par with other individuals in the same District whose lands, contiguous/adjacent in the vicinity of their lands and have been acquired and to solatium.

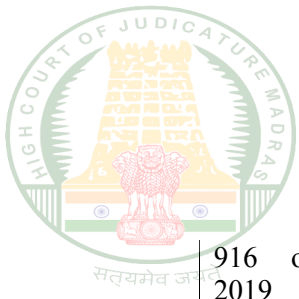
12. Awards came to be passed on various dates as against which Original Petitions came to be filed before the respective Principal District Judges of Theni and Madurai. The details of the Awards are tabulated below:

C.M.A. No.	Place of lands acquired	Land Acquisition Officer who passed the award	Number and Date of award by the Competent Authority	Number and Date of order in Arbitration Original Petition
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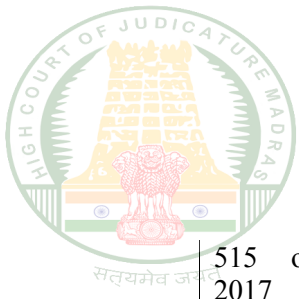
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912 of 2019	Thanichiyam Village, T.Vadipatti Taluk, Madurai District	Competent Authority and District Revenue Officer, Madurai	ROC No. 9166 of 2006 30.07.2007	Arb.O.P.no.76 of 2013 Dated 29.03.2019 Principal District Judge, Madurai
839 of 2019	Kulasekarankottai Village Vadipatti Taluk, Madurai District	Competent Authority and District Revenue Officer, Madurai	ROC No. B10/111595/2005 04.06.2007	Arb.O.P.no.43 of 2014 Dated 11.02.2019 Principal District Judge, Madurai
535 of 2020	Kulasekarankottai Village T.Vadipatti Taluk, Madurai District	Competent Authority and District Revenue Officer, Madurai	ROC No. B10/111595/2005 04.06.2007	Arb.O.P.no.37 of 2014 Dated 30.08.2019 Principal District Judge, Madurai
566 of 2020	Kulasekarankottai Village T.Vadipatti Taluk, Madurai District	Competent Authority and District Revenue Officer, Madurai	ROC No. B10/111595/2005 04.06.2007	Arb.O.P.no.61 of 2014 Dated 30.08.2019 Principal District Judge, Madurai
104 of 2019	Thathampatti Village, Vadipatti Taluk, Madurai District	Competent Authority and District Revenue Officer, Madurai	ROC No. B10/111594/2005 14.05.2007	Arb.O.P.no.3 of 2013 Dated 17.09.2018 Principal District Judge, Madurai



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916 of 2019	Kulasekarankottai Village T.Vadipatti Taluk, Madurai District	Competent Authority and District Revenue Officer, Madurai	ROC No. B10/111595/2005 04.06.2007	Arb.O.P.no.46 of 2014 Dated 02.01.2019 Principal District Judge, Madurai
442 of 2020	Thuvariman Village Madurai South Taluk, Madurai District	Special District Revenue Officer (LA) National Highways -7, Virudhunagar	ROC No. B9/114810/2004 26.03.2007	Arb.O.P.no.47 of 2013 Dated 30.08.2019 Principal District Judge, Madurai
437 of 2020	Thuvariman Village Madurai South Taluk, Madurai District	Special District Revenue Officer (LA) National Highways -7, Virudhunagar	ROC No. B9/114810/2004 26.03.2007	Arb.O.P.no.45 of 2013 Dated 30.08.2019 Principal District Judge, Madurai
399 of 2020	Pallakkapudupatti Village Thirumangalam Taluk, Madurai District	Special District Revenue Officer (LA) National Highways, Virudhunagar	ROC No. B10/102388/04 12.01.2007	Arb.O.P.no.68 of 2013 Dated 13.12.2019 Principal District Judge, Madurai
538 of 2020	Thuvariman Village Madurai South Taluk, Madurai District	Special District Revenue Officer (LA) National Highways -7, Virudhunagar	ROC No. B9/114810/2004 26.03.2007	Arb.O.P.no.49 of 2013 Dated 22.08.2019 Principal District Judge, Madurai



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515 of 2017	Melmangalam Village Periyakulam Taluk, Theni District	Special District Revenue Officer/Competent Authority for Land Acquisition (National Highways – 45E and 220), Theni	ROC No. A.P.No. 38/2015/Theni/NH-45 E & 220/Unit 1 19.03.2015	Arb.O.P.no.1 of 2015 Dated 22.12.2016 Principal District & Sessions Judge, Theni
863 of 2023	Devathana patty Village Periyakulam Taluk, Theni District	Special District Revenue Officer/Competent Authority for Land Acquisition (National Highways – 45E and 220), Theni	ROC No. A.P.No. 9/2016/Theni/NH-45 E & 220/Unit 1 21.03.2016	Arb.O.P.no.15 of 2016 Dated 19.06.2018 Principal District & Sessions Judge, Theni
864 of 2023	Devathana patty Village Periyakulam Taluk, Theni District	Special District Revenue Officer/Competent Authority for Land Acquisition (National Highways – 45E and 220), Theni	ROC No. A.P.No. 131/2015/Theni/NH-45 E & 220/Unit 1 11.08.2015	Arb.O.P.no.4 of 2016 Dated 25.02.2019 Principal District & Sessions Judge, Theni
444 of 2023	Veerapandi Village Theni Taluk, Theni District	Comptent Authority and District Revenue Officer, Theni	ROC No. 42/2010/spl.tahr/LA Award No. 10/ 2011 Veera pandi Village 12.01.2012	Arb.O.P.no.29 of 2015 Dated 22.03.2018 Principal District & Sessions Judge, Theni



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554 of 2023	Veerapandi Village Theni Taluk, Theni District	Comptent Authority and District Revenue Officer, Theni	ROC No. 42/2010/spl.tahr/LA Award No. 10/ 2011 Veera pandi Village 12.01.2012	Arb.O.P.no.33 of 2015 Dated 20.03.2019 Principal District & Sessions Judge, Theni
553 of 2023	Veerapandi Village Theni Taluk, Theni District	Comptent Authority and District Revenue Officer, Theni	ROC No. 42/2010/spl.tahr/LA Award No. 10/ 2011 Veera pandi Village 12.01.2012	Arb.O.P.no.27 of 2015 Dated 28.08.2018 Principal District & Sessions Judge, Theni
447 of 2023	Chinnamanur Township, Palayam Taluk, Theni District	Comptent Authority and Special District Revenue Officer, (LA-NH), Theni	ROC No. 50/2010/spl.DRO/LA-NH Award No. 220/ 2010 – Chinnamanur Village 03.09.2013	Arb.O.P.no.8 of 2016 Dated 29.01.2019 Principal District & Sessions Judge, Theni
570 of 2023	Veerapandi Village Theni Taluk, Theni District	Comptent Authority and District Revenue Officer, Theni	ROC No. 42/2010/spl.tahr/LA Award No. 10/ 2011 Veera pandi Village 12.01.2012	Arb.O.P.no.25 of 2015 Dated 12.07.2016 Principal District & Sessions Judge, Theni

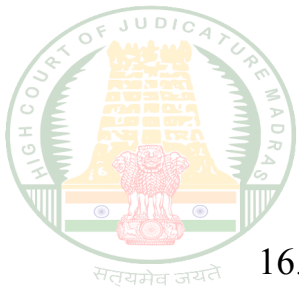
13. We see no reason to burden this order with any more of the minute details relating to the lands acquired and restrict ourselves to addressing the legal issues only, relating to parity in consideration and solatium. We advert to the issue of solatium first. The NH Act at Section 3-J states that nothing in the



Land Acquisition Act, 1894 shall apply to an acquisition made under the National Highways Act. Since interest and solatium were dealt with and provided for under the Land Acquisition Act, such benefits were being denied to land owners whose lands were acquired under the NH Act.

14. The issue was finally resolved by a judgment of the Hon'ble Supreme Court in *Union of India and another V. Tarsem Singh and others*¹, where the question that was answered was whether the non-grant of solatium and interest to lands acquired under the NH Act which is available if lands are acquired under the Land Acquisition Act, is bad in law. A consequential prayer was for a declaration that Section 3-J of the NH Act was violative of Article 14 of the Constitution of India, to this extent.

15. The sheet anchor of the appellants in that case was Article 14 as they contended that the acquisitions, whether made under the Land Acquisition Act or NH Act, are to be treated on par. While interest and solatium were statutorily provided for under the Land Acquisition Act, they were being denied to land owners whose lands were acquired under the NH Act by virtue of Section 3-J.



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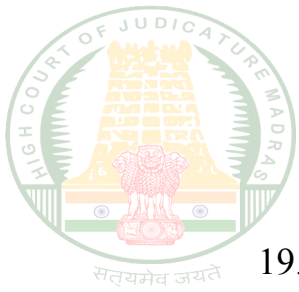
16. The judgment in the case of *P.Vajravelu Mudaliar V. Special Deputy Collector for Land Acquisition*² and *Nagpur Improvement Trust V. Vithal Rao*³ were relied upon. In the case of *P.Vajravelu Mudaliar*, the challenge was to an amendment made to the Land Acquisition Act providing for acquisition of land for housing schemes by fixing compensation different from that prescribed in the principal Act. The challenge succeeded.

17. In the case of *Nagpur Improvement Trust*, 7 Judges of the Hon'ble Supreme Court dealt with the modification made to the Nagpur Improvement Trust Act. Under that modification, solatium that could have been obtained under the Land Acquisition Act was not available to acquisitions under the Improvement Act.

18. The above judgments were held to clinch the issue of solatium in favour of the appellants and ultimately in the case of *Tarsem Singh*, the provisions of Sections 23(1A) and (2) and interest payable under Section 28 and proviso were made applicable to acquisitions under the NH Act as well. The provisions of Section 3-J were held to be discriminatory and violative of Article 14 of the Constitution of India and declared unconstitutional to that extent.

² (1965) 1 SCR 614

³ (1973) 1 SCC 500



19. In light of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court, we find nothing untoward in the grant of solatium under the impugned orders and confirm the same. Clearly, the rejection of the claim for solatium at the original stages was perverse, which perversity has been corrected under the impugned order.

20. We now advert to the second issue relating to compensation. The primary argument advanced in this regard is on the point of assumption of jurisdiction by the learned Principal District Judges in modifying the awards/enhancing the compensation granted. The appellants have referred to the statutory provisions as well as various judgments to bring home the position that interference under Section 34 is limited.

21. They argue that the most the appellate Court could have done is to set aside the award as contemplated under Section 34(2) of the Act and the respective Principal District Judges had no authority under the law to either modify or enhance the quantum of compensation or to award solatium.

22. The cases cited at the Bar are now discussed. The first case relied on by the appellant is *Mc Dermott International Inc. V. Burn Standard Co. Ltd.*⁴ where the legal position that has been set out is that the grounds for interference in an Arbitration award under Section 34 of the 1996 Act are

⁴ (2006) 11 SCC 181



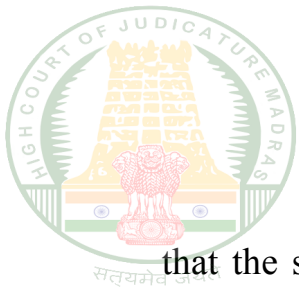
extremely limited. The 1996 Act envisages only a Supervisory role for the Courts in the review of an Arbitral award. Such review is to be kept to a minimum to ensure that fairness is maintained in the matter. Intervention is contemplated only in cases of fraud, bias, or violation of the principles of natural justice and very sparingly, at that.

23. Interference on the ground of illegality is permissible only if such illegality goes to the root of the matter and the question of violation of public policy would arise only if the violations were so unfair and unreasonable so as to shock the conscience of the Court. At paragraph 52, the Apex Court holds as follows:

52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

24. In *P.R.Shah, Shares & Stock Brokers (P) Ltd.*⁵, the approach to minimalistic intervention in Arbitral awards was emphasized, the Court holding

5 (2012) 1 SCC 594



that the scope and ambit of Section 34 does not extend to re-assessing or re-appreciating either evidence or facts. Likewise, in *Dyna Technologies (P) Ltd. V. Crompton Greaves Ltd.*⁶, the thrust of Section 34, as being only intended to cure procedural defects, was reiterated. It was made clear that the High Court was not expected to proceed on the merits of the matter and would have to rest content with curing defects, if any, that arose in the award.

25. In fact, even if there were to be an alternative view which appeals to the adjudicating Court, it would restrain itself from interfering with the award merely on that ground, except if the view taken by the Arbitral Tribunal portrayed perversity, unpardonable under Section 34 of the Act.

26. In *Eastern Trading Company V. Kalpana Lamps & Components*⁷, it was re-emphasised that apprising of evidence was impermissible under Section 34 of the 1996 Act. The judgments in the case of *Haryana Tourism Ltd. V. Khandhari Beverages Ltd.*⁸, *Delhi Airport Metro Express (P) Ltd. V. Delhi Metro Rail Corp. Ltd.*⁹, *UHL Power Co. Ltd. V. State of H.P.*¹⁰, re-emphasize the aforesaid view.

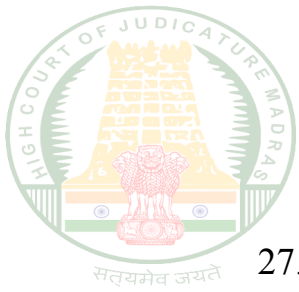
6 (2019) 20 SCC 1

7 CDJ 2007 MHC 5394

8 2022 (3) SCC 237

9 2022 (1) SCC 131

10 2022 (1) SCC 116



27. In *MMTC Ltd. V. Vedanta Ltd.*¹¹, the position that was settled is that

Section 34 does not admit of consideration of any challenge on the merits of an award. This was reiterated in *Ssangyong Engg. & Construction Co. Ltd. V. NHAI*¹² and *Maharashtra State Electricity Distribution Co. Ltd. V. Datar Switchgear Ltd.*¹³, and, taking note of the statutory provisions as well as the march of law on the subject, it was held that Section 34 cannot be held to include a power to modify an award.

28. A parallel line of decisions were referred to, that is, commencing from the decision of the learned single Judge in *Gayatri Balaswamy V. ISG Novasoft Technologies Ltd.*¹⁴, where it was held such power was available under Section 34. An appeal against that order also resulted in the same conclusion in the case of *ISG Novasoft Technologies Ltd V. Gayatri Balaswamy*¹⁵.

29. The decision of the Division Bench in *Gayatri Balaswamy* had not taken note of an earlier Division Bench decision of the Madras High Court in *Central Warehousing Corpn. V. A.S.A. Transport*¹⁶, where, after referring to the first line of decisions including *McDermott International* (supra), the

11 (2019) 4 SCC163

12 ((2019) 15 SCC 131

13 ((2018) 3 SCC 133

14 2014 SCC Online Mad 6568

15 2019 SCC Online Mad 15819

16 2007 SCC Online Mad 972



conclusion was to the effect that under Section 34 of the Act, the Court can only set aside the award leaving the parties to commence arbitration afresh, if so desired.

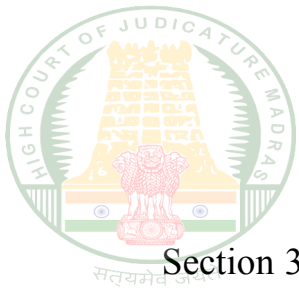
30. The gamut of case-law on the matter has been taken note of and discussed in *Project Director (NHAI) V. Hakeem*¹⁷, which decision is relied on by both parties. That judgment disposed a batch of appeals that arose from the same acquisition as is the subject matter of the present case. This Court had concluded that as far as Arbitral awards made under the National Highways (NHAI) Act, 1956 were concerned, Section 34 must be read as if it permitted modification of the award made under the Highways Act enhancing compensation awarded originally.

31. The question that arose in that matter was thus, on point, as to whether the power of the Court under Section 34 of the 1996 Act '*to set aside an award of an Arbitrator would include the power to modify such award*'. After referring to the judgments in *Kinnari Mullick V. Ghanshyam Das Damani*¹⁸, *Dakshin Haryana Bijli Vitran Nigam Ltd. V. Navigant Technologies (P) Ltd.*¹⁹ and other judgments, the Apex Court reiterates that power under

17(2021) 9 SCC 1

18 (2018) 11 SCC 328

19 (2021) 7 SCC 657



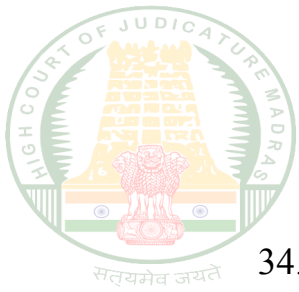
Section 34 was limited to either setting aside the matter or remanding it back to the Arbitrator in the event an error was detected.

32. At paragraph 48, they state as follows:

48. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over.

Thus, the conclusion in law is to the effect that there was no power to modify, revise or vary an award that could be read into Section 34 of the 1996 Act.

33. From paragraph 49 onwards, the matter takes a dramatic turn. On merits the specific submission was, as in the present cases, was that parity in compensation awarded as between landowners covered by the same Notification must be maintained. It was noted by the Apex Court that the NHAI had not filed appeals in all matters and there were some instances where land owners had got away with higher compensation, whereas others had been awarded reduced/lower amounts.

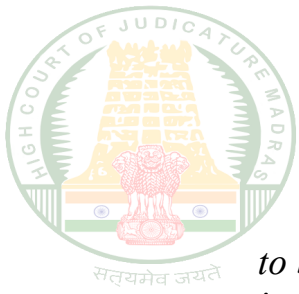


34. The Court also took note of the fact that the quantification of the compensation, was itself perverse, that is, by taking into account the guideline value, which would not be relevant for determining of compensation under the Land Acquisition Act.

35. They say at paragraph 50 that *'the arbitral award in these cases is given by a government servant appointed by the Central Government, the result being the rubber stamping of compensation awarded on a completely perverse basis. Given the fact that, in these petitions at least, the constitutional validity of the NH Amendment Act, 1997 has not been challenged, we must proceed on the basis that grave injustice would be done if we were to interfere on facts, set aside the awards and remand the matter to the very government servant who took into account depressed land values which were relevant for purposes of stamp duty only'*. This position is analogous to the present appeals as well.

36. At paragraph 56, they made an observation that there could be no differential compensation awarded as the public purpose sought to be achieved is one and the same. Paragraph 56 reads thus:

'56. There can be no doubt that differential compensation cannot be awarded on the ground that a different public purpose is sought to be achieved. Also, the legislature cannot say that, however laudable the public purpose and however important it is to expedite the process of land acquisition, differential compensation is



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to be paid depending upon the public purpose involved or the statute involved.'

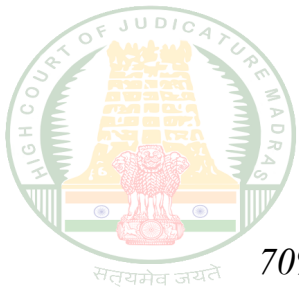
37. They then take the case of a land owner who has two parcels of lands close to each other, one abutting the National Highway and the other some distance from the National Highway and, in that context, state as follows:

57. Take the case of a single owner of land who has two parcels of land adjacent to each other. One parcel of land abuts the national highway, whereas the other parcel of land is at some distance from the national highway. Can it be said that the land which abuts the national highway, and which is acquired under the National Highways Act, will yield a compensation much lesser than the adjacent land which is acquired under the Land Acquisition Act only because in the former case, an award is by a government servant which cannot be challenged on merits, as opposed to an award made under Part III of the Land Acquisition Act by the reference Court with two appeals in which the merits of the award can be gone into? There can be no doubt that discrimination would be writ large in such cases.

38. Ultimately, they refer to the judgment of 7 Judges in *Nagpur Improvement Trust V. Vithal Rao*²⁰ on the question of a reasonable classification for the purpose of Legislation. At paragraphs 29 and 30 of *Vithal Rao*'s case, extracted below, the Bench has stated as follows:

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at

20 (1973) 1 SCC 500

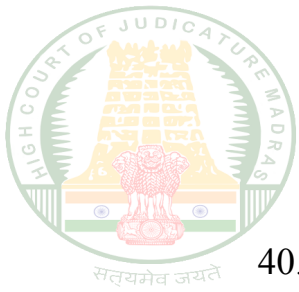


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70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.

39. The conclusion in *Hakeem's* case was that the appeals of the Project Director were to be dismissed on the ground that the National Highways Authority of India had allowed similarly situated persons to receive compensation at a much higher rate than awarded to other land owners and parity must be maintained in the case of similarly placed persons. They also conclude that they would not be inclined to send the matters back to be re-done afresh in view of the elapse of nearly one decade from the original awards.



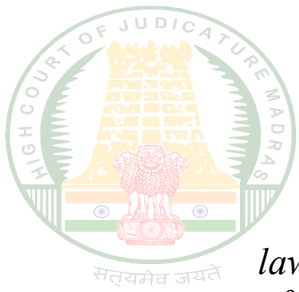
40. The aforesaid decision is fundamental to the decision to be taken on the averments that have been made by both parties. The land owners have placed very great reliance on this judgment. The respondents for their part, would emphasize that, in principle, there was no quarrel on the proposition that parity in compensation has to be maintained. However, it is only by the exercise of discretion under Article 142 that such parity was, in fact, brought into fruition by the Hon'ble Supreme Court.

41. Neither the Constitution not the Judgment in the case of *Hakeem* (supra), the respondents say, extend such discretion to the High Court. Thus the decision in the case of *Hakeem* (supra) is distinguishable for the simple reason that it is a judgment of the Hon'ble Supreme Court exercising a discretion which the High Court does not possess.

42. For these reasons, they would submit that the authorities had no power to review the compensation and place the same on par with other similarly placed persons, but ought to have, in keeping with the mandate under Section 34 of the 1996 Act, dismissed the appeals before them.

43. The conclusion in *Hakeem*'s case in as follows:

59. Given the fact that the NH Amendment Act, 1997 has not been challenged before us, we refrain from saying anything more. Suffice it to say that, as has been held in Taherakhatoon v. Salambin Mohammad, [(1999) 2 SCC 635] (at para 20), even after we declare the law and set aside the High Court judgment on



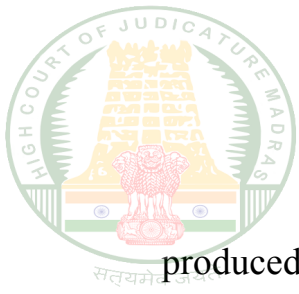
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law, we need not interfere with the judgment on facts, if the justice of the case does not require interference under Article 136 of the Constitution of India.

60. Given the fact that in several similar cases, the NHAI has allowed similarly situated persons to receive compensation at a much higher rate than awarded, and given the law laid down in *Nagpur Improvement Trust v. Vithal Rao*[(1973) 1 SCC 500], we decline to exercise our jurisdiction under Article 136 in favour of the appellants on the facts of these cases. Also, given the fact that most of the awards in these cases were made 7-10 years ago, it would not, at this distance in time, be fair to send back these cases for a *de novo* start before the very arbitrator or some other arbitrator not consensually appointed, but appointed by the Central Government. The appeals are, therefore, dismissed on facts with no order as to costs.

44. We have studied the judgment in *Hakeem's* case carefully. The relevant facts are the same as in the present cases. The subject acquisitions have all been done under the same Notifications as in that case. True there will be variations in the finer details such as, the dimensions of the lands acquired, the survey numbers, the exact locations of the lands, the defences put forth by the landowners before the original authorities and the specifics of the valuations itself.

45. However, the authorities who have passed the impugned orders have adverted to the facts in detail, finding rank perversity in the valuations adopted in the quantification of the compensation. No details of any sort have been

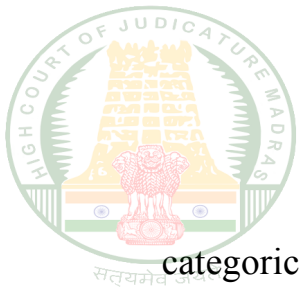


produced before us by the respondents to indicate, let alone establish, that the original compensation was correct and proper and based on acceptable materials.

46. On the other hand in Hakeem, the Bench has specifically referred to the methodology adopted by the authorities for valuation, finding the same to be incorrect and inadequate. At the risk of repetition, we once again draw attention to that portion of the judgement in *Hakeem's* case extracted at paragraphs 34 and 35 of this order.

47. The exercise of appellate power in the matters was for the reasons adumbrated in paragraphs 59 and 60 of that judgement extracted supra. Having the benefit of those observations, we believe we would be remiss if we do not apply them to the present cases particularly seeing as the facts and circumstances in the matters are near identical. The observations in *Hakeem's* case in regard to the slipshod and incorrect manner of quantification of compensation at the lower levels would equally apply in the present cases as well.

48. Undoubtedly, the position of law that the contours of intervention/interference in an award are severely circumscribed by the parameters under Section 34 of the 1996 Act, is too well settled now. However the concluding observations in Hakeem's case make it unambiguously and



categorically clear that there has been perversity in the orders of the lower authorities in determining compensation. In a sense, one could say that the original awards of compensation were in conflict with the most basic notions of justice. This position would enable and fortify our decision to dismiss the appeals.

49. That apart, the Supreme Court also declines interference for the reason that the original awards had been passed a decade earlier. In the present cases, the awards have been passed on various dates in 2007, 2012, 2013, 2015 and 2016 and this position is thus analogous with those appeals. Even for this reason, we decline interference.

50. In *State of Maharashtra V. Digambar*²¹, three Judges of the Hon'ble Supreme Court dealt with the plea of the Writ Petitioner in regard to compensation for land allegedly utilized by the Government without his consent in execution of scarcity relief works undertaken by the State Government.

51. The High Court had accepted the plea of the petitioner rejecting the defence of the Government on the ground of laches and delay of 20 years. The High Court had opined that in a welfare State, such attitude of the State Government was not appreciated, particularly when it was clear that citizens

21 1995 (4) SCC 683

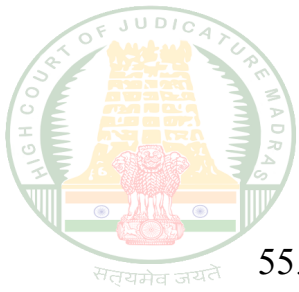


had been deprived of their right without following due process of law and without compensation.

52. In appeal, the State reiterated its prayer. The appeal came to be allowed and in dealing with the specific argument that other Special Leave Petitions on identical points had been rejected in limine, the Hon'ble Supreme Court held that that would not be a bar to the State agitating the matter yet again, particularly if the omission to file an appeal or pursue the matter in other similar cases had jeopardized its interests or had jeopardized public interest.

53. Thus, the appellants would argue that the mere fact that no appeals have been filed in some cases could not be the sole ground on which parity can be sought by the individuals in the matter of compensation. The judgment in *Digamber's* case is distinguishable for the reason that it has to be set in the context of the facts and circumstances that arose there. We are concerned with an entirely different set of facts which have been considered in extenso in *Hakeem's* case. Thus, we see no application of *Digamber's* case to the present appeals.

54. Thus, the Civil Miscellaneous Appeals filed by the State stand dismissed and the Civil Miscellaneous Appeal filed by the individual stands allowed. No costs. Connected Miscellaneous Petitions are closed.



55. Coming to the batch of Miscellaneous Petitions seeking condonation of delay, the period of delay for which condonation is sought varies between 222 and 1519 days. In identical matters relating to arbitral awards in the cases of land owners covered by the same Notifications, petitions for condonation of delay have been dismissed by other Benches of this Court owing to the quantum of delay and lack of credible justification for the same. It is also an admitted position that many of those orders have attained finality as on date.

56. In *Government of Maharashtra (Water Resources Department) represented by Executive Engineer V. Borse Brothers Engineers and Contractors Private Limited*²², the question that came up for consideration was the interpretation of the phrase '*sufficient cause*' under Section 5 of the Limitation Act. In that context, they considered the cleavage of opinion between various Courts as to how that phrase was to be construed.

57. The judgment dealt with the question of limitation in the context of both the Arbitration and Commercial Courts Acts. The conclusion was premised on the objects sought to be achieved under both these enactments which is, the speedy resolution of disputes. Bearing this in mind, the Court concluded that the expression '*sufficient cause*' was not elastic enough to cover long delays beyond the period provided by the appeal provision itself. In any

22 (2021) 6 SCC 460



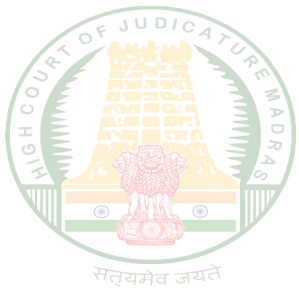
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event, that expression was not a panacea for the ill of negligent and stale claims.

58. The Court also held that different yardsticks could not be taken as far as Government was concerned in matters relating to condonation of delay and those yardsticks that were applied in litigation involving private individuals would apply for the Government also. This then is the position of law that would have to be applied in deciding the present petitions.

59. In the present cases, the affidavit filed in support of the petitions seeking condonation are wholly bereft of any facts relevant to the causation of the delay. In all cases, the reason cited is the judgment of the Hon'ble Supreme Court in *Hakeem's* case. Several appeals have earlier been dismissed at the stage of delay condonation holding that this was insufficient as a justification. (See order in CMP (MD) No.10662 of 2019 in CMA(MD) SR No.76557 of 2019 dated 01.03.2022 and CMP (MD) Nos.1827 to 1830 and 1832 of 2023 in CMA(MD) SR.Nos.66398, 66400, 66401, 66402 and 66399 of 2022 dated 06.06.2023).

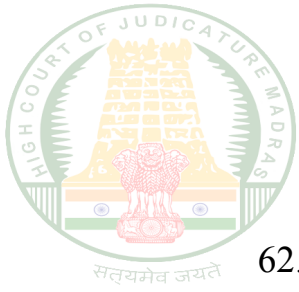
60. In some cases, a token justification has been provided that we find lacking on justification and hence does not appeal. As a sample case, we extract paragraph 17 of the delay condonation petition in CMP(MD) No.1936 of 2023 that reads thus:



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17. *It is respectfully submitted that the impugned order was passed by the Lower Court on 21.03.2019 and the said order was made ready on 22.04.2019 and received by the PIU 24.04.2019. It is submitted that while the case was pending before the District Court, the Highway project was within the authority of Project Director of PIU, Madurai. In the meanwhile, the Dindigul Project Implementation Unit of NHAI was carved out of Madurai PIU of NHAI and came into being w.e.f. 22.01.2018. The files pertaining to newly related Dindigul Unit were received from Madurai PIU in different dates of February 2018. It is further submitted for some period, as the post of Project Director Dindigul was vacant, it was looked after by the Project Director of Nagercoil as additional charge from 22.01.2018 to 01.09.2020. Full time Project Director was appointed to the newly carved out office for PIU, Dindigul w.e.f. 02.09.2020. Similarly, the (southern) Regional Officer of NHAI post at Madurai was also vacant from 26.04.2019 to 23.08.2021. Due to all these reasons, the appeals could not be filed by the Petitioner / Appellant immediately within the prescribed period of limitation.*

61. As far as the above reasons are concerned, we find no merit as the Project Implementation Unit (PIU), Dindigul was created on 21.01.2018, which is prior to the receipt of the order on 24.04.2019. Though the appointment of a full time Project Director was on 02.09.2020, there was an officer holding additional charge in the interim. There is no justification provided that would exonerate the officers in charge from not attending to the matters in a timely fashion. Likewise in all cases, the reasons provided are sketchy and provide no justification for the delay that has been occasioned.



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62. Thus, all the Miscellaneous Petitions seeking condonation of delay stand dismissed. No costs.

[A.S.M.J.] & [R.V.J.]

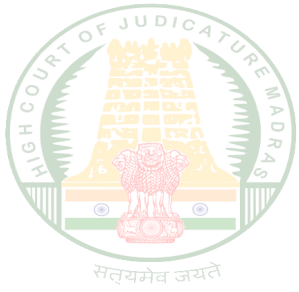
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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citations: Yes/No

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To

The District Revenue Officer/
Competent Authority for Land Acquisition,
(National Highways-7)
Collectorate Building, Madurai – 625 020.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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CMA(MD)Nos.104, 839, 912 & 12274 of 2019
& 437, 399, 442, 535, 538 & 566 of 2020
& 515 of 2017 & 515, 444, 447, 554 & 553 of 2023
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