

C.M.A.No.3035 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGEMENT RESERVED ON : 22.03.2022

JUDGEMENT DELIVERED ON: 22.04.2022

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3035 of 2019

and

C.M.P.No.16519 of 2019

The Project Director (LA),
NH-68, NHAI, Salem,
Sri Nagar Colony,
Opp to Divyam Jewellers Five Road,
Salem.

Presently at No.212-3/D3-1,
Sri Nagar Colony,
Narasothipatti, Salem - 636 004

.. Appellant

vs.

1. T.Palanisamy

2. The Competent Authority and Special
District Revenue Officer (LA), NH-68,
Salem to Ulundurpet.

3. The District Collector (Arbitrator),
Salem

.. Respondents



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Prayer : Appeal filed under Section 37(1) and (2) of the Arbitration and Conciliation Act, 1996 praying to set aside the order made in Arbitration O.P.No.34 of 2015 dated 26.10.2018 on the file of the Principal District and Sessions Judge, Salem.

For Appellant .. Mr.Su.Srinivasan

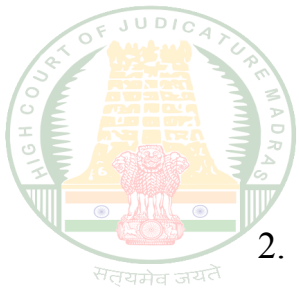
For Respondent-1 .. Mr.R.Anand Padmanabhan
for M/s.TVJ Associates

For Respondents 2 and 3 .. Mr.Edwin Prabhakar
Special Government Pleader

JUDGEMENT

The short issue which engages the jurisdiction of this Court is:-

“Whether a District Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 can modify the award to grant a relief to a peitioner who states that the said relief which is statutorily available to him has been omitted to be awarded by the learned Arbitrator”.

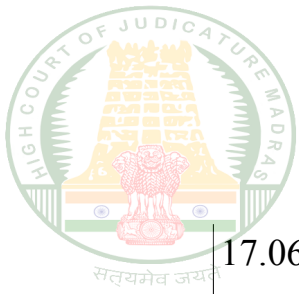


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2. The parties are referred to in the same array as before the Principal District and Sessions Court, Salem.

3. **The facts of the case** on hand is herein below extracted in the form of the dates and events.

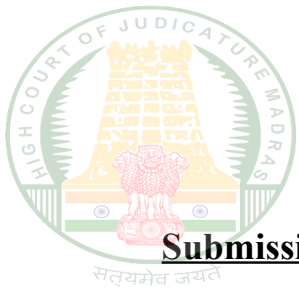
02.06.2008	Publication of Notification under Section 3-A(1) of the National Highways Act in the Gazette of India.
15.07.2008	Publication in the New Indian Express and Daily Thanthi calling for objections.
12.05.2009	Notification under Section 3D(i) approved and published in the Gazette of India.
01.07.2009	Public Notice under Section 3 G(3) of the National Highways Act published in the Daily Thanthi and New Indian Express inviting claims from parties interested in the lands now vested with the Government of India and to appear in person or through Agent or Lawyer before Competent Authority, The Special District Revenue Officer (L.A) Salem and Villupuram District at Salem and Revenue Divisional Officer, Attur. No objections received.
20.11.2009	First respondent makes the award in respect of 54991 sq.mts of land. Compensation amount paid to petitioner.
16.04.2011	Petitioner objects and files an Arbitration Petition as compensation omitted to be paid in respect of some buildings and seeking an enhancement in respect of others.



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17.06.2011	Revision of the compensation by the Special District Revenue Officer.
06.01.2013	The Arbitrator cum District Collector confirms the revised compensation and directs it to be paid together with interest @ 9% from the date of taking possession till date of payment.
June 2013	Arbitration O.P.No.34 of 2015 filed by the petitioner to set aside the award passed by the first respondent and direct the respondents to sanction the statutory benefits of additional amount at 12%, solatium at 30% and interest at 18% on Rs.23,45,633/-.
26.10.2018	Arbitration O.P.No.34 of 2015 is allowed. The award of the first respondent set aside retaining the market value of Rs.23,45,633/- and directing the respondents to pay 12% additional market value from date of notification to the date of award, 30% solatium and interest at 9% on the difference amount for one from taking possession and 15% thereafter till payment.

4. It is this order of the Principal District Judge, Salem, which is the subject matter of appeal here by the second respondent. The only ground of challenge is that the District Court has exceeded the jurisdiction conferred upon it by modifying the Award totally overlooking his powers under Section 34 of the Act, which is restricted to only setting aside the award.



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Submissions:

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5. Mr.Su.Srinivasan, learned counsel appearing on behalf of the second respondent/appellant would submit that under the provisions of Section 34 of the Arbitration and Conciliation Act, hereinafter referred to as the A and C Act, the power of the Court is restricted and the Court does not have the power to modify or vary the award passed by the Arbitrator. The Court can set aside the award only on the grounds set out in Section 34(2) of the A and C Act. He would rely on the judgement of the Hon'ble Supreme Court reported in the case of ***Project Director, National Highways Authority of India -vs- M.Hakeem and Another in 2021 (9) SCC Page 1*** to support the above argument and relied on para 48 therein. He would submit that this judgement has been relied upon in two of the judgements of this Court in C.M.A.No.2266 of 2019 and C.M.A.No.3724 of 2019, where the learned Judge has allowed the appeal filed by the National Highways Authority questioning the order passed by the District Court of Vellore and Salem respectively in modifying the award passed by the Arbitrator under the National Highways Act, hereinafter referred to as the NH Act. He would also rely on the judgement reported in ***2018(11) SCC Page 328 [Kinnari Mullick and Another -vs- Ghanshyam Das Damani]*** to submit that at best, the Court can remand the



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matter back to the Arbitrator by deferring the hearing of the Section 34 petition. He would therefore submit that in the light of the judgements of the Hon'ble Supreme Court spelling out the powers and restrictions in the exercise of jurisdiction under Section 34 of the A and C Act, the order impugned has to definitely be set aside.

6. Per contra, Mr.Anand Padmanabhan, learned counsel appearing on behalf of the petitioner/first respondent would submit that solatium is a statutory right and its denial by the Arbitrator definitely calls into question the award passed by the Arbitrator. He would at the outset question the maintainability of the appeal under Section 37 of the A and C Act. He would submit that the Principal District Judge has not set aside the award passed by the Arbitrator, but has only modified it to include the relief which the petitioner is statutorily entitled to. Therefore, no appeal would lie under Section 37(1)(b) of the A and C Act. He would also put forward an argument that Section 3J of the NH Act as amended by Act 16 of 1997 was declared unconstitutional and struck down by the Karnataka High Court in the judgement reported in **2003 (1) Kar LJ Page 406 [Lalitha and Another -vs- Union of India and Others]**. Therefore, by reason of this order, Section 3J of the NH Act is deemed to be non-existent in the statute. Given the above situation, the



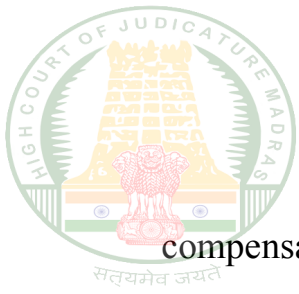
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petitioner would be entitled to the additional market value of 12%, solatium of 30% and interest on market value. Our Court in the judgement of ***T.Chakrapani and Others -vs- Union of India and Others in W.P.Nos.15699 of 2010 etc., dated 04.03.2011*** has also held Section 3 J of the NH Act to be unconstitutional. He would also rely upon the judgement of the Hon'ble Supreme Court in ***Dyna Technologies Pvt. Ltd. -vs- Crompton Greaves Limited reported in 2019 (20) SCC Page 1*** to submit an alternate proposition that this Court could remand the matter back to the Arbitrator to enable him to correct the omission.

Discussion:-

7. Section 34 of the A and C Act has restricted the interference of the Courts to the grounds found in Section 34(2) of the A and C Act alone. Unlike the Arbitration Act 1940 which gave powers to the Court to modify or correct the award, this power has been expressly taken away by the A and C Act.

8. Before proceeding to analyse the correctness or otherwise of the order under appeal, it would make useful reading to understand the grievance of the petitioner. The petitioner /first respondent is not aggrieved by the amount of

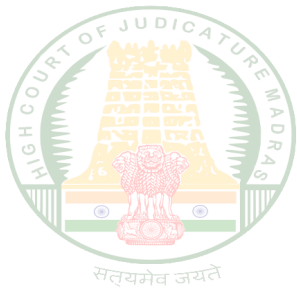


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compensation awarded towards the land cost, what he is aggrieved is the omission to grant the statutory compensation payable under the head of additional market value at 12%, solatium at 30% and interest, which are but the natural consequence of the award of compensation for the land acquired. The Hon'ble Supreme Court had declared the provisions of Section 3 J of the NH Act to be unconstitutional insofar as it relates to Section 23(1-A) and (2) and Section 28 proviso of the Land Acquisition Act and these provisions were made applicable in the judgement reported in **2019(9) SCC Page 304 [Union of India and Another -vs- Tarsem Singh and Others]**. The Bench had also held the judgements in **Lalitha -vs- Union of India** (Supra) and **T.Chakrapani -vs- Union of India** (Supra) as correct.

9. In the judgement reported in **1991 (4) SCC Page 212 [Narain Das Jain (Since deceased) by LRs -vs- Agra Nagar Mahapalika, Agra]**, the Hon'ble Supreme court had described solatium as follows:-

"6. Solatium, as the word goes, is "money comfort", quantified by the statute, and given as a conciliatory measure for the compulsory acquisition of the land of the citizen, by a welfare State such as ours. The concern for such a citizen was voiced by the Law Commission of India in its Report submitted in 1957 on



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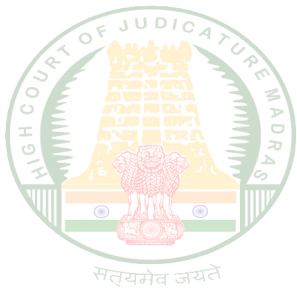


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the Need for Reform in the Land Acquisition by observing as follows:

"We are not also in favour of omitting Section 23(2) so as to exclude solatium of 15 per cent for the compulsory nature of the acquisition. It is not enough for a person to get the market value of the land as compensation in order to place himself in a position similar to that which he could have occupied had there been no acquisition, he may have to spend a considerable further amount for putting himself in the same position as before As pointed out by Fitzgerald the community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it. This principle has been in force in India ever since the Act of 1870. The Select Committee which examined the Bill of 1893 did not think it necessary to omit the provision but on the other hand transferred it to Section 23."

"9. The denial of solatium to the appellant on the sum awarded by the Tribunal is based on the reasoning that firstly the Collector had not awarded solatium and the appellant while taking the matter to the Tribunal had



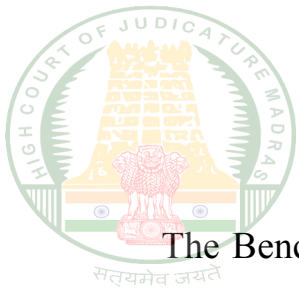
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not raised such claim. Secondly after the order of the Tribunal the appellant when taking the matter to the High Court in appeal, had not made a grouse and laid claim to it in his grounds of appeal. The High Court, it appears was even then prepared to grant solatium to the appellant and offered the appellant to seek amendment of the grounds of appeal but the appellant declined to do so asserting that his claim to solatium was not based on any demand at this instance but was rather a statutory duty of the court to grant it, as otherwise, the mandate of Section 23(2) would fail. The High Court negatived such contention."

10. We do not appreciate the distinction made by the High Court in this regard. ... We are thus of the view that the High Court should have measured the claim of the appellant to solatium on the sum awarded by the Tribunal with the same yardstick as to the sum awarded by it and modified the decree accordingly. We have thus no hesitation in upsetting the judgment and order of the High Court in this regard and award to the appellant solatium at the rate of 15 per cent on the entire market value of the land The appeal shall stand allowed accordingly."



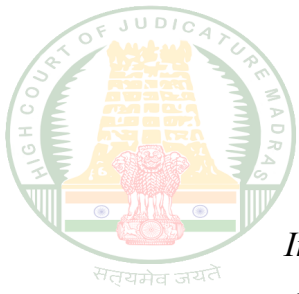
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The Bench also went on to state that solatium automatically followed the market value of land as a shadow would a man. The Bench observed that there is no discretion with the Court to not award it. The Bench held as follows:-

"7. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any state where the court gets occasion to amend or rectify. This is the spirit of provision, wherever made."

10. In the case of T. Chakrapani (supra), the learned Judge of this Court had described solatium as follows:-

"21. The petitioners also placed reliance on the judgment of the Hon'ble Punjab & Haryana High Court in the case of Golden



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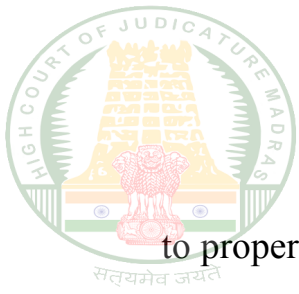
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Iron & Steel Vs. Union of India and ors. (CWP.No.11461 of 2005), decided on 28.03.2008. The Hon'ble High Court of Punjab and Haryana also held Section 3-J to be violative of Article 14 of the Constitution of India. It was held by the Hon'ble Punjab and Haryana High Court as under:

"... ..

Solatium is not a largessee or a mere subsidy that the State doles out to a hapless landowner in discharge of some benevolent exercise of governmental power. Solatium is an amount, paid by the State to an unwilling land owner, for compulsory appropriation of his property. The word solatium draws its meaning from the word solace that is comfort money given as a statutorily recognized gesture of conciliation for compulsorily depriving a land owner of his property. The importance of solatium cannot be over emphasized and any departure therefrom would, in our considered opinion, be justified only where the enactment discloses a reasonable classification for treating land owners differently. Solatium forms an integral component of compensation and, therefore, can only be denied where the statute satisfies the tests of valid classification. ... "

In this case, an argument was put forward on behalf of the State that once the right



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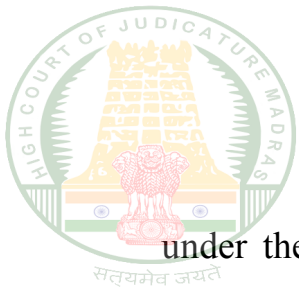
to property is not fundamental, solatium and interest cannot be claimed as a matter

of right like how the land owner is entitled to compensation for the land acquired.

This argument was not accepted and the learned Judge went on to hold that Section 3 J results in discrimination to land owners whose lands are acquired under the NH Act and those acquired for public purpose and was therefore violative of Article 14 of the Constitution of India.

11. Therefore, a reading of the above judgement clearly highlights that the additional market value at 12%, solatium at 30% and interest are an integral part of the award which does not require a land owner to plead to be paid the above. In the case on hand, these amounts have been omitted to be given to the land owner by the Arbitrator. The omission has been corrected by the Principal District Judge before whom the petition under Section 34 of the A and C Act had been filed. However, this is called into question in this appeal as being an exercise of jurisdiction not vested with the Court under Section 34 of the A and C Act.

12. A fact that has to be kept in mind is that the arbitral proceedings



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under the NH Act is not by consensus amongst the parties but is a mechanism thrust upon a land owner by the NH Act. A land owner whose lands have been acquired under the Land Acquisition Act can have the omission rectified in the proceedings that he files in the civil Court against the award passed by the Land Acquisition Officer or in the further appeal to the Appellate Court. However, in the case of a land owner whose lands have been acquired under the NH Act and the Arbitrator fails to pass an order for payment of solatium etc., he is left with no alternate to have the award corrected in a Section 34 petition.

13. Therefore, an Arbitrator exercising jurisdiction under the NH Act has to be more vigilant in ensuring that the award is a fair one and the person whose lands have been compulsorily acquired is compensated adequately and as per his legal entitlement. As discussed earlier, the payment of solatium etc., is compulsory and as held in the case of Tarsem Singh supra payable even in the absence of a specific plea or proof.

14. It is no doubt a fact that the Hon'ble Supreme Court in the judgment



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in 2021 (9) SCC Page 1 [*The Project Director, National Highways No.45 E &*

220 National Highways Authority of India Vs. M.Hakeem and another] has held

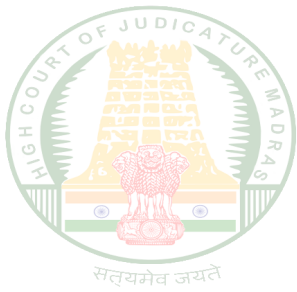
the power to modify an award under Section 34 is not available to the Courts.

However in Paragraph 49 of the said judgement, the learned Judges have observed as follows:

"49.Also, we cannot shut our eyes to the fact that the arbitrator has awarded compensation on a completely perverse basis i.e. by taking into account "guideline value" which is relevant only for stamp duty purposes, and not taking into account sale deeds which would have reflected the proper market value of the land. Given the fact that the awards in all these cases are therefore perverse, the District Judge rightly interfered with the same."

15. The challenge in that case was to the adoption of the guideline value of the lands by the Arbitrator which led to an abysmally low compensation being granted to the land owners. The District Court had enhanced the award which upheld by the High Court and this order was the subject matter of challenge before the Hon'ble Supreme Court. Ultimately, the learned Judges have held as follows:

"59. Given the fact that the NH Laws (Amendment) Act,



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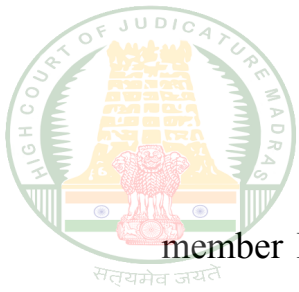
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1997 has not been challenged before us. We refrain from saying anything more. Suffice it to say that, as has been held in Taherakhatoon v.Salambin Mohammed (1999) 2 SCC 635 (at para 20), even after we declare the law and set aside the High Court judgement on law, we need not interfere with the judgement 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 [Nagpur Improvement Trust -vs- 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."

The judgement in Hakeem was rendered by a 2 member Bench.

16. In an earlier judgment of the Hon'ble Supreme Court rendered by a 3

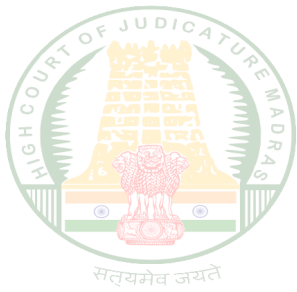


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member Bench in the case of Dyna Technologies supra, the learned Judges after extracting the provisions of Section 34 of the A and C Act, held that arbitral awards should not be interfered with in a casual or cavalier manner *"unless the Court comes to the conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award"*. The case on hand squarely falls within his distinction of the award being perverse in as much as the mandatory compensation amounts have not been provided to the land owner.

17. A Division Bench of the Kerala High Court in the case of ***V.M.Mathew -vs- National Highways Authority of India and Others*** reported in ***2021 SCC Online Ker 387***, while considering a similar set of facts and in an appeal under Section 37 of the A and C Act, had awarded the compensation. The Bench had held as follows:-

"2. Aggrieved by the award of the Arbitrator, the appellant moved the District Court, Thrissur with Arbitration O.P.No.264/2013, under Section 34 of the Act. The learned III Additional District Judge considered the matter and, having regard to the constrains under Section



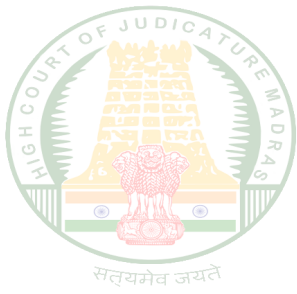
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34 of the Act, declined to interfere....

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3.Today when taken up for hearing, to our pointed question as to whether the appellant will be contented if the court allows a limited relief of granting solatium and interest, as provided under Section 23(1A) and (2) and interest payable in terms of the proviso to Section 28 of the Land Acquisition Act, 1894. Such a query was put bearing in mind the dictum of the Hon'ble Supreme Court in *Union of India -vs- Tarsem Singh* [(2019) 9 SCC 304 : AIR 2019 SC 46891], which is followed by a Division Bench of this Court in which we were parties, reported in *Eliyamma v. Deputy Collector, Palakkad* [2021(1) KHC 145 DB]. The learned counsel answered in the affirmative and thus we proceed to dispose of the appeal.

4. The District Collector granted enhancement of compensation as stated supra. It is evident from the arbitral award appended to the appeal that no amount was paid towards solatium or interest thereon. That cannot be faulted since the National Highways Act does not provide for granting solatium or interest, as payable under the Land Acquisition Act. This aspect was considered by the Hon'ble Supreme Court in the decision



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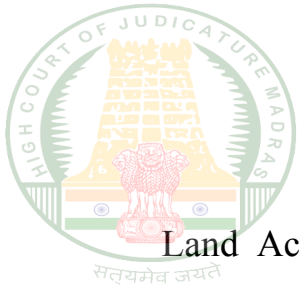


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quoted supra. The Court declared that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of proviso to Section 28 will apply to acquisitions made under the National Highways Act. To that extent, the Apex Court held that Section 3J of the National Highways Act is violative of Article 14 of the Constitution and declared it unconstitutional.

5. *That has become the law of the land under Article 141 of the Constitution. In other words, the benefit is liable to be granted in all the pending claims for enhancement of compensation under the National Highways Act which are live on the date of declaration by the Apex Court. Thus, even in the absence of specific plea of proof, the appellant is entitled to get solatium and interest on solatium as provided in Section 23(1A) and (2) and interest in terms of proviso to Section 28 of the Land Acquisition Act."*

18. Therefore, on the basis of the distinction set out by the Hon'ble Supreme Court in the case of Dyna Technologies and taking into account the implied reference in the judgement of the Hon'ble Supreme Court in the case of Tarsem Singh that even in the absence of specific plea or proof, the appellant is entitled to the benefits of Section 23(1-A) and (2) and proviso to Section 28 of the



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Land Acquisition Act, I see no reason to interfere with the order passed in Arbitration O.P.No.34 of 2015 of the Principal District Court, Salem. Although a plea for a remand was made taking note of the fact that the land has been acquired as early as in the year 2008 and taking into consideration the dicta of the Hon'ble Supreme Court that the land owner is entitled to the above sums, I see no reason to once again remand the matter back to the Arbitrator. The appeal therefore stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.04.2022

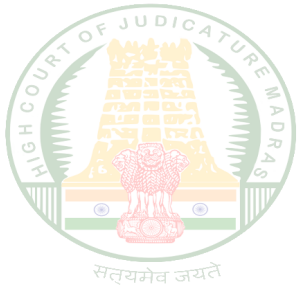
Index: Yes/No

Speaking Order: Yes/No

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To

1. The Competent Authority and Special District Revenue Officer (LA), NH-68, Salem to Ulundurpet.
2. The District Collector (Arbitrator), Salem



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