(2008) 03 MAD CK 0189

In the Madras High Court

Case No : C.R.P. (PD) (MD) No''s. 1817 of 2007 and 262 of 2008 and C.R.P. (NPD) (MD) No''s. 57 of 2007 and 35 of 2008 and M.P. No. 2 of 2007 in C.R.P. (NPD) (MD) No. 57 of 2007

Gunasekar and 3 others APPELLANT

Vs

Special Tahsildar, Adi Dravidar Welfare, Tirunelveli RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(14)
Court Fees Act, 1870 — Section 8
Land Acquisition Act, 1894 — Section 15, 18, 4, 5, 6
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 11, 8
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 51

Citation : (2008) 03 MAD CK 0189

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : R.S. Ramanathan in CRPPD Nos. 1817 of 2007 and 262 of 2008, Mr. A. Arumugam for Mr. M.V. Venkataseshan in CRPNPD No. 57 of 2007 and Mr. K. Ashok Kumar Ram in CRPNPD No. 35 of 2008, for the Appellant; K. Balasubramanian, Additional Government Pleader and Shri A.L. Somayaji Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—All the Civil Revision Petitions relate to payment of court fee payable by owners of land or persons interested on filing an appeal u/s 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978''(Tamil Nadu Act 31 of 1978) (hereinafter called "the Act 31 of 1978") seeking enhancement of amount paid as compensation for the land acquired under the aforesaid Act. C.R.P.(PD) No. 1817 of 2007:- This revision petition has been filed by the owners or the persons interested who are aggrieved by the order and decretal order dated 13.9.2004 passed in Check Slip No. 201/XXV/S in C.M.A. No. 7 of 1999 on the file of the II Additional Subordinate Judge, Tirunelveli.

2. The lands situated in Meenammalpuram village, Palayamkottai Taluk, Tirunelveli District, owned by the revision petitioners were acquired by the Special Tahsildar Adi Dravidar Welfare for the purpose of providing passage to the burial ground to the Meenammalpuram village under Adi Dravidar Welfare Schemes. Award has been passed in Award No.11/98-99 dated 19.3.1999 fixing the value of the lands at Rs. 25,769/- per Acre as on 9.1.1999. Not satisfied with the quantum of compensation, the owners/person interested filed appeal before the Principal Subordinate Judge, Tirunelvei in CM. A.No.7 of 1999 in terms of Section 9 of the Act 31 of 1978. A fixed court fee of Rs. 25.00 alone was paid under Article 3(1)(b) of Schedule II of Tamil Nadu Court Fees and Suit Valuation Act herein after referred to as the "Court Fee Act".

3. During the course of inspection, the Court Fee Examiner, High Court, on verifying the records, issued Check Slip No.201/XXV/S. According to Court Fee Examiner, the above payment of court fee of Rs. 25/- under Article 3(1)(b) of Schedule II of the Act is not proper. According to the authority, Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act alone will applicable and the revision petitioners have to pay a sum of Rs. 1,353.50 towards Court Fees.

4. The revision petitioners/appellants filed their objection stating that the Special Tahsildar fixed the amount payable for the land acquired. If the land owner is not satisfied under the Act, he can make a request to refer the claim to the concerned Sub Court. In law it is a petition claiming enhanced amount. There is no difference between a reference made under the Land Acquisition Act, 1894 and the Acquisition of Land under Tamil Nadu Act 31 of 1978. But for administrative convenience the reference made under Land Acquisition Act 1894 is numbered as Original Petition and the reference made under the Tamil Nadu Act 31 of 1978 is numbered as Civil Miscellaneous Appeal. In effect both are references made by the Land Acquisition Officer upon the request of the land owner. Hence, Section 51 of the Court Fees Act is not applicable to the facts of this case. The Court fee paid already is correct.

5. The learned Subordinate Judge rejected the petitioners/claimants'' plea and directed the revision petitioners/appellants to pay the deficit court fee on or before 20.9.2004, as per check slip, in default held that the appeal will be dismissed.

6. Against such order, the Civil Revision Petition No.1817 of 2007 is filed by the revision petitioners/land owners/person interested reiterating the contention made in the objection before the Subordinate Judge.

7. CR.P.(NPD)No.35 of 2007:- The lands situated in Pachaimalaiyankottai village, Nilakottai Taluk, owned by the revision petitioner were acquired by the Special Tahsildar Adi Dravidar Welfare under Adi Dravidar Welfare Schemes, Act 31 of 1878. Award has been passed in Award No.8/97-98 dated 20.3.1998 fixing the value of the lands at Rs. 24,626/- for 0.35.0 Ares and Rs. 18,294/- for 0.26.0 Ares. Not satisfied with the quantum of compensation, the revision petitioner

filed appeal before the Subordinate Judge, Dindigul in CM. A.No.6 of 1998. A fixed court fee of Rs. 1.00 alone was paid under Article 3 of Schedule II of Tamil Nadu Court Fees and Suit Valuation Act.

8. During the course of inspection, the Court Fee Examiner, High Court, on verifying the records, issued Check Slip No.1262/XXVII/S Diary No.81. According to Court Fee Examiner, the payment of court fee of Re. 1/- under Article 3 of Schedule II of the Court Fee Act is not proper, as Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act alone will apply and the revision petitioner/ appellant has to pay a sum of Rs. 51,876.50 towards Court Fees.

9. The revision petitioner/appellant filed her objection stating that the the court fee paid by her is correct. She relied on the decisions in The State of Madhya Pradesh Vs. Seth Gowardhandas Maheshwari, Relying on 1964(2) MLJ 487, a case relating to acquisition of land under the Madras Slum Improvement Act, a special enactment, it was contended that the court fees will have to be paid under Article 3 of Schedule II of the Madras Court Fees and Suits Valuation Act and not u/s 51 of the Court Fees Act.

10. The learned Subordinate Judge rejected the revision petitioner/appellant''s plea and accepted the court fee fixed by the Court Fee Examiner and directed the revision petitioner/appellant to pay the court fee u/s 51 of the Court Fee Act

11. Against such order, the Civil Revision Petition No.35 of 2008 is filed by the revision petitioner/appellant reiterating the contention made before the Subordinate Judge.

12. CRP(NPD) No.57 of 2007:- The lands situated in Kattakamanpatti, H/o Vathalagundu village, Nilakottai Taluk, owned by the revision petitioner wase acquired by the Special Tahsildar Adi Dravidar Welfare under the Act 31 of 1978. Award has been passed in Award No.11/97-98 dated 20.3.1998 fixing the value of the lands to an extent of 0.48.5 Ares at Rs. 45,462/-. Not satisfied with the quantum of compensation, the owner of the land/person interested filed appeal before the Subordinate Judge, Dindigul in C.M.A.No.9 of 1998. A fixed court fee of Rs.1.00 alone was paid under Article 3 of Schedule II of Tamil Nadu Court Fees and Suit Valuation Act.

13. During the course of inspection, the Court Fee Examiner, High Court, on verifying the records, issued Check Slip No.1265/XXV/S Diary No.B1. According to Court Fee Examiner, the payment of court fee of Re.l/- under Article 3 of Schedule II of the Act is not proper, as Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act alone will apply. According to the Court Fee Examiner, the appellant has to pay a sum of Rs. 37,985.75 towards Court Fees. Accordingly, the Subordinate Judge, directed the appellant to pay the above court fee.

14. C.R.P.(PD)No.262 of 2008:- This Civil Revision Petition is filed against the judgment and decree passed by the second Additional Subordinate Judge, Tirunelveli in C.M.A.No.14 of 1998, which was dismissed on 21.9.2004 on the

ground that deficit court fee was not paid in respect of the appeal filed as against the award No.6/97-98 dated 23.3.1998 for acquisition of the land under the provisions of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 31 of 1978.

15. All these matters were listed for admission before this Court on different dates and the respective counsel addressed the court on the issue. Primarily, the counsel for the revision petitioners in each of the cases, relied upon the decision of this Court in Ramaih and others - vs. -Special Tahsildar, Adi-Dravidar Welfare, Cheranmahadevi, ''Tirunelveli District and others reported in (2007) 6 MLJ 1647 = 2008 1 L.W. 367 rendered by S. Nagamuthuj., hereinafter referred Lo as Ramaiha''s case and stated that the court fee is not payable in terms of Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act. Therefore, the Orders of the Court below should be set aside.

16. The question that has come up for consideration before this court is on the issue, whether the court fee payable on the memorandum of appeal filed under Section9 under the Act 31 of 1978 will be as per Article 3 of Schedule II of the Tamil Nadu Court Fees and Suit Valuation Act, or u/s 51 of the said Act, considering the nature of acquisition for public purpose and in view of the compensation paid.

17. All the four revision petitions relate to appeals filed by the land owners/ persons interested challenging the award passed by the authority under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), seeking higher amount than what has been determined by the competent authority under the Act 31 of 1978, the State Special Enactment.

18. The said State special enactment, Act 31 of 1978 was challenged before this High Court and was struck down as ultra vires. The State of Tamil Nadu took the matter on appeal to the Supreme Court and the Supreme Court upheld the validity of the Act 31 of 1978 except for one provision of which we are not concerned. While upholding the provision of the Act 31 of 1978, the Supreme Court went into the various Sections of the Act 31 of 1978 and upheld the same as intra vires. The decision of the Apex Court while upholding the said Act 31 of 1978 becomes relevant for deciding the controversy raised by the revision petitioners, whose main plea appears to be that the award passed by the Collector is not an award nor an order and the appeal as stated in Section 9 of the Act 31 of 1978 is not an appeal, but only a reference to the Court and therefore, no court fee is payable in terms of Section 51 of Tamil Nadu Court Fees Act. In support of this contention much emphasis had been laid by the counsel for the revision petitioners on the decision rendered by S. NAGAMUTHUJ., reported in (2007) 6 MLJ 1647, viz., Ramaiha''s case. In the aforesaid reported decision, while considering the provisions of the Act 31 of 1978, in relation to payment of court fee, learned Judge observed in paragraphs 30, 31 and 32 as follows:-

30. Similarly, in the Harijan Welfare Act, also when the amount is determined u/s 7 of the Harijan Welfare Act, there is no offer made and therefore, it does not become an award. When the authority tenders payment of amount to the persons entitled thereto as required u/s 11 of the Harijan Welfare Act, it becomes an award, until such a tender is made u/s 11 of the Harijan Welfare Act, as held by this Court in the above cited judgment, in the eye of law, there is no award of compensation at all.

31. If any tender made u/s 11 of the Harijan Welfare Act is challenged, it may be said that an award of compensation is under challenge. But here, u/s 9 of the Harijan Welfare Act, it is only the amount determined which is challenged by way of appeal and not an award.

32. To apply Section 51 of the Court Fees Act, it should be satisfied that the appeal is against an order relating to compensation. Since I have held that what is challenged by way of an appeal u/s 9 of the Harijan Welfare Act, is neither an order not an award, Section 51 of the Court Fees Act, has got no application in this case. Similar view has been taken by the learned judge in the above cited case also.

Section 9 of the Act 31 of 1978 provides for an appeal against an order by any person aggrieved by the amount determined by the authority u/s 7 of the Act. In Ramiaha''s case, the court came to conclusion that the determination of amount made u/s 7 of the Harijan Welfare Act, is neither an award nor an order and in the eye of law there is no award of compensation and therefore, Section 51 of the Court Fee Act does not apply. It came to the conclusion that only after the amount is tendered u/s 11, it becomes an award of compensation for challenge. In para 36 it is further held that "for the amount of compensation to become either an award or an order, it should be passed by an independent Agency like an Arbitrator or Court after hearing both the claimant''s case and that of the authority". The determination of the amount u/s 7 of the Act 31 of 1978 is not an award or an order and therefore, Section 51 of the Act will not apply. Reliance was placed on the decision of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, Further, in paragraph 37 of the decision reported in (2007) 6 MLJ 1647, it is held as follows:

37. The next contention of the learned Additional Advocate General is that, comparison of Section 18 of the Land Acquisition Act, and an appeal made u/s 9 of the Harijan Welfare Act, should not be made, in respect of the Court Fees to be paid. According to him, under the Land Acquisition Act, the land owner is required to give a claim petition to the authority concerned who has to pass an award, but under the Harijan Welfare Act, such a reference is not provided for and instead, the land owner is required to make an appeal to the Court. In my considered opinion, though the word "appeal" has been employed in Section 9 of the Harijan Welfare Act, in the eye of law, it will not be an appeal as provided u/s 51 of the Court Fees Act. When a person whose land has been acquired under the Land Acquisition Act, is not required to pay Court Fees u/s 51 of the Court

Fees Act, there cannot be any reason to require a person who makes a similar request to the Court to pay Court Fees u/s 51 of the Court Fees Act, when his land has been acquired under the Harijan Welfare Act. When these two persons are similarly situated, there can be no reason why the provisions of the Harijan Welfare Act and Section 51 of the Court Fees Act are to be so interpreted that it casts burden upon the one and not upon the other.

(emphasis supplied)

Further placing the reliance on the decision in Appavoo Mudaliar - vs. - Special Dy. Collector for Land Acquisition, Town Planning Schemes, Madras reported in (1964) 2 MLJ 487 = (1965) 78 L.W. 333, in paragraph 38 it is held as follows:-

38. In view of the above positions, I have to necessarily hold that Section 51 of the Court Fees Act, is not applicable for an appeal made u/s 9 of the Harijan Welfare Act.

The Court, therefore, concluded in paragraph 41 that for an appeal filed u/s 9 of the Act 31 of 1978 appropriate court fee to be paid is not u/s 51 of the Act and only Article 3 of Schedule II of the Court Fees Act. The reasoning given by this Court in Ramiaha''s case apparently runs counter to the Apex Court''s decision in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, and since the said decision was not considered, this Court had to necessarily consider the issue in depth.

19. Sri A.L. Somayaji, learned Senior Advocate, who appeared as Amicus Curiae, submitted that the provisions of the Act 31 of 1978, the State Act as upheld by the Apex Court, clearly holds that the amount determined u/s 7 is compensation and the order of the competent authority is an award. What is provided u/s 9 of the Act 31 of 1978 is an appeal against the order/award and therefore, the court fee as provided u/s 51 of the Act is payable. Learned Senior Counsel referred to the various paragraphs in the decision of the Apex Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, Supreme Court Cases 519 = 1995-2-L.W.819 and stated that the State special enactment as upheld by the Apex Court cannot be interpreted in any other manner. The whole Scheme of the Act is for acquisition of land for a public purpose (i.e.) for Harijan Welfare Schemes and it provides for compensation to the person interested which includes the market value, which is determined based on enquiry after affording the owner of land or person interested an opportunity to place all relevant materials and it includes solatium also. Besides, other relevant factors are also considered. This is provided in the Act 31 of 1978 and the Rules. The Supreme Court has clearly held that what is paid in lieu of land acquired is compensation and the amount determined is an award/order.

20. Mr. A.L. Somayajee, learned senior counsel also stated that the decision of the Apex Court upholding the Act 31 of 1978, was not brought to the attention of the learned Judge in Ramiaha''s case and therefore, the court did not consider the said issue in the the light of the Apex Court''s decision State of Tamil Nadu

and Others Vs. Ananthi Ammal and Others, Supreme Court Cases 519 = 1995-2-L.W.819. In this regard, he submitted the following decisions of the Supreme Court-

1) Nirmal Jeet Kaur Vs. The State of Madhya Pradesh and Another,

2) Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, and

3) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others,

It was, therefore, contended that since the decision of the Apex Court upholding the Act 31 of 1978 was not considered, the reported decision (i.e.) Ramaiha''s case in (2007) 6 MLJ 1647 will have no force in the eye of law.

21. The Supreme Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, upheld the various provisions of the State Special Enactment Act 31 of 1978, and the paragraphs, which are relevant for the purpose of the present adjudication are paragraphs 8, 9, 10, 12, 13 and 14 and they are set out hereunder:-

8. Sub-section (1) of section 4 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of an Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire it in pursuance of section 4 Sub section (2) of section 4 obliges the District Collector or any officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector or the officer so authorised, is interested in such land to show cause why it should not be acquired. Where the District Collector has called upon the owner or other person to show cause under subsection (2), clause (a) of sub-section (3) requires him to pass orders on the cause so shown. Where an officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), clause (b) of section 3 requires that officer to report to the District Collector his recommendations on the cause so shown and the District Collector is required to pass such orders as he may deem fit after considering the report. Sub section (2) of section 4, therefore, obliges the acquiring authority to serve notice upon the land owner and other persons interested in the land to show cause why it should not be acquired. By reason of sub-section (3) of section 4, such cause has to be taken into account and orders passed in respect thereof. It is only thereafter that the acquiring authority can arrive at the satisfaction that it is necessary to acquire the land. The provisions of section 4, therefore, substantially encapsulate the provisions of section 4 to 6 of the Land Acquisition Act, the only major difference being that, under the said Act, it is the District Collector and not the State Government who must be satisfied that the land is required to be acquired. It does not appear to us that this is a provision which is unreasonable or arbitrary.

9. By reason of section 5, the land in respect of which notice u/s 4(1) is published vests absolutely in the State Government on and from the date of such publication. Every person having an interest in such land is, by reason of section 6, entitled to receive compensation. Section 12 says that where the amount thereof is not paid or deposited on or before the taking of possession of the land, interest thereon is payable at the rate of 6% per annum from the time of taking of possession until payment or deposit.

10. Section 7 states that the amount payable in respect of land that is acquired under the said Act "shall be the market value of such land on the date of publication of the notice under sub-section (1) of section 4". What is payable as compensation is the market value of the land and it is to be determined as on the date on which the notice u/s 4(1) is published. To that extent the provisions of the said Act are more favourable than those of the Land Acquisition Act for, under that statute, market value as on the date of the Section 4 notification is payable, not on the date of the Section 6 notification.

12. Sub-section (1) of section 7, as aforesaid, states that the amount payable in respect of the land that is acquired under the said Act shall be its market value on the date of publication of the notice u/s 4(1). Sub-section (2) of section 7 states that, in addition to the market value of the land, the prescribed authority shall in every case award a sum of 15 per centum on such market value as solatium in consideration of the compulsory nature of the acquisition. Sub-section (3) of Section 7 states that the prescribed authority shall, after holding an inquiry in the prescribed manner, determine by order the amount payable under sub-section (1) and a copy of the said order shall be communicated to the owner of such land and every person interested therein. The purport of section 7, read as a whole, is that the market value of the land is payable as compensation and sub section (3) states that the market value shall be determined after holding an inquiry in the prescribed manner. Necessarily, that enquiry contemplates notice to the owner and other persons interested in the land and consideration of their claims for compensation and the basis thereof, namely, the evidence they adduce. Upon determination of the market value of the land after inquiry, the prescribed authority is obliged under sub-section (2) of section 7 to award as compensation for the acquisition the market value and an additional 15% as solatium.

13. An appeal is prescribed u/s 9 to the court by any person who does not agree with the amount determined by the prescribed authority "under sub-section (2) of section 7". It was argued that the appeal was limited to the award of solatium and that, therefore, there was no appeal against the determination of market value and the reference to the court in that behalf in the manner of section 18 of the Land Acquisition Act. We do not think that sections 7 and 9 may be so read as to render section 9 an absurdity. As aforesaid, it is the obligation of the prescribed authority under sub section (2) of section 7 to award the market value of the land plus 15% as solatium. The appeal contemplated by section 9 is,

therefore in respect of the award in respect of the land which comprises its market value and solatium.

14. That no reference as in Section 18 of the Land Acquisition Act in regard to the amount of compensation for land that is acquired is provided for does not, in our view, make the said Act unreasonable. Under the provisions of the Land Acquisition Act the award is no more than an offer. If the land owner or other person interested in the land does not accept the offer. Section 18 gives him the right of having the compensation amount decided by the court (See Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, In the reference court compensation has to be established. (See Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, The record before the Collector does not ipso facto become the record of the reference court. In the case of the said Act an appeal is provided u/s 9 from the award, that is, the market value of the land and solatium, u/s 7. The market value is required to be determined, by reason of sub-section (3) of section 7, upon an enquiry as hereinabove explained. The land owner or other person interested in the land has, therefore, the opportunity to establish its market value before the prescribed authority. Such evidence as he places before the prescribed authority becomes a part of the record of a the court in appeal u/s 9. The court in appeal u/s 9 would also, in appropriate cases, have the right to call for additional evidence.

(emphasis supplied)

22. While interpreting the various provisions of Act 31 of 1978, the Supreme Court, clearly holds that every person interested in such land is entitled to receive compensation in terms of Section 6 of the Act 31 of 1978. In paragraph 10 it is stated that what is payable as compensation is the market value of land as on the date of Notification issued u/s 4(1). Again in paragraph 12 referring to Section 7 as a whole, it is held that the amount payable to person interested is compensation determined u/s 7 after an enquiry. Further, in paragraph 12 it has been clearly held that after enquiry the prescribed authority is obliged under Sub Section (2) of Section 7 to award as compensation the amount which will be the market value and an additional 15% solatium. Therefore, the Apex Court comes to the conclusion that what the person interested in the land acquired is entitled to receive is compensation. While upholding the Section 7 of the Act 31 of 1978, the Supreme Court holds that the amount payable in respect of the land acquired is the market value on the date of publication of Notification u/s 4(1) of the Act and the amount payable is referred to as compensation, which is determined, inter aha, based on the market value of the land pursuant to an enquiry and the evidence as may be produced by the person interested.

23. While interpreting the provisions of Act 31 of 1978, the decision of the Apex Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , will be more relevant to decide whether the determination of the amount by the competent authority under the provisions of the Act 31 of 1978 is an award/ order and whether the amount that is tendered is compensation or otherwise.

Since the Act 31 of 1978 has been upheld by the Apex Court, the interpretation of the various Sections as upheld by the Supreme Court become more relevant than any other decision that has been referred to.

24. In paragraph 14, the Supreme Court makes a clear distinction between a reference u/s 18 of the Land Acquisition Act 1874 and the award/order u/s 7 against which an appeal is prescribed u/s 9 of the Act 31 of 1978. It further held that evidence produced by the person interested before the authority becomes part of the record of the court in appeal u/s 9 of the Act 31 of 1978, whereas under the Land Acquisition Act, the compensation has to be established in the Reference Court. The Supreme Court clearly holds that the amount determined under the Act 31 of 1978 is compensation and the determination u/s 7(2) is an award after full-fledged enquiry. The Rules provide for the procedure for such determination. Rule 4 provides the method for determination of market value of the land. Rule 5 provides the procedure for determination of the amount. The land owner has got a right to let in evidence and establish his claim and if aggrieved by the determination, appeal against the award granting compensation for the land acquired. A clear distinction has been drawn between the provisions of the Central Act, Land Acquisition Act and Act 31 of 1978, the State Act. The Supreme Court clearly comes to the conclusion that what is filed u/s 9 is an appeal against the award. Therefore, the amount determined and payable by the competent authority is a compensation and the order passed is an award/order subject to appeal at the instance of the aggrieved land owner. In view of the above stated legal position as held by the Apex Court, there can be no hesitation to come to the conclusion that an aggrieved land owner or person interested while filing an appeal u/s 9 of the Act 31 of 1978, seeking enhancement of the compensation amount being the difference between the amount determined and the amount claimed in appeal, is therefore liable to pay court fee u/s 51 of the Court Fee Act.

25. The decision of the Apex Court upholding the Act 31 of 1978 was not brought to the attention of the Court by the learned Additional Advocate General, except the decision of the Apex Court in C.G. Ghanshamdas and Others Vs. Collector of Madras, which relates to Land Acquisition (Central Act).

26. The decision in Appavoo Mudaliar - v. - Special Deputy Collector for Land Acquisition, Town Planning reported in (1964) 2 MLJ 487 = (1965) 78 L.W.333 on which much emphasis had been made by S. Nagamuthu, J., though said to be parimateria of the Act 31 of 1978, cannot persuade this Court to hold that what is determined u/s 7 of the Act 31 of 1978 is not an award or an order and that the appeal u/s 9 is not an appeal against an order granting compensation. In view of the decision of the Supreme Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, Supreme Court Cases 519 drawing analogy from the decision from Appavoo Mudaliar''s case will not be appropriate. My view is further fortified by the fact that in C.G. Ghanshamdas and Others Vs. Collector of Madras, the Apex Court holds as follows:

It is relevant to note that in section 51 of the Act which arises for consideration before us the word ''order'' does not appear in isolation. The section states that the fee payable under the Act on a memorandum of appeal against an order relating to compensation in any Act for the time being in force for the acquisition of property for public purpose shall be computed on the difference between the amount awarded and the amount claimed by the appellants. The ''order'' referred to in section 51 of the Act need not therefore be an ''order'' of a civil court as defined in section 2(14) of the CPC but should be an ''order'' relating to compensation under any Act for the time being in force for the acquisition of property for public purposes. There is no doubt that the award passed by the Arbitrator under the Requisitioning Act is a formal expression of a decision made by a competent authority which is binding on the parties and it relates to compensation payable under an Act for the time being in force for the acquisition of property for the public purpose. Hence we are of the view that even though the expression ''order'' simpliciter has to be understood in the sense in which that expression is defined in section 2(14) of the Code of Civil Procedure, the word ''order'' found in section 51 of the Act has to be read differently having regard to the words which qualify that expression in that section, namely, ''relating to compensation under any Act for the time being in force for the acquisition of properties'', The said order need not be an order of a civil Court only. It can be of any statutory authority. But it must determine compensation for a property acquired under a law of acquisition of property for public purpose. The award made u/s 8 of the Requisitioning Act satisfies these tests. We do not, therefore, find any substance in this contention too. Since according to us the appeal before the High Court filed u/s 11 of the Requisitioning Act falls squarely u/s 51 of the Act, court-fee has to be paid on ad valorem basis as provided in Article 1 of Schedule I to the Act. It follows that the residuary Article i.e. Article 3(iii)(A)(1)(a) of Schedule II to the Act is not attracted. The High Court was right in following its earlier decision in Y. Venkanna Choudary Vs. Government of India, by Military Estates Officer and Another, and directing the appellants to pay court-fee on ad valorem basis u/s 51 of the Act.

(emphasis supplied)

27. The Additional Advocate-General having omitted to refer to the decision of the Supreme Court in Ananthi Ammal''s case upholding the Act 31 of 1978, has however, laid emphasis on the decision of the Supreme Court in C.G. Ghanshamdas and Others Vs. Collector of Madras, to state that what has been passed by the Collector under the provisions of the Act 31 of 1978 is an award/ order which will attract the provisions of Section 51 of the Court Fees Act, but was rejected by this Court in Ramiaha''s case. In paragraph 39, this is what the learned Judge has stated. Paragraph 39 of the decision in (2007) 6 MLJ 1657 reads as follows:

39. The learned Additional Advocate General would rely on the judgment in C.G. Ghanshandas - vs. - Collector of Madras AIR 1997 SC 180, wherein the Hon''ble

Supreme Court has dealt with the provisions of the Requisitioning and Acquisition of Immovable property Act, (hereinafter referred to as "the Requisitioning and Acquisition Act") and also held that in respect of any appeal made against the award of compensation, Court Fees to be paid shall be only u/s 51 of the Court Fees Act. But, a close comparison of the provisions of the Court Fees Act, with the Harijan Welfare Act is made, it could be seen that the provisions are neither is pari materia nor analogous under these two enactments. Under the Requisitioning and Acquisition of Immovable Property Act 1952, when there is no agreement between the parties on the question of compensation payable, the said question is referred to an Arbitrator u/s 8 of the Requisitioning and Acquisition Act. It is for the Arbitrator the Judicial Officer to pass an award. If any person is aggrieved by the said award, an appeal is to be made under the provisions of the Requisitioning and Acquisition Act. When such an appeal is preferred, Court Fee is to be paid u/s 51 of the Court Fees Act.

A comparison has been made to the provisions of the Court Fees Act with the Harijan Welfare Act and it is stated that the provisions are neither pari materia nor analogous under these two enactments. I am afraid the scope of Court Fees Act is different from the scope of the State Special Enactment for acquisition of property for Harijan Welfare Schemes. May be that a comparison can be drawn between the Requisitioning and Acquisition of Immovable property Act and the Harijan Welfare Act or the Land Acquisition Act, but the comparison between Court Fee Act and the Harijan Welfare Act cannot decide the issue. The answer lies in the C.G. Ghanshamdas case wherein the Apex Court approved decision of the Calcutta High Court In Re: Ananda Lal Chakrabutty and Others, . Section 8 of the Court Fees Act 1870 is similar to the present Section 51 of the Court Fees Act. The observation of the Apex Court made in C.G. Ghanshamdas case in paragraph 16 reads thus:

We find that earlier to the above decision a contrary view had been taken by the Calcutta High Court In Re: Ananda Lal Chakrabutty and Others, . In that case Rankin, C.J. Who decided it observed thus:

Section 8, while not itself imposing any fee upon any one, provides a rule for computation of the fee payable under the Act in a certain class of cases. What it says is that, in the class of cases, which it deals with, the amount of fee payable under the Act on a memorandum of appeal, it is to be computed according to the difference between the two sums. Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge which is an ad valorem charge and is not a fixed charge;

.....The provisions of S.8, involving as they do that fee in the class of cases dealt with is an ad valorem fee are themselves sufficient to exclude any question of Article 11 of Schedule II being made applicable to such cases. It is not necessary to consider whether the Tribunal''s award, which is an order and not a decree is an order having the force of a decree. Whatever the effect of that phrase may be, section 8 shows one perfectly clear that an appeal regarding compensation in a Land Acquisition case is not under Article 11 of Schedule II, because it is not a fixed fee at all....

Further, in C.G. Ghanshamda''s case the word "order" in Section 51 of the Court Fee Act has been interpreted to state that it need not be an order of the civil court only and it can be of any statutory authority. The emphasis is on compensation for property acquired under law of acquisition of property for public purpose. This is satisfied by the Act 31 of 1978 as upheld by the Apex Court.

28. The emphasis is on computation of the fee payable under the Court Fee Act i.e., the court fee payable on a memorandum of appeal against an order relating to compensation under any Act for acquisition of property for public purpose.

29. Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act reads thus:

Fee on memorandum of appeal against order relating to compensation:- The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purpose shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

30. The computation of court fee u/s 51 of the Act is on the difference between the amount awarded and the amount claimed by the appellant. Once there is a determination of the amount by an order or an award and a different amount is claimed by the land owner, the Section 51 of the Act gets attracted.

31. One other aspect which is also been overlooked is the fact that the acquisition of land under Act 31 of 1978, the authority is bound to tender payment of the amount to the person entitled to in terms of Section 11 and therefore the determination of the amount u/s 7 is an order. This issue is also answered in C.G. Ghanshamdas case which dealt with an order passed by an Arbitrator determining the compensation which was contended as an order with no effect and repelled by the Apex Court holding as follows:-

But Section 9 of the Act requires he competent authority to pay the compensation awarded to the person or persons entitled thereto. Therefore, we are unable to accept the contention of the learned counsel for the appellant that the award made by the arbitrator is something which has no effect and therefore it cannot be considered as an order. It is true that it is not an ''order'' as defined in the Civil Procedure Code, the same having not been made by a civil court. But the expression ''order'' is not defined in the Act. The award of the arbitrator is undoubtedly a formal expression of a decision made by a competent authority. Further it is a decision binding on the parties to the proceedings in which it is made. Therefore the question whether the order in question is executable or not appears to us to be irrelevant for the purpose of determining the point in issue.

32. The decision of the Apex Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, of Ramaiha''s case is relating to the

provision of Land Acquisition Act and the reference u/s 18 of the Land Acquisition Act. The said decision will not apply to the facts of the present case, in the light of the decision rendered by the Apex Court in Ananthi Animal''s case wherein the provision of special enactment, 31 of 1978 has been upheld by the Apex Court. While upholding such State enactment, the Apex Court has clearly distinguished the State enactment with reference to the Central Act, viz., the Land Acquisition Act, 1894. The decision of the Apex Court upholding the State enactment 31 of 1978 and the reasons contained therein alone has to be taken into consideration for the purpose of interpreting the provisions of the Act 31 of 1978. The provisions of Land Acquisition Act cannot be referred to for the purpose of interpreting the provisions of the Act 31 of 1978 except to the extent applicable, as it has been clearly and distinctly differentiated by the Apex Court in the decision of Ananthi Ammal''s case. Reference to other Acts will not be appropriate.

33. Much emphasis placed in the Ramaiha''s case is on the decision of the Madras High Court, viz., Appavoo Mudaliar''s case reported in 1964 (2) MLJ 487. No doubt, certain provisions of the Tamil Nadu Slum Improvement Acquisition of Land Act, 1954 seems to be analogous to the provisions of State enactment 31 of 1978. In Appavoo Mudaliar''s case, the learned single Judge comes to the conclusion that only at the time when the amount offered to the person interested it is in the nature of an award. The determination of the compensation is not an award. It becomes an award only if the same is offered by the authority to the land owner. In otherwords, the determination of the amount u/s 7 of the Act 31 of 1978, is not an award, it is only when it is tendered as compensation to the person entitled u/s 11 that it becomes an award and on this analogy, Ramaiha''s case proceeds to state that what is determined u/s 7 and challenged by way of an appeal is not an order or award. This view cannot be countenanced, since the Apex Court has clearly held that the amount determined u/s 7 is an award and an order and the appeal provided u/s 9 is a challenge to the award/ order. The court fee will have to be paid on the difference between the sum determined and the sum claimed in appeal and that is what Section 51 of the Court Fees Act provides for. Therefore, the decision of Appavoo Mudaliar''s case cannot come to the aid of the land owners/person interested, who proceed to file an appeal u/s 9 without paying the requisite court fee u/s 51 of the Court Fees Act. This will be opposed to the decision of the Apex Court in Ananthi Ammal''s case cited supra.

34. Mr. R.S. Ramanathan, the learned counsel appearing for the revision petitioners in CRP Nos.1817 of 2007 and 262 of 2008 contended that the word "compensation" used in Section 51 of the Court Fees Act should be read and determined in the manner as set out in Section 15 of the Land Acquisition Act, which reads as follows:

15. Matters to be considered and neglected. - In determining the amount of compensation, the Collector shall be guided by the provisions contained in

Sections 23 and 24.

The learned counsel drew the attention of this Court to Section 23 which sets out the matters to be considered in determining the compensation. He submitted that the word compensation used in the State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, does not represent the true measure of compensation as determined under the Central Act. He further drew the attention of this Court to Section 8 of the Act 31 of 1978 and stated that u/s 8 of Act 31 of 1978, the matters to be ignored in determining the amount u/s 7 has been indicated, which is analogous to Section 24 of the Central Act and there is no provisions analogous to Section 23 of the Central Act in the State Act. Therefore the true measure of compensation is not available in the said Act (i.e.) Act 31 of 1978; the determination u/s 7 of the Act 31 of 1978 is relatable to market value and solatium alone and the parameters of the Section 23 of the Central Act are not taken into consideration. Therefore, the determination u/s 7(3) of Act 31 of 1978 is not a compensation in the real sense. The answer to this issue is readily available in paragraph 11 of the Apex Court''s decision in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, wherein it is held as follows:

It is therefore, of no great consequence that the said Act does not go on to specify what is to be taken into account in determining the amount payable as compensation for land is acquired thereunder.

35. Sri R.S. Ramanathan, further contended that u/s 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) an appeal can be filed by any person, who does not agree to the amount determined by the prescribed authority, without specifying the amount sought by way of enhancement as it is not relatable to compensation in the real sense of the word "Compensation". He also drew the attention of this Court to Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act XXX of 1952) and stated that the award made by the arbitrator u/s 8 of the Central Act XXX of 1952 in granting the award amount is distinct and different from the determination of amount by the prescribed authority u/s 7 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978). This contention also cannot be accepted because without specifying the amount claimed in excess of the amount claimed, the Court in appeal cannot decide the issue in one way or the other. The word used in Section 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) is appeal against order of amount determined. The term order was interpreted by the Supreme Court in C.G. Ghanshamdas and Others Vs. Collector of Madras, . The relevant portion has already been extracted supra. Therefore, the said contention cannot be accepted. Incidentally, a perusal of the memorandum of appeal filed by the revision petitioner in the typed set of papers clearly shows that they have sought for enhancement of compensation/in a particular, sum over and above the amount determined by the competent

authority. Therefore, the said contention has to be rejected.

36. The learned counsel Shri A. Arumugam appearing for Shri M.V. Venkataseshan, who appears for the revision petitioner in CRP No.57 of 2007 referred to Section 51 of Court Fees Act and stated that the word compensation found in Section 51 of Court Fees Act has been specifically omitted in Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) and therefore, the Court Fee is not payable u/s 51 of the Court Fee Act. The said contention has to be straight away rejected in view of the decision of the Honourable Supreme Court in State of Tamil Nadu v. Ananthi Ammal reported in AIR 1995 S.C. 211, wherein it has been clearly held that what is determined by the competent authority is an award granting compensation for the land acquired for public purposes.

37. In the light of the above decision, the land owner/or person interested, whose land is acquired for public purpose, viz., the Harijan Welfare Schemes, if aggrieved by such determination has a right of appeal u/s 9 of the Act 31 of 1978 on payment of court fee only in terms of Section 51 of the Court Fee Act.

38. Yet another contention was raised by the learned Additional Government Pleader stating that many of the revision petitions have been filed and returned and represented after much delay which are, however, condoned by the court. The land owners should not enjoy the benefit of interest for the period during which they failed to prosecute the same diligently. The land owner should not benefit by way of interest in the event of enhancement of compensation awarded by the court, as there is no fault on the part of the State. Such issue does not arise for consideration in the present revision petitions. The issue is left open to the State to agitate the same before the Court below at the appropriate time.

39. C.R.P.(PD)No.1817 of 2007 and C.R.P.(NPD)Nos.57 of 2007 and 35 of 2008:- The Check slip issued by the Court below as upheld by the Subordinate Judge demanding the court fee in terms of Section 51 of the Tamil Nadu Court Fees Act is correct and the revision petitioners are directed to pay the court fee in terms of Section 51 of the Court Fees Act within a period of four weeks from the date of receipt of copy of this order, failing which the court below is directed to act in accordance with law for non payment of court fee. Accordingly, both the above Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition is closed.

40. C.R.P.(PD)No.262 of 2008:- If the revision petitioners paid appropriate court fee within a period of four weeks, the court below is directed to take up the C.M.A.No.14 of 1998 shall be restored to file and dispose the same on merits, failing which the judgment of the court below shall stand. Accordingly, the above Civil Revision Petition is dismissed. 42. This Court records the valuable assistance given by Shri A.L. Somayaji, learned Senior Counsel.

