

SIVAKAMI & ORS.

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v.

STATE OF TAMIL NADU & ORS.

(Civil Appeal Nos. 2749-2750 of 2018)

MARCH 12, 2018

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**[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]**

*Judgment/Order:*

*Non-reasoned order – Sustenance of – Writ petition before High Court, challenging land acquisition proceeding, allowed by Single Judge of High Court – Division Bench of High Court in writ appeal set aside the order of Single Judge on the ground that the order was non-reasoned – Review petition dismissed – On appeal, held: Division Bench rightly set side the order of Single Judge holding it to be non-reasoned, but Division Bench also failed to give its own reasoning on all the issues while deciding the appeal – It was necessary for the Division Bench to deal with all the grounds raised by the parties while reversing the order of writ court and to record their own findings by assigning reasons – Matter remitted to Division Bench of High Court – Land Acquisition.*

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*Code of Civil Procedure, 1908:*

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*Or. XLVII r. 1 – Review jurisdiction – Scope of – Distinction from appellate jurisdiction – Held: Power of review is very limited – It cannot be decided like a regular intra-court appeal, scope whereof is much wider, wherein all the issues raised by the parties are open for examination by the appellate court.*

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**Allowing the appeals, the Court**

**HELD: 1. Division Bench of High Court in writ appeal having rightly observed that the Single Judge neither discussed any issue nor gave his reasoning and nor even dealt with any of the grounds raised by the parties in support of their case and yet allowed the writ petition and quashed the acquisition proceedings, erred in not dealing with any of the issues arising in the case. [Para 14] [637-A]**

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A           **2. Division Bench should have either dealt with all the**  
issues raised by the parties and given its own reasoning on all  
such issues while deciding the appeal or remanded the case to  
the writ Court (Single Judge) for deciding the appellants' writ  
petition afresh on merits and to pass a reasoned order dealing  
B           with all the grounds raised by the parties in support of their  
respective contentions. [Para 15] [637-F-G]

**3. It was necessary for the Division Bench to deal with all**  
the grounds raised by the parties while reversing the order of  
writ Court and to record their own findings by assigning reasons  
in support of the conclusion. It was, however, not done.  
C           [Para 17] [638-A]

**4. What the Division Bench was required to do while**  
deciding the appeal, it was done by the Division Bench while  
deciding the review application. The order in review application  
runs into 10 pages whereas the order in appeal runs into 6 pages.  
D           Such approach of the Division Bench cannot be countenanced  
while deciding the appeal and the review application. The scope  
of the appellate powers and the review powers are well defined.  
The power of review under Order 47 Rule 1 of the Code of Civil  
Procedure, 1908 is very limited and it may be exercised only if  
E           there is a mistake or an error apparent on the face of the record.  
The power of review is not to be confused with the appellate  
power. The review petition/application cannot be decided like a  
regular intra court appeal. On the other hand, the scope of  
F           appeal is much wider wherein all the issues raised by the parties  
are open for examination by the Appellate Court. What was not  
decided in appeal by the Division Bench, could not be decided by  
the Division Bench while deciding the review application. It is  
for this reason, review order is also set aside. [Paras 19, 20 and  
21] [638-D-E, G]

**5. Thus, the orders passed by the High Court, i.e. (writ**  
Court and Division Bench) are bad in law and cannot be legally  
sustained for want of any reason, discussion and finding on any of  
the grounds/issues raised by the parties in support of their  
respective contentions. Since the matter is pending for the last  
three decades, it is just and proper to remand the case (writ

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**petition) to the Division Bench for its decision afresh on merits, in accordance with law instead of remanding it to the Writ Court. [Paras 22 and 23] [638-H; 639-A]** A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2749-2750 of 2018.

From the Judgment and Order dated 13.03.2013 of the High Court of Judicature at Madras in Review Application No. 77 of 2012. B

A. Mariarputham, Sr. Adv., Ms. Aruna Mathur, P. Malaichamy, Avneesh Arputham (for M/s. Arputham Aruna and Co.), Advs. for the Appellants. C

Subramonium Prasad, Thomas P. Joseph, Sr. Advs., B. Vinodh Kanna, M. Yogesh Kanna, Ms. Sujatha Bagadhi, P. V. Yogeswaran, Ashish Kumar Upadhyay, Bhuwan Jayant, B. Balaji, K. V. Vijayakumar, Ms. Maitreyee Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by D

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 13.03.2013 passed by the High Court of Judicature at Madras in Review Application No.77 of 2012 in W.A. No.868 of 2011 whereby the Division Bench of the High Court dismissed the review application filed by the appellants herein as not maintainable and also on merits and order dated 02.09.2008 in WA No.868 of 2001 whereby the Division Bench set aside the order dated 06.01.1997 passed by the Single Judge of the High Court which was in favour of the appellants herein. E

3. These appeals involve a short point. Few facts need mention *infra* to appreciate the point involved in the appeals. F

4. The appellants herein are the writ petitioners before the High Court in the writ proceedings out of which these appeals arise.

5. The appellants claim to be the owners of the land in question admeasuring around 1.52 acres in Survey No.142/1A situated at Ganapathi Village, Coimbatore Taluk. G

6. The land in question was the subject matter of land acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") in the year 1985 at the instance of State of Tamil Nadu, H

A which had issued notifications under Sections 4 and 6 of the Act for its acquisition. The appellants, felt aggrieved of the acquisition of their land in question, filed Writ Petition No.5220 of 1987 in the High Court at Madras and questioned therein the legality and correctness of the entire acquisition proceedings including the orders in G.O. Ms. No.1119, Social Welfare Department dated 15.05.1985 and G.O.Ms. No.1536, Social Welfare Department dated 18.06.1986.

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7. The challenge to the acquisition proceedings was on several grounds as is clear from the grounds taken by the appellants (writ petitioners) in the writ petition and the SLP.

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8. The writ petition was contested by the State wherein it defended the acquisition proceedings as being legal, proper and in conformity with the provisions of the Act.

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9. The Single Judge, by order dated 06.01.1997, allowed the appellants' writ petition and quashed G.O.Ms. No.1119 dated 15.05.1985 and G.O. Ms. No. 1536 dated 18.06.1986.

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10. The State felt aggrieved and filed intra court appeal before the Division Bench out of which these appeals arise. By impugned order, the Division Bench allowed the State's appeal and while setting aside the order of the Single Judge dismissed the appellants' writ petition. In other words, the acquisition proceedings were upheld by the Division Bench as being legal and proper. Against the said order, review application was filed by the appellants herein but it was dismissed. It is against these two orders of the Division Bench, the writ petitioners felt aggrieved and filed these appeals by way of special leave in this Court.

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11. Heard Mr. A Mariarputham, learned senior counsel for the appellants and Mr. Thomas P. Joseph, learned senior counsel, Mr. B. Balaji and Mr. K.V. Vijaya Kumar, learned counsel for the respondents.

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12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside the impugned orders, remand the case to the Division Bench for deciding the writ petition filed by the appellants afresh on merits.

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13. In our considered opinion, the reasons to remand the case to the Division Bench are more than one, which are set out hereinbelow.

14. First, the Division Bench in Paras 4 and 5 of its main order dated 02.09.2008 in W.A.No.868 of 2001 having rightly observed that the Single Judge neither discussed any issue nor gave his reasoning and nor even dealt with any of the grounds raised by the parties in support of their case and yet allowed the writ petition and quashed the acquisition proceedings erred in not dealing with any of the issues arising in the case, It is apposite to reproduce paras 4 and 5 hereinbelow:

**“4. From the impugned order passed by the learned Single Judge, it would be evident that the learned Single Judge, without discussing the relevant facts of the case pertaining to the writ petitioners (respondents 1 to 4 in this writ appeal) and without analyzing the relevant proposition of law laid down by a Single Judge of this Court in the decision reported in 1994 Writ L.R. 764 (Seethalakshmi/Ramakrishnanda vs. Special Tahsildear (LA) II, Bharathiyar University, Coimbatore and another) and without considering the question as to whether the case of the writ petitioners, was similar to the one reported in 1994 Writ L.R. 764 (supra), merely allowed the writ petition based on the submission made by the learned counsel appearing for the respective parties.**

**5. In the facts and circumstances, as contended by the learned counsel appearing for the appellant-State, the impugned order passed by the learned Single Judge, can be held to be not a reasoned order, erroneous and not sustainable in the eye of law. We accordingly set aside the impugned order passed by the learned Single Judge.”**

15. Second, in the light of afore-mentioned findings, the Division Bench should have either dealt with all the issues raised by the parties and given its own reasoning on all such issues while deciding the appeal or remanded the case to the writ Court (Single Judge) for deciding the appellants’ writ petition afresh on merits and to pass a reasoned order dealing with all the grounds raised by the parties in support of their respective contentions.

16. The Division Bench, however, simply allowed the State’s appeal and, in consequence, dismissed the writ petition and upheld the acquisition proceedings as being legal and proper and that too without assigning any reason in support thereof.

A 17. Third, it was necessary for the Division Bench to deal with all the grounds raised by the parties while reversing the order of writ Court and to record their own findings by assigning reasons in support of the conclusion. It was, however, not done.

B 18. In our considered opinion, this appears to be a case where the Single Judge (writ Court) allowed the appellants' writ petition without assigning any reason and without dealing with any of the grounds raised by the parties except placing reliance on one decision for allowing the writ petition whereas the Division Bench allowed the State's appeal without dealing with any of the issues raised by the parties in the writ petition and without assigning any reason as to why the writ petition deserved to be dismissed.

C 19. In our view, what the Division Bench was required to do while deciding the appeal, it was done by the Division Bench while deciding the review application. We find that the order in review application runs into 10 pages whereas the order in appeal runs into 6 pages. We cannot countenance such approach of the Division Bench while deciding the appeal and the review application.

D 20. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court

E 21. *A fortiori*, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order.

F 22. In the light of foregoing discussion, we are of the view that the orders passed by the High Court, i.e., (writ Court and Division Bench) are bad in law and cannot be legally sustained for want of any reason, discussion and finding on any of the grounds/issues raised by the parties in support of their respective contentions.

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23. Since the matter is pending for the last three decades, we consider it just and proper to remand the case (writ petition) to the Division Bench for its decision afresh on merits in accordance with law instead of remanding it to the Writ Court. A

24. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned orders are set aside and the writ petition is remanded to the Division Bench for its decision afresh on merits in accordance with law. B

25. We, however, make it clear that having formed an opinion to remand the case to the Division Bench, we did not apply our mind to the merits of the controversy. We, therefore, request the High Court (Division Bench) to decide the writ petition in accordance with law preferably within six months uninfluenced by any of our observations. C

Kalpana K. Tripathy

Appeals allowed.