

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 10 of 2012 (SZ) (THC)

IN THE MATTER OF:

1. K.K.Subramaniam
2. S.Lakshmi
3. S. Selvakumar

All are at 9-D, Fifty Feet Road,
Ramakrishnapuram,
Karur - 639 001.



... Applicants

AND

1. Loss of Ecology (Prevention & Payment of Compensation) Authority,
Rep. by its Member Secretary,
(Old No.148) New No.298, Peters Road,
Chennai.
2. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Environment and Forest,
Fort St.George, Chennai - 9.

... Respondents

Counsel appearing for the Applicant:

Mr . Auxilia Peter

Counsel appearing for the Respondents:

**Mr. N.Sankaravadivel for R1
Mr.M.K. Subramanian for R2**

ORDER

PRESENT:

HON'BLE SHRI JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

NGT

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

The applicants have originally filed W.P.No.8483 of 2011 before the Hon'ble High Court of Madras challenging the order of Loss of Ecology (Prevention and Payments of Compensation) Authority, namely, the first respondent dated 29.07.2010, which was subsequently transferred to this Tribunal and re-numbered as Application No.10 of 2012.

2. The applicants had chosen to challenge the award passed by the first respondent, Loss of Ecology (Prevention and Payment of Compensation) Authority, dated 29.07.2010, by which, the authority has granted compensation of Rs.8,30,247/- by modifying the earlier award passed by it granting Rs. 2,16,300/- for the total extent of 10.5 acres of land in S.Nos.330 and 331 comprised in Patta No.1243 and situated in Thoppampatti Village. It is not in dispute that the applicants before this Tribunal, are the purchasers of the said land from the original owner, namely, Samiyappan. The applicants are stated to be the joint owners of 10.5 acres of land in S.No.330 and 331 comprised in patta No.1243 situated in Thoppampaptti Village, Thennilai keezh Bhavani Ayacut, Aravakurichi Taluk, Karur District. According to the applicants, the land, which is situated on the left bank of Noyyal river, was used for cultivating Sugarcane, Paddy, Groundnut, Mango, Coconut and Teak . It was due to the pollution of the river Noyyal caused by the Bleaching and dyeing Units in Tirupur area, there has been no yield from the agricultural lands. The Government has issued G.O.Ms.No.213 dated 30.03.1989, which prohibits the establishment of highly polluting industries within 1 Km from the embankments of the water sources, against which a Writ Petition came to be filed before the Hon'ble High Court of Madras. The expert opinion is that there has been contamination and soil deterioration in that area.

3. According to the applicants, earlier the groundnut was cultivated with an yield of 900 kg per acre, but it does not germinate any more on the petitioner's land and the yield has fallen from 200 nuts per plant to just 50 nuts per plant and the size of nuts was also significantly reduced and that is because, the land was adversely affected by the polluted water. It is the further case of the applicants that the Mango trees started drying up upon irrigation of water. The applicants have obtained an Expert Opinion from Dr.K.Krishnamurthy, Soil Scientist and former Dean of Tamil Nadu Agricultural University and the report shows the pollution level is to a very large extent due to the toxic chemicals emanated from the dyeing industries and the expert has estimated the loss caused in respect of Teak cultivation, Coconut trees, loss of yield of Coconut trees for four years, loss of Mango trees and has arrived the amount to an extent of Rs.19,27,500/- as loss caused to the applicants.

4. On that basis, the applicants have filed a claim petition before the 1st respondent Authority claiming compensation of the said amount. As the Officer of the 1st respondent has not considered the identification of individuals and families who have suffered due to the pollution, it was stated that the Authority will only assess the loss of ecology in the affected areas at Karur and individuals' claim can be taken up only later. Then, the applicants have filed Writ Petition in W.P.No. 18197 of 2003 before the Hon'ble High Court of Madras for a direction to dispose of their claim petition dated 24.02.2003. The writ petition came to be disposed of on 07.07.2003 with a direction to the first respondent to dispose of the claim petition within a period of two months.

5. According to the applicants, thereafter, the first respondent officials have inspected the land of the applicants on 27.08.2003 and ultimately, the applicants have received an order dated 24.09.2003 disposing their claim petition stating that the applicants would be eligible for compensation and the amount would be declared at the time of finalizing the study of the total land affected by pollution. Having not satisfied with that, the applicants have again approached the High Court of Madras by

filing a Writ Petition in W.P.No.39368 of 2003 for a direction to the first respondent to remediate the Noyyal River within the time frame and relocate the industries set up in violation of the terms in G.O.Ms.No.213 dated 30.03.1989.

6. According to the applicants, Dr.K.Krishnamurthy Soil Scientist again visited the lands on 11.07.2004 and gave a report and for the computation of loss of Mango, Coconut etc., assessing the loss to the extent of Rs.20,00,000/- and the said report was placed before the Authority concerned. The first respondent passed an award on 29.12.2004 stating that the applicants are entitled to compensation, which was payable for the loss in production for 'Predominant Crops' and not for individual crops, and by not taking note of the individual Teak Trees, and Mango Trees awarded compensation of Rs.60,300/- to the first applicant and Rs.1,56,300/- to the third applicant. That award was again challenged by the applicants before the Hon'ble High Court of Madras by filing a Writ Petition in W.P.No.5682 of 2005 on the ground that the Teak and the Mango Trees are 'Predominant Crops' and the respondent officials themselves have inspected the field on 27.08.2003 and stated that Teak was planted over 0.20 hectares, which are aged 10 to 15 years and there were about 300 in numbers and that several of them have dried and the Mango saplings were planted over 5 acres aged 2 1/2 years and the mango leaves show scorching symptoms due to salt water irrigation. There was an interim order passed by the High Court on 05.04.2005 directing the 1st respondent to entertain the representation of the applicants for enhancement of compensation. Thereafter, the applicants have filed an amended claim petition claiming an amount of Rs.19,27,500/- towards compensation in view of the continuing loss based on the report of Dr.K.Krishnamurthy, Soil Scientist. It is stated that the said Dr.K.Krishnamurthy, was also examined as a witness before the first respondent Authority. However, the first respondent Authority has not passed any award stating that many other matters are pending before the High Court of Madras, challenging the award and the compensation will be given after the High Court of Madras gives a final verdict. It was in those circumstances, the Writ Petition No.5682 of 2005 came to be disposed of on 12.02.2010 directing the 1st respondent Authority to

reconsider the claim of the applicants for loss suffered in Teak Plantation, Mango and Coconut cultivation due to the polluted water. Thereafter, the 1st respondent Authority passed the impugned award dated 29.07.2010 granting Rs.8,30,247/- modifying the earlier Award.

7. According to the applicants, the Award is non speaking one. The award of Rs.2,37,760/- towards loss of Teak Trees against the claim of Rs.5,00,000/- is against the evidence adduced before the 1st respondent Authority. Further, the award of Rs. 2,65,941/- for loss of Coconut trees is against the claim of Rs.3,00,000/- and another sum of Rs.2,00,000/- claimed for the loss due to the yield is not properly appreciated. That apart, the applicants have claimed a further amount of Rs.5,25,000/- for the damage caused to the soil in 10.5 acres of land, in respect of which, no compensation was awarded. The compensation for relocation of soil and damage to Motor Pump was granted to the extent of Rs.1,75,000/- as against the claim of Rs.2,50,000/- It is on the above said grounds, the present application came to be filed by way of a Writ Petition originally, before the Hon'ble High Court challenging the impugned Award of the 1st respondent Authority.

8. According to the learned counsel appearing for the applicants, the 1st respondent Authority has already visited the spot on 27.08.2003 and informed the applicants on 24.09.2003 that the applicants are entitled for compensation. However, the evidence given by Dr.K.Krishnamuthy has not been properly considered by the Authority. The amended claim itself is based on the Expert's opinion and reducing the amount from the claim made by the applicants is devoid of any reason.

9. On the other hand, it is the contention of the learned counsel appearing for 1st respondent Authority that the applicants have participated in the enquiry and in fact, in spite of the notice given, the applicants have not chosen to appear when inspection was made and the award amount was decided by appreciating the evidence and there

is absolutely no illegality in the impugned Award passed by the first respondent Authority.

10. We have referred to the entire pleadings as well as the detailed Award passed by the first respondent Authority constituted as per the direction of the Hon'ble Supreme Court of India. It is not in dispute that while the 1st and 2nd applicants are father and mother and the 3rd applicant is the son and they are the purchasers of the land involved in this case from the original owner. The compensation claimed by the applicants as per the amended claim made by them is as follows:

1.	Loss of Teak trees	Rs. 5,00,000/-
2.	Loss of Coconut Trees (300 Trees X Rs.1,000)	Rs. 3,00,000/-
3.	Loss due to decrease in the yield of Coconut Trees for four years.	Rs. 2,00,000/-
4.	Polluted well water in the petitioner's land (including a 5 HP Motor)	Rs. 2,50,000/-
5.	Mango Trees (350 Trees X Rs.150)	Rs. 52,500/-
6.	Damage to 10.5 acres of land	Rs. 5,25,000/-
7.	Loss of water sources on 10.5 acres of land	Rs. 1,00,000/-
	Total Compensation	Rs.19,27,500/-

11. As against the claim of Rs.5,00,000/- towards loss of Teak trees, the Authority has granted Rs.2,37,760/- The reason given in the impugned Award is that the Expert appointed to assist the Authority, viz. Mr.A.Jainaladeen, Soil and Teak Expert, who has got 13 years of experience in various Departments, has noted that there were no standing Teak Trees in the field and the trees have already been felled using saw leaving only stumps and totally 126 number of stumps were found with girth varying from 30 cm to 65 cm. All the Teak plants have died in the year 2001, which is also admitted even as per the statement of Mr.K.K.Subramaniam. The Expert, who assisted the 1st respondent Authority, has adopted the principles of Teak silviculture and arrived at the loss in respect of Teak Trees at Rs.2,37,760/- which has been

accepted by the 1st respondent Authority. There is absolutely no reason for this Tribunal to interfere with the assessment and quantum arrived at by following such scientific method.

12. In so far as it relates to the claim regarding the Coconut trees, the applicants have claimed compensation for loss of Coconut trees, (for 300 trees at the rate of Rs.1000/- per tree), to the extent of Rs.3,00,000/- In addition to that, they have chosen to claim loss of yield of Coconut trees for four years at Rs.2,00,000/- The Expert who assisted the Authority has relied upon the latest NAIP economic yield rates, and fixed the loss caused due to reduction of yield at Rs.56,507/- per year. As per the economic evaluation of Anna University, he has arrived the loss in respect of Coconut trees at Rs.1,69,521/-, and towards the loss sustained by the claimants in Coconut yield, based on the above said NAIP Economic Yield loss, arrived at Rs.56,507/- per year and estimated the gross loss at Rs.2,65,941/- at the rate of Rs.88,647/- per year, for 1.619 hectare for 3 years period. Taking note of the two claims made by the applicants in respect of Coconut trees, the Authority has given benefit of the higher amount suggested by the Expert, namely, Rs.2,65,941/-, which, in our view, cannot be considered to be either illegal or perverse.

13. In respect of Mango trees, as against the claim of Rs.52,500/- in respect of admitted 350 Mango trees of 2 1/2 years old age, in the year 2002, the Expert, who assisted the Authority, has computed the loss at the rate of Rs.150/- per tree, and arrived at Rs.51,546/-, which do not require any interference by this Tribunal.

14. In respect of polluted water in the lands of the applicants including 5 HP electric motor pumpset which is stated to have been damaged, as against the claim of Rs.2,50,000/-, the Authority has granted Rs.1,75,000/-, which also does not require any interference considering the factual situation which has been discussed in detail by the 1st respondent Authority.

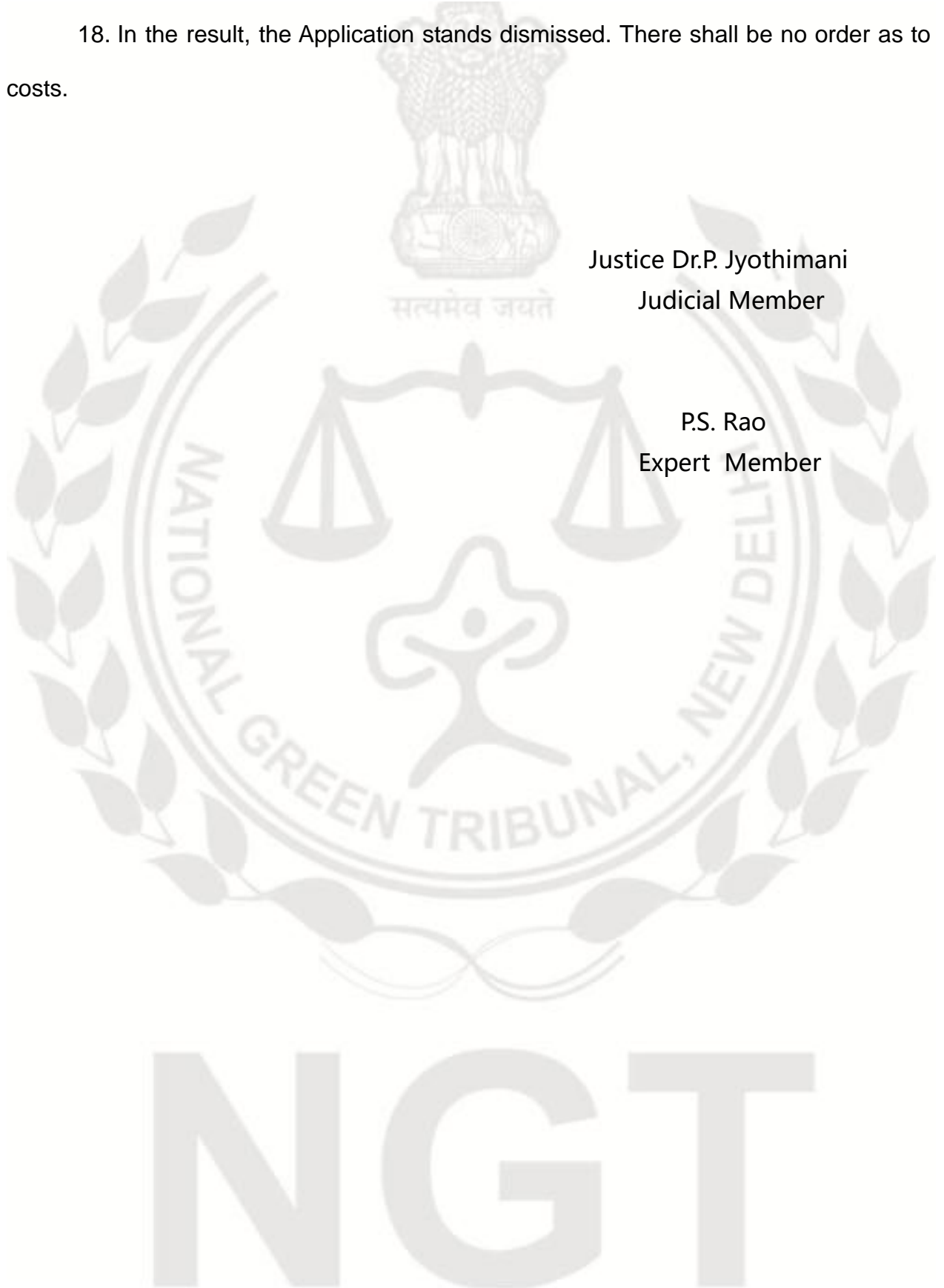
15. The applicants have claimed towards damages caused to 10.5 acres of land to the extent of Rs.5,25,000/- The Tribunal in this regard has taken note of the fact that even according to Dr.K.Krishnamurthy, Soil Scientist, whose report is relied upon by the applicants, the soil of the land showed 9.4 pH and Ec valued at 2.5 ds/m (TDS 1600 mg/l) and therefore, the soil was moderately affected as classified by the Expert Body - Anna University. After the inspection was made by Mr.A.Jainalaudeen, the Expert who assisted the Authority and who has found after measurement that admittedly, there were no agricultural operations going on since 2011 and hence there is no usage of polluted water now. The expert has given opinion that the soil is still fit for cultivation and that was also supported by the photographs showing profuse growth of coppice shoots from the stumps of felled Teak trees and in that view of the matter, the claim of Rs.5,25,000/- was rejected. We are of the considered view that in as much as the same was on a considered opinion, one cannot arrive at a conclusion that it is non application of mind and therefore, no interference is called for.

16. Lastly, in respect of loss of water sources, which was claimed at Rs.1,00,000/-, and which has been granted by the 1st respondent Authority in full, there cannot be any grievance to the applicants in respect thereto.

17. There is one other issue that has been raised during the course of arguments that at the time when the Expert assisting the 1st respondent Authority, namely, Mr.A.Jainalaudeen was making spot inspection, the applicants were unable to participate and therefore, such report cannot be the basis for estimating the claim amount. But there are records to show that even on 07.06.2010, a notice was sent to the first applicant informing about the proposed visit by the Expert on 30.06.2010 and in spite of it, the applicants have not chosen to appear. In our view, it is not the fault on the part of the Authority. Even otherwise, inasmuch as the Authority has considered the expert's view, in its proper perspective and with regard to the benefits to be given to the applicants, even as against the expert's view, the Authorities have given more benefit. There is no reason for us to interfere with the findings of the 1st respondent

Authority. Accordingly, there are no merits in the application and looking at any angle, the applicants are not entitled to claim any amount more than what was awarded by the Loss of Ecology (Prevention and payment of Compensation) Authority.

18. In the result, the Application stands dismissed. There shall be no order as to costs.



Justice Dr.P. Jyothimani
Judicial Member

P.S. Rao
Expert Member