



9 and Section 151 of CPC praying to appoint an Advocate Commissioner with the help of an approved valuer to note down the physical features of the property under acquisition / demolition and to follow up the correct procedure in the valuation and assessment of the property for the just compensation.

2) **Brief averments in the petition are as follows:** The petitioner herein filed the main petition to set aside the award given by the 2<sup>nd</sup> respondent and the affirmation of the same under the appeal by the 1<sup>st</sup> respondent herein and for enhanced compensation by adopting correct methods, mode and procedure in valuing the properties under acquisition. The matter is subjudice and the respondent entered into appearance and now posted on 27.10.2021 for filing counter of the respondents. When the proceedings is pending, the 2<sup>nd</sup> respondent served a notification dated 23.01.2021 stating that demolition of superstructure would be done on 01.11.2021 without fail and if such coercive demolition is allowed to be done without properly valuing and assessing the property in question, it will be deprived of legitimate claim of just compensation. In this circumstance, it is utmost necessary to appoint an advocate commissioner to note down the physical features with the assistance of the approved valuer in order to seek remedy for the gross irregularity and illegality in the procedure so far followed by the respondents in the determination of compensation, if the advocate commissioner is not appointed, it will cause grave injustice to the petitioner. Hence, this petition.

3) **The averments of the counter, in brief, are as follows:-** The petition is not maintainable either in law or on facts of the case. The front portion of the

petitioner's building has been already been demolished and now, the petitioner has filed written petition in W.P.No.19444/2021 before the Hon'ble Madurai Bench of Madras High Court against the respondents for removing or altering the physical features of the property bearing S.No.187/5B and Old S.No.187/5C. The valuation of the property has been valued as Sec.26(1) of RECTLARR Act 30 of 2013 and the petitioner has also been received additional compensation. In order to get a huge compensation, the petitioner filed this petition and hence, prayed to dismiss the petition with costs.

4) **Point that arises for consideration in this Petition is that**

Whether this petition is to be allowed as prayed for?

5) **Point:** In the petition, on 20.11.2021, an order has been passed and Advocate Mr.K.Prasanna has been appointed as Advocate Commissioner and the petitioner is posted for filing of commissioner report.

6) In meanwhile, a letter sent by PWD was received by this Court, wherein they demanded a sum of Rs.1,21,884/- towards centage charge for giving the valuation report on the side of the Engineer of PWD,Thanjavur. In this regard, the Learned Government Pleader appearing for the petitioner informed the court that no such claim can be made on the side of the PWD Department as it is the duty of the said Department to assist for measuring the property in question and filing the report thereon before this Court. In this regard, this Court directed the Government Pleader to clarify the issue in respect of payment of centage charge alleged to be payable by

the petitioner to the PWD Department for availing the service of the officials in measuring and valuing the property in question.

7) As such, the Learned Government Pleader would contend that as per the GO No.181 dated 16.05.2003, in the event of measuring and valuing the property and furnishing the statement of certificate thereon, they are entitled to claim the centage charge from the person, who availed such service and also in the course of argument, he drew the attention of the court towards the para 8 of the said GO and would submit that PWD is entitled for claiming 1% of the value of property towards the centage charges and this charge is not to be credited in the account of any individual, but to be credited into the account of the Government. Hence, the petitioner herein is liable to pay the said charge in accordance with the said GO and he would further contend even in the batta memo submitted by the petitioner herein, the petitioner has categorically expressed his consent for payment of centage charge to the PWD Department and the summon issued thereon also contained the same undertaking given by the petitioner herein to pay the centage charge. Hence, after undertaking given by the petitioner only, the officials attached with the PWD Department provided their service of assistance to the advocate commissioner to measure the property in question. Now, as per the direction of this Court, the property in question was visited and measured and report to be submitted on the side of the PWD Department also get ready. However, on account of failure on the part of the petitioner in payment of centage charge, the Executive Engineer is not able to file the valuation report and certificate thereon.

8) The Learned Counsel appearing for the petitioner would contend that since PWD is the Department affiliated to the Government, with assistance of whom, the property in question was assessed, the question of claiming centage charge does not arise as the compensation fixed by the Government based on the assessment report filed by the PWD was found incorrect. Hence, the service provided by the Department affiliated to the Government is not chargeable.

9) The Learned Counsel appearing for the petitioner would further contend that simply because of filing undertaking for payment of centage charge for the service provided by the PWD does not bind the petitioner for the payment of the same and also would contend that even after this Court feels that the PWD is entitled for getting the centage charge for the service provided by them from the petitioner, that cannot be decided at this stage, on contra, it has to be decided at the time of final disposal of the main application. Further, the Learned Counsel appearing for the petitioner does not dispute the validity and applicability of the GO relied upon by the PWD Department for claiming the centage charge for the service provided by them.

10) Heard. Perused the records.

11) Considering the submissions advanced by the Learned Counsel appearing for the petitioner and the Learned Government Pleader and also on perusal of the GO relied upon by the PWD and the undertaking given by the petitioner for payment of centage charge for visiting the subject matter of the property in the batta memo, it is seen that as per the GO MS No.181 dated 16.05.2003 in the event of providing any service to any individual on the direction of the Court, the PWD is

entitled for claiming centage charge for their service in preparing valuation report.

12) The Learned Counsel appearing for the petitioner would contend that the petitioner cannot be compelled to pay the said centage charge at this stage, but it can be directed to pay the same at the final disposal of the main case. Though the Learned Counsel appearing for the petitioner contended in such a way, he did not produce any supportive document to substantiate his contention. In such a circumstance, considering the undertaking given by the counsel appearing for the petitioner and the GO relied upon by the PWD Department, I am of the view that the officials of the PWD Department is entitled for claiming the centage charge for furnishing the assessment report prepared by them on the request made by the petitioner herein. Hence, this Court deemed appropriate to direct the petitioner herein to pay the centage charge at this stage itself for enabling the officials attached with the PWD to furnish the assessment report. Whether the said centage charge payable by the petitioner to be included in the cost of the proceedings or not can be decided at the time of final disposal of the main case. Thus, the payment of centage charge to be paid by the petitioner herein can be included in the cost at the time of final disposal.

13) In fine, the petitioner is hereby directed to pay the centage charge as claimed by the Public Works Department on or before 02.02.2023 and upon the payment of such centage charge, the officials attached with the PWD Department is hereby directed to furnish their valuation report on the subject matter of property forth

with. For payment of centage charge by the petitioner and the Commissioner report by 02.02.2023. The said amount to be paid as centage charge can be decided at the time of final disposal for its inclusion in the cost of the proceedings.

This Order is dictated by me to the Stenographer Grade-III of this Court, transcribed by her in Computer, corrected and pronounced by me in open court, this the 2nd day of January 2023.

Sd/-P.Mathusuthanan,  
Principal District Judge,  
Thanjavur.

Order in  
IA.141/2021 in A.O.P.No.12/2021  
PDJ Court, Thanjavur.  
D.O.O: 02.01.2023.