

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

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THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.9758 of 2004

Saroja

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Petitioner

Vs

1. Special Tahsildar (Land Acquisition)

Adi Dravidar Welfare,
Taluk Office,
Dindigul.

2. The District Collector,
Dindigul District.

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Respondents

(R2 suo motu, impleaded as per this order)

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus directing the respondent to make reference under Section 18 of the Land Acquisition Act in respect of land acquisition in S.No.448/1, Nilakkottai, Dindigul District in Award No.1 /98-99 dated 29.09.1998.

For Petitioner : Mr.B.Ravi

For Respondents : Mr.O.Selvam, GA

ORDER

The petitioner has filed the above Writ Petition to issue a writ of mandamus directing the respondents to make reference under Section 18 of the Land Acquisition Act in respect of acquired land in

S.No.448/1, Nilakkottai, Dindigul District in Award No.1/98-99 dated 29.09.1998.

2. Since the petitioner has not impleaded the District Collector, Dindigul, as party to the writ petition, for the purpose of proper and effective adjudication, I, suo motu, implead the District Collector, Dindigul as the second respondent in this writ petition. Mr.O.Selvam, learned Government Advocate appearing for the first respondent, takes notice for the newly impleaded second respondent.

3. It is the case of the petitioner that her land in S.No.448/1, measuring to an extent of 0.75.5 Hectares, in Nilakkottai Taluk, was acquired by the Government for the purpose of Adi Dravidar Welfare. After acquisition, the petitioner participated in the award proceedings and filed statement on 28.09.1998 in Section 5A enquiry and also gave her consent for acquisition. She also contended before the respondent that the compensation amount fixed by the authority was very meagre and therefore, she was receiving the same under protest. Subsequently, an award was passed in Award No.1/98-99 dated 29.09.1998 and that, she did not hear anything from the respondent with regard to the reference under Section 18 of the Land Acquisition Act. Hence, the petitioner is before this Court.

4. Though the writ petition was admitted on 08.04.2004, till date, the respondents have not filed any counter.

5. Mr.B.Ravi, learned counsel appearing for the petitioner submitted that though the petitioner raised her objection regarding the lesser price recorded in the award proceedings, no reference was made under Section 18 of the Land Acquisition Act. Learned counsel, in support of his contention, relied on the decision of this Court reported in 1999 (III) CTC 133 (M.P.Palani and twenty three others v. the State of Tamil Nadu and two others), wherein, in para 5, it has been held as follows:

"5. In view of Sections 12(2) and 13(2) of the Land Acquisition Act, 1894 and in the light of the specific assertion in the affidavit objecting the fixation of lesser price for their lands and in the absence of any information by any of the respondents, I hold that unless the notice of award is accompanied by a copy of the award, it would not be effective notice within the meaning of Section 12(2) of the Act. Like-wise, if any statement is made during the award enquiry asking for higher compensation, the same may be treated as an application for reference. I also hold that if compensation is received under protest in such case also it is to be treated as an application for

reference. In all these cases, undoubtedly, duty is cast on the Collector to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 for adjudication. In this view of the matter, there will be a direction to the respondents to make a reference under Section 18 of the Land Acquisition Act, 1894 in so far as the petitioners are concerned in respect of subject Award No.4 of 1987 dated 26.04.1989 within a period of three months from the date of receipt of a copy of this order. Writ Petition is allowed in the above terms. No costs."

6. From the above observation, it is clear that if any statement is made during the award enquiry asking for higher compensation, the same may be treated as an application for reference. It is also clear that if the compensation is received under protest, in such case also it is to be treated as an application for reference. Further, this Court held that duty is cast on the Collector to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 for adjudication.

7. In the case on hand, though the petitioner has stated that the compensation fixed by the authority was very meagre and the same was received under protest, the District collector has not referred the matter under Section 18 of the Land Acquisition Act. In such circumstances, following the ratio laid down in the decision cited

supra, I am of the view that the District Collector has to refer the matter under Section 18 of the Land Acquisition Act to the Civil Court for adjudication.

8. For the reasons stated above, I direct the newly impleaded second respondent viz., the District Collector, Dindigul District, to make a reference under Section 18 of the Land Acquisition Act, 1894 in respect of the petitioner's land, which was acquired by Award No.1/98-99 dated 29.09.1998, within a period of three months from the date of receipt of a copy of this order.

9. With this observation, the Writ Petition is disposed of. No costs.

27.07.2017

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Index: Yes / No

NOTE: Registry is directed to carry out amendment in the petition with regard to impleading the District Collector, Dindigul District as second respondent herein.

M.DURAISWAMY, J.

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To

1. Special Tahsildar (Land Acquisition)
Adi Dravidar Welfare,
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Dindigul.
2. The District Collector,
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