

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.38744 of 2004
and
WP.MP.No.46293 of 2004**

1.K.Killyvalavan
2.Krishnasamy ... Petitioners

Vs

1.The District Collector,
Erode District,
Erode.
2.The Revenue Divisional Officer
cum Land Acquisition Officer,
Erode, Erode District. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus directing the respondents to refer the matter passed in Award No.3/93, dated 28.10.1993 on the file of the second respondent to the concern Civil Court as per under Section 18 of the Land Acquisition Act, insofar relates to the petitioners land bearing S.Nos.227/1B, 227/4A to the extent of 0.75 acres situated in Attavanai Pidariyur Village, Perundurai Taluk, Erode District.

For Petitioners : Mr.C.Prakasam

For Respondents : Mr.O.Selvam, GA

ORDER

The petitioners have filed the above Writ Petition to issue a writ of mandamus directing the respondents to refer the Award No.3/93 dated 28.10.1993 on the file of the second respondent, in respect of the petitioners' land in S.Nos.227/1B and 227/4A measuring to an extent of 0.75 acres situated in Attavanai Pidariyur Village, Perundurai Taluk, Erode District, to the concerned Civil Court under Section 18 of the Land Acquisition Act.

2. It is the case of the petitioners that by Award No.3/93 dated 28.10.1993, their land in S.Nos.227/1B and 227/4A measuring to an extent of 0.75 acres situated in Attavanai Pidariyur Village, Perundurai Taluk, Erode District, were acquired by the Government for the purpose of Tamil Nadu State Transport Corporation (Jeeva Transport Corporation) workshop. After acquisition, award enquiry was conducted and the petitioners participated in the same and made their objections and requested the second respondent to fix higher compensation. They have also given a written representation to make reference under Section 18 of the Land Acquisition Act, before the Civil Court for fixing higher compensation. However, the respondents have not made any reference to the Civil Court. Hence, the petitioners are before this Court.

3. Though the writ petition was admitted on 27.12.2004, till date, the respondents have not filed any counter.

4. Mr.C.Prakasam, learned counsel appearing for the petitioners submitted that though the petitioners have raised their 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."

5. 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.

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6. In the case on hand, the petitioners have raised their objections during the award proceedings and made a representation to refer the matter to the Civil Court for fixing higher compensation under Section 18 of the Land Acquisition Act. Even in para 18 of the award, the second respondent has recorded the objections so made by

the petitioners and receipt of the compensation amount under protest and representation made by the petitioners to make reference under Section 18 of the Land Acquisition Act. However, no such reference was made by the respondents. In such circumstances, following the ratio laid down in the decision cited supra, I am of the view that the first respondent viz., District Collector, Erode District, has to refer the matter under Section 18 of the Land Acquisition Act to the Civil Court for adjudication.

7. For the reasons stated above, I direct the first respondent to make a reference under Section 18 of the Land Acquisition Act, 1894 in respect of the petitioners' land, which was acquired by Award No.3/93 dated 28.10.1993, within a period of three months from the date of receipt of a copy of this order.

8. With this observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

27.07.2017

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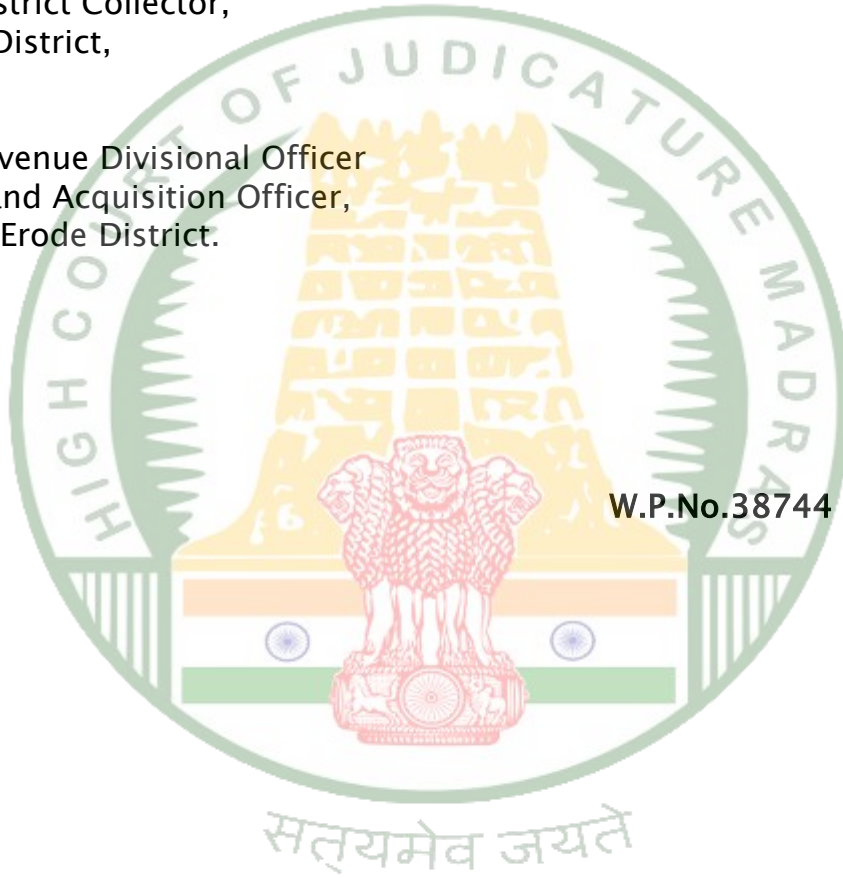
Index: Yes / No

M.DURAISWAMY, J.

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To

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Erode District,
Erode.
- 2.The Revenue Divisional Officer
cum Land Acquisition Officer,
Erode, Erode District.



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