

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

Writ Appeal No.351 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.21640 of 2008 dated 07.12.2016. A batch of writ petitions filed in the years 2007, 2008 and 2010 were heard together and, by a common order, the Learned Single Judge, relying on an earlier order passed by another Learned Single Judge in W.P.No.17958 of 2007 and batch dated 03.01.2014, dismissed the writ petitions.

In the order under appeal, the Learned Single Judge has noted that out of the 58 Writ Petitions, which were filed challenging the acquisition proceedings initiated pursuant to a notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") on 13.05.1996, 38 Writ Petitions were dismissed by this Court by its order in W.P.No.17958 of 2007 and batch dated 03.01.2014, and there could not be any different order in the batch of 20 Writ Petitions listed before him, though the learned counsel for the petitioners had tried to persuade him to take a different view. The Learned Single Judge relied on an order passed in W.P.Nos.18918 and 22261 of 1999 dated 11.12.2003 wherein it was held that this Court would not interfere with or adjudicate upon the orders passed under the Act in a writ petition filed by the land owner, and the only way in which the land owners could ventilate their grievance regarding the award was by seeking a reference under Section 18 of the Act.

The Learned Single Judge further observed that the petitioners, in the batch of writ petitions before him, had sought a reference seeking enhancement of compensation after the award was passed;

compensation was also enhanced by the reference Court; and after the compensation was enhanced, it was a futile exercise for the High Court to examine the merits of the contentions raised by the learned counsel for the petitioners relating to the validity of the order passed under Section 5(A) of the Act.

Sri M.Vidya Sagar, learned counsel for the appellant-writ petitioners, would submit that, in the earlier round of litigation, the appellant-writ petitioners had questioned the action of the respondents in invoking the urgency clause under Section 17(4) of the Act, and in dispensing with a Section 5-A enquiry; this Court had directed the respondents to hold an enquiry under Section 5-A of the Act; after such an enquiry was held, awards were passed without a declaration under Section 6 of the Act being issued; the Land Acquisition Officer had observed in the award that, since this Court had only directed a 5-A enquiry to be held and did not direct a declaration under Section 6 to be issued, it was unnecessary for a Section 6 declaration to be issued; reliance placed by the Learned Single Judge on the earlier order in W.P.No.17958 of 2007 and batch dated 03.01.2014 is misplaced, as in those cases the petitioners had not even participated in the Section 5-A enquiry; unlike the petitioners therein, the petitioners, in the present batch of writ petitions, have participated in the Section 5-A enquiry and have filed their objections; while the challenge to the inaction of the respondents, in issuing the Section 6 declaration, was no doubt questioned in the present writ petition, eight years after the award was passed, it should not disable this Court from granting relief. Learned Counsel would rely on ***Usha Stud and Agricultural Farms Private Limited vs. State of Haryana***¹.

¹ (2013) 4 Supreme Court Cases 210

On the other hand, the learned Government Pleader for Land Acquisition would submit that, in these batch of writ petitions, the award was passed on 25.08.1999; all the land owners had received compensation in terms of the award, and have sought enhancement by seeking a reference under Section 18 of the Act; on the Reference Court enhancing the compensation, the claimant land-owners had filed E.Ps before the Civil Court; and it is only after they had received the enhanced compensation, did the appellant file the writ petition questioning the failure of the respondents to issue a declaration under Section 6 of the Act. Learned Government Pleader would rely on ***Swaika Properties (P) LTD vs. State of Rajasthan***² to contend that a challenge to the land acquisition proceedings, after an award is passed and after a reference has been made under Section 18 of the Act, cannot be entertained in proceedings under Article 226 of the Constitution of India.

In ***Usha Stud and Agricultural Farms Private Limited***¹ the Supreme Court held that a declaration under Section 6(1) of the Act can only be made after a report is filed by the Collector under Section 5A(2) of the Act. While the submission of Sri M.Vidya Sagar, learned counsel for the petitioner, that, after conducting the Section 5-A enquiry, the respondents are obligated to issue a declaration under Section 6 of the Act thereafter, and they could not have proceeded to pass an award without having issued a declaration under Section 6 of the Act, cannot be said to be without merit, the fact remains that, of the 58 writ petitions filed before this Court questioning the very same land acquisition proceedings on the very same grounds, 38 Writ Petitions were heard earlier and a common order was passed in W.P.No.17958 of 2007 and batch dated 03.01.2014 dismissing all the 38 Writ Petitions and the said order has attained finality. The Learned Single Judge was, therefore,

² (2008) 4 Supreme Court Cases 695

justified in holding that it was wholly inappropriate for him to take a different view in the 20 Writ Petitions which formed part of the very same batch of 58 Writ Petitions relating to the very same acquisition proceedings.

As noted hereinabove the award, in the present case, was passed in the year 1999. While the earliest of the writ petitions, which formed part of the batch of cases disposed of by the order under appeal, were filed in the year 2007, some were filed in the year 2008 and one in 2010 i.e 9 years and 11 years after the award was passed. Further, most of these petitioners not only received the compensation in terms of the award, they also sought a reference under Section 18 of the Act, the Reference Court had also enhanced the compensation, and the land owners had also received the enhanced compensation, pursuant to the orders passed in the Execution Proceedings filed by them before the Civil Court. It is only after receiving the enhanced compensation, determined by the Reference Court, that most of the Writ Petitioners, including the appellants herein, had filed Writ Petitions before this Court.

While Sri M.Vidya Sagar, learned counsel for the petitioners, would submit that not all the claimants had received the enhanced compensation, the fact that all of them had challenged the validity of the award more than eight years after the award was passed, and after they had received compensation in terms of the award, is not in dispute. In ***Swaika Properties (P) LTD²*** the Supreme Court held that a Writ Petition, filed after possession of the land had been taken and after the award had become final, deserved to be dismissed on the ground of laches.

Further 38, of the 58 Writ Petitions filed before this Court questioning the very same notification, (i.e W.P.No.17958 of 2007 and batch), was dismissed by another Learned Single Judge by his order

dated 03.01.2014. The said order of the Learned Single Judge dated 03.01.2014 has attained finality. It is only the remaining 20 Writ Petitions which came up for consideration before the Learned Single Judge, and the Learned Single Judge has dismissed all of them, by the order under appeal, refusing to take a different view. It would be wholly inappropriate for us to reopen settled issues, several years after the awards passed by the Land Acquisition Officer have attained finality, more so where the claimants have not only sought enhancement of compensation by way of a reference under Section 18 of the Act, but have received the original compensation awarded by the Land Acquisition Officer and also the enhanced compensation awarded by the reference Court. It is only thereafter that they have filed the present Writ Petitions under Article 226 of the Constitution of India. Solely on the ground of inordinate delay and laches, and as awards which have attained finality should not be reopened several years thereafter, we see no reason to interfere with the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

27th March, 2017
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Date: 27.03.2017

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