

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.8145 of 2009

ORDER:

Heard Mr. D.Kodanda Rami Reddy for petitioner and the learned Assistant Government Pleader for respondents.

2. The petitioner prays for *mandamus* declaring the action of respondents in not initiating land acquisition proceedings and not paying compensation to BRH (Bodha Roof House) situated in Sy.No.755/ 1 of Malinenipatnam Village, Atloor Mandal, Kadapa District, as illegal, arbitrary and unconstitutional.

3. The circumstances relevant for disposing of the writ petition can briefly stated thus:

The respondents issued draft notification on 21.01.1996 proposing to acquire land of petitioner in Sy.No.755/ 1, forming part of Reach No.17 of Malinenipatnam Village, Atloor Mandal, Kapapa District. On 21.01.1997 draft declaration was published and the respondents passed Award No.10/ 98-99 dated 18.01.1999. Though award dated 18.01.1999, the petitioner was paid compensation for the land acquired through notification dated 21.01.1996. Now, the grievance of petitioner is that petitioner is entitled to compensation for the structures in existence in Sy.No.755/ 1, which for convenience referred by petitioner as BRH. The petitioner relies on the letter dated 30.10.1998 to show that a house measuring 20 ft x 8 ft., in fact, was in existence and respondents either in 4(1) notification or draft declaration, did not advert to the super structures. On 20.04.2009, the present writ petition was filed for the relief referred to above.

4. This court directed the respondents to initiate land acquisition proceedings for acquiring the super structures said to have been in existence in Sy.No.755/ 1. The respondents filed petition to vacate the interim direction. In the counter-affidavit filed by respondents, the objections are that the writ petition under Article 226 of the Constitution of India is not maintainable. The petitioner, being a party to award proceedings, and having received compensation for the land acquired, the remedy, if any, in respect of insufficient, incomplete or inadequate payment of compensation, must ask for reference under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act') within the time prescribed by the Act. In the case on hand, admittedly, no such request has been made. According to respondents, the prayer for initiation of land acquisition proceedings for the super structures said to have been in existence is completely misconceived and liable to be rejected.

5. Learned counsel appearing for the parties have substantially reiterated the stand taken in the pleadings and for brevity, I am not proposing to refer to these contentions again. Now the short point is whether the petitioner is entitled for a direction to respondents for issuing land acquisition proceedings for payment of compensation to BPH.

6. I have perused the material on record and after taking note of submissions of counsel appearing for the parties, this court *prima-facie* is of the view that the writ petition deserves to be dismissed for the following reasons:

7. On 18.01.1999, the Award No.10/ 98-99 was passed and admittedly, petitioner received compensation for the land notified and

acquired. The grievance if any, relating to compensation determined or paid by respondents, the petitioner has to workout remedies as noted under Section 18 of the Act. In the case on hand, no such request was made. The petitioner relies on the letter dated 30.10.1998 to contend that the super structure for which the compensation is claimed for in the instant writ petition, as a matter of fact, existed in Sy.No.755/ 1. This court is of the view that the letter, if at all available and forming part of land acquisition enquiry, should have been relied upon at the time of award enquiry before respondents. The objections of the Assistant Government Pleader on this communication cannot also be ignored. He contends that the authenticity of letter dated 30.10.1998 cannot be presumed, as it does not contain the seal or source from which it is produced or manner in which the copy is obtained by petitioner. This submission is certainly against the circumstances pleaded by petitioner and no explanation is stated by petitioner to examine this aspect any further. Yet another reason to reject the writ prayer is that petitioner did not move in the matter for nearly 10 years from the date of passing award and invoking jurisdiction under Article 226 of the Constitution, suffers from latches and delay, thus disentitles even for consideration of such belated prayers.

8. For the above reasons, the writ petition fails and is accordingly dismissed. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S. V. BHATT, J

Date: 23.08.2017
BSS

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