

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.23775 of 2017

ORDER:

The undisputed and uncontroverted facts are that petitioner's land admeasuring Ac.1.00 guntas, in Survey No.753, situated at Miryalaguda Town, Nalgonda District, came to be acquired by the Government for formation of bypass road; that an Award came to be passed by the third respondent - Land Acquisition Officer & Revenue Divisional Officer, Miryalaguda, on 19.09.2002 by fixing the compensation; that the petitioner not being satisfied with such compensation, submitted an application in terms of Section 18 of the Land Acquisition Act, 1894 (for short 'the Act') to the Land Acquisition Officer on 04.02.2004 to refer the case to the Civil Court for determination of just compensation and the same was kept pending, as such, the petitioner filed Writ Petition No.4128 of 2017 seeking a direction to the Land Acquisition Officer to dispose of her application under Section 18 of the Act; that when the learned Government Pleader for Land Acquisition submitted that the application of the petitioner for referring the matter to the Civil Court under Section 18 of the Act came to be rejected vide letter No.E1/3374/2003, dated 06.02.2017, the petitioner withdrew the said Writ Petition

with liberty to assail the said letter, dated 06.02.2017 and that thereafter, the petitioner received a copy of letter, dated 28.09.2013 addressed by the second respondent - District Collector, Nalgonda, rejecting the request of the third respondent for referring the matter to the Civil Court in view of the fact that duration between the date of service of notice under Section 12(2) of the Act and receipt of the application is 54 days and the application should be filed within six (6) weeks from the date of receipt of such notice. Aggrieved by the same, the petitioner filed the present Writ Petition.

It is the contention of the learned counsel for the petitioner that rejection of the petitioner's application for reference under Section 18 of the Act on the ground of limitation is arbitrary and illegal, as such intimation itself is after a period of nine years. It is also his contention that Section 18(2)(b) of the Act, as amended by Act 20 of 1959, with effect from 15.10.1959, is applicable to the case of the petitioner, as such, it is not six weeks, as stated in the impugned letter.

A counter-affidavit is filed by the third respondent setting out that there is a delay of three days in filing the application under Section 18 of the Act and thus, the same is beyond the

period of limitation and as there is a statutory bar, the application of the petitioner cannot be considered and that the petitioner also invoked Section 28-A of the Act by filing an application for re-determination of the compensation awarded in O.P.No.43 of 2005 vide judgment, dated 23.10.2017 and thereby, the Writ Petition is not maintainable and the same is liable to be dismissed.

It is to be noted that the petitioner's land was acquired by the Government for formation of bypass road and her application, dated 04.02.2004, filed under Section 18 of the Act came to be acknowledged by the respondent authorities on 06.02.2004; that the notice of award under Section 12(2) of the Act was received by the petitioner on 06.12.2003 and Section 18(2)(b) of the Act prescribes the time of making an application for reference to the Civil Court for determination of the compensation is two months; that in view of the fact that there are 31 days each in the months of December and January, it can be said that the application received by the respondent authorities is exactly on the dot, though on the last date of limitation prescribed. It is to be noted further that the respondent authorities took nine years for taking decision and intimating the petitioner that her legitimate claim is

rejected vide letter, dated 28.09.2013, as such, even assuming that there is a day's delay in filing the application by the petitioner, the same is condonable, particularly, keeping in view the peculiar facts of the case.

It is to be noted further that vide proceedings, dated 15.05.2004, the third respondent sought permission of the second respondent to refer the application of the petitioner under Section 18 of the Act to the Civil Court categorically stating that the petitions were received within the time of sixty days from the date of receipt of notice under Section 12(2) of the Act. However, in the counter-affidavit, it is stated otherwise. The third respondent along with the counter-affidavit enclosed the application of the petitioner dated 28.02.2018 invoking Section 28-A of the Act claiming to be paid compensation in terms of the common award, dated 23.10.2017 passed by the learned Senior Civil Judge's Court, Miryalaguda, in O.P.No.43 of 2005, whereunder compensation was paid @ Rs.564/- per sq.yard with attendant benefits under the statute. It is to be noted further that under Section 28-A of the Act, the claimant, who had received the compensation, is entitled to seek to be paid compensation, as determined by the Court, within three months from the date of the

Award of the Court. In the case on hand, the petitioner's application under Section 28-A of the Act would be required to be considered as it is submitted within time and in view of the submission of the learned counsel for the petitioner that the petitioner would be satisfied, if her application is disposed of in terms of the aforesaid Common Award in O.P.No.43 of 2005 dated 23.10.2017. In view of the same, the impugned letter is liable to be set aside.

Accordingly, the Writ Petition is allowed by setting aside the impugned letter and by directing the third respondent to pass appropriate orders on the petitioner's application under Section 28-A of the Act, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

Miscellaneous Petitions, if any pending shall stand closed.
There shall be no order as to costs.

CHALLA KODANDA RAM, J

2nd MAY, 2018.

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