THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Appeal No.682 of 2018
And
Writ Petition No.7879 of 2018

COMMON 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 I.A.No.1 of 2018 in W.P.No.7879 of 2018 dated 15.03.2018.

Sri G.Vivekanand, Learned Counsel for the appellant-writ petitioner, would take us through the order issued by the Government of India under Section 113(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the "2013 Act" for short), whereby the provisions of the 2013 Act, relating to determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule, and infrastructure amenities in accordance with the Third Schedule, have been made applicable to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act. Learned Counsel would submit that, in terms of the said order and as the preamble thereto specifically refers to the need to extend the benefits, made available to land owners under the 2013 Act, to similarly placed land owners whose lands were acquired under the 13 enactments specified in the Fourth Schedule, the benefits of Section 96 of the 2013 Act must be held applicable even to the acquisitions under the National Highways Authority Act, 1956 which is one among the enactments in the Fourth Schedule to the 2013 Act; and, consequently, no income tax deduction can be made from the compensation awarded under the said Act.

On the other hand, Ms.K.Mamatha, Learned Senior Standing Counsel for Income-tax, would draw our attention to Section 194LA of the Income Tax Act, to submit that an obligation is cast on the Land Acquisition Officer in terms of the said provision to deduct, at the time of payment of compensation, an amount equal to ten per cent of such sum as income-tax thereon. She would submit that it is only in terms of the second proviso to Section 194LA that, for an award made under the 2013 Act, no income-tax is deductable in view of Section 96 thereof; Section 96 of the 2013 Act specifies that no income tax shall be levied on any award made under the 2013 Act; since Section 105(i) specifically provides that the provisions of the 2013 Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule, which includes the 1956 Act, the exemption granted to awards made under the 2013 Act, in terms of Section 96 thereof, is not available to awards made under the National Highways Authority Act, 1956.

While we have noted the rival submissions, urged by the Learned Counsel on either side, the fact remains that the contention urged on behalf of the appellant-writ petitioner regarding the order made by the Government of India under Section 113(1) of the 2013 Act has not even been averred in the affidavit filed in support of the Writ Petition. It would be wholly inappropriate for us therefore, while sitting in appeal against the interlocutory order passed by the Learned Single Judge, to examine the contentions which were not even urged before him.

Sri G.Vivekanand, Learned Counsel for the appellant-writ petitioner, would submit that, since the I.A. has already been dismissed, it would not be possible for him to now urge the said contentions and seek an interim order, and any delay in adjudicating the dispute would result in income-tax being deducted from the compensation payable in terms of the award made under the National Highways Authority Act, and in its being remitted to the Income-tax Department. Learned Counsel would request that the appellant-writ petitioners be permitted to withdraw the Writ Petition itself, granting them liberty to file a Writ Petition afresh.

Ms.K.Mamatha, Learned Senior Standing Counsel for the Income-tax Department, would submit that, in case such a Writ Petition is filed afresh, the Income-tax Department should be arrayed as a respondent, which Sri G.Vivekanand, Learned Counsel for the appellant-writ petitioner, readily agrees to.

In the light of the aforesaid submission, we permit the appellant-writ petitioner to withdraw Writ Petition No.7879 of 2018 with liberty to file a Writ Petition afresh raising all such grounds as are available to them in law.

The Writ Petition is dismissed as withdrawn. The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

Date:28th June, 2018.
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