

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.22933 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a Writ of Mandamus declaring the action of the respondents in not referring the applications of the petitioners under Section 18 of the Land Acquisition Act to the competent civil Court as mandated under the Act, as illegal and arbitrary, and consequently, to direct the respondents to forthwith refer the applications of the petitioners under Section 18 of the Land Acquisition Act to the competent Civil Court.

2. Heard Mrs. S. Nanda, learned Counsel for the petitioners and the learned Government Pleader for Land Acquisition.

3. It is the case of the petitioners that their land was acquired consequent upon the submergence of their land in Jurala project, and award Nos.14 of 1990 dated 10.8.1990 and 9 of 1992 dated 28.3.1992 were passed and that they submitted their applications before the 1st respondent within the stipulated time seeking reference of their case under Section 18 of the Land Acquisition Act to the competent Civil Court for enhancement of compensation on par with other claimants. But the respondents have not referred the same to the Civil Court and in those set of circumstances, the present writ petition is filed seeking a direction to the respondents to refer their applications under Section 18 of the Land Acquisition Act to the competent Civil Court for enhancement of compensation.

4. The learned Government Pleader has contended that the petitioners accepted the compensation amount without any protest and as long as

they have not protested, the question of referring their case under Section 18 of the Land Acquisition Act to the competent Civil Court would not arise. Relying upon the judgment of the Hon'ble Supreme Court in **Wardington Lyngdoh and others Vs. Collector, Mawkyrwat**¹, wherein at paragraph No.5, the Hon'ble Supreme Court held that the protest is a condition precedent to make an application under Section 18 of the Land Acquisition Act, the learned Government Pleader contends that since there was no protest, the applications of the petitioners were rejected and it was informed to the petitioners vide proceedings dated 9.1.1992.

5. The learned Counsel for the petitioners has contended that this Court considered the similar issue in W.P.No.4670 of 2007 following the judgment of this Court reported in **District Collector, Kakinada, East Godavari District Vs. P. Nagabhushana Rao**² wherein it was held that making of application under Section 18 of the Act itself is sufficient to show that the compensation received was under protest and therefore, there need not be any separate protest while accepting the amount. Following the said judgment (2nd cited supra), the learned single Judge of this Court passed orders in W.P.No.4670 of 2007, dated 21.9.2007 directing the Land Acquisition Officer to refer the claim of the petitioners therein to the competent Civil Court under Section 18 of the Land Acquisition Act.

6. I have considered the rival submissions made by the parties. The applications submitted by the petitioners before the authorities concerned seeking reference under Section 18 of the Land Acquisition Act to the competent Civil Court, are well within time. In view of the same and in view of the dicta laid down by the Full Bench of this Court in judgment

¹ (1995) 4 SCC 428

² 2003(6) ALD 48(FB)

(2nd cited supra), I am of the considered view that this writ petition can be disposed of directing the respondents to consider the applications submitted by the petitioners and pass appropriate orders.

7. Accordingly, the Writ Petition is disposed of directing the respondents concerned to consider the applications submitted by the petitioners, in accordance with the provisions of Section 18(2) of the Land Acquisition Act and pass appropriate orders, within a period of eight weeks from the date of receipt of a copy of this order. The order earlier passed by the respondents concerned rejecting the applications of the petitioners is set aside. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

21st March, 2018
Nn



(ABHINAND KUMAR SHAVILI,J)

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