

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No. 5805 of 2006**

**ORDER:**

This writ petition is filed, under Article 226 of the Constitution of India, by the petitioner seeking a writ of mandamus to declare the action of the respondents in passing an award in R.C.No.NH5/313/2003 dated 28.09.2005 without issuing a notification under Section 3-A(1), declaration under Section 3-D(1), and public notice under Section 3-G(3) of National Highways Act, 1956 (for short "the Act"), as arbitrary, illegal, contrary to the provisions of the Act and in violation of Article 300-A of the Constitution of India. A consequential direction is also sought to set aside the said award.

2. Briefly, the case of the petitioner is that he is the owner of land to an extent of Ac.1.80 cents in Survey No.3/7 of Mulaguntapadu village, Singarayakonda Mandal, Prakasam District, having purchased the same vide registered sale deed dated 21.08.1989 from his vendors and pattadar passbooks and title deeds were issued in his favour. While so, when the respondents tried to acquire his land, the petitioner filed W.P.No.22133 of 2005. The said writ petition was dismissed on 07.10.2005 as it is misconceived and without any factual foundation. It is also observed that if the land of the petitioner is required, the 1<sup>st</sup> respondent has to necessarily initiate action by issuing a notification under Section 3-A of the Act and without there being any such

notification, the petitioner cannot be denied the right to enjoy the subject land. Subsequently, when the respondents tried to enter into the subject land, the petitioner filed C.C.No.1560 of 2005. In the contempt case, a counter was filed stating that the entire procedure has been followed by the 2<sup>nd</sup> respondent to acquire the land and that an award was passed on 28.09.2005 which is much prior to the order passed in the writ petition. In view of the same, the contempt case was dismissed by an order dated 31.01.2006 giving liberty to the petitioner to question the award and the procedure followed. The subject land was not shown in the 3-A(1) notification and the notification was published to the extent of Ac.0.69 cents in Survey No.3/7 in the name of one Talluri Mala Kondaiah. 3-D(1) notification also does not describe the land of the petitioner or his name and it reads only Survey No.3/7 B-2 to an extent of Ac.0.69 cents in the name of Talluri Mala Kondaiah. The notifications without showing the name of the petitioner are illegal and arbitrary. Aggrieved by the same, the present writ petition is filed.

3. The respondents filed separate counters stating that an extent of Ac.0.58 cents in Survey No.3/7B2 of Mulaguntapadu village has been requisitioned by the 1<sup>st</sup> respondent and necessary acquisition proceedings were initiated. Notification under Section 3-A(1) was approved by the Central Government on 14.10.2004 and the same was published on 27.10.2004 in two local newspapers as per the procedure contemplated under the Act. Subsequently, Section 3-D(1) notification was also approved by the Central Government on

18.07.2005 and it was published in local newspapers on 20.08.2005. Thereafter, an award enquiry was conducted by the 2<sup>nd</sup> respondent on 30.08.2005 to the persons concerned and an award was passed on 28.09.2005. The petitioner having participated in the award enquiry and having given written statement agreeing for acquisition before the 2<sup>nd</sup> respondent, cannot question the award already passed.

4. During pendency of the writ petition, the petitioner died and his legal heirs were brought on record as petitioner Nos. 2 to 5 vide order dated 10.06.2011 in W.P.M.P.No.22163 of 2009.

5. Heard Smt. N. Shoba, learned counsel for the petitioners, Mr. S.S. Varma, learned standing counsel for National Highways Authority of India, appearing for the 1<sup>st</sup> respondent, and learned Government Pleader for Land Acquisition (AP) appearing for the 2<sup>nd</sup> respondent.

6. After perusing the record, vide docket order dated 17.11.2017, this Court had recorded that as seen from the record produced by the 2<sup>nd</sup> respondent, the 1<sup>st</sup> petitioner had given consent for acquisition of the land and accordingly the award was passed in terms thereof and the matter was adjourned at the request of the counsel for the petitioners.

7. When the matter is listed today, the counsel for the petitioners submits that the award amount of Rs.1,35,894/- be disbursed to the legal heirs of the deceased 1<sup>st</sup> petitioner i.e., petitioner Nos.2 to 5 and

they be given opportunity to agitate their rights for enhancement of compensation, in accordance with law.

8. Learned standing counsel for the 1<sup>st</sup> respondent as well as learned Government Pleader for the 2<sup>nd</sup> respondent contended that when once a consent award is passed by the respondents, the petitioners cannot be allowed to agitate their rights for enhancement of compensation and there cannot be any scope for litigation in view of passing of the consent award. Learned standing counsel for the 1<sup>st</sup> respondent also submitted that in compliance with the award dated 28.09.2005, a cheque bearing No.790430 dated 18.12.2005 for the awarded amount of Rs.1,35,894/- of SBI, Kandukur, was drawn in favour of the awardee, Sri Tatavarthi Nagendra Babu, the 1<sup>st</sup> petitioner, but he refused to receive the same.

9. Having considered the submissions made by the parties, this Court directs the respondents to pay compensation of Rs.1,35,894/- in favour of petitioner Nos.2 to 5, being the legal heirs of the deceased 1<sup>st</sup> petitioner, in terms of award dated 28.09.2005 passed by the 2<sup>nd</sup> respondent and on receipt of such amount, it is for petitioner Nos.2 to 5 to agitate their rights for enhancement of compensation, if they are entitled as per law.

10. With the above observations, the writ petition is disposed of. No order as to costs.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

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**ABHINAND KUMAR SHAVILI, J**

27<sup>th</sup> March, 2018  
cbs



HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No.5805 of 2006  
(disposed of)

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