

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 7272 OF 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking a Writ of Mandamus declaring the proceedings Rc.Nos.155/02 S.D.T.-II and 83/04 S.D.T.-1 dated 13.11.2006 and 14.11.2006 issued by the 2nd respondent as arbitrary. Consequential direction was also sought to the 2nd respondent to refer the matter under Section 18 of the Land Acquisition Act, 1894 to the competent civil court for enhancement of compensation.

Heard Sri A.Venkata Ramana, learned counsel appearing for the petitioners and learned Government Pleader for Land Acquisition appearing for respondents.

It is contended by the counsel for the petitioners that the petitioners purchased the land in Sy.No.250/1-2-3-5-6-7-8-11-14-15-16 in plot Nos.22, 52, 51 and 278 of Pedagantyada Village through a registered Sale Deed dated 26.07.2002 and 07.08.2002 respectively, since then they are in possession of the said properties. While they were in possession of the said properties, the respondents herein had issued land acquisition proceedings to an extent of Ac.40.24 cents in Dibbapalem Village of Pedagantyada Mandal of Visakhapatnam District, for providing back up area to Gangavaram Port. In the said land acquisition proceedings the names of the petitioners were not included, but the names of their Vendors were included. Finally, an award was passed on 27.08.2005, wherein the names of the vendors were reflected. On coming to know that the land of the petitioners was acquired and an award was passed, the petitioners have submitted their representations to the authorities concerned bringing to their notice that they are the purchasers and rightful owners of the

said land, and they are entitled to compensation under the Land Acquisition Act. The respondents having conceded the representation submitted by the petitioners were pleased to pass orders on 02.11.2006 wherein the petitioners were paid compensation and on the same day the petitioners have submitted a representation for enhancement of compensation and sought to refer the matter to competent civil court under Section 18 of the Land Acquisition Act. The 2nd respondent had considered the said representation and vide proceedings dated 13.11.2006 and 14.11.2006, rejected the representation of the petitioners on the ground that it is barred by limitation.

The counsel for the petitioners relied upon the Full Bench Judgment of this Court reported in **Special Deputy Collector, Singareni Collieries co., Ltd., Godavarikhani v. Dasari Ramulu and others**¹ to the effect that the application for reference seeking under Section 18 of the Land Acquisition Act should be made within six months from the date of award. Wherein, at paragraph 34, held as follows:

“34.In view of the observations made above we are of the considered view that:

(1) In Andhra Pradesh the limitation for seeking the reference under Section 18 is two months statutorily provided from the date of service of the notice by the Collector of the award;

(2) The notice under Section 30 by the Court even if served by the Collector cannot be equated with the notice under Section 12(2) required to be served for the purpose of commencement of the limitation under Section 18(2)(b);

(3) Since the mode of service of notice has not been provided for, the question of service of notice as a fact can be found in the facts and circumstances of each individual case.

¹ 2000(2) ALD 418 (FB)

(4) The burden of alleging and proving of the service of notice either actually or constructively, is on the State when the State intends to take advantage contending that the application seeking reference under Section 18 is barred by limitation. It is for the State to show the date on which the claimant acquired actually or constructively the knowledge of the award from which the period of limitation would commence.”

Admittedly in this case no notice was served on the petitioners and the date of knowledge of passing award has to be taken into account as per the law laid down by the Full Bench of this Court. Therefore, the rejection order dated 13.11.2006 and 14.11.2006 is arbitrary and illegal and they are liable to be set aside and the case of the petitioners shall be referred to competent civil court under Section 18 of the Land Acquisition Act.

Learned Government Pleader appearing for the respondents had contended that the so called rejection of the representation of the petitioners on 13.11.2006 and 14.11.2006 respectively was never issued by the respondents and no such endorsement was made rejecting the case of the petitioners. Hence, the contention of the petitioners that their case was rejected on the ground of limitation vide order dated 13.11.2006 and 14.11.2006 is totally false and incorrect.

This Court has considered the rival contentions made by the parties.

Admittedly the petitioners were not aware about the award passed on 27.08.2005 and when they came to know about passing of such award, submitted their representation to the respondents, and accordingly, the respondents have considered their representation and modified the award vide order dated 02.11.2006 to the effect that the amount of compensation was given to the petitioners. When the respondents have considered the representation of the petitioners and

passed the revised award in favour of the petitioners, then in all fairness the respondents ought to have referred the matter to the competent civil court under Section 18 of the Land Acquisition Act for enhancement of compensation.

Therefore, the writ petition is disposed of directing the respondents to refer the case of the petitioners under Section 18 of the Land Acquisition Act to the competent civil court for enhancement of compensation within four weeks from the date of receipt of a copy of this order. No costs.

As a sequel, miscellaneous petitions if any, pending shall stands closed.

ABHINAND KUMAR SHAVILI, J

09.04.2018
BV

