

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.24101 of 2008

1. Mrs.Pushpa
2. Mr.Sathiyarayanan

..Petitioners

vs

1. The Government of Puducherry
Directorate of School Education
Central University Land Acquisition wing
Puducherry

2. The Revenue Officer, CULAW cum
Land Acquisition Officer
Government of Pondicherry
Directorate of School Education
Puducherry.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, calling for the records of the Second Respondent culminating the impugned Order No. 636/DSE/LAO/2006 dated 23.07.2008, quash the same and direct the Respondents to refer the Petitioners claim dated 23.06.2008 under Section 18 of the Land Acquisition Act to the Civil Court for adjudication.

For Petitioners : Mr.C.A.Diwakar

For Respondents : Mr.D.Ravichander
Additional Government Pleader
(Pondicherry)

O R D E R

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent culminating the impugned Order No. 636/DSE/LAO/2006 dated 23.07.2008, quash the same and direct the Respondents to refer the Petitioners' claim dated 23.6.2008 under Section 18 of the Land Acquisition Act to the Civil Court for adjudication.

2. The case of the petitioners is that they are the owners of the property in R.S.No. 48/A1/2 under the Land Acquisition Act 1894. This land had been given to the Petitioners under a partition cum family arrangement dated 21.01.2000 between Late Krishnamoorthy Reddiar and the petitioners. The learned counsel appearing for the petitioners stated that they had not received any notice of the acquisition proceedings. The petitioners are now given to understand that notwithstanding the fact that the necessary mutation had taken place in the revenue records, notice dated 03.10.2006 was not issued to the petitioners and thereafter, an enquiry was conducted. After conducting the enquiry, the declaration under Section 6 was submitted to the Government. After the Section 6 declaration, award was passed. The competent authority passed an award, wherein the petitioners have also participated. However, the notice under Section 12(2) has been received on 02.04.2008 & 03.04.2008. Thereafter, the petitioners made a representation on 23.06.2008, to make a reference under Section 18 of the Land Acquisition Act to the Civil Court. As against the rejection order, the present petition is filed.

3. The learned counsel appearing for the petitioners further submitted that the Revenue Officer has to send the Award along with 12(2) notice to enable the petitioner to make a representation to refer under Section 18 of the Land Acquisition Act. In the present case on hand, no such award was annexed along with the 12(2) notice. Issue in this regard is squarely covered by the decision rendered in the case of Vijay Mahadeorao Kubade Vs State of Maharashtra Through the Collector in Civil Appeal Nos. 6003-6004 of 2018 and the relevant paragraph is extracted here under;

" 11. The learned counsel appearing on behalf of the Government, has not disputed the aforesaid proposition of law. Accordingly, We are of the opinion that the aforesaid observations are squarely applicable to the present case as the notice dated 4.12.1987, was not accompanied with the award. In this case, there could not have been a valid notice of the award, by letter dated 04.12.1987, under sub-section (2) of Section 12 of the Land Acquisition Act, until the appellant received a certified copy of the award, which he did on 03.02.1988. Therefore, the reference for enhancement was, accordingly, not barred by limitation."

4. The learned Additional Government Pleader appearing for the respondents would submit that the Directorate of School Education required dry land bearing R.S.No. 48/1A/2 and 48/2B/2 measuring a total extent of 0.18.86 H for the construction of school building for Government Girls High School in Maducarai Revenue Village, Bahour and thereafter, notification under Section 4(1) of the Act was submitted to the Government on 21.10.2005 and on approval of the Government, G.O.Ms.No.4 dated 02.02.2006 was issued by the Revenue and Disaster Management.

5. The learned Additional Government Pleader further submitted that though the 12(2) notice was sent on 02.04.2008 & 03.04.2008, no records were available to show that the copy of the Award was sent along with 12(2) notice.

6. In view of the decision rendered by the Hon'ble Apex Court, this Court is inclined to allow the writ petition. The 2nd respondent is directed to refer the matter under Section 18 of the Land Acquisition Act to competent Civil Court within a period of eight weeks, from the date of receipt of a copy of this order.

7. Accordingly, the present writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

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To

Sub Assistant Registrar

1. The Government of Puducherry
Directorate of School Education
Central University Land Acquisition wing
Puducherry

2. The Revenue Officer, CULAW cum
Land Acquisition Officer
Government of Pondicherry
Directorate of School Education
Puducherry.

+1 cc to M/s.C.A.Diwakar, Advocate, S.R.No.54640
+1 cc to the Government Pleader(Pondicherry), S.R.No.55097

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NRL(CO)
SSM(04/09/2019)