

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.30077 of 2004

1. Saraswathi
2. Valliammal

... Petitioners

Vs.

1. The District Collector,
Erode District,
Erode.
2. The Special Tahsildar,
Land Acquisition,
TACID, Unit IV,
305, Bhavani Road,
Perundurai,
Erode District.
3. The District Revenue Officer,
Erode District, Erode 1. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 3rd respondent dated 02.09.2004 made in Va.Pa. 14/2002/A2 (SIPCOT), quash the same and consequently, direct the respondents to refer the Award No.3 of 1996 dated 02.01.1996 issued by the 2nd respondent herein to the competent Civil Court under Section 18 of the Land Acquisition Act, 1894.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.D.Raja, Spl.G.P.

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O R D E R

This petition has been filed to quash the order of the 3rd respondent dated, 02.09.2004 made in Va.Pa. 14/2002/A2 (SIPCOT) and refer the award No.3 of 1996, dated 02.01.1996 passed by the second respondent.

2. The petitioners' request through the legal notice dated 21.07.2004 seeking reference under Section 18 of the Land Acquisition Act has been rejected by the third respondent herein through the order dated, 02.09.2004, which is under challenge in the present Writ Petition.

3. The learned counsel for the petitioners submitted that though the petitioners were aware of the award proceedings, they happen to be illiterate people, and had no knowledge about the provision for reference under Section 18 of the Act seeking enhancement and they have hence filed the present Writ Petition. In support of his contentions, the learned counsel for the petitioners relied upon the decision of the Division Bench of the Andhra Pradesh High Court, reported in 2004 AIR (A.P.) 1 (District Collector, Kakinada, East Godavari District and others vs. P.Nagabhushana Rao and others).

4. The learned Special Government Pleader appearing for the respondents submitted that the petitioners herein are very much aware of the award proceedings and as such, they ought to have filed an application seeking reference under Section 18 of the Act within a period of six months. Since the award was passed way back in 02.01.1996, it would not be appropriate to entertain the Writ Petition at this belated stage. In support of his contention, the learned Special Government Pleader relied upon the judgment reported in 2010 3 SCC 545 (Bhagwan Das and others vs. State of Uttar Pradesh and others).

5. A perusal of the award proceedings would reveal that the petitioners herein were very much aware of the award, which came to be passed on 02.01.1996 and the reference under Section 30 is made thereafter. Even in the reference proceedings under Section 30, the petitioners herein had participated. As such, it can only be construed that they had knowledge of the award proceedings in the year 1996 itself. However, the request for reference under Section 18 came to be made through the legal notice on 21.07.2004, after a lapse of almost eight years.

6. As rightly pointed out by the learned Special Government Pleader, the limitation for seeking reference to the Court is six weeks or six months as provided under Section 18 (2) of the Act. If the award is made in the presence of the petitioners herein, they would be required to file an application within six weeks from the date of the award itself. If they had not received notice under Section 12 (2) of the Act, application may be made within a period of six months from the date on which they had knowledge of the award. In the instant case, the petitioners had knowledge of the award in the year 1996 itself and there is no

explanation whatsoever as to why they had not preferred an application within a period of six months therefrom.

7. Insofar as the decision relied upon by the petitioners is concerned, the observations of the Division Bench of the Andhra Pradesh High Court in Nagabhushana Rao case pertains to the legal proposition on the right of a person who had received the compensation under protest. The relevant portion of the said observations reads as follows:

"28. In the view we have taken, we answer the reference holding that in the absence of any manner of protest having been specified in the Act and the time when protest is to be lodged, act of filing of an application seeking reference to Civil Court within the period of limitation prescribed under Section 18 of the Act will impliedly infer that the claimant / person interested had accepted the amount with protest. Not expressly lodging protest at the time of receiving amount in such circumstance would not amount to waiver of the right to seek reference under Section 18 of the Act."

8. The above proposition may not be of help to the petitioners herein since the petitioners had not made any application under Section 18 earlier, even though, they had protested.

9. The decision of the Hon'ble Apex Court reported in 2010 3SCC 545 cited by the learned Special Government Pleader reads as follows:-

"28. The following position therefore emerges from the interpretation of the proviso to section 18 of the Act :

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under section 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under section 12(2) of the Act was the date of knowledge of the contents of the award."

10. The observations of the Hon'ble Apex Court is self explanatory. As such, since the petitioners herein had not chosen to file an application seeking reference under Section 18 within a period of six months, cannot be now permitted to make an application, at this belated stage. In view of the same, I do not find any merit in the Writ Petition. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

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Erode.
2. The Special Tahsildar,
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305, Bhavani Road,
Perundurai,
Erode District.
3. The District Revenue Officer,
Erode District, Erode 1.

+1cc to Mr.N.Manokaran, Advocate sr.19181
+1cc to Government Pleader sr.19378

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