
(1915) 04 MAD CK 0013
In the Madras High Court

Meenakshi Ammal

APPELLANT

Vs

Mr. R.G. Orr and Others

RESPONDENT

Date of Decision : 08-04-1915

Acts Referred:

Madras Estates Land Act, 1908 — Section 186

Citation : AIR 1915 Mad 1175 : 29 Ind. Cas. 457

Hon'ble Judges : Napier, J

Bench : Single Bench

Judgement

Napier, J.—The order in this case is one passed by the District Judge of Ramnad u/s 186 of the Madras Estates Land Act. The preliminary

order which is appealed, against was passed on the 20th August 1911, and the judgment assessing the compensation, on the 30th June 1913. The

present petition was filed on the 5th November 1913, The Court authorised acquisition of the land for the purpose sought, namely, a threshing

floor. The petitioner now complains that the Court erred in basing its decision solely on the certificate of the Collector and in refusing to allow him

to adduce evidence. He, however, took no steps to get that order set aside, but allowed the proceedings to continue; and it was not until he had

failed in getting compensation as high as he wanted that he objected to the preliminary order. On this ground alone I would dismiss the petition.

2. On the examination of the record I find that the allegation that the District Judge bases his decision on the certificate alone, is not correct. The

learned Vakil admitted that he had the petition before him and it is clear from the language of the order that he had other materials also before him.

He does not say in his order that he is satisfied on the certificate of the Collector alone. He deals with the objections taken by the petitioner and

decides that in the circumstances the threshing floor is required at the place where the land-holder seeks to have it made. That ground, therefore, disappears.

3. The allegation that the petitioner was not permitted to call witnesses is contained in an affidavit made by a relative of the petitioner, who speaks to what occurred at the hearing. The proceedings were in English and there is nothing to show that the petitioner was in a position to speak accurately to the facts. The proper person to have made the affidavit is obviously the Vakil who appeared, and no affidavit from him is forthcoming. The respondents have filed a counter-affidavit in which they allege, what is not contradicted, that the petitioner applied for no process to the Court for witnesses, in these circumstances I cannot accept the affidavit as being conclusive. On this ground also I would dismiss the petition.

4. The only other question that has been strenuously argued on behalf of the petitioner is the claim that the Court must take evidence of itself. This view has the authority of the majority of the Full Bench who considered this question in the case *Goghun Mollah v. Rameshur Narain Mahta* 18 C.P 271 on identical words in the Bengal Act. I do not, however, think it necessary to express any opinion. The point is one of great difficulty and in my view it will be very difficult to construe this section in any way that will give full value to both clauses of Sub-section (1). The matter must be decided by a Bench of this Court. The petition is dismissed with costs.