

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020

DELIVERED ON : 06.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.284 of 2020

Ramesh

..Appellant

Vs.

1. Union of India
rep. by its Secretary to Government (Revenue)
Government of Puducherry
Puducherry.
2. The Deputy Collector (Revenue) (North) cum
Land Acquisition Officer
Puducherry.
3. The Principal District Court
Pondicherry.

..Respondents

Prayer:

Appeal filed under Clause 15 of the Letters Patent against the order dated 13.12.2019 passed by the learned Single Judge in W.P.No.24314 of 2017. Petition under the Article 226 of the Constitution of India praying for the issuance of a unit of certiorarified mandamus to call for the records relating to impugned order bearing No.7807/ DC(R) N/LA/ 2016/248 dated 23.1.2017 made by 2nd respondent quash the same as highly illegal and violative of Article 300A & 21 and violative of Principle of Natural Justice and consequently direct the 2nd respondent to refer the petitioner representation dated 7.11.2016 under section 18 of Land Acquisition Act to Civil Court for enhancement of compensation jointly tried along with L.A.O.P. No.239 of 2009 pending on the file of 3rd respondent

For Appellant : Mr.V.Raghavachari
for Mr.A.Tamilvanan

For Respondents : Mrs.N.Mala
1 and 2 Additional Govt. Pleader
(Pondy)

JUDGMENT

The Hon'ble Chief Justice

The learned Single Judge, on 13.12.2019, dismissed the writ petition filed by the appellant where he had prayed for quashing of the order dated 23.1.2017 passed by the Deputy Collector (Revenue) (North) cum Land Acquisition Officer, Puducherry whereunder, the application for making a reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act') moved by the appellant was rejected.

2. The learned Single Judge held that the appellant had filed the application under Section 18 of the 1894 Act beyond the period of six months, and he being not a purchaser from the original land-owner and who had not made any attempt to get his name mutated in the Land Revenue Records, was not entitled to for a mandamus contrary to the statute. It was further held by the learned Single Judge that the allegation of failure to serve notice on the appellant in the land acquisition proceedings did not invalidate the acquisition or otherwise create any further right in favour of the appellant, that stood foreclosed for the purposes of Section 18 of the 1894 Act on the expiry of the period of limitation prescribed therein.

3. The Court has further found that the reliance placed on the judgment of the learned Single Judge dated 12.2.2018 in W.P.No.6416 of 2015 (A.Munisamy v. Union of India, rep. by the Secretary to Government, Department of Revenue & Disaster Management, Govt. of U.T. of Puducherry) was not attracted on the facts of the present case and hence, this appeal by the appellant questioning the correctness of the impugned judgment dated 13.12.2019.

4. Affidavits have been exchanged between the parties and we had posed certain questions calling upon the respondent Puducherry Government to answer the same vide order dated 3.6.2020, which is extracted herein under:

"Learned counsel for the appellant, relying on the judgment of the Apex Court in the case of Madan & Another vs State of Maharashtra reported in AIR 2014 (SC) 846, has urged that after the order was passed under Section 32 of the Land Acquisition Act, 1894 and the appellant was found entitled to the compensation, he was well within his right to move an application under Section 18 of the Land Acquisition Act, 1894, seeking enhancement of the compensation but the same has been erroneously rejected by the learned Single Judge.

2. The question of date of knowledge, accrual thereof or even constructive knowledge have been dealt with by the Apex Court in several decisions and it is the contention of the learned Additional Government Pleader appearing for the first and second respondents that the appellant in respect of another acquisition, where again his name was not appearing in papers, has filed a Writ Petition that was dismissed, was well aware of the process of law and he cannot be given the benefit of an illiterate farmer who did not know about the process of moving an application.

3. The fact of the matter is that the acquisition and the award concluded against the vendor of the petitioner who, it is stated, had died and the award was made final. The appellant did not choose to question the award, but only after the apportionment case as mentioned above was finalised that he did move the application under Section 18 of the Act contending that his knowledge being subsequent and his accrual of rights having been declared in the said proceedings, the presumption in law would be as held in the case of Madan & Another vs State of Maharashtra (Supra) that the appellant has right now to move an application under Section 18 of the Act.

4. The said controversy has been dealt with in several decisions of the Apex Court apart from the case of Madan (Supra) and therefore, learned counsel may assist the Court appropriately with regard to the decisions thereon.

5. Learned Additional Government Pleader (Puducherry) accepts notice for respondents 1 and 2 and may file their response within six weeks.

List the matter on 22.07.2020."

5. The matter was again taken up on 20th of August, 2020 when we passed another order, which is extracted herein under:

"Heard Mr.V.Raghavachari, learned counsel for the appellant and Mrs.N.Mala, learned Additional Government Pleader (Puducherry), for the respondents.

2.This is a dispute arising out of a claim of enhancement of compensation by the appellant on the ground that even though the acquisition proceedings have not been challenged by the appellant, the entire acquisition proceedings culminated without any notice or opportunity to the appellant at any stage, in the background that the appellant's name was not mutated in the revenue records. The appellant claims himself to be a purchaser of the property in the year 1998, whereas the acquisition was initiated in the year 2007 with the notifications issued under Sections 4 and 6 of the Tamil Nadu Land Acquisition Act, 1894.

3.The award came to be delivered in favour of the recorded tenure holders after putting them to notice, but the claim of the appellant is that he was never put to notice nor was he ever intimated about the passing of the award. It is at the stage of apportionment when the appellant came to know of the same, he moved an application on 01.09.2009, but such application was also closed. The appellant moved an application for re-opening of the proceedings and ultimately, the appellant's application for compensation on apportionment was allowed on 06.06.2019, in LAOP.No.239 of 2009.

4.Prior to this, on 07.11.2016, the appellant moved an application for enhancement of compensation and this application contains a recital to the effect that on 17.10.2016, when the appellant had gone to the site, that is, the plot in question, he came to know that the same had been acquired and the neighbouring lands have also been acquired by the Government, Coast Guard Section. On this information, the application was moved for enhancement. The same has been rejected on 23.01.2017 on the ground that it was not moved within six months as per Section 18(2) of the Land Acquisition Act and therefore, the claim cannot be

acceded to. The order recites that this should have been done within six months from the date of the award and therefore, the application was not maintainable.

5. What we find is that raising a challenge to the said order, the appellant came up contending that it is only from the date when the Section 30 application came to be decided that the appellant would legitimately get the right to seek enhancement, even if he had moved applications earlier.

6. The pleadings on this issue, namely, with regard to date of knowledge and moving of application as well as the entitlement to move an application have been stated at different places differently and no finding conclusively has been recorded in the order dated 23.01.2017 about the date on which the appellant had knowledge or could be treated to be having knowledge for the purpose of moving of the application.

7. Nonetheless, this would depend upon the facts which have been pleaded and more so, keeping in view the law laid down by the Apex Court, particularly, in the judgment in the case of Madan & Anr. vs. State of Maharashtra, (2014) 2 SCC 720.

8. One of the issues that has been raised by the appellant is that the duty to mutate on a registered sale deed of the property having been obtained by the appellant from the lawful owner lies on the authority concerned as prescribed in the Puducherry Settlement Act, 1970 (Act No.28 of 1970) where, in Chapter IV, Sections 17 to 19 are relevant. It is urged that since the property had been acquired by the appellant by a registered document, then the procedure prescribed under Section 18 would be applicable and therefore, it was the obligation on the part of the Collector to have undertaken the said exercise of mutation, which, admittedly does not appear to have been done, as a result whereof the name of the appellant did not appear in the revenue records nor was he put to notice at any stage throughout the acquisition proceedings. It is, therefore, submitted that the burden did not lay on the appellant, but on the authorities to have undertaken this exercise and having not done so,

the appellant cannot be deprived of his legitimate claim of enhanced compensation keeping in view the provisions of Article 300-A of the Constitution of India.

9.It has also been pointed out that similar applications had been moved by other contiguous holders, some of which were rejected and some of which have also been allowed.

10.In the above background and taking aid of the judgment in the case of Madan (supra), learned counsel for the appellant contends that the application moved by the appellant cannot be treated to be barred by time, that too, without even recording any finding in respect of the date of knowledge as envisaged under law.

11.Learned Additional Government Pleader (Puducherry) may file a comprehensive affidavit within three weeks. Three weeks time is granted to file rejoinder.

List on 30.09.2020."

6. The facts that are necessary for unveiling the analysis of the arguments advanced by the either side, are, that one Arumugam purchased the land, which is presently in dispute, along with some others on 3.3.1983. It is the name of this tenure-holder that came to be entered and was continuing during the time of the acquisition proceedings. However, one Sorna Gandhi is alleged to have been appointed as the Power of Attorney Agent by the said Arumugam on 20.1.1995 and the said Power of Attorney holder sold the land to one Angalammal on 18.11.1997. The petitioner, Ramesh, alleges to have secured the property and acquired it through a registered sale deed dated 9.3.1998 from Angalammal. The fact remains that no mutation was carried out in favour of Angalammal or the petitioner, and the name of Arumugam continued in the revenue records. Arumugam died on 18.9.1998.

7. The land was proposed to be acquired for the Indian Coast Guard for which a Notification under Section 4 of the 1894 Act was issued on 30.10.2007, followed by an enquiry under Section 5A whereafter, the Notification under Section 6 was issued on 29.2.2008. It is undisputed that the name of Arumugam continued in the revenue records and accordingly, his name appeared in the acquisition proceedings referred to above. Notices under Section 9(3) and Section 10 of the 1894 Act dated 14.3.2008 are said to have been issued, fixing 31.3.2008 for hearing in the Award.

Notice was issued in the name of Arumugam, who had already died on 18.9.1998. The Award was delivered on 30.9.2008 recording that since the claimants have not turned up, the matter stood referred under Section 30 of the 1894 Act by the Collector to the Court concerned. In relation to the present matter, concerning the land in dispute, L.A.O.P. No.239 of 2009 was registered. The possession of the land was taken on 27.2.2009 and handed over to the Indian Coast Guard.

8. It is here that a relevant fact deserves to be stated separately as it falls within the chronology of events, and is a fact which is stated by Ms.Mala, learned Additional Government Pleader for the respondent Puducherry Government, that an application dated 1.9.2009 was tendered by the appellant wherein he had disclosed the knowledge about the acquisition proceedings and asked for the Award being made in his favour. The contention of the learned Additional Government Pleader is that this letter has been deliberately suppressed by the appellant and therefore, the appellant has not come with clean hands. On the other hand, we find that this letter was not filed by the respondent before the learned single Judge and admittedly, it has been filed before us for the first time. Thus, neither the appellant nor the respondent Government had mentioned it before the learned single Judge. We shall deal with this submission and the counter-submission herein after in the judgment.

9. Section 30 reference in L.A.O.P. No.239 of 2009 remained unattended and it was closed ex parte on 21-09-2012.

10. According to the appellant some of his neighbours had filed an application under Section 18 of the 1894 Act for enhancement of compensation and that was registered as L.A.O.P. No.5 of 2016, which was allowed by the Court on 29.3.2016.

11. The appellant through an impleadment petition and a recall application is said to have approached the Court on 26.10.2016 for re-opening the proceedings under Section 30 of the 1894 Act, that were closed on 21.9.2012.

12. It may be stated at this stage that the said impleadment application and request for reopening the proceedings was allowed and the title of the appellant came to be accepted as also his apportionment in the compensation vide order dated 6.6.2019 during the pendency of the writ petition.

13. Simultaneously, after having moved the petition for reopening the proceedings under Section 30 of the 1894 Act, the appellant also moved an application under Section 18 on 7.11.2016 and in this application he took a stand that when he went at the site on a day very close to the moving of the

application, he was informed of the acquisition proceedings and the action taken and, therefore, taking a plea that he had knowledge of the proceedings only in 2016, he moved the application under Section 18 which came to be rejected by the order dated 23.1.2017. It is against this rejection that the writ petition giving rise to the present appeal was filed and has been dismissed by the impugned judgment.

14. The appellant also alleges to have moved a fresh representation under Section 18 of the 1894 Act on 30.7.2019 as well, after his Section 30 petition was allowed on 6.6.2019.

15. Commencing his arguments in the background that the entire acquisition proceedings had been carried out against a dead person, viz. Arumugam, who had died on 18.9.1998, the proceedings were otherwise invalid, Mr. Raghavachari, learned counsel for the appellant contends that the appellant in effect is not challenging the acquisition proceedings, but claiming his limited right for enhancement of compensation which survives and which cannot be defeated merely because the name of the tenure-holder was not mutated in the revenue records that too, the fault whereof lies on the Puducherry Government and its officials. By citing several judgments as to how principles of natural justice are to be observed scrupulously in land acquisition proceedings, Mr. Raghavachari contends that this by itself should be sufficient for the survival of the claim of the appellant as the entire proceedings of acquisition, the Award and other consequential actions were carried out surreptitiously without putting either the real tenure-holder or the interested persons, including the petitioner to notice. It is also urged that no copy of the award was served or informed to the petitioner. He has cited the following eight judgments to substantiate his submission:

1. P.C. Thanikavelu v. The Special Deputy Collector for Land Acquisition, Madras and another 1989 AIR (Mad.) 222;

2. M. Saroja (deceased) and others v. State of Tamil Nadu and others, 2003 (3) MLJ 697;

3. Pon Elangovan and others v. The State of Tamil Nadu rep. by its Secretary, Revenue Department, Chepauk and others, 2009 (7) MLJ 229;

4. Premji Nathu v. State of Gujarat and another, (2012) 5 SCC 250;

5. Tukaram Kana Joshi and others v. M.I.D.C. and others, (2013) 1 SCC 353;

6. V. Ramalingam and others v. Govt. of Puducherry and others, 2016 (3) CTC 632;

7. Vijay Mahadeorao Kubade v. State of Maharashtra, (2018) 8 SCC 266; and

8. Patel Popatbhai Madevbhai v. State of Gujarat, 2020 Supreme (Guj) SCC 239.

16. Mr.Raghavachari has further submitted that the judgments relied on by him also indicate that service of notice of the Award was necessary on all persons interested, which the Collector is bound to do and having not done so, the appellant, who was the tenure-holder and also an interested person, has been deprived of his property and right to claim adequate compensation that violates Article 300-A of the Constitution of India. He submits that non-compliance of service of notice in the present case is clearly established as the entire proceedings went against a dead person and no notice was given to the interested persons.

17. He further contends that the appellant had no intention to suppress the letter dated 1.9.2009 before this Court and as a matter of fact, it is the respondents who, in spite of having received the said letter, did not take any action and therefore, they are at fault in not taking appropriate steps to issue notice or make the appellant a party to Section 30 reference or otherwise to enable him to avail the benefits of Section 18 of the 1894 Act.

18. Mr.Raghavachari then urged that the date of knowledge in the present case has to be construed after Section 30 application of the appellant was allowed on 6.6.2019 and for which, heavy reliance has been placed by Mr.Raghavachari on the judgment of the Apex Court in the case of MADAN AND ANOTHER v. STATE OF MAHARASHTRA AND OTHERS, reported in (2014) 2 SCC 720, in particular paragraphs 11 to 13 thereof.

19. To substantiate his submissions further on the issue of mutation of the name of the appellant, Mr.Raghavachari contends that the situation in the Union Territory of Puducherry is slightly different as compared to the State of Tamil Nadu in respect of mutations in the revenue records. He submits that Sections 17, 18 and 19 of the Puducherry Settlement Act, 1970 cast a statutory duty on the part of the Registration Authority registering a document, the Collector and the authorities specified by him to carry out mutations in the revenue records of the registered documents which they are obliged to do under the aforesaid provisions without there being any necessity of

any application being moved by a person who acquires the property by a registered document. He has invited the attention of the Court to the proviso to Section 17(1), Section 18 and Section 19(2) of the Puducherry Settlement Act, 1970 to contend that when it is the duty of the Collector and the officials specified by him to mutate the name of a person who acquires a property through a registered document then, any failure on the part of the Registering Authority to intimate the same to the Collector and the consequential failure on the part of the authorities concerned in not mutating the name of the appellant cannot be a fault attributed to the appellant. He submits that this being a statutory obligation, the Collector himself while proceeding in the land acquisition matter was obliged to make such enquiries from the Registering Authority or the Registering Authority ought to have intimated the Collector about the transfer of such land where the mutation whereof was necessary. He contends that this lapse on the part of the authorities concerned cannot defeat the right of the appellant as it was the respondent who was responsible for carrying out the mutation. There being no obligation cast on the appellant, the said circumstance of non-mutation of the property cannot be read adverse to the appellant.

20. Learned counsel further submits that once the law is settled about knowledge commencing only after the appellant's rights came to be declared and his entitlement to receive compensation under Section 30 of the 1894 Act, then only the appellant had the cause of action to seek enhancement through an application under Section 18 of the 1894 Act, which was rightly moved on 7.11.2016 and again on 30.7.2019. Any prior knowledge, even assuming though not admitting, cannot take away the right of the appellant to move an application which he again did after his application under Section 30 was allowed on 6.6.2019. This, according to him, was very much within the limitation prescribed under Section 18 of the 1894 Act and hence, the order rejecting the same ought to have been quashed by the learned single Judge. Mr.Raghavachari has urged that the learned single Judge has not examined these aspects and has erroneously arrived at the conclusions by attributing the entire fault to the appellant regarding mutation, regarding limitation and also regarding his obligation to approach the appropriate authority in accordance with law.

21. Ms. Mala, learned Addl. Govt. Pleader for the Government of Puducherry countered the submissions made on behalf of the appellant urging that the appellant deliberately suppressed the letter dated 1.9.2009 that squarely establishes the date of knowledge about the acquisition proceedings. In spite of that he did not move any application under Section 18 or Section 30 of the 1894 Act within the time prescribed. Thus, the moving of an

application in 2016 or in 2019 is unjustified and not condonable. Even otherwise, there is no provision to condone the delay.

22. She then submits that the contention on violation of principles of natural justice is misconceived inasmuch as the acquisition proceedings culminated by adopting the procedure prescribed under law. The appellant's name was not mutated nor there was any evidence that he attempted to assert his title during the acquisition proceedings or even thereafter at the time of Award preparation. The Collector was not supposed to make a fishing and roving enquiry into the status of revenue entries. The appellant being the third successive transferee, he ought to have been diligent in getting his name mutated. The subsequent declaration under Section 30 proceedings in 2019 about the status of the petitioner's title does not cure the lapses on the part of the appellant in approaching the Collector for moving an application under Section 18 of the Act. The judgment of the Apex Court in the case of Madan (supra) will not come to the aid of the appellant as, on facts, the Apex Court had come to the conclusion that the tenure-holder in that case had no knowledge earlier, but in the present case the letter dated 1.9.2009 establishes knowledge in the year 2009 whereas the application was moved almost after seven years in 2016. The application dated 16.3.2016 expressing surprise and having knowledge for the first time is an incorrect disclosure as the appellant has suppressed the knowledge already disclosed in the letter dated 1.9.2009.

23. Having heard learned counsel for the parties, there is no dispute with the proposition relating to service of notice, which was admittedly not given to the recorded tenure holder, as Arumugam, whose name was recorded, had died on 18.9.1998, long before the acquisition proceedings set into motion. It is thus admitted that service of notice was sought to be effected on a dead person, which was obviously not done, and that is why the Collector referred the matter under Section 30 of the 1894 Act to the Court. This approach of the Collector does not appear to be correct and is not in conformity with law, for which reliance having been placed by the learned counsel for the appellant on the decisions cited at the Bar is justified. He has also justifiably relied on the judgment of a Division Bench of this Court in the case of Ravisam v. Government of Tamil Nadu, (2020) 5 MLJ 720. Apart from this, it is also correct that after the award was delivered, a copy of the award has not been served either on the recorded tenure holder or on the appellant. On principles, therefore, these arguments cannot be brushed aside, but may not have a bearing, in as much as the appellant has not challenged the acquisition proceedings culminating in the award. The award cannot be possibly challenged now after almost 11

years. What he has come forward contending is that his right to seek enhancement of compensation at least cannot be taken away. This has, therefore, to be examined and to that extent we find that the argument of the learned counsel for the appellant that mutation of the name of the appellant was the responsibility of the State appears to be correct. It is for this specific reason that 1970 Act of Puducherry, referred to above, clearly obliges the revenue authorities to carry out mutation in so far as it relates to acquisition of property through registered documents. Sections 17(1), 18 and 19 of the 1970 Act are extracted herein under:

"17. Person acquiring by succession etc., to furnish information:-

(1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, gift, mortgage, lease or otherwise any right in a land or where such person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall report in writing his acquisition of such right to such officer as may be specified in this behalf by the Collector, within three months from the date of such acquisition and the said officer shall at once give a written acknowledgement of the receipt of the report to the person making it:

Provided that any person acquiring the right by virtue of a registered document shall be exempted from the obligation to report to the said officer.

18. Procedure on acquisition of right through documents registered:-

No document by virtue of which any person acquires a right in any land as registered holder, occupant, owner, mortgagee, lessee or tenant or assignee, of the rent or revenue thereunder shall be registered under the Indian Registration Act, 1908 (12 of 1908), unless the person liable to pay the registration fees also pays to the Registering authority such fees as may be prescribed for making the necessary entries in the approved Register of Rights and other connected registers and on the registration of such document the registering authority shall make a report of the acquisition of the right to the officer specified by the Collector under sub-section (1) of section 17 in the manner prescribed.

19. Register of Mutations:-

(1) There shall be maintained for every village a

Register of mutations in such form as may be prescribed.

(2) On receipt of a report under sub-section (1) of section 17 or under section 18, the officer specified by the Collector under sub-section (1) of section 17 shall correct the entries in the approved Register of Rights after making such enquiries as are necessary, and after hearing objections, if any. Any such correction made shall be communicated by the said officer to all persons who from the Register of Rights or the Register of Mutations appear to be interested in the mutation and to any other person whom the said officer has reason to believe to be interested therein.

(3) The entries effected in the approved Register of Rights in accordance with sub-section (2) shall be tested and certified by such officer as may be specified by the Collector in this behalf."

24. A perusal of these three Sections, which are the statutory provisions governing mutation, carves out an exemption in favour of those tenure holders who have acquired the property by the method of registration of a document. It is, thus, clear that the registering authority has to intimate the Collector or the authorities specified by him of the transaction for carrying out the mutation. The appellant, therefore, cannot be non suited, in as much as had this process been carried out, there would have been no need of any enquiry about the status of the owner of the land. Admittedly, the sale deed was executed long before in 1998. It is true that the appellant also could have informed the Collector or the specified authority for carrying out mutation, if it had not been done. But, so far as the legal position is concerned, the argument advanced on behalf of the appellant to this extent has to be accepted.

25. The respondent State, therefore, ought to have undertaken this exercise and had the notice of the award delivered on 30.9.2008 been given to the appellant, it is quite possible that he would have taken steps for seeking his remedy thereunder. Notice of award is mandatory, which the respondents contend was carried out, as the notices for declaration of award had already been despatched to all the recorded tenure holders. This does not conform to the provision of law and any proceedings against a dead person will not get validated, as such issuance of notices is not a mere formality, which has been discussed in detail by the Division Bench in Ravisam (supra) and also the decisions cited at the Bar. In the Union Territory of Puducherry, it is therefore not a matter of making a roving

enquiry, but rather maintaining the revenue records as per the 1970 Act and to that extent the argument of the learned counsel for the appellant has to be accepted.

26. However, we are now called upon in this appeal to consider the impact of the letter dated 1.9.2009, which was in the shape of a representation sent to the Collector and which has been filed along with the typed set of documents of the respondent. The said representation is extracted herein under:

" Puducherry
-8-2009

From
V.Ramesh
No.3, VOC Street
Puducherry - 605 001

Seal of
Deputy Sub Collector
cum Sub Divisional Officer
No.7177
1 Sep 2009

To:
The Sub Collector (Revenue) North
Puducherry.

Sir,

Sub: Right over the property of the acquisition
of land excuted in Kakkavanthope Village
of Ariyankuppam, Pondy - Intimation -
Reg.

I came to know that under Ariyankuppam Revenue Village in Kakkavanthope having Village No.43, Patta No.294, Cadastre No.523Pt. and R.S.No.116/2 the land to an extent of 12 are (or) 22 Kuzhies 8 Visams was taken on acquisition by the Government for the sake of Sea Coast Guard.

In this regard I am to state that this land and patta was in the name of Thiru K.Arumugam, S/o. Thiru Kothandapani Counder, No.100, Veerampattinam Road, Kakkavanthope, Ariyankuppam Puducherry-7. Tmt. G.Sournagandhi, W/o Thiru Govindasamy, No.2/3, Pall Theru Thengaithittu, Mudaliarpeta, Pondy-4 who was given Power of Attorney by Thiru K.Arumugam vide registered as No.64 of 1995, Book 4, Volume 278, Pages 229 to 232 dated 20.1.1995 had sold this land to Tmt.L.Angallamalle W/o. Thiru

G.Logaratchagan No.27, Karumarar Street, Mudaliaret, Pondy-4 vide Sale Deed registered No.6219 of 1997, Book I, Volume 1469, Pages 109 to 112 dated 24.11.1997.

Tmt.L.Angallamalle in turn divided this land of having R.S.No.116/2 into 10 plots and sold the plot bearing No.8 measuring 1111 sq.ft. to me vide Sale Deed register No.980 of 1998 of Book 1.

At present I am one of the owner of this land which comprises of 10 plots under R.S.No.116/2.

In this regard I have not transferred the patta in my favour. As such I presume that the notices might had been served to Thiru K.Arumugam who really do not have any right over this property.

Due to the facts explained in the aforesaid paras I declare that I am the true and real owner and have the right over Plot No. out of 10 which comes under the R.S.No.116/2 in Kakkayanthope Village No.43 of Ariyankuppam Revenue Village with Cadastre No.523 pt. and Patta No.294.

Hence I request that the compensation declared by the Government may kindly be considered in my favour and necessary action may please be initiated in this regard.

Thanking you,

Yours faithfully
sd/-"

27. We had called upon the parties to exchange affidavits on this document and a counter affidavit was filed by the respondent and in paragraph (11) thereof, the following statement of fact has been made, which is extracted herein under:

"11. I humbly submit that the Appellant Thiru.Ramesh S/o.Venkatesan has made an representation vide letter dated 01.09.2009 to the Land Acquisition Officer and intimating the right over his property measuring an extent of 1111 sq. feet situated at R.S.No.116/2 of Ariyankuppam Revenue Village which was acquired by the Government for setting of Coast Guard station, requesting payment of compensation as declared by

the Government and in his letter nowhere objected the acquisition proceedings and claimed for enhanced compensation."

28. A reply statement to the same was filed by the appellant contending that these facts had not been pleaded by the Government before the learned Single Judge, but in paragraphs 3 and 4 of the reply affidavit, the following statement has been made by the appellant:

"3. I submit that attempt has been made by the respondents in attributing knowledge of the passing of award as early in the year 2009 through my letter dated 01.09.2009. The said fact was not pleaded in the Writ Petition and all of the sudden the copy of the letter is being served along with other documents. As far as the letter dated 1/9/2009 is concerned nowhere it is mentioned that I am aware about the award. I submit that it is a simple representation given intimating the respondents about the sale in my favour much prior to the acquisition and a request for compensation declared by the government. The contents of the letter by itself would go to show that I was not aware of the award passed by the respondents. I submit that mere knowledge about the acquisition proceeding would not by itself imply that I am aware of the details of the award.

4. I submit that even after the receipt of the said letter dated 01.09.2009, intimating my purchase the respondents do not care to check the records and in a mechanical manner, had made reference u/s 30 in the name of erstwhile land owner Arumugam who was dead and respondents allowed the L.A.O.P.No.239/2009, for dismissal in the year 2012 for non prosecution. The respondents being a statutory authority cannot infringe the property right enshrined under Constitution in such an arbitrary manner, without even noticing the sale in my favour. And moreover the respondents were very much reluctant in conducting the case and allowed the L.A.O.P.No.239/2009 (u/s.30 references L.A. Act) for dismissal and it is only on my subsequent enquires with regard to the land acquisition I came to know about the passing of award in 4/2008 and subsequent references u/s.30 immediately I approached the court for restoration and a representation dated 07.11.2016 was filed for enhancement of compensation u/s. 18 of L.A. Act."

29. What emerges from these pleadings before this Court, which is in continuation of the writ petition itself, we find that the appellant has not denied the existence of the said representation, but what he contends is that it was a mere representation and that in spite of this, the respondents closed the Section 30 proceedings without any notice to the appellant on 21.9.2012. We have analyzed these pleadings as well as the aforesaid facts and we find that this was a relevant fact which neither the appellant nor the respondent brought it to the notice of the learned Single Judge. We, therefore, do not propose to enter into the allegation and counter allegation of any suppression of this fact, which, in our opinion, is relevant for the purpose of construing the date of knowledge of the acquisition proceedings.

30. The appellant contends that he had no notice of the award, and the representation dated 1.9.2009 does not indicate as if the appellant had any knowledge about the award. However, the last paragraph of this letter dated 1.9.2009 says that the compensation declared by the Government may be considered in his favour. The compensation declared is only by the Collector through the award and, therefore, this letter clearly indicates that the appellant had come to know of the entire proceedings of acquisition culminating in the award dated 30.9.2008. Even otherwise, it will be safe to presume that the appellant did make enquiries and then only he came to know of the acquisition proceedings or the award of compensation. The date of knowledge, therefore, of the appellant about the award can safely be fixed as 1.9.2009, which is the date of his representation, and the filing whereof has not been disputed.

31. Once it is established that the appellant had the knowledge of the proceedings, then the period of limitation for the purpose of Section 18, in our opinion, would start running from the said date. Learned counsel for the appellant has raised his contentions only with regard to his right of receiving enhanced compensation and has not made any challenge to the acquisition proceedings. In the above circumstances, going by the language used in Section 18 of the 1894 Act, the appellant being an interested person, and having not been served with a copy of the award, was entitled to move the application within six months from the date of knowledge of the award. As already held above, the appellant had come to know of the entire acquisition proceedings culminating in the award on 1.9.2009 and, therefore, the moving of his application in the year 2016 expressing surprise, and having no knowledge, is not correct. But then, the reference which was made under Section 18 of the 1894 Act in the case of Thiru Kumaravelu and Thiru Shivaram on 29.1.2016, which were part of the very same acquisition proceedings does indicate that Section 18 proceedings were going

on. We have, however, carefully perused the reference made in those cases on 29.1.2016 and we find from a perusal thereof that the application under Section 18 therein had been moved on 31.10.2008, which was well within six months from the date of service of notice under Section 12 of the award. Therefore, any neighbours having been benefitted out of the same by getting their compensation enhanced was on account of they having taken timely action. The applications appear to have been moved within time in those cases.

32. We are surprised at the stand taken by the Government in paragraph (11) of the counter affidavit filed by the State Government, which has been extracted in paragraph 27 herein above, where they have described the application moved by the appellant dated 1.9.2009 as one claiming enhanced compensation. If that is so, then the said application was very much in close proximity of the award that was delivered on 30.9.2008. Nonetheless, the same does not appear to be an application under Section 18 of the 1894 Act for enhancement of compensation. Such an application, for the first time, came to be filed in the year 2016 itself. Had the appellant treated the application dated 1.9.2009 to be one for enhancement of compensation, he ought to have pursued the same by filing a writ petition seeking a mandamus for taking action on the same, which was never done. It was almost seven years thereafter that he moves the application in the year 2016. Thus, the appellant cannot take the benefit of his own lapses. The legal clock, therefore, in the present case stopped ticking after the expiry of the limitation period from the date of knowledge i.e., 1.9.2009. Hence, the Collector was justified in refusing to make a reference under Section 18 of the 1894 Act in the year 2016.

33. The case of the appellant, therefore, stands on a different footing on facts. But then, the argument advanced by Mr.V.Raghavachari on the strength of the Apex Court judgment in the case of Madan (supra) has to be dealt with. It is correct that in paragraphs 11 to 13 of the report of the Hon'ble Apex Court, it has been held that it is only after the decision in Section 30 proceedings that the tenure holder got the right to move an application for enhancement. However, we find that the date of knowledge was also discussed therein.

34. The facts of the present case, as analyzed herein above, leave no room for doubt that the appellant in the present case had knowledge of the award proceedings way back in 2009 itself. He attempted and succeeded in getting Section 30 proceedings reopened and his title established for receiving the compensation, which was during the pendency of the writ petition in the year 2019. The order passed in favour of the appellant in the proceedings under Section 30 dated 6.6.2019 nowhere

discloses that the Court gave a finding as if the appellant had no notice of the proceedings of the award, nor is there any finding on the letter dated 1.9.2009 that has been considered by us. Nothing has been filed before us or before the learned Single Judge to demonstrate as to how the proceedings under Section 30 of the 1894 Act came to be reopened at the instance of the appellant, so as to demonstrate any proof of the appellant's date of knowledge of the proceedings. Thus, the appellant cannot gain any benefit out of a declaration made under Section 30 of the 1894 Act during the pendency of the writ petition. The order dated 6.6.2019 contains the gist of the averments made by the appellant, who was the sixth respondent in the said proceedings, and has been detailed in paragraph (4) of the said order. Then in paragraphs (12) and (13), the claim petitions of others along with that of the appellant have been discussed and it has been recorded that Arumugam was the original tenure holder and after his death, his heirs had been brought on record and notices were issued and served on them. Thereafter, separate findings have been recorded, including in respect of the appellant having acquired the said property, and finally in paragraph (25), it was found that the appellant was entitled to a compensation amount of Rs.6493/- in respect of 12 Ares of land (1111 sq.ft.).

35. In view of the entire discussion herein above, it is thus evident that the appellant did not approach the Collector by filing an application within time, after having knowledge of the award as per Section 18 of the 1894 Act, and hence his application under Section 18 rightly came to be rejected by the order dated 23.1.2017 impugned in the writ petition.

Accordingly, the writ appeal fails and is hereby dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Secretary to Government (Revenue)
Union of India
Government of Puducherry
Puducherry.

2. The Deputy Collector (Revenue) (North) cum
Land Acquisition Officer
Puducherry.

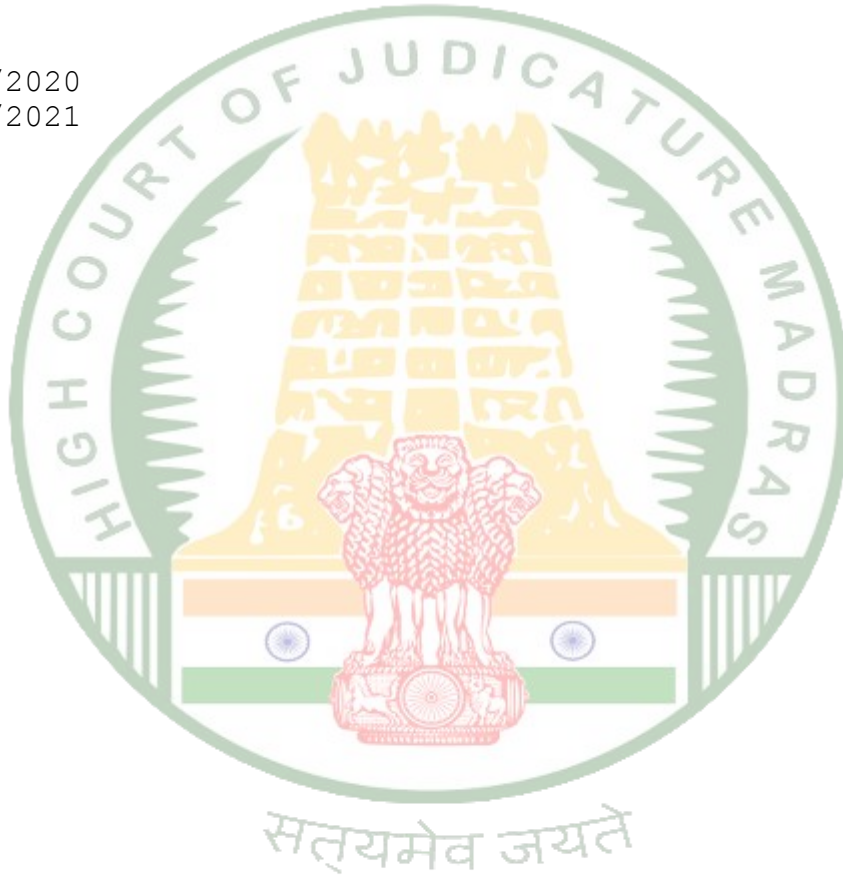
3. The Principal District Court
Pondicherry.

+1cc to A.Tamilvannan, Advocate, SR33042

+1cc to The Government Pleader, SR32787

Pre-delivery Judgment in
W.A.No.284 of 2020

CO (PP)
BDL/30/12/2020
KKV/25/01/2021



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