



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.01.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(MD)No.771 of 2014

and

M.P(MD) No.1 of 2014

The Indian Rare Earths Ltd.,
Manavalakurichy,
Rep. By its Unit Head,
Manavalakurichy,
Kalkulam Taluk,
Kanyakumari District.

... Revision Petitioner/
2nd Respondent/Referring Officer

Vs.

Smt.Saraswathy (Died)

1.C.Swamy Das

... 1st Respondent/Petitioner

2. The Special Tahsildar,
Padmanabhapuram,
Thuckalay, Kalkulam Taluk,
Kanyakumari District.

... 2nd Respondent/
1st Respondent/Referring Officer

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 20.06.2013 in I.A.No. 6 of 2012 in LAOP No.59 of 1991 of the Sub Court, Kuzhithurai, Kanyakumari District.

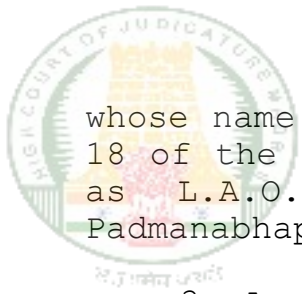
For Petitioner	:	Mr.Krishna Srinivasan
For R1	:	Mr.S.Meenakshi Sundaram, Senior Counsel for Mr.T.Balaji
For R2	:	Mr.V.R.Shanmuganathan Special Government Pleader

O R D E R

This revision at the instance of the requisitioning body for whose benefit the lands were acquired.

2. An award was passed by the Referring Officer granting a sum of Rs.1100/- per cent. The wife of the first respondent herein in

<https://hcservices.ecourts.gov.in/hcservices/>



whose name the lands stood had sought for a reference under Section 18 of the Land Acquisition Act. The reference was made and numbered as L.A.O.P.No.59 of 1991 on the file of the Sub Court, Padmanabhapuram.

3. As could be seen from the records, the said LAOP was closed on 24.01.1995 for failure to furnish address. Thereafter, the petitioner came up with an application seeking restoration of LAOP contending that he came to know about the closure only on 09.08.2005. The application was filed on 19.08.2005 before the Sub Court, Padmanabhapuram. Another application was filed seeking condonation of delay of 10 years and 176 days in filing the application for restoration of LAOP in I.A.No.120 of 2009.

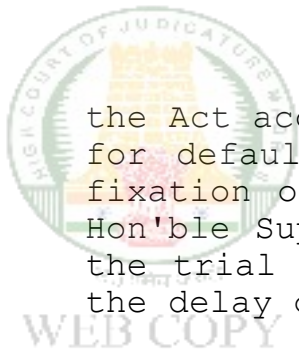
4. The said application resisted by the petitioner herein contending that the petitioner has not made out sufficient cause for the delay. It was also pointed out that the first respondent, who has now stepped into the shoes of his wife seeking compensation for the land acquired, was in fact heading the Manavalakurichy Unit of the petitioner company and therefore, according to the petitioner herein, he was well aware of the proceedings and had been negligent in prosecuting the claim for compensation.

5. The learned Sub Judge, Kuzhithurai, who heard the application by order impugned in this revision, allowed the same on condition that the first respondent herein pays a sum of Rs.2000/- to the petitioner herein as costs. It is this order which is now challenged in this revision.

6. I have heard Mr.Krishna Srinivasan, learned counsel for M/s.S.Ramasubramaniam Associates for the petitioner and Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for Mr.C.T.Perumal for the first respondent. The Special Tahsildar, Land Acquisition is represented by Mr.V.R.Shanmuganathan, learned Special Government Pleader.

7. Mr.Krishna Srinivasan, learned counsel appearing for the petitioner would vehemently contend that the application suffers from want of diligence on the part of the first respondent. Pointing out that the first respondent was actually an employee of the petitioner company and he was very well aware of the proceedings, the learned counsel would contend that the claim that he was not aware of the closure of LAOP in the year 1995 is false to his knowledge.

8. Contending contra, Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the first respondent would submit that in view of the judgment of the Supreme Court in **2002(2) SC 242 (in Khazan Singh (dead) By Lrs Vs. Union of India)** the closure itself is incorrect and without jurisdiction. A reference under Section 18 of



the Act according to the Hon'ble Supreme Court cannot be disposed of for default or closed. It has to reach the logical conclusion of fixation of compensation. In view of the said pronouncement of the Hon'ble Supreme Court, the learned Senior Counsel would submit that the trial court was right in taking a pragmatic view and condoning the delay on payment of costs.

9. I have considered the submissions of the learned counsel on either side.

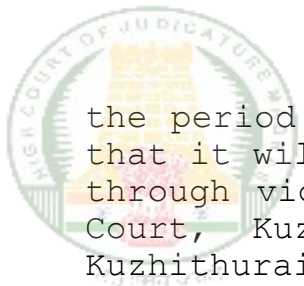
10. Though the contention of the learned counsel for the petitioner merits acceptance and it cannot be said to be the first respondent was ignorant of the closure of the LAOP in the year 1995, however in the context of the judgment of the Supreme Court referred to above, I do not think the application for restoration of LAOP that was closed or dismissed for default could be rejected by the court. The order closing LAOP or dismissing it for default cannot be considered to be a legal order as the Supreme Court has categorically held that the court cannot pass such orders in proceedings under Section 18 of the Land Acquisition Act 1894. However, the courts should also attempt to balance the right of the parties when such cases with inordinate delay come up before them.

11. The delay in this case is 10 years and 176 days which cannot but be termed as inordinate delay. Though the trial court was justified in condoning the delay, I am of the considered opinion that it should have protected the petitioner company from the liability to pay interest atleast for the period of delay. The fact that the Land Acquisition Act 1894 mandates payment of interest at 15% per annum which is very high compared to the prevailing interest rates. I am of the opinion that the submission of the learned counsel for the petitioner that the petitioner should be protected from the liability to pay interest for the delayed period is fair and just.

12. In the light of the above, the application in I.A.NO. 6 of 2012 is allowed. The delay in filing a petition to restore LAOP No.59 of 1991 is condoned.

13. At this stage, both the learned counsel would state that instead of condoning the delay and sending the matter back to the trial court for numbering the application under Order 9 Rule 9 of the Code, I can exercise my powers under Article 227 of the Constitution of India and restore the LAOP and direct the Sub Court, Kuzhithurai to dispose of the same in accordance with law.

14. Accepting the request made by the learned counsel on either side, the application filed for restoration of LAOP No.59 of 1991 is allowed. LAOP will stand restored subject to the condition that the land owner/ claimant will not be entitled to interest for the



the period between 25.01.1995 and 19.08.2005. It is also made clear that it will be open to the parties to request the court for hearing through video conferencing if the facility is available at the Sub Court, Kuzhithurai. If such request is made, the Sub Court, Kuzhithurai is required to consider the same favourably.

15. In the result, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

CM

To

1. The Sub Court,
Kuzhithurai, Kanyakumari District.
2. The Section Officer
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.KARTHIKEYAN, Advocate (SR-2297[F] dated 29/01/2021)

Order made in
C.R.P(MD)No.771 of 2014 and
M.P(MD) No.1 of 2014
27.01.2021

KUN(CO)

SRS (04/03/2021) 4P : 4C