



W.A.No.4025 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.07.2023

Delivered on: 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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and

C.M.P. No.25228 of 2019

Shahjahan S/o. Ameerjan

.. Appellant

Vs.

1. The Government of Tamil Nadu,
represented by its Secretary to Government,
Revenue Department,
Fort St. George, Chennai – 600 009.

2. The Special Tahsildar,
Land Acquisition,
Neyveli Lignite Corporation,
Neyveli, Cuddalore.

3. The Chairman,
Neyveli Lignite Corporation,
Neyveli, Cuddalore.

4. The Power Grid Corporation of India,
represented by its authorized Officer,
Kunnathur Post, Alandur,
Tiruchirappalli – 621 316.

.. Respondents



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Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.32782 of 2004 dated 15.07.2019.

For Appellant : Mr. V. Raghavachari, Senior Counsel
for Mrs. V. Srimathi.

For Respondents : Mrs. Geetha Thamaraiselvan, Special
Government Pleader [for R1 & R2],

Mr. N. Nithianandam [for R3]
Mr. Rita Chandrasekar [for R4]
M/s. Aiyar & Dolia.

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful Writ petitioner is the appellant before us.

2. The appellant approached the Writ court in W.P. No.32782 of 2004, seeking issuance of a Writ of Mandamus to direct the Special Tahsildar, Land Acquisition to refer the disputes arising out of the acquisition of the appellant's lands under Section 18 of the Land Acquisition Act, to the Sub Court.

3. The case of the appellant was that the Government of Tamil Nadu



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acquired lands belonging to the appellant in 1988. Notifications were issued and the appellants also participated in the proceedings and sought for enhancement of compensation. The grievance of the appellant was that despite the passage of 14 years, no compensation was paid to the appellant in respect of the lands acquired from him and that the matter was also not referred to the Civil Court for enhancement. Though possession was taken from the appellant, the actions of the respondents, according to the appellant, were in violation of Article 300 (A) of the Constitution of India.

4. The Writ court, after hearing the appellant and the statutory respondents, dismissed the Writ petition on the grounds of delay and laches, noticing that the Writ petition was filed after a lapse of 14 years after the award came to be passed.

5. Aggrieved by the said dismissal order passed by the Writ court, the appellant has preferred the present Writ appeal challenging the order of the Writ court mainly on the ground that the appellant never participated in the proceedings fixing compensation and that even the copy of the award



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was not served on the appellant. According to the appellant, the Writ Court did not take note of the fact that the appellant had protested to the fixation of the compensation amount and it was also recorded by the District Collector and that the respondents did not even file a counter denying the case put forth by the appellant before the Writ Court that the award copy was not served on the appellant.

6. We have heard Mr. V. Raghavachari, Senior Counsel appearing for Mrs. V. Srimathi, counsel for appellants and Mrs. Geetha Thamaraiselvan, Special Government Pleader for the 1st and 2nd respondents, Mr.N. Nithianandam, counsel for the 3rd respondent and Mr. Rita Chandrasekar for M/s. Aiyar & Dolia, counsel for the 4th respondent.

7. The learned Senior Counsel for the appellant would mainly contend that the authorities have not followed the mandatory procedures contemplated under the Land Acquisition Act 1984 and in such circumstances, the question of delay can never be put against the appellant. Further he has also placed reliance on the following Judgments:



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7(i). ***Maharashtra State Road Transport Corporation vs. Shri Balwant Regular Motor Service, Amravati and others***, reported in (1969) ***1 SCR 808 : AIR 1969 SC 329*** where the Hon'ble Supreme Court approved the ratio laid down by the Court of Chancery in *Lindsay Petroleum Co. vs. Prosper Armstrong Hurd. Abram Farewall and John Kemp*. The relevant paragraph is extracted for easy reference:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other,



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so far as relates to the remedy”.

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7(ii). ***R. Rajashekar and others vs. Trinity House Building Co-operative Society and others, reported in (2016) 6 Supreme Court Cases 46***, for the proposition that *once the proceedings are void ab initio in law for non-compliance with mandatory statutory requirement, then the land owners cannot be shut out from the Court in challenging the acquisition proceedings.*

7(iii). ***Sukh Dutt Ratra and another vs. State of Himachal Pradesh and others, reported in (2022) 7 Supreme Court Cases 508*** for the proposition *that right against deprivation of property, unless in accordance with procedure established by law, continues to be a constitutional right under Article 300-A.* The Hon'ble Apex Court ruled that *though the right to property is no longer a fundamental right pursuant to the 44th Amendment to the Constitution, the State cannot shield itself behind the ground of delay and laches as there cannot be a limitation to do justice.*

7(iv). ***Delhi Airtech Services Pvt. Ltd., and another vs. State of***



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U.P. And another, reported in 2022 SCC Online SC 1408 – for the proposition that *even where the urgency clause is invoked, for acquiring lands, an award u/s.11 was required to be passed so as to determine the compensation payable to the land owners.*

7(v). **Vidya Devi vs. State of Himachal Pradesh and others, reported in (2020) 2 Supreme Court Cases 569** for the proposition that *the State cannot dispossess a citizen of his property, except in accordance with the procedure established by law and that though, obligation to pay compensation, is not expressly included in Article 300-A, the same is to be inferred.*

7(vi). A Division Bench judgment of the High Court of Calcutta in **Ajet Ali Baidya and others vs. State of West Bengal and others**, reported in **2022 SCC Online Cal 1328 : AIR 2022 (NOC 610) 293** for the proposition that *when possession of lands was taken without any acquisition, the fact that the writ petitioner has approached the Court belatedly would not be fatal so as to frustrate a claim for compensation*



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as the same is guaranteed under Article 300-A of the Constitution of India.

7(vii). The order of a Single Judge of this Court in ***W.P. No.3303 of 2009 in Lakshmanan and another vs. The District Collector, Krishnagiri and another***, for the proposition that *even though no separate application was filed by the land owners, seeking enhanced compensation, when there was an assertion by the Land Acquisition Officer that the matter would be referred to the Civil Court under Section 18 of the Land Acquisition Act, it cannot be contended that reference cannot be made to the Civil Court without a formal application.*

8. Per contra, the learned counsel for the respondents would contend that the writ petitioner participated in the proceedings which is borne out of records and after a lapse of 14 years, it is not open to the appellant to seek remedy. Reliance was also placed on judgment of the Hon'ble Supreme Court in ***State of Karnataka v. Lauxman***, reported in ***(2005) 8 SCC 709*** to fortify their contention that an application u/s.18 had to be made within



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the prescribed time and that even Section 5 of Limitation Act would not apply to such an application contemplated u/s.18 of the Land Acquisition Act. The counsel for the respondents, would therefore, prayed for dismissal of the Writ appeal.

9. We have carefully analysed the rival submissions advanced by the counsel. We have also perused the records and the various decisions, on which reliance has been placed by the respective counsel.

10. The relevant provisions of the Land Acquisition Act that would require our attention, are extracted hereunder, for easy reference:

“11-A. Period within which an award shall be made – The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.



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Explanation :- *In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuant of the said declaration is stayed by an order of a Court shall be excluded.*

12. Award of Collector when to be final –

(1) *Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.*

(2) *The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.*

18. Reference to Court – (1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*

(2) *The application shall state the grounds on which objection to the award is taken:*

Provided that every such application shall be made,-

(a) *if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*



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(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

In Section 18 of the Principal Act,-

(1) In Sub-Section (2), for the words “The application shall state the grounds on which objection to the award is taken”, the following shall be substituted, namely:-

“The application shall state-

(a) the grounds on which the objection to the award is taken; and

(b) if it relates to the enhancement of compensation, the exact amount required to be enhanced”.

(2) after sub-section (2), the following sub-section shall be inserted, namely:-

(3) Notwithstanding anything contained in this Act or in the Code of Civil Procedure, 1908 (Central Act V of 1908), or in any other law for the time being in force or in any contract, the application shall, if such application relates to the amount of compensation and if the acquisition is not made for the Government, implead the person or authority, as the case may be, for whom the acquisition is made, as a party in such application”.

11. We have also perused the typed sets of papers filed on behalf of the respondents to highlight the fact that the appellants had given a statement as early as on 05.04.1990, pursuant to which alone, the award



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came to be passed on 26.11.1990. Notices u/s.12(2) dated 21.01.1991 and 11.03.1991 are also enclosed in the said typed set. The compensation amount being deposited is also substantiated by enclosing the copy of the challan for revenue deposit of Rs.66,052/-.

12. The narrow compass on which the decision on the subject matter rests is as to whether it is incumbent on the land owner to make a written application seeking reference u/s.18 of the Land Acquisition Act for enhancement of compensation. We have already extracted Section 18. Even from the opening words of Section 18, it is clear that *a person interested ..., is entitled to make a written application to the Collector requiring the matter referred to the Court for determining of compensation amount, where such person interested does not accept the award.* Section 18(2) assumes relevance and importance in so far as the facts of the present case are concerned. It contemplates cases where a person seeking reference to the Court was present or was represented before the Collector, at the time when the award was made and in all other cases, where such person interested was not present or represented before the Collector, when the award was made. Time limit of 6 weeks is given



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for cases falling under the first scenario where the person interested was present or represented and a period of 6 weeks from the receipt of notice u/s.12(2) from the Collector or 6 months from the date of Collector's award, whichever period was first expired, in all other cases, where the person interested was either present or not represented. Section 18(2)(b) refers to Section 12(2) of the Act. Section 12(2) requires the Collector to give immediate notice of award to all the persons interested and who are not present personally or by the representatives when the award is made.

13. Coming back to the facts of the present case, it is admitted that the appellant was not present either personally or through his representative when the award was passed. Therefore, it was obligatory on the part of the Collector to serve a notice u/s.12(2) on the appellant. It is the categorical and specific case of the appellant that he was never served with any notice u/s.12(2) or given a copy of the award also. However, admittedly, after the enquiry, where the appellant admittedly participated and objected to the quantum of compensation, the award came to be passed only on 26.11.1990. Therefore, following the mandate of Section 18 r/w 12(2), it is the duty of the respondents to establish that due notice



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contemplated u/s.12(2) was served on the appellant. Before us, a typed set of papers has been filed enclosing notices dated 21.01.1991 and 11.03.1991 under section 12(2) of the Act. It is seen from the records that notices u/s.12(2) were attempted to be served on the appellant; but however the same have been refused, as can be seen from the endorsements.

14. In view of the refusal of the 12(2) notices by the appellant, we can safely conclude that the mandate required to be followed by the State u/s.18 has been complied with. The appellant was therefore put on notice about the award and compensation amount. In fact, it is now well settled law that it is not a precondition that a copy of the award should be enclosed along with the Section 12(2) notice and the purpose of Section 12(2) notice is only to inform the decision of the Collector to the concerned land owner, regarding the amount of compensation to be paid. In any event the appellant cannot complain of being in the dark for the reasons that he participated in the award enquiry before the final award came to be passed and he also admits that subsequently he was dispossessed.

15. The other questions that fall for our consideration are firstly, as to whether in order to seek reference to the Civil Court u/s.18 of the Act,



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whether there is any substitute to a written application that has to be made by the interested persons to the Collector, requiring the matter to be referred for determination of compensation to the Civil Court. Secondly, whether the delay on the part of the appellant in approaching the Writ court was fatal.

16. In so far as the first question is concerned, Section 18 requires a written application to be made within 6 weeks from the date of receipt of notice u/s.12(2) or within 6 months from the date of the award passed by the Collector, which ever period expires first. Here admittedly, the appellant has refused to receive Section 12(2) notices and therefore we can safely draw a presumption that he had notice of the award proceedings and the attempt to serve Section 12(2) notice on the appellant is deemed to be in compliance with the provisions of the Act. Viewing it from this angle, an application ought to have made to the Collector within 6 weeks from the date of Section 12(2) notices, which were way back in January 1991 and March 1991. In this connection, the Respondent's counsel would refer to the judgment of the Hon'ble Supreme Court in *State of Karnataka vs. Laxuman, reported in (2005) 8 Supreme Court Cases 709*. There, the



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Hon'ble Supreme Court interpreting the provisions of the State of Karnataka's amendment to the Land Acquisition Act, held that *under the Central Act, there was no time limit fixed for making an application.* However, the Hon'ble Supreme Court referring to the specific amendment made to the statute by the State of Karnataka, held that where *the Deputy Commissioner did not make a reference to the Court within a period of 90 days from the date of receipt of the application, then Article 137 being the residuary article of the Limitation Act, 1963 stands attracted and the application making a reference had to be made within 3 years from the date of expiry of the 90 days period contemplated u/s.18(3)(a) as stood amended by the Karnataka legislature.* Only in this context, the Hon'ble Supreme Court held that when a specific time period of 90 days has been fixed, it is the duty of the Land Acquisition Officer concerned to make a reference within such time, the claimant had to approach the Court within 3 years. The Hon'ble Supreme Court concluded that under the scheme of Section 18 of the Act, as in Karnataka, the claimant would lose his right to move the Court on expiry of 3 years and 90 days from the date of his making an application to the Deputy Commissioner u/s.18(1) of the Act, within the period fixed by Section 18(2) of the Act and that it would not be



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open to revive the right of the claimant at the hands of the Deputy Commissioner by making a reference at his sweet will and pleasure. In short, the Hon'ble Supreme Court held that *even though a right would not stand extinguished, the remedy would become barred in such cases.*

17. In so far as the Central Act and the amendments to the same by the State of Tamil Nadu, we do not find any similar mandatory provisions obligating the Collector to refer the matter to the Civil Court within a specific period of time, like in the case of Karnataka, where a period of 90 days has been fixed.

18. The other question that begs our attention is as to whether an obligation is cast on the Collector to refer the matter to the Civil Court or as to whether the person interested, namely, the appellant in the instant case, ought to have made a written application in that regard, in all instances where the land owner is not agreeable to the compensation awarded by the Land Acquisition Officer.

19. Here admittedly, we have seen from the records produced by the respondents themselves that the petitioner had in no uncertain terms



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objected to the compensation being offered for the lands acquired from him. Therefore, the appellant had clearly expressed his intention regarding the compensation offered not being satisfactory and consequently to the fact that the Civil Court had to determine just and fair compensation payable to him. In very similar circumstance, a learned Single Judge of this Court in ***Lakshmanan and others vs. The District Collector, Krishnagiri and another***, referred herein supra, held that “*mere protest or expression of dissatisfaction to the award of compensation without there being anything in writing may be sufficient and that the authority concerned in under an obligation to refer the matter to the Court in accordance with Section 18(2) of the Act*”.

20. The learned Single Judge has referred to a decision of this Court rendered on this issue which also came to be upheld by the Hon'ble Supreme Court. The learned Single Judge also referred to divergent views taken by the Full Bench of this Court in ***N. Rajaraman and Ors. vs. The Special Tahsildar, reported in 2007 SCC Online Mad 90*** wherein the Full Bench held that “*for making a reference under Section 18 of the Act, a*



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written application after the award is passed is mandatory and such application is required to be made within the period of limitation prescribed under Section 18 of the Act” and distinguished the said judgment on the facts of the case before the Single Judge where the “collector himself had undertaken to refer the matter to the reference Court and in such circumstances, the petitioner therein could not be non-suited”.

21. In the facts of the present case, the appellant has asserted that despite his request for enhancement of compensation amount, the respondents neither took any steps to pay him compensation nor any steps to refer the matter to the Civil Court for determination of compensation.

22. In ***Steel Authority of India vs. SUTNI Sangam, reported in (2009) 16 Supreme Court Cases 1***, the Hon'ble Supreme Court held that “an owner of a land has a right to receive just compensation and he should be given an opportunity to make reference”. The Hon'ble Apex Court further held that “a person may get an opportunity to get a



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reference only when he is informed about the making of an award”.
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23. Here, admittedly, the appellant was put on notice of the award when the notice u/s.12(2) of the Act came to be issued. For the reasons best known to the appellant, he has refused to receive the same. Therefore, we have to take it that he is deemed to have knowledge of the award at least at the time of refusal to receive the notice u/s.12(2) of the Act.

24. Answering the 2nd question, an application seeking reference to the Civil Court under Section 18 of the Act has to be made only by way of a written application and merely because the petitioner had objected to the compensation offered as being inadequate and very low and that the same was recorded by the Authorities at the time of award enquiry would not enable the appellant to claim that the mandate of Section 18 has been fulfilled. As already discussed, the reliance placed on **Lakshmanan's** case referred herein supra is clearly distinguishable on facts. The ratio laid down by the Full Bench of this Court in **N.Rajaraman's** case holds the field. In order to seek reference to the Civil Court under Section 18 of the Act, it is mandatory that a written application is made after the award is passed.



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25. One another fact that assumes relevance is the notice dated 18.04.2004 issued by the appellant just prior to filing of Writ petition. In the said notice, it is merely stated that possession was taken from the appellant and that *“It seems till date you have not paid the compensation or fixed the compensation to my client. You have taken the property long back. My client waited till date to receive the compensation from you. You are hereby called upon to pay the compensation amount with interest within 7 days of receipt of this notice to my client. Otherwise legal action will be taken against you and you will be held liable for all costs”*. Even in the said notice, the appellant has not stated that he was not aware of the award or that he was never put on notice about the award by issuance of the mandatory Section 12(2) notice. The appellant has casually chosen to make an allegation that compensation has not been paid or fixed and the demand made is also only for payment of compensation amount with interest. There is no whisper about any request made, oral or written seeking enhancement of compensation. Admittedly, the protest that was made by the appellant was prior to the award being passed and therefore, the same has no weight age or bearing. The Act mandates that pursuant to



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the award, within a specified period of time, as set out in Section 18 of the Act, the appellant has to make an application requesting for enhancement of the compensation amount. Admittedly, no such application was made within the specified period of time. Even the Hon'ble Supreme Court in ***Steel Authority of India vs. SUTNI Sangam*** cited supra, has categorically held that “for invoking Section 18, the person interested is required

(1) not to accept the award;

(2) that the matter may be referred to the Court for determination by the Court by way of a written application inter alia pointing out his objection with regard to:

(a) amount of compensation;

(b) the person to whom it is payable

(c) apportionment there of amongst the persons interested”.

The Hon'ble Supreme Court has also further held that “the law does not contemplate that even before the award is made a general or vague objection can be entertained by the Collector. Objection to the award, therefore, should be specific and when a reference is made to Court, the Court shall ordinarily be bound by the terms of reference. The Reference



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Court does not have a plenary jurisdiction. It does not have any original jurisdiction to entertain an application directly from the Collector or from the landholders”.

26. The Hon'ble Apex Court has further held that *“the statute itself provides for a law of limitation, compliance therewith is mandatory. For the purpose of applying statute of limitation, the courts should be, however, liberal in their approach u/18(2)(b) provides for a maximum period of 6 months from the date of the Collector's award. It was therefore impermissible to direct references being made after a long period particularly when Section 5 of the Limitation Act, 1963 cannot be said to have any application”.*

27. The appellant, having participated in the enquiry and also expressed his protest cannot feel ignorance of further proceedings taken, namely passing of the award, especially when the grievance of the appellant is that he has lost possession of the property and has not been paid any compensation. Therefore, having chosen to sleep over the matter



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for more than a decade and casually issuing a Lawyer's notice and following the same with a Writ of Mandamus, will not entitle the appellant to relief from this Court.

28. From the above discussions, we find that the appellant had knowledge of the award and having chosen to refuse the notices issued under Section 12(2) of the Act, it is not open to the appellant to turn around and claim that he had no notice of the award or the compensation determined and that it was incumbent on the Collector to refer the matter to the Civil Court even in the absence of a written application from the appellant. In any event, the time prescribed under the statute is only 6 weeks from the date of receipt of the Section 12(2) notice. Even giving the benefit of doubt to the appellant, assuming for moment that he did not receive the Section 12(2) notice and he can be given benefit of 6 months period also as provided u/s.18 of the Act, from the date of award, even then the appellant has taken no steps whatsoever to seek enhanced compensation, which according to him was payable for the lands acquired by him, especially when possession thereof has also been, admittedly, taken from the appellant.



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29. We, therefore, see no reason for interfering with the order of the Single Judge holding that the Writ petitioner is not entitled to any relief, dismissing the Writ petition in the grounds of delay and laches.

In fine, this Writ appeal fails and accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
27.09.2023

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai – 600 009.

2. The Special Tahsildar,



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Land Acquisition,
Neyveli Lignite Corporation,
Neyveli, Cuddalore.

3. The Chairman,
Neyveli Lignite Corporation,
Neyveli, Cuddalore.

4. The Power Grid Corporation of India,
represented by its authorized Officer,
Kunnathur Post, Alandur,
Tiruchirappalli – 621 316.

D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs/kpr)

Pre-delivery judgment in
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