



W.A.No.2228 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A.No.2228 of 2021
and C.M.P.No.14081 of 2021

1.Union of India,
rep. by the Secretary to Government,
Department of Revenue and Disaster Management,
Government of Union Territory of Puducherry,
Puducherry.

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

.. Appellants

Vs

A.Munisamy

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 12.02.2018 passed by the learned Single Judge in W.P.No.6416 of 2015.



WEB COPY



W.A.No.2228 of 2021

For the Appellants : Mr.S.Ravee Kumar
Govt. Pleader (Puducherry)

For the Respondent : Mr.T.Sai Krishnan

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.S.Ravee Kumar, learned Government Pleader (Puducherry) for the appellants and Mr.T.Sai Krishnan, learned counsel for the respondent.

2. The present respondent/original writ petitioner had filed a writ petition seeking directions against the present appellants to make a reference under Section 18 of the Land Acquisition Act, 1894 (for brevity, "*the Land Acquisition Act*") in respect of the quantum of compensation payable to the respondent/original writ petitioner for his land in Survey No.143/5 of Poornankuppam Village acquired under the award dated 05.11.2010.



W.A.No.2228 of 2021

3. The learned Single Judge allowed the said writ petition and directed the second appellant to make a reference within four weeks from the date of receipt of the said order.

4. Learned Government Pleader (Puducherry) appearing for the appellants strenuously contends that the learned Single Judge was in error in directing reference under Section 18 of the Land Acquisition Act. The award has been passed on 05.11.2010. The notice under Section 12(2) of the Land Acquisition Act is issued on 28.01.2011 and served upon the respondent/original writ petitioner on 02.02.2011. The respondent/original writ petitioner does not dispute the receipt of the notice under Section 12(2) of the Land Acquisition Act. A reference under Section 18 was sought to be made on 16.09.2014 after nearly three years and nine months from the date of award and after three years and seven months from the date of service of notice under Section 12(2) of the Land Acquisition Act.

5. According to learned Government Pleader (Puducherry), the



W.A.No.2228 of 2021

pendency of the reference under Section 30 would not arrest the running of the limitation. On 16.10.2015, a second application was filed by the respondent/original writ petitioner for making a reference under Section 18 of the Land Acquisition Act. The same is also delayed by more than five weeks from the date of the order under reference under Section 30 of the Land Acquisition Act. According to learned Government Pleader (Puducherry), even under the Right to Information Act, the copy of the award was received by the respondent/original writ petitioner on 29.01.2015.

6. Learned Government Pleader (Puducherry) submits that application for reference under Section 18 has to be made within the period prescribed under the provision. Learned Government Pleader (Puducherry) relies upon the judgment of the Apex Court in the case of *Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Limited and another*, reported in (2015) 7 SCC 601 and in the case of *Bhagwan Das and others v. State of Uttar Pradesh and others*, reported in (2010) 3 SCC 545 to submit that the period prescribed under Section 18 is mandatory and



W.A.No.2228 of 2021

WEB COPY

constructive knowledge of the award is sufficient.

7. Learned Government Pleader (Puducherry) further submits that Section 28A of the Land Acquisition Act also gives another opportunity to persons who have failed to seek a reference under Section 18. However, it does not permit another reference under Section 18 after the order passed under Section 30 of the Land Acquisition Act. Learned Government Pleader (Puducherry) submits that it is settled law that what has been specifically excluded was never intended to be included and ought not to be included by way of interpretation.

8. Learned counsel for the respondent/original writ petitioner supports the judgment of the learned Single Judge. He relied upon the judgments of the Apex Court in the case of *Madan and another v. State of Maharashtra*, reported in (2014) 2 SCC 720 and in the case of *State of Telangana and others v. D.Mahesh Kumar and another*, reported in (2018) 15 SCC 703.



W.A.No.2228 of 2021

9. We have considered the submissions canvassed by learned counsel for the parties.

10. It is not disputed that the award has been passed on 05.11.2010. The notice under Section 12(2) of the Land Acquisition Act is served upon the respondent/original writ petitioner on 02.02.2011. It is also not disputed that nobody was present at the time of passing of the award. However, the present appellants are not in a position to demonstrate that the notice under Section 12(2) was accompanied with the copy of the award. The same is also relevant fact.

11. It appears that the respondent/original writ petitioner was supplied with the copy of the award on 29.01.2015 pursuant to the application under RTI Act. Prior to that, on 16.09.2014, application was already made by the respondent/original writ petitioner for reference under Section 18 of the Land Acquisition Act. Till that date, the respondent/original writ petitioner was never served with the copy of the award. It also appears that reference under Section



W.A.No.2228 of 2021

30 of the Land Acquisition Act was made and the said reference under Section 30 was terminated on 23.07.2015.

12. The facts of the present case are nearer to the facts in case of *Madan and another* (supra). In the said case before the Apex Court, reference under Section 30 was pending. The appellants therein did not possess the knowledge of the award till reference under Section 30 was decided. The appellants therein filed reference under Section 18 within six weeks of the order passed in the reference under Section 30 of the Land Acquisition Act. The Apex Court observed that the date of the award used in proviso (b) to Section 18(2) of the Land Acquisition Act must be understood to mean the date when the award is either communicated to the party or is known to him either actually or constructively. It was further observed that there was dispute amongst the land owners in respect of the acquired land and, on account of which, no apportionment of compensation was made by the Collector, who made a reference under Section 30 of the Land Acquisition Act to the Court. The Apex Court further observed that right to receive compensation under the



W.A.No.2228 of 2021

award would crystallise after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the Court in the reference under Section 30 or in the civil suit, as may be.

13. In the case of *Mahesh Kumar* (supra), the Apex Court observed that it is a different issue that the date of knowledge is material for the purpose of seeking the reference under Section 18, but the date of award remains static and final.

14. In the present case, as observed supra, the respondent/original writ petitioner was never served with the copy of the award with notice under Section 12(2) of the Land Acquisition Act. That apart, reference under Section 30 of the Land Acquisition Act was pending. The first application for reference was filed by the respondent/original writ petitioner even prior to the reference under Section 30 was decided. The respondent/original writ petitioner



W.A.No.2228 of 2021

could get the copy of the award only after the respondent applied under RTI Act in the year 2015 and prior to that, an application was already made for a reference under Section 18 of the Land Acquisition Act.

15. Considering the aforesaid conspectus, the facts of the present case are nearer to the facts in the case of *Madan and another* (supra) and the judgment in the said case squarely applies to the present matter.

16. In the light of that, the learned Single Judge has not committed any error while passing the impugned judgment.

17. The writ appeal, as such, is disposed of. There will be no order as to costs. Consequently, C.M.P.No.14081 of 2021 is closed.

(S.V.G., CJ.)

(P.D.A., J.)

16.08.2023

Index : Yes/No



W.A.No.2228 of 2021

Neutral Citation : Yes/No
bbr

WEB COPY



WEB COPY



W.A.No.2228 of 2021

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU,J.

bbr

W.A.No.2228 of 2021

16.08.2023