



W.P.(MD) No.17468 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2024

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

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1.Achuthan Pillai (died)

2.S.Thilagam

3.Kamal Kumar

4.T.Sreekala

*(P2 to P4 have been impleaded vide
order dated 12.08.2024*

*P3 and P4 represented by P2 - Thilakam
as Guardian)*

... Petitioners

/vs./

1.The District Collector of Kanyakumari
at Nagercoil,
Kanyakumari District.

2.The Revenue Divisional Officer/Sub Collector,
Padmanabhapuram, at Thuckalay,
Kanyakumari District.

3.Indian Rare Earths Limited,



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Manavalakurichy,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to his order in Roc. B1/S.R.15/82 dated 26.07.2016 on his file, quash the same, directing the 2nd respondent to make an award, determining the amounts of compensation payable to the petitioner as per Section 28-A of the Land Acquisition Act, 1894, for the acquisition of the petitioner's lands of the one acre and 34 cents in Re-Survey No.653/2 of Manavalakurichy Village, Kalkulam Taluk, Kanyakumari District and seventy two cents in Re.Survey No.652/1 of the said Manavalakurichy Village in accordance with the common award dated 14.06.2002 of the learned Subordinate Judge of Padmanabhapuram in LAOP.Nos. 7/1981 etc., on his file, confirmed by this Court by its common judgment dated 26.09.2008 in A.S.Nos.813 to 855 of 2002 and 106 of 2003 to 111 of 2003 on its file within a time to be fixed by this Court.

For Petitioners	: Mr.K.N.Thampi
For R1 & R2	: Mr.P.Thambidurai
	Government Advocate
For R3	: Mr.Krishnan Srinivasan Senior Counsel for
	Mr.S.Ramasubramanian and Associates

ORDER

Challenging the rejection of her application claiming enhanced compensation under Section 28A of the Land Acquisition Act, 1984, on the



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ground of limitation, the petitioner is before this Court.

2. The short facts, which forms the prelude for the filing of this writ petition, are as follows:

2.1. The petitioner, who is represented by his wife and Guardian on the ground that the petitioner is an idiot, would submit that the petitioner/her husband is the owner of an extent of 1 acre and 34 cents and 72 cents in R.S.Nos.653/2 and 652/1 respectively totally measuring an extent of 2 acres and 4 cents, at Manavalakurichi Village, Kalkulam Taluk, Kanyakumari District.

2.2. It is her case that these lands along with the other lands were notified under Section 4(1) of the Land Acquisition Act, 1894 (*herein after referred to as Act*). The lands were acquired for the third respondent by the second respondent. An award was passed in Award No.4/81-82 awarding compensation of Rs. 57,101.80/- to the petitioner for the acquisition of his lands and other land owners were also given compensation for their lands that had been acquired. Since the compensation granted was very low, some of the land owners had sought reference under Section 18 of the Act and number of LAOPs came to be filed in



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LAOP.No.7 of 1981 and other LAOPs. The third respondent had got itself impleaded in these litigations as per the order of this Court and a common judgment came to be passed on 14.06.2002 enhancing the compensation to a sum of Rs.1,000/- per cent.

3. Challenging the said order, the third respondent had preferred A.S.Nos. 855 of 2002 and 106 to 111 of 2003 on the file of this Court. By judgment dated 26.09.2008, these appeals were dismissed as withdrawn, as a result the compensation arrived at by the learned Judge in the LAOPs reached finality. The petitioner would submit that her husband has not sought for reference under Section 18 of the Act and therefore, after the withdrawal of the appeals by the third respondent, a written representation on behalf of the petitioner was presented on 03.11.2008 under Section 28A of the Act to the respondents requesting redetermination of the amount of compensation payable to him on the basis of the amount of compensation awarded by the Court.

4. The second respondent by an order dated 26.11.2008 informed the petitioner that since no petition under Section 18(1) of the Act has been filed at



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the time of payment of compensation amount, enhanced compensation cannot be paid. This order was challenged by the petitioner representing by his wife in W.P. (MD) No.445 of 2009. By an order dated 01.04.2016, the said writ petition was allowed. The impugned order was quashed and the matter was remitted back to the second respondent directing the second respondent to pass orders strictly on the basis of the provisions of Section 28A of the Act within a period of 3 months. Thereafter, the order was produced before the second respondent together with representation dated 02.05.2016 and the second respondent was asked to reconsider and pass orders. Thereafter, by the impugned order, the request was rejected. Challenging the same, the petitioner has approached this Court. Pending the writ petition, the petitioner passed away and his legal representative including his wife as Guardian was brought on record.

5. The third respondent has filed a counter *inter alia* contending that the order of the second respondent cannot be found fault with, since the petitioner has not filed a petition under Section 28A of the Act within the time limit prescribed thereunder and that the very petition is time barred.



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6. In the counter, the third respondent has responded to the various averments contained in the affidavit filed in support of this writ petition and sought to uphold the order passed by the second respondent on the ground that the petition under Section 28A of the Act has been filed beyond the period of limitation.

7. Mr.K.N.Thambi, learned counsel for the petitioner after taking the Court through the facts would place his arguments on two grounds; a) The order of the learned Subordinate Judge in LAOPs., had been taken up on appeal and b) the appeal had been dismissed as withdrawn. The order of the Subordinate Judge merged with the appellate Court order and therefore, the time would start from the date, on which this Court had dismissed the first appeal filed by the third respondent.

8. In support of this argument, he would rely upon the judgments of the Hon'ble Supreme Court reported in *AIR 1987 Supreme Court 1304 (Kewal Ram Vs. Ram Lubhai and others)* and *AIR 1974 Supreme Court 1380 (M/s.Gojer*



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Brothers (P) Ltd., Vs. Shri Ratan Lal Singh).

9. He would also reply upon the judgment of the Hon'ble Supreme Court reported in ***2006 (2) CTC 534 (Union of India Vs. Munshi Ram (dead) by LRs and another)***, wherein the Hon'ble Supreme Court had observed that the provisions of Section 28A seeks to confer the benefit of enhanced compensation even on persons who have not sought a reference under Section 18. The learned Judges observed that there cannot be disparity between the persons, who get the benefit as they have approached the Court under Section 18 of the Act and deprive the others of this enhanced compensation. Section 28A has been enacted to go away with this inequitable situation. Therefore, he would submit that since the petition had been filed within three months from the date of the judgment passed in A.S.Nos.855 of 2002 and 106 to 111 of 2003, the petitioner's application is well within time and the second respondent has totally erred in dismissing the petition.

10. The learned counsel would submit that by reason of the impugned order, the petitioner has been awarded only a sum of Rs.207.50/- per cent,



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whereas the other land owners, who have approached the Court has been granted compensation of Rs.1,000/- per cent. The learned counsel would submit that Section 28A of the Act has been introduced to grant the benefit to the land owners, who have been deprived of their land.

Per contra, Mr.Krishnan Srinivasan, learned Senior Counsel appearing on behalf of the third respondent would submit that from the language of Section 28A of the Act, it is clear that limitation stands ticking from the date of the Award passed by the original Court.

11. He would rely upon the judgment of the Hon'ble Supreme Court reported in **(1995) 2 Supreme Court Cases 736 (Union of India and another Vs. Pradeep Kumari and others)**, wherein the Hon'ble Supreme Court has observed that the period of limitation for moving an application under Section 28A of the Act will begin to run only from the date of the award on the basis of which redetermination of compensation is sought. The learned counsel would submit that in the instant case, the redetermination happened on 14.06.2022 and not when the appeal was withdrawn. The learned counsel would submit that therefore



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the order passed by the second respondent is very much in order.

12. In support of this argument, he would rely upon the judgment of the Hon'ble Supreme Court ***reported in (1996) 6 Supreme Court Cases 746 (Jose Antonio Cruz Dos R.Rodriguese Vs. Land Acquisition Collector and another)***, where the question which had arisen for determination was, whether the period of three months prescribed for making the application for redetermination of the amount of compensation under Section 28A would begin to run from the date of award under Section 18 of the Act or from the date of decision in the appeal. This question has been answered as follows:

" 3.The plain language of Section 28-A, therefore, prescribes the three months' period of limitation to be reckoned from the date of the award by the Court disposing of the reference under Section 18 and not the appellate court dealing with the appeal against the award of the Reference Court."

13. He would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2018) 16 Supreme Court Cases 445 (Ramsingbhai (Ramsangbhai)***



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Jerambhai Vs. State of Gujarat and another), where once again the very same question had been raised and the same had been answered in para 3 of the said judgment as follows:

"3.It is clear from the opening words of the provision that the redetermination under Section 28A is available only in respect of an "Award" passed by the "court" under Part III of the Act, comprising Sections 18 to 28A (both inclusive). The "court" referred to in Section 28A of the Act is the court as defined under Section 3(d) to mean "... a principal civil court of original jurisdiction ...". Thus, the judgment of the appellate court is not within the purview of Section 28A. It is also to be noted that the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the Award passed by the Reference Court under Part III of the Act. In its recent judgment in Bharatsing and others v. The State of Maharashtra and others, this Court has surveyed the decisions on this issue and reiterated the legal principle."



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14. The learned counsel would also rely on the judgment of the Hon'ble Supreme Court reported in **2013 10 scc 765 (Popat Bahiru Govardhane and others Vs. Special Land Acquisition Officer and another)**, in support of his argument that once there is a settled legal proposition, the Court cannot seek to extend the limitation on equitable grounds. Para 16 of the said judgment reads as follows:-

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting



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15. Heard the learned counsel on either side and perused the judgments cited by the learned counsel on either side.

16. The entire dispute revolves around Section 28A of the Act, which reads as follows:

"28-A. Re-determination of the amount of compensation on the basis of the award of the Court:

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation



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awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

17. In the light of the judgment of the Hon'ble Supreme Court in **(1996) 6**



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Supreme Court Cases 746 (Jose Antonio Cruz Dos R.Rodriguese Vs. Land Acquisition Collector and another) and (2018) 16 Supreme Court Cases 445 (Ramsinghai (Ramsangbhai) Jerambhai Vs. State of Gujarat and another, the question as to whether the period of three months in the case of a petition under Section 28A of the Act would commence from the date of the award under Section 18 or the judgment in appeal is no longer *res integra*. The Hon'ble Supreme Court has categorically and clearly stated that since the redetermination of the award is made by the Principal Civil Court of original jurisdiction as defined under Section 3d, the Court therefore referred to in Section 28A of the Act is only the Court defined under Section 3d.

18. The judgments cited by the learned counsel for the petitioner would not come to his aid, since that is a case, where the land acquisition proceedings had commenced much prior to the insertion of Section 28A into the Act. The judgment makes it clear that a person could seek redetermination of the amount of compensation, if the award had been made after coming into force of Section 28A of the Act and the amount of compensation is in excess of the amount awarded by the Collector and the application is moved within 3 months from the date of the



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award on the basis of which the redetermination of the amount of compensation is sought. Even in this judgment, it has been clearly stated that the benefit would be available, if the applicant makes an application within the prescribed period of 3 months from the making of the award on the basis of which the redetermination is sought.

19. Further, considering the dictum laid down by the Hon'ble Supreme Court reported in **2013 10 scc 765 (Popat Bahiru Govardhane and others Vs. Special Land Acquisition Officer and another)**, where, it has been held that the Courts are bound to apply the law of limitation with all its rigour where the statutes so prescribe even if the same would affect one party and the Court cannot extend the period of limitation on equitable ground.

20. Therefore, the Writ Petition stands dismissed. No costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No

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Index : Yes / No

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