

VIJAY MAHADEORAO KUBADE

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v.

STATE OF MAHARASHTRA THROUGH THE COLLECTOR

(Civil Appeal Nos. 6003-6004 of 2018)

JULY 04, 2018

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**[N. V. RAMANA AND
MOHAN M. SHANTANAGOUDAR, JJ.]**

Land Acquisition Act, 1894 – s.12(2) – Effective notice of the award – Land acquisition – Passing of the award – Copy of award not sent to land owner along with the notice dated 04.12.1987 of the award – Land owner received certified copy of the award on 03.02.1988 – Thereafter, on 09.02.1988 the land owner filed reference against award for enhancement of compensation – Issue raised as to limitation – Reference Court held the Reference to be within limitation – However, High Court held the Reference to be barred by limitation – On appeal, held: There could not have been a valid notice of the award, by letter dated 04.12.1987, u/s. 12(2), until the land owner received a certified copy of the award, which he did on 03.02.1988 – Thus, the reference for enhancement filed on 09.02.1988 not barred by limitation – Order of the High Court concerning the point of limitation set aside.

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Disposing of the appeals, the Court

HELD: The notice dated 04.12.1987, was not accompanied with the award. In the instant case, there could not have been a valid notice of the award, by letter dated 04.12.1987, under subsection (2) of Section 12 of the Land Acquisition Act, until the appellant received a certified copy of the award, which he did on 03.02.1988. Therefore, the reference for enhancement was, accordingly, not barred by limitation. The order of the High Court concerning the point of limitation is set aside and the matters are remanded back for fresh consideration on merits of the case *inter alia*, as to the quantum of compensation. [Para 11, 12] [1110-E, F]

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Premji Nathu v. State of Gujarat and Anr. [2012] 3 SCR 1042 : (2012) 5 SCC 250 – relied on.

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Case Law Reference**[2012] 3 SCR 1042 relied on Para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6003-6004 of 2018.

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From the Judgment and Order dated 14.07.2014 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in First Appeal Nos.116 and 31 of 1996

WITH

Civil Appeal Nos. 6006-6007 of 2018.

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Ms. Bansuri Swaraj, Siddhesh Kotwal, Raghunatha Sethupathy, Gagan Narang, Ms. Astha Sharma, Nishant Ramakantrao Katneshwarkar, R.S.Hegde, Ms. Farhat Jahan Rehmani, Chandra Prakash, Rajeev Singh, Advs. for the appearing parties..

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The Judgment of the Court was delivered by

N. V. RAMANA, J.**Civil Appeal Nos.6003-6004/2018****(Arising out of SLP (C) Nos. 27516-27517/2014)**

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1. Leave granted.

2. These appeals are filed against the final judgment and order dated 14.07.2014, passed by the High Court of Judicature at Bombay (Nagpur Bench) in First Appeal No. 116 of 1996 and First Appeal No. 31 of 1996.

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3. A brief reference to facts of the case may be necessary for the disposal of this case. The predecessor interest of the appellant herein was the owner of the property in dispute. In the year 1985, the disputed land, was proposed to be acquired by the Divisional Controller, MSRTC Corporation, Amravati for construction of city service terminus at Amravati. Required Notification under Section 126 (4) of the MRTP Act, 1966 read with Section 6 of the Land Acquisition Act was published in the Government Gazette dated 05.12.1985. Thereafter the objections from the interested parties were heard by the Special Land Acquisition Officer, Zilla Parishad Works, Amravati. By a final order dated 30.11.1987, the Special Land Acquisition Officer, passed an award, wherein an

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amount of Rs. 5,83,366/- was payable by the respondent authorities to the appellant herein. On 21.12.1987, the predecessor interest of the appellant received a notice from the collector/Land Acquisition Officer informing them about the award being passed on 30.11.1987, which is reproduced as under-

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You are hereby given notice that you are being treated as person interested in the above-mentioned case. In the said case on 30.11.1987, I, have pronounced the following Award under sub-section 1 of Section 11 of the 1894 Act.

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(1) The area of the land is 704.31 sq. meters in plot No. 3.

(2) The amount of Rs. 2,58,849.00 as compensation be given for the land.

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(3) The amount of compensation has been divided as follows:-

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(2) The amount payable to you is Rs.2,58,849.00. You personally or through authorized representative should remain present before me on 28.12.1987. You can receive the compensation under protest so that there is no impediment in your right to send reference to the Civil Court in respect of this case.

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It may be noted that the actual award was not enclosed with the aforesaid notice and the predecessor interest of the appellant received the certified copy of the award only on 03.02.1988. On 09.02.1988, the predecessor interest of the appellant, aggrieved by the compensation awarded to him by the Special Land Acquisition Officer, filed a reference against the award for enhancement of compensation under Section 18 of the Land Acquisition Act. In the meantime, the predecessor interest of the appellant, had received the award amount under protest, that the reference for enhancement was pending.

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4. The Reference Court (Court of Civil Judge), after hearing the parties concerned, partly allowed the reference and increased the compensation from Rs. 110/- per square meter to Rs. 210/- per square meter. It may not be out of context to note that respondent authority had not raised any issue on limitation.

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A 5. Aggrieved, both parties, filed Cross appeals being First Appeal No. 116 of 1996 and First Appeal No. 31 of 1996 and the present matter was tagged along with various other similar petitions. The High Court by order dated, 07.10.2010, while remanding the matter back to the Reference Court on the issue of limitation, kept the matter pending before the High Court in the following manner-

B On hearing the learned counsel for the parties and on perusal of the Record and proceedings along with the copy of Section 12(2) notices, which were sought to be produced by the learned Assistant Government Pleaders before this Court at the time of the arguments that it would be necessary in the interest of justice to refer the issue of limitation to the reference Court from whose judgments, the appeals are preferred by invoking the provisions of Order 41 Rule 25 of the Code of Civil Procedure, since the reference Court has omitted and failed to frame and try the issue of limitation, which essentially ought to have been decided before deciding the reference applications on merit.

C Hence, by keeping all these first appeals pending in High Court, the issue of limitation is referred to the reference Court for trial after granting an opportunity to the parties to amend the pleadings on the issue of limitation and also to tender evidence on the said issue. The reference Court is directed to try the issue of limitation in all these cases within a period of six months from the date of appearance of the parties before the reference Court and shall return the record to this Court and shall return the record to this Court together with its findings on the issue of limitation along with the reasons therefor.

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F 6. On remand, the reference Court granted opportunity to the parties to lead evidence and upon hearing the parties, it passed judgment and order dated 11.10.2011. The reference court, found that the predecessor interest had filed the reference for enhancement, before the expiry of the limitation as they became aware of the contents of the award only on 03.02.1988 and not when a notice informing the award was sent.

G 7. The High court resumed hearing of the case, after receiving the order of the Reference Court on remand. The High Court again dealt with the contention concerning the issue of limitation and concluded, H by order dated 14.07.2014, that the appellants herein, had not filed the

reference for enhancement of compensation within the time limitation,
in the following manner- A

10. The next submission made by Mr. K.H. Deshpande, learned Senior Counsel, is that the details about the Award in order to raise a challenge or grounds to be taken in the reference Application, could be available only after obtaining certified copy of the Award and a mere visit to the office of the Land Acquisition officer for receipt of compensation on 28th December, 1987 cannot be taken to mean that the claimants were posted with the details of the Award in order to raise a challenge. **It is an admitted fact that all the claimants received compensation on 28th December, 1987 and, therefore, constructively and practically, they must be posted with the knowledge about the contents and details of the award.** B C

8. Aggrieved by the aforesaid impugned order, the appellant is in appeal before this Court. D

9. The main contention canvassed by the appellants, in these Civil Appeals, is whether an effective notice of the award was provided to the appellant herein, as per the mandate of Section 12 (2) of the Land Acquisition Act, 1894?

10. Learned counsel for the petitioner, Ms. Bansuri Swaraj, relies on the judgment of *Premji Nathu v. State of Gujarat and Anr.*, (2012) 5 SCC 250, wherein this court has observed as under- E

20. In the light of the above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the appellant was barred by time is legally sustainable. F

21. A careful reading of the averments contained in Para 2 of the application filed by the appellant under Section 18(1) shows that the notice issued by the Collector under Section 12(2) was served upon him on 22-2-1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8-4-1985 for making a reference to the Court. This implies that the copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference. G H

A **22.** On behalf of the State Government, no evidence was produced
 before the Reference Court to show that the copy of the award
 was sent to the appellant along with the notice. Unfortunately,
 while deciding Issue 3, this aspect has been totally ignored by the
 Reference Court which mechanically concluded that the application
 filed on 8-4-1985 was beyond the time specified in Section
 B 18(2)(b). The learned Single Judge of the High Court also
 committed serious error by approving the view taken by the
 Reference Court, albeit without considering the fact that the notice
 issued by the Collector under Section 12(2) was not accompanied
 by a copy of the award which was essential for effective exercise
 C of right vested in the appellant to seek reference under Section
 18(1).

(emphasis supplied)

D 11. The learned counsel appearing on behalf of the Government,
 has not disputed the aforesaid proposition of law. Accordingly, we are of
 the opinion that the aforesaid observations are squarely applicable to the
 present case as the notice dated 4.12.1987, was not accompanied with
 the award. In this case, there could not have been a valid notice of the
 award, by letter dated 4.12.1987, under sub-section (2) of Section 12 of
 the Land Acquisition Act, until the appellant received a certified copy of
 E the award, which he did on 03.02.1988. Therefore, the reference for
 enhancement was, accordingly, not barred by limitation.

F 12. Having regards to the facts and circumstances of this case,
 we set aside the order of the High Court concerning the point of limitation
 and remand the matters back for fresh consideration on merits of the
 case *inter alia*, as to the quantum of compensation. Taking into
 consideration, the long pendency, we request the High Court to dispose
 of the matter expeditiously.

13. The appeals are disposed of in the afore-stated terms.

G **Civil Appeal Nos. 6006-6007 of 2018**
(arising out of SLP (C) No. 16339-16340/2018)
(arising out of SLP (C) No..... CC No. 17187 of 2014)

14. Permission to file the Special Leave Petition is granted.

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15. Application for deletion of respondent no. 3 in Special Leave Petition arising out of First Appeal No. 35 of 1996 is allowed. A

16. Leave granted.

17. As these appeals are filed against the same impugned judgment and order dt. 14.07.2014 passed by the High Court of Judicature at Bombay (Nagpur Bench) and having the same question of law, these appeals are also disposed of in a sequel to the discussion set out above. B

Nidhi Jain

Appeals disposed of.