

State of Kerala Vs. Matha

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Court : Kerala

Decided On : Jan-20-2005

Reported in : 2005(1)KLT788

Judge : K.S. Radhakrishnan and; M.N. Krishnan, JJ.

Acts : Land Acquisition Act, 1994 - Sections 28A

Appeal No. : W.A. No. 875 of 1997

Appellant : State of Kerala

Respondent : Matha

Advocate for Def. : N.L. Krishnamoorthy and; Sathya Shreepriya, Adv.

Advocate for Pet/Ap. : Lal George, Adv.

Disposition : Appeal allowed

Judgement :

K.S. Radhakrishnan, J.

1. The short question that has come up for consideration in this case is whether the period of limitation for filing an application under Section 28A of the Land Acquisition Act, 1994, begins to run from the date of passing of the award by the Court in a reference filed by the land owner, other than the applicant, whose land

was acquired by common notification under Section 4 or from the date of knowledge by the applicant of the passing of the award by the Civil Court.

2. The above mentioned question is no more *res Integra*. Apex Court in *State of A.P. v. Marri Venkaiah and Ors.*, 2003 (7) SCC 280, answered the question and held that the limitation begins to run from the date of passing of the award and not from the date of knowledge of the award.

3. A Division Bench of this Court in *Indira Devi v. Special Tahsildar*, 1991 (1) KLT 33, interpreting Section 28A of the Act held that the knowledge of the award is imperative before the land owner can exercise his right under Section 28A. The Court held that it is only proper to treat the date of knowledge of the award of the Court as the starting point of the period of three months for an application under Section 28A. While computing the period of three months, it was held that, the period begins to run from the date of knowledge of the award subject to the exclusion contained in the proviso to Section 28(1). Learned Single Judge followed the decision of the Division Bench in *Indiradevi's case*, *supra*, and set aside Ext.P4 order of the District Collector. Learned Judge consequently directed the Collector to examine the contention of the petitioners that they have knowledge of the award only on 11.12.1994 and directed to dispose of the application accordingly.

4. Counsel appearing for the writ petitioner Smt. Sathyasree Priya when faced with the decision of the Apex Court in *Marri Venkaiah's case*, *supra*, (2003) 7 SCC 280, placed reliance on the decision of the Apex Court in *State of Tripura v. Roopchand Das and Ors.*, (2003) 1 SCC 421, and contended that whatever be the legal position, benefit be given to the petitioners if their applications are within the period of limitation from the date of the latest award since there are more than one awards. She also wanted us to direct the Government to reckon the date of the latest award so as to claim the benefit of the decision of the Apex Court in *Roopchand's case*, *supra*.

5. We are of the view the decision of the learned Single Judge cannot be sustained since the principle laid down in *Indiradevi's case* is no more good law in view of the decision of the Apex Court in *Marri Venkaiah's case*, *supra*, (2003) 7 SCC 280. It is also to be noted that a learned Judge of this Court in *State of Kerala*

v. Velayudhan, 2003 (3) KLT SN P. 142, also took the view that reference Court was not justified in condoning the delay in filing Section 28A application beyond three months from the date of the award. We therefore affirm the judgment of the learned Single Judge in Velayudhan's case, supra, 2003 (3) KLT SN P. 142 and hold that the decision in Indira Devi's case, supra, 1991 (1) KLT 33, is no more good law in view of the decision of the Apex Court in Marri Venkaiah's case, supra, (2003) 7 SCC 280.

6. In such circumstances, we are inclined to allow this appeal and set aside the judgment of the learned Single Judge. With regard to the contention raised on behalf of the petitioners that the application be considered applying the dictum laid down in Roopchand Das's case, we make it clear it is open to the petitioners to work out their remedies if they are entitled to on the basis of the revised judgment in L.A.R.No. 2 of 1993 of the Sub Court, Quilandy. If the authorities are moved they would consider the application in the light of the judgment of the Apex Court in Roopchand Das's case, supra, and in accordance with law.

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