Supreme Court of India
Sharadchandra Ganesh Muley vs State Of Maharashtra And Ors on 14 August, 1995
Bench: K. Ramaswamy, B.L. Hansaria

CASE NO.:
Appeal (civil) 7565-66 of 1995

PETITIONER:
SHARADCHANDRA GANESH MULEY

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT: 14/08/1995

BENCH:
K. RAMASWAMY & B.L. HANSARIA

JUDGMENT:

JUDGMENT 1995 (2) Suppl. SCR 693 in W.P. No. 649 of 1984 and W.P. No. 2249 of 1994.

The following Order of the Court was delivered : Delay of 840 days condoned. Leave granted.

The appellant is challenging the notification under s.4(1) of the Land Acquisition Act published on February 3, 1970. Initially, he filed W.P. 649/84 and obtained stay of dispossession of February 16, 1984. That writ petition was dismissed on merits on March 31,1992. The Land Acquisition officer made the award on March 30, 1994 which was challenged in W.P. No. 2249 of 1994, but without success. Thus these appeals by special leave against the original writ petition as well as the second writ petition.

Shri Khanwilkar, learned counsel for the appellant, has stated in fairness that in the first petition he could not canvas the bar of limitation under s.11A of the Act for the reason that the appellant had obtained an order through the court on February 16, 1984 injuncting dispossession of the land from him; and in view of the judgments rendered by this Court that direction would be an impediment for the authorities to make the award within two years. Therefore, he raised a further contention that since the award has not been made within two years from the date of the decision of the High Court, namely, March 31, 1992, the award passed under s. 11 is without jurisdiction. We find no force in the contention.

It is seen that the bar under s.11A was available to the appellant when the first writ petition was filed, since the Amendment Act 68 of 1984 had come into force on September 24, 1984 during the pendency of the writ petition. He did not raise the point. Therefore, the doctrine of "might and ought" engrafted in Explanation IV to s.11 of the CPC would come into play and the appellant is precluded to raise the controversy once over. Therefore, the doctrine of constructive res judicata puts an embargo on his right to raise the plea of bar of limitation under s.11A.

Further, we have seen the xerox copy of the award, copy of which had been supplied to the appellant. It clearly indicates that the Land Acquisition Officer made the award on March 30, 1994 under his signature and seal. Under s.12(1) of the Act it is conclusive evidence of making of the award. Because of the mere fact that the appellant had received the copy of the award on April 12, 1994, it cannot be held that the award was made on that date. There are no interpolations in the signature made by the officer along with the date. It is seen that the over-writing is only in respect of some other matters. Under s.11(2), it is mandatory that the authorities shall obtain prior approval of the competent authority or the State Government in case where the value of the land exceeds the value prescribed under the rules made by the appropriate Government. In fact the award clearly indicates that on May 17, 1993 endorsement was made "subject to prior approval". Obviously, the award was made on May 17, 1993 and after obtaining the prior approval, it was signed by the Land Acquisition Officer on March 30, 1994. Therefore, the award was clearly made within two years from the date of the judgment of the High Court.

We do not, therefore, find any illegality warranting interference. The appeals are accordingly dismissed. No costs.

Appeals dismissed.