

(2001) 10 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 3332 of 1999

Akbarmiya Amirmiya and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(2), 18, 18(1), 28A

Citation : (2002) 2 GLR 954(1)

Hon'ble Judges : J.N. Bhatt, J; Akshay H. Mehta, J

Bench : Division Bench

Advocate : B.S. Patel, for the Appellant; A.D. Oza, G.P. and A.J. Desai, A.G.P., for the Respondent

Judgement

J.N. Bhatt, J.—The main point in focus, in this group of petitions, is as to whether the petitioners are entitled to the benefit of the provisions of Section 28A of the Land Acquisition Act, 1894 (the Act for short) pertaining to redetermination of the amount of compensation on the basis of the award of the Court.

2. Since all the petitioners have claimed the benefit of the provisions of Section 28A of the Act, and common questions are involved in this group of petitions, therefore, upon request, they are being disposed of by this common judgment.

3. The petitioners had requested the respondent authority for redetermination of the amount of compensation obtained by them on the basis of the consent award declared on 24-2-1988 u/s 11(2) of the Act, on the strength of the subsequent award of the Court u/s 18(1) declared on 13-2-1989. The respondent authority declined the request of the petitioners, inter alia, on the ground that they are not entitled to the benefit of the provisions of Section 28A of the Act, and also, on the ground that in view of condition No. 4 of the agreement between the parties, the petitioners after making agreement and resultant award based on that, u/s 11(2), not entitled to make reference u/s 18 of the Act.

4. The following admitted facts may be highlighted.

(1) The petitioners are agriculturists and they had agricultural lands in sim of village Nagalpur, Dist: Mehsana.

(2) Notification u/s 4(1) of the Act had been published in the official gazette on 13-9-1984 followed by notification u/s 6(1) on 16-2-1986 for the acquisition of the land of the petitioners.

(3) There was an agreement and resultant consent award u/s 11(2) between the parties.

(4) The amount of compensation had been paid to the petitioners at the rate of Rs. 12.84 ps. per sq. mtr. by the order dated 24-2-1988 pursuant to the consent award.

(5) Some of the claimants who have not entered into consent award desired to make reference u/s 18 of the Act, as a result of which, the reference had been made.

(6) The reference Court (District Court, Mehsana) passed award u/s 18 in Reference Cases No. 295 and 296 of 1989 which was modified by this Court, which prompted me petitioners to approach the respondent No. 2 by filing application u/s 28A of the Act.

(7) The respondent No. 2 rejected the applications of the petitioners on the ground that they are not entitled to re-determination of compensation as there was consent award u/s 11(2) and condition No. 4 of the agreement.

5. That is how, the petitioners have, now come up before this Court challenging its legality and validity by filing this group of petitions under Article 226 of the Constitution of India.

6. We have heard the learned Advocates appearing for the parties. We have, also, examined the factual profile and the legal landscape relevant to the issue in focus,

7. Section 28A of the Act is introduced with a specific design and desideratum to provide for re-determination of amount of compensation and for that purpose to empower the Court to re-determine the amount of compensation on the basis of award of the Court. It reads as under :

"28A. 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 u/s 11, the persons interested in all the other land covered by the same notification u/s 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 u/s 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 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-sec., the day on which the award was pronounced and the 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 u/s 18."

It is quite obvious and explicit from the plain perusal of Section 28A that it applies only to those claimants who had failed to seek reference u/s 18 of the Act and re-determination has to be done by the Collector on the basis of compensation awarded by the Court in a reference u/s 18 of the Act and application in that behalf has to be made to the Collector within three months from the date of award of the Court.

8. There is no dispute about the fact that consent award was passed by the Collector concerned, upon the agreement reached between the parties, on 24-2-1988, and they had not obviously, desired for reference u/s 18 of the Act. The award passed in favour of the petitioners on the basis of agreement is, admittedly, not upon adjudication by the Competent Authority u/s 11(1) as well as u/s 18 of the Act. It is, specifically, averred in the affidavit-in-reply that after making an agreement u/s 11(2), award came to be passed, and therefore, the claimants, petitioners herein, would not be entitled to make an application for reference to the Court u/s 18 of the Act.

9. Section 18 of the Act provides for reference to the Court and procedure thereon. It would be expedient here to refer to the said provisions which read as under :

"18. Reference to Court -- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made --

(a) if the person making it was present or represented before the Collector at the time when he made this award, within six weeks from the date of the Collector's award;

(b) in other cases within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire."

The opening words of Section 18 clearly go to show that the claimant who has not accepted the award is entitled to require the authority to make a reference for the determination of his petition as to measurement of the land, the amount of compensation, apportionment of it or the payability to the persons interested in the land acquired.

Section 11 provides for inquiry into the measurement, value and claims and award by the Collector. Sub-section (2) provides for making of an award according to the terms of an agreement between the parties. In other words, Section 11(1) provides for an award or offer to be made to the owner of the land whose land has been acquired by the Government. Whereas, Section 11(2) provides for an award based on consent.

10. It would be, also interesting to refer to the provisions of Sec. 31 of the Act. Second proviso to Section 31 will be relevant to be referred to. Section 31 makes provision for payment of compensation or deposit of the same to be made in the Court by the competent authority. Second proviso makes it very clear that payment of compensation on deposit of the sum in the Court by the authority after making an award u/s 11 is subject to the provision that no person who has received the part of the amount otherwise than under protest shall be entitled to make an application u/s 18. This lends reinforcement to the view that a person who is a consenting party in an award u/s 11(2) is not entitled to seek reference u/s 18. If he has received the amount of compensation otherwise than under protest, also, shall not be entitled to make any reference u/s 18. A person who is not entitled to seek any reference u/s 18, obviously, would not be entitled to the benefit of Section 28A. It is very clear from the provisions of Section 28A that it provides benefit to a person and it shall apply only to those claimants who had failed to seek reference u/s 18 of the Act. But a person who is not entitled to seek reference u/s 18, obviously, would not be entitled to the benefit u/s 28A of the Act. Again, as per condition No. 4 of the agreement between the consenting parties, like that the present petitioners, after making an agreement and resultant award u/s 11(2) of the Act, they would not be entitled to seek a reference.

11. It would be interesting to refer here the amendment introduced by Gujarat Act No. 20 of 1965. Section 11(2) to (4) came to be introduced, for the first time, whereby, the concept of consent award empowering the Collector to act on the agreement between the parties came to be provided. Obviously, the object of introducing such a provision in Sub-section (2) of Section 11 has been to

encourage negotiations and conciliations between the parties interested in the land and the acquiring body as regards value of land under acquisition, and also, to avoid delay in acquisition proceedings and unnecessary and unwarranted litigation. The Parliament, also, passed Land Acquisition (Amendment) Act, 1984, on similar lines amending Section 11 of the principal Act.

12. If both the parties to the agreement agree to the amount of compensation, the Collector having jurisdiction after satisfying himself as to the genuineness and voluntary nature of the agreement and further that such an agreement can be taken into consideration for passing an award under Sub-section (2) of Section 11 can pass award u/s 11(2). It is, therefore, obvious and evident that Sub-section (2) of Section 11 is empowering and enabling the concerned authorities having jurisdiction to act on duly and genuinely executed agreement between the parties and to pass consent award. The very concept and philosophy of consent award envisioned and ingrained in Section 11(2) of the Act is to make expeditious payment of compensation and to acquire immediately the possession of the required land so as to avoid delay and achieve the object of notification u/s 4(1) of the Act. The plea and the premise on which this group of petitions on hand is founded upon is counter to the spirit and provisions of Section 11(2) of the Act. Section 28A of the Act is designed to enable a person who has received the amount of compensation u/s 11(1) of the Act to apply to the Competent Authority for re-determination of the amount of compensation in the event of any award of the Court u/s 18, wherein, the amount of compensation is on a higher side or is enhanced and the claimant who has not availed the benefit of seeking reference u/s 18 is entitled to the benefit of Section 28A of the Act.

13. The view which we are inclined to take in this group of petitions, after close scrutiny and analysis of Sub-section (2) of Section 11 of the Act is, also, reinforced by the decision of the Apex Court in Abdul Aziz Abdul Razak and another Vs. Municipal Corpn. of Greater Bombay and another, , in which the benefit of statutory enhanced rate of interest was refused to the claimants on the ground that there was a contract and the award was u/s 11(2) as amended by the Act 68 of 1984. It was, clearly, held that the benefit of enhanced rate of interest as per the Amendment Act cannot be allowed in view of the agreement between the parties. It was, further, held that the Land Acquisition Officer was entitled to award interest as per the contract between the parties.

14. It will be, also, interesting to refer to a decision of the Division Bench of this Court in Dinesh Soni and Ors. v. O.N.G.C. 1994 (2) GLH 131, wherein, this Court has, unequivocally, held that where there is an award made based on agreement between the parties, the claimant is not entitled to seek reference and the concerned Collector is not empowered to make a reference u/s 18 of the Act in view of the provisions of Section 11(2). This Court in a Division Bench decision in Ismail Ibrahim Pandoor through P.A.H. Bai Mariam Suleman Pandoor Vs. Officer on Spl. duty Land Acquisition Unit III and Others, , has also held that when an agreement has been reached between the owner of the land and the Land

Acquisition Officer and the amount of compensation is fixed accordingly, it would be determination of the market price u/s 11(2) and not u/s 11(1) of the Act, and therefore, there would not lie an application seeking reference u/s 18(1) of the Act. The view which we are taking is further reinforced by the following decisions :

(1) Ishwarlal Premchand Shah and others Vs. State of Gujarat and others,

(2) State of Gujarat, etc. Vs. Daya Shamji Bhai, etc.,

(3) Babua Ram and Others Vs. State of U.P. and Another, .

15. There is no other contention much less the contention that the agreement on which the award u/s 11(2) is based on is void or inexecutable. In our opinion, therefore, the contention of the respondent authorities that the claimants are not entitled to the benefit of the provisions of Section 28A of the Act as they are the beneficiaries of the award u/s 11(2) is quite justified and the plea on the basis of which this group of petitions are founded upon is unsustainable requiring us to dismiss the petitions leaving the parties to bear their own costs. Accordingly, these petitions are dismissed with no order as to costs. Rule discharged, No costs.