

(2010) 03 OHC CK 0041

In the Orissa High Court

Case No : Writ Petition (C) No. 3225 of 2009

Akula Garanayak and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Land Acquisition Act, 1894 — Section 11, 18, 28A, 28A(1), 4(1)

Citation : (2010) 110 CLT 177 : (2011) 1 OLR 465 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Judgement

Sanju Panda, J.—Challenge has been made in this Writ Petition to the Order Dated 19.12.2008 passed by the Zone Officer, Land Acquisition & Resettlement & Rehabilitation Officer, Rengali Multipurpose Project, Deogarh in LA Case No. 961 of 2006.

2. In pursuance of the notification u/s 4(1) of the Land Acquisition Act (in short, "the Act") published in the year 1978, the entire village of Badaludunga of Pallahara Block including the residential houses of the Petitioners was submerged in the Rengali Dam Project. Applying multiplier theory, the Land Acquisition Officer, Deogarh, fixed the compensation for the acquired land as follows:

KISSAM RATE Sarad-I Rs. 4,500 per acre Homestead Rs. 4,500 per acre Sarad - II Rs. 3,800 per acre Sarad- III Rs. 3,800 per acre Goda-I Rs. 2,500 per acre Gada-II Rs. 2,000 per acre

Being aggrieved by the said award, some of the villagers filed applications u/s 18 of the Act to refer the matter to the Court. The Learned Civil Judge (Senior Division), Deogarh in L.A Misc. Case No. 25 of 1991 enhanced the rate of compensation at the rate of Rs. 22,400 per acre, in LA Misc. Case No. 87 of 1991 at the rate of Rs. 21,000 per acre & in LA Misc. Case No. 9 of 1992 at the rate of Rs. 20,000 per acre. Even though the present Petitioners could not file applications u/s 18 of the Act to refer the matter to the Civil Court after the

Court enhanced the awarded amount they filed applications u/s 28A(1) of the Act within the stipulated time for enhancement of the award. The civil Court also enhanced the awarded amount on 17.4.1995 in another case, i.e., LA Misc. Case No. 3 of 1994. Being aggrieved by the said award, the State Government filed FA No. 187 of 1995 before this Court which was disposed of on 19.6.2000.

3. The present Petitioners filed OJC No. 2546 of 2002 which was disposed of by this Court on 25.8.2005 with a direction to the Land Acquisition Officer to consider the applications of the Petitioners filed u/s 28A(1) of the Act within three months from the date of receipt of the order. As the Land Acquisition Officer did not consider the same within the stipulated time, the Petitioners filed Contempt Application No. 374 of 2006. During pendency of the said contempt application, the Petitioners application u/s 28A(1) of the Act was rejected on 12.6.2007 holding that the application was filed within stipulated period as provided u/s 28A of the Act but the applicants submitted the application along with a xerox copy of the Judgment. The applicants were given opportunity to submit the certified copy of the Judgment. However, they filed the certified copy in December, 2006 which was not within three months of the pronouncement of the Judgment of the Civil Court, Talcher. Therefore, their application for re-determination of compensation u/s 28A of the Act could not be considered. Challenging the said order. WP(C) No. 5089 of 2008 was filed which was disposed of by this Court on 23.6.2008 directing the Zone Officer, Deogarh to verify the records & arrive at a conclusion whether the Judgment passed in FA No. 187 of 1995 was available in the record & whether the petition u/s 28(A) was filed within three months from the said Judgment as well as the time spent for obtaining the certified copy & dispose of the matter on merit afresh within a period of six months, if there was no other impediment.

4. After disposal of the said Writ Petition, the Zone Officer heard the matter on 19.12.2008 & considering the materials available on record rejected the application holding that the application dated 14.7.1995 was filed without certified copy of the Judgment passed in LA Misc. Case No. 3 of 1994. Hence, the Petitioners were asked to file the said certified copy. They filed the said certified copy in December, 2006 which disclosed that they applied for the same on 11.12.2006. FA No. 187 of 1995 was filed by the State & the Petitioners also filed their cross-objection in the same. The said first appeal was disposed of on 19.6.2000 enhancing the awarded amount. Since the appeal was a continuation of the proceeding, the final order in the first appeal became the final order of the proceeding. Therefore, the limitation started from 19.6.2000; The first application dated 14.7.1995 was based on the Judgment in LA Misc. Case No. 3 of 1994 & it was not accompanied by the certified copy. Therefore, the same was rejected. The said technical defect was never cured by the applicants & the award had been refixed by this Court. Hence, the Zone Officer had to consider whether the application dated 7.12.2005 along with the certified copy of the Judgment passed in LA Case No. 3 of 1994 & the xerox copy of FA No. 187 of 1995 was filed within the period of limitation or not. The period of three months

of limitation as stipulated u/s 28A(1) of the Act completed on 19.9.2000. The copy of the Judgment in FA No. 187 of 1995 showed the date of application to be 29.7.2000 & the date of delivery to be 16.8.2000 so the copy period was 19 days. Therefore, the application should have been filed by 8.10.2000. But it was filed on 7.12.2005 which was more than five years after the period of limitation. Hence, the application could not be considered & the same was rejected as it was made much beyond the period of limitation. The said order is impugned in this Writ Petition.

5. Learned Senior Advocate appearing for the Petitioners submitted that from the Order Dated 12.6.2007 it appears that the Petitioners filed the application u/s 28A(1) of the Act within the stipulated time. Therefore, the authority should have considered the application on merit & re-determined the award amount as per the direction given in LA Misc. Case No. 3 of 1994 as well as FA No. 187 of 1995 & the Zone Officer should not have rejected the application of the Petitioners on the ground that the same was barred by limitation. Therefore, the impugned order is liable to be set aside.

6. We have called for the LCR & perused the same. Admittedly the order was passed by the Zone Officer on 12.6.2007. This Court in WP(C) No. 5089 of 2008 directed the Zone Officer, Deogarh to examine whether the application of the Petitioners was filed within the period of limitation after excluding the time consumed for obtaining the copy as per the certified copy. The Zone Officer though held that the application u/s 28A(1) of the Act was filed within the stipulated time, the Petitioners did not file the certified copy of the Judgment along with the application.

7. Section 28A(1) of the Act provides for re-determination of the amount of compensation on the basis of the award of the Court. For better appreciation, Section 28A(1) of the Act is quoted below:

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) & who are also aggrieved by the award of the Collector, may, notwithstanding that they had No. 1 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-Section, the day on which the award was pronounced & the time requisite for obtaining a copy of the award shall be excluded.

8. From the above, it is crystal clear that the aforesaid Section stipulates that an application for re-determination of the amount of compensation has to be filed

within three months, but it does not strictly stipulate that the application shall be accompanied by a certified copy of the order of the Court. From a plain & simple reading of the aforesaid provision, it is clear that the Petitioners' application was within the time after the Court directed to re-determine the compensation on 17.4.1995 so also as held by the Zone Officer on 12.6.2007. The said order reveals that LA Misc. Case No. 3 of 1994 was disposed of on 17.4.1995 by the Learned Civil Judge (Senior Division), Deogarh. An application u/s 28A(1) of the Act was filed on 14.7.1995 & the said Section does not provide that the application must be accompanied by a certified copy.

9. This Court also considered the submissions made by the Learned Counsel for the State that this Court in WP(C) No. 5089 of 2008 directed the Zone Officer to verify the record to arrive at a conclusion whether the application was filed within three months or not taking into consideration the certified copy of the Judgment. But such a situation arose only to compute the period of limitation of three months. Had the application been filed being accompanied by the certified copy, the Petitioners would have been entitled to the exclusion of the time consumed for obtaining such certified copy. But, admittedly the Petitioners along with others who were 30 in numbers had filed the application within the stipulated time along with the xerox copy of the Judgment. Therefore, on that ground their application should not have been rejected though they did not file the certified copy of the Judgment. The requirement of law is that as per Section 28A(1) of the ACT an application has to be filed within a period of 3 months for re-determining the awarded amount & the said Section does not specifically provide that the application must be accompanied by a certified copy of the Judgment.

10. To appreciate this fact, we may refer to Order 41 Rule 1 of the CPC wherein it is provided that a memorandum of appeal shall be accompanied by a copy of the Judgment. In such a situation, a copy of the Judgment should be filed. But Section 28A(1) of the Act provides that in computing the period of three months within which an application to the Collector shall be made under the Sub-Section, the day on which the award was pronounced & the time requisite for obtaining a copy of the award shall be excluded. While interpreting the said provision, it cannot be said that an application under the said provision is to be filed accompanied by a certified copy of the Judgment.

11. There is no doubt that the Land Acquisition Act is a benevolent statute & the Government gives compensation to the land oustees for taking away their land by way of land acquisition. Further Section 28A(1) of the Act provides that even if 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(1), even though they had not made an application to the Collector u/s 18, may file an application for enhancement of the award. However, if the Court has enhanced the award on a reference of other persons then also the land oustee can file an application u/s 28A(1) of the Act & will get the benefit of such enhancement of the award. Therefore, the provision

should be interpreted for the benefit of the land oustee & not against the interest of the land outstee who has lost his property & also suffered in not getting the proper compensation considering the value of the property.

12. In view of the discussions made in the foregoing paragraphs, the Order Dated 19.12.2008 passed by the Zone Officer, Land Acquisition & Resettlement & Rehabilitation Officer, Rengali Multipurpose Project, Deogarh in LA Case No. 961 of 2006 is illegal & not sustainable in the eye of law. Therefore, this Court sets aside the said impugned Order Dated 19.12.2008 passed in LA Case No. 961 of 2006 & directs the Zone Officer, Deogarh, to redetermine the awarded amount. Since this is an old matter of the year 1995, this Court directs him to re-determine the awarded amount within a period of two months & disburse the same to the Petitioners immediately thereafter.

I.M. Quddusi, A.C.J.

13. I agree