

(2013) 08 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7063 of 2013

Annamma Varghese

APPELLANT

Vs

Special Tahsildar (L.A.)

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 4 KHC 106 : (2013) 4 KLJ 273 : (2013) 4 KLT 40

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : Thomstine K. Augustine, K.C. Thomas Pala and M.P. Raju, for the Appellant; C.K. Sherin, Sr. Government Pleader, for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner, owner of an extent of an item of immovable property comprised in Re-survey No. 48/3-1 of Cheirakadavu Village in Kanjirappally Taluk, has filed this Writ Petition challenging Ext. P5 proceedings of the 1st respondent, rejecting an application filed by her u/s 28A(3) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" for short). An extent of 2.82 Ares of land was acquired for the purpose of up-gradation of the Punalur-Muvattupuzha road. According to the petitioner, only a meagre amount was awarded to her as compensation for the land acquired. However, the petitioner had not sought for a reference to the Civil Court, under S. 18 of the Act. According to her, an adjacent property owner had sought for such a reference and the matter was adjudicated by the Sub Court, Pala, and by Ext. P2 judgment, enhanced compensation was awarded. The petitioner thereupon submitted Ext. P3 application dated 18.4.2011 under S. 28A of the Act, seeking the benefit of Ext. P2 judgment. However, the same was rejected by the 1st respondent. Therefore, the petitioner preferred Ext. P4 application under S. 28A(3) of the Act. As per Ext. P5 proceedings dated 17.12.2012, the 1st respondent has rejected the said application. The petitioner challenges the said order in this Writ Petition. The reason stated for rejection of the petitioner's application is that, as per an agreement, Ext. R1(b) dated 18.6.2008, entered

into between the petitioner's husband and the 1st respondent at the instance of the additional 3rd respondent, a resettlement and rehabilitation package was accepted. Therefore, having accepted the compensation granted as per Ext. R1(b), it is not open to the petitioner to turn around and seek a reference u/s 28A(3) of the Act in view of Ext. P2 judgment. Since the petitioner had accepted the award without any protest, it has been held that the petitioner is not entitled to seek a relief under S. 28A(3) of the Act.

2. According to the learned counsel for the petitioner, Advocate Sri Thomstine K. Augustine, the 1st respondent had already passed an award under S. 11(1) of the Act and notice of the said award had been issued to the petitioner as early as on 1.4.2008. Ext. P1 is the notice of award so issued. Having passed an award determining the compensation payable to the petitioner, it is contended that the 1st respondent had no power or authority to enter into an agreement in the nature of Ext. R1(b), invoking the powers under S. 11(2) of the Act. Reliance is also placed on a decision of the Apex Court to support the above contention.

3. A counter affidavit has been filed by the 1st respondent. According to the 1st respondent, there are two modes available to the 1st respondent in the matter of acquiring land for a public purpose. They are, negotiated direct purchase and acquisition of the land. Where the procedure for negotiated direct purchase is adopted, the party accepts a lump sum payment as compensation with no right to claim an enhancement in the said amount. This is because of the fact that having agreed for the lump sum amount, he is not permitted to turn around and seek enhanced compensation later. Where the second mode of acquisition is adopted, it is within the powers of the 1st respondent to fix the compensation for the land, without the junction of the land owner and therefore, the owner of the land is entitled to challenge the land value so fixed and to claim enhancement. In the present case, the petitioner having accepted the amount of compensation and executed Ext. R1(b) agreement, he is not entitled to claim any further enhancement. Therefore, the learned Government Pleader seeks dismissal of this Writ Petition.

4. Heard. It is not in dispute that an award was passed under S. 11(1) of the Act as early as on 01.04.2008. Ext. P1 is the notice of the award. S. 11 of the Act is reproduced hereunder for convenience of reference:

11. Enquiry and award by Collector--[(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land [at the date of the publication of the notification u/s 4, Sub-Section (1)] and into the respective interests of the persons claiming the compensation and shall make an award under his hand of--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf].

[(2) Notwithstanding anything contained in sub-Section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908, (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under the Act].

(emphasis supplied)

5. A perusal of the above provision gives an impression that though S. 11(1) confers powers on the District Collector to pass an award in terms of the said provision, it would be open to the Land Acquisition Officer to invoke the powers under S. 11(2) at any stage of the proceedings. This is because of the sweeping words in which sub-s. (2) is framed. The words "at any stage of the proceedings" would give an impression that, the power under S. 11(2) could be invoked by the District Collector at any stage. The above provision had come up for consideration before the Apex court in Orissa Industrial Infrastructure Development Corporation Vs. Supai Munda and Others, After considering the issue, the Apex Court has laid down the law in the following words at para. 11 of the said judgment.

11..... When the award is made by the Collector under S. 11 of the Act, the proceedings before him stand terminated as soon as the award is made. The provision of sub-section (2) of S. 11 is attracted only at any stage of the proceedings before the Collector, that is to say, if the Collector has not passed the award u/s 11 of the Act and the proceedings before him were still subsisting. In the present case, it clearly appears from the award dated 25.07.1992 itself that it was made under

S. 11 of the Act. The claimant Shri Supai Munda (respondent herein) has categorically stated that he received the compensation amount pursuant to the notice under S. 12(2) of the Act, which was issued on 27.7.1992. That statement remains uncontroverted. In our view, therefore, there was no occasion for the learned Collector to have recourse to sub-section (2) of S. 11 of the Act. There can never be two awards -- one under S. 11 of the Act and another under S. 11(2) of the Act over the same land acquired.

(emphasis supplied)

6. In view of the above binding pronouncement of the law, there cannot be any doubt that the award under S. 11(1) having been passed as early as on 1.4.2008, the agreement Ext. R1(b) dated 18.6.2008 was absolutely without jurisdiction. In view of the above, the fact that Ext. R1(b) was executed, cannot be a ground for rejection of the petitioner's application Ext. P4 by Ext. P5.

7. The learned Government Pleader has raised a contention that the petitioner had not made any protest while receiving the award amount. The said conduct cannot have any bearing on the question as to whether the petitioner's application under S. 28A(3) should be considered or not. This is for the reason that the said provision itself has been enacted to provide redressal to persons who had not protested to the award and sought a reference to the civil court under S. 18 of the Act. The position has been clarified beyond any doubt by the dictum laid down by the Apex Court in *Union of India (UOI) and Another Vs. Hansoli Devi and Others*, where a Constitutional Bench has observed as follows:

Para. 11: Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under S. 28A. If a person has not filed an application under S. 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of S. 28A and would be entitled to make an application when some other landowner's application for reference is answered by the reference court. It is apparent on the plain language of the provisions of S. 28A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the legislature itself to deny the benefit of substantial right conferred upon the owner.

For the foregoing reasons, it is to be held that the ground mentioned in Ext. P5 for rejecting the petitioner's application under S. 28A(3) of the Act, evidenced herein by Ext. P4, is unsustainable. Ext. P5 is therefore set aside.

This Writ Petition is accordingly allowed. The 1st respondent is directed to make a reference of the petitioner's case to the competent Civil Court under S. 28A(3) of the Act, within a period of two weeks.