

(2004) 08 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 7892 of 2004

Arvindbhai Ramanbhai Shah

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Land Acquisition Act, 1894 — Section 11, 18, 28A, 28A(1), 4
Limitation Act, 1963 — Section 12

Citation : (2004) 08 GUJ CK 0062

Hon'ble Judges : K.M. Mehta, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : K.M. Sheth, for Petitioner No. 1-2/2, for the Appellant; S.P. Hasurkar, AGP, for the Respondent

Final Decision : Allowed

Judgement

K.M. Mehta, J.—Arvindbhai Ramanbhai Shah and others, petitioners, have filed this petition with a prayer that this Court may be pleased to quash and set aside the impugned order passed by respondent No. 1, The Special Land Acquisition Officer, dated 25.3.2004 by issuing suitable writs i.e. writ of certiorari. The petitioners have further prayed that this Court may direct respondent No. 1 to allow the application of the petitioners u/s 28A of the Land Acquisition Act (hereinafter referred to as "the Act") according to the judgement and order passed by the Reference Court in L.R.C. No. 505 of 1993 to 513 of 1993 dated 24.9.2002 and further direct the respondents to immediately pay the amount of compensation according to the judgement of the Reference Court by way of issuing suitable writ, order or direction under Article 226 of the Constitution of India.

2. The brief facts giving rise to this petition are as under:

2.1 The petitioners were owners and occupiers of the land situated at Khandivada, tal. Vaghodia, Dist. Vadodara. As regards Arvindbhai Ramanbhai

Shah, he was owner of land bearing survey No. 26/1/38 admeasuring 1 hectare 70 Are 8 sq. mtrs. As regards heirs of deceased Himmatbhai Madhabhai namely Rameshbhai Himmatbhai, Ishwarbhai Himmatbhai, they were the owners of Survey No. 16 admeasuring 1 hectare, 09 Are 1 Sq. mtr. and Survey No. 17 admeasuring 29 Are 34 sq. mtrs.

2.2 The Government of Gujarat has decided to acquire the said land for the construction of main canal of Narmada Project. The Government thereafter issued Notification u/s 4 of the Act on 7.7.1998. Thereafter, after completing necessary formalities under the provisions of the Act, the Land Acquisition Officer awarded compensation at the rate of Rs. 2/- per sq. mtr. by passing award in Case No. 1/88 on 18.5.1991.

2.3 It is the case of the petitioner in the petition that the said amount of compensation was very meagre and insufficient, some of the claimants of the same village, of the same notification and of the same award, approached the Joint Civil Judge (S.D.) at Vadodara by way of filing Reference Application u/s 18 of the Act. The claimants in their petition have prayed for award of Rs. 20/- per sq. mtr. for their acquired land. The Reference Court has partly allowed the Reference Application of the said claimants and determined the rate of compensation of the lands of the claimants at the rate of Rs. 13/- per sq. mtr. including the amount awarded by the Land Acquisition Officer by way of judgement and order dated 24.9.2002 in the Reference Case Nos. 505 of 1993 to 513 of 1993.

2.4 In view of the aforesaid position, the present petitioners have preferred an application u/s 28A of the Act to the respondents through their advocate on 11.11.2002 with a request to the respondents that their application may be allowed as per the judgement of the Reference Court and the petitioners should be awarded the amount of compensation at the rate of Rs. 13/- per sq. mtr. as per the judgement of the Reference Court. The said application has been annexed by the petitioners at Annexure-B to the petition. In the said application four claimants with different survey numbers have been shown, namely, (1) Vanubhai Manubhai Parmar, (2) Chimanbhai Chuniabhai, (3) Arvindbhai Ramanlal Shah and (4) heirs of Himmatbhai Madhabhai - Rameshbhai Himmatbhai and Ishwarbhai Himmatbhai. It appears that out of the four people, only claimant Nos. 3 and 4 have filed the present petition.

3. Thereafter, the petitioners have received a letter from respondent No. 1 dated 31.7.2003 requesting them to remain present before respondent No. 1 for hearing of the application u/s 28A on 13.8.2003. The said letter dated 31.7.2003 has been produced by the petitioners at Annexure-C to this petition.

4. The petitioners along with their advocate appeared before respondent No. 1 on 13.8.2003 and made written and oral submissions before respondent No. 1 and requested to allow their application on the basis of the judgement of the Reference Court. The petitioners by their letter dated 3.3.2003 addressed to the

Land Acquisition Officer enclosing a certified copy of the order of the Reference Court in Land Reference Case No. 505 of 1993 to 513 of 1993 which was not earlier available to them.

5. The petitioners have contended that thereafter respondent No. 1 has considered the written submissions of the advocate for the petitioners and as per judgement respondent No. 1 has passed draft award and sent the said award allowing the application of the petitioners to the Government, wherein the Government has considered the letter written by respondent No. 2 and sent back the said award to respondent No. 1 to reject the application and pass appropriate order. Ultimately, respondent No. 1 has passed the impugned order rejecting the application u/s 28A of the Act. The Land Acquisition Officer has rejected the application of the petitioners on the ground that the petitioners have not filed their application within the period of limitation from the date of the award u/s 18 of the Act and the petitioners have filed the application after 122 days and therefore it is time barred. Therefore, the Land Acquisition Officer has rejected the application of the petitioners.

6. Being aggrieved and dissatisfied by the said order of the Special Land Acquisition Officer, the petitioner filed the present petition before this Court on 1.7.2004.

7. When the matter was placed before this Court on 6.7.2004, this Court issued notice. Thereafter, the matter was heard on 2.8.2004.

8. We have heard learned advocate, Mr. K.M. Sheth, for the petitioner and learned Assistant Government Pleader, Mr. H.P. Hasurkar, for the respondent.

9. Learned advocate Mr. K.M. Sheth has assailed the impugned order dated 25.3.2004 passed by the Special Land Acquisition Officer on various grounds. He has relied upon Section 28A of the Act. The said Section has been inserted by Land Acquisition (Amendment) Act, (68 of 1984) by Sec. 17 from 24th September, 1984. Section 28A of the Act reads as under:

"28-A. Redetermination 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 redetermined 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 and the time 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 made 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."

Relying on the aforesaid provision, the learned advocate for the petitioner submitted that the person, who is aggrieved by the award u/s 11 of the Act and who has not filed application to the Collector u/s 18 of the Act, is entitled to claim that the amount of compensation payable to him may be redetermined on the basis of the amount of compensation awarded by the Court. The learned advocate for the petitioner submitted that the petitioner had filed application u/s 28A of the Act within the three months from the date of the award of the Reference Court. As per the aforesaid provision also, the claimant has to make an application within three months from the date of the award of the Reference Court. The Reference Court passed the award on 29.4.1997. Admittedly, the petitioner made application u/s 28A of the Act on 21.7.1997, which was received by the Authority, and, therefore, the application u/s 28A of the Act was filed within time. It was specifically stated in the application that certified copy of the judgment and award of the Reference Court was not made available to the petitioner and, to comply with the requirement of Section 28A of the Act, the application was required to be made within three months and, therefore, the petitioner made the application so that there may not any occasion to the Authority to reject the application as being time-barred. It is further submitted in the application that as and when the petitioner receives the certified copy of the judgment and award, he would supply the same to the Authority. It is, therefore, submitted that, when the petitioner made the application u/s 28A of the Act within time, i.e. within three months, there was no question of rejecting the application of the petitioner on the ground that the advocate for the petitioner has submitted certified copy of the judgment and award of the Reference Court after the prescribed period of limitation.

9.1 The learned advocate for the petitioner further submitted that Section 28A is a beneficial provision and it is to be construed liberally. He has relied upon the Statement of "Objects and Reasons" of Section 28A of the Act, which has been reproduced by the Hon'ble Supreme Court in the case of Union of India and another vs. Pradeep Kumari and others reported in (1995) 2 Supreme Court Cases 736 which read as under: (Para 4(ix) pages 740-741)

"The object underlying the enactment of these provisions, as indicated in the Statement of Objects and Reasons, was:

(ix) Considering that the right of reference to the civil court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek redetermination of compensation, once anyone of them has obtained orders for payment of higher compensation from the reference court u/s 18 of the Act."

9.2 The learned advocate for the petitioner has relied upon paragraphs 10 and 11 of the aforesaid judgment (on pages 742 and 743), which read as under:

9.2.A "para 10 - It is possible to visualise a situation where in the first award that is made by the court after the coming into force of Section 28A the enhancement in the amount of compensation by the said award is not very significant for the reason that the person who sought the reference was not able to produce adequate evidence in support of his claim and in another reference where the award was made by the court subsequently such evidence is produced before the court and a much higher amount is awarded as compensation in the said award. By restricting the benefit of Section 28A to the first award that is made by the court after the coming into force of Section 28A the benefit of higher amount of compensation on the basis of the subsequent award made by the court would be denied to the persons invoking Section 28A and the benefit of the said provision would be confined to redetermination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of Section 28A. There is nothing in the wordings of Section 28A to indicate that the legislature intended to confer such a limited benefit u/s 28A. Similarly, there may be a situation, as in the present case, where the notification u/s 4(1) of the Act covers lands falling in different villages and a number of references at the instance of persons having lands in different villages were pending in the court on the date of coming into force of Section 28A and awards in those references are made by the court on different dates. A person who is entitled to apply u/s 28A belonging to a particular village may come to know of the first award that is made by the court after the coming into force of Section 28A in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the cases of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in court on the date of coming into force of Section 28A and may not be in a

position to know, in time, about the first award that is made by the court after the coming into force of Section 28A. By holding that the award referred to in Section 28A(1) is the first award made after the coming into force of Section 28A, such persons would be deprived of the benefit extended by Section 28A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28A. The object underlying Section 28A would be better achieved by giving the expression "an award" in Section 28A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of Section 28A. If the said expression in Section 28A(1) is thus construed, a person would be able to seek redetermination of the amount of compensation payable to him provided the following conditions are satisfied :

- (i) An award has been made by the court under Part III after the coming into force of Section 28A;
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector u/s 11 has been allowed to the applicant in that reference;
- (iii) The person moving the application u/s 28A is interested in other land covered by the same notification u/s 4(1) to which the said award relates;
- (iv) The person moving the application did not make an application to the Collector u/s 18;
- (v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and
- (vi) Only one application can be moved u/s 28A for redetermination of compensation by an applicant."

9.2.B "para 11 - Since the cause of action for moving the application for redetermination of compensation u/s 28A arises from the award on the basis of which redetermination of compensation is sought, the principle that "once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court" can have no application because the limitation for moving the application u/s 28A will begin to run only from the date of the award on the basis of which redetermination of compensation is sought."

9.3 The learned advocate for the petitioner has further relied upon the judgment of the Allahabad High Court in the case of Sukhdeo and others, Vs. State of U.P. and others, , more particularly Paragraph 11 of the said judgment, which reads as under:

9.3.A "para 11 - We now come to the question whether it is imperative that an application u/s 23-A should be accompanied by a certified copy of the award of the Court. No such intention is discernible either expressly or impliedly. In the proviso substantially the provisions as contained in Section 12 of the Limitation

Act, 1963 are to be found. Therefore, if an applicant chooses to file a certified copy of the award along with the application he will be entitled to exclude the time spent in obtaining the copy. However, an application or a certified copy has got to be filed within a period of three months from the date of the receipt of the notice of the award or the date of knowledge of the award either actual or constructive. An application filed within time but unaccompanied by a certified copy of the award cannot be treated even as irregular. It will be a valid application. If the Collector so likes, or if a party wants he may grant time to file a certified copy. For a quicker and expeditious disposal of the application, it will be in the interest of the applicant himself that he should file a certified copy of the award along with his application. The SLAO, therefore, failed to exercise the jurisdiction vested in him by law in rejecting the applications of the petitioners on the ground that they were not accompanied by a certified copies of the award."

9.4 The learned advocate for the petitioner has further submitted that, under the provisions of Section 28A of the Act, the following days are to be excluded in computing period of three months:

(i) The date on which the award was pronounced by the Reference Court.

(ii) The time requisite for obtaining the copy of the award of the Court.

10. Learned Assistant Government Pleader, Mr. H.P. Hasurkar, for the respondent, has tried to support the order passed by the Special Land Acquisition Officer. However, it may be noted that, on behalf of the Special Land Acquisition Officer, no affidavit-in-reply is filed controverting the factual position narrated by the petitioner in the petition. We have, therefore, relied upon and accepted the factual averments made by the petitioner in the petition.

11. We have considered (i) the Statement of Objects and Reasons of Section 28A of the Act, (ii) provisions of Section 28A of the Act, (iii) judgment of the Supreme Court in the case of Union of India and another Vs. Pradeep Kumari and others, , and (iv) judgment of the Allahabad High Court in the case of Sukhdeo and others, Vs. State of U.P. and others, .

12. In this case, the Reference Court passed the award on 29.4.1997. The petitioner submitted application u/s 28A of the Act on 21.7.1997 without certified copy of the award and it was stated in the application that the certified copy of the award was not made available at that time. Thereafter, the certified copy of the award was submitted on 21.7.2000 to the Special Land Acquisition as soon as it was received. In spite of the aforesaid facts and circumstances of the case, the Special Land Acquisition by his order dated 22.3.2004 has held that, as per the Government guidelines, which is issued by the Revenue Department, the petitioner has not supplied the certified copy of the award within the period of limitation and, therefore, the application was rejected.

13. In our view, the reasoning of the Special Land Acquisition is contrary to and inconsistent with the provisions of Section 28A of the Act as well as the principle

laid down by the Supreme Court in the case of Union of India and another Vs. Pradeep Kumari and others, . The Special Land Acquisition Officer ought to have considered the Objects and Reasons as to how Section 28A was introduced and also aforesaid judgment of the Supreme Court. In our view, the order of the Special Land Acquisition is contrary to and inconsistent with the principle laid down by the Allahabad High Court in the case of Sukhdeo and others, Vs. State of U.P. and others, . On a plain reading of sub-section (1) of Section 28A of the Act, it applies to only those claimants who failed to seek reference u/s 18 of the Act. Redetermination has to be done by the Collector on the basis of compensation awarded by the Court in the reference u/s 18 of the Act and the application in their behalf has to be made within three months from the date of the award.

14. We are of the view that if application is filed u/s 28A within three months from the date of the award, it cannot be dismissed as not maintainable if other conditions are satisfied merely because certified copy was not produced along with the application u/s 28A.

14.1 From a bare reading of Section 28A of the Act, production of certified copy of the award along with application as provided under Order 41 Rule 1 of CPC (i.e. copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy excluded. There may be cases where parties may not be aware of the exact nature of the award of the Court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under S. 28A should always be accompanied with the certified copy.

15. In the present case, the Land Acquisition Officer has relied upon the administrative instruction issued by the Government in rejecting the application of the petitioner.. On the other hand, he has ignored the statutory enactment, i.e. Section 28A of the Act.

15.1 Subject to the provisions of the Constitution, the executive power of the Union extends to all matters in respect of which the Parliament has power to make laws. So also, the executive power of the State extends to all matters in respect of which the State Legislature has power to make laws. [Re: Article 73 and 162 of the Constitution of India.]

15.2 Executive function comprises of both determination of policy as well as carrying out its execution. Since the governmental functions have increased, it is inevitable for the Government to issue administrative instructions for determination of policy and its uniform application. However, the administrative rules, regulations and instructions which do not flow from the statutory force,

have no force of law. The Government can fill up the gaps in the statutory rules by issuing administrative instructions. They cannot, however, over reach the Act and the Rules.

15.3 In view of this, the action of the Land Acquisition Officer, relying upon the administrative instruction, which is contrary to and inconsistent with the legislative enactment, is not binding to the respondent-Authority in law and, therefore also, on this additional ground, the order of the Land Acquisition Officer is bad in law. In our view, no Officer of the Government can rely on any administrative instruction which is contrary to and inconsistent with the statutory provision.

16. In the result, the petition is allowed. The order dated 25.3.2004 passed by the Special Land Acquisition Officer, Vadodara, is quashed and set aside. Rule is made absolute with no order as to costs.

17. In view of the aforesaid circumstances of the case, this Court directs respondent No. 1 to consider the application of petitioner u/s 28A of the Act having been filed within the period of limitation and pass an order in the light of the judgement and award passed by the Reference Court in Land Reference Case No. 505 of 1993 to 513 of 1993 dated 24.9.2002 and in accordance with law. The respondents are directed to pass order as expeditiously as possible but not later than two months from the date of receipt of the order of this Court.

18. If the award is passed, the respondents are further directed to pay the amount of compensation to the petitioners according to the present order and in light of judgement and award of the Reference Court as expeditiously as possible but not later than three months from the date of passing of the order/award.