

(2005) 02 KL CK 0029
In the High Court Of Kerala
Case No : W.A. No. 3253 of 2001

Baby Mathew

APPELLANT

Vs

G.C.D.A.

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Land Acquisition Act, 1994 — Section 16, 16(2), 28A

Citation : (2005) 1 ILR (Ker) 828 : (2005) 2 KLT 39

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : N. Dharmadan and R. Ranjini, for the Appellant; M.V. Joseph and Roy Chacko, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Whether a land owner who had surrendered land on the basis of an agreement entered into between him and the requisition authority and the compensation amount received in pursuance of the award passed u/s 16 of the Kerala Land Acquisition Act is entitled to get the benefit of Section 28A of the Land Acquisition Act, 1994.

2. Sri. T.P. Mathew was the owner of 71 cents of land in survey number 1013/1 of Ernakulam village. The Greater Cochin Development Authority (in short, "GCDA") for the purpose of Elamkulam West Extension Scheme, wanted to acquire the said property. Notification u/s 3(1) of the Land Acquisition Act was issued on 21.11.1978. Secretary of the GCDA and late Mathew entered into an agreement on 20.2.1979 by which price of the property was agreed. It was also agreed that the land owner would hand over possession of the property in advance and GCDA would pay 50% of the price at the time of taking possession and the balance within one year from the date of taking possession of the property or the date of the award whichever is earlier. Pursuant to the said agreement, possession was handed over on 6.4.1979. Consideration for the sale of the property was fixed in the agreement at Rs. 1,729/-per Are for wet land

and Rs. 3,721/- per Are for dry land. Total value came to Rs. 85,524.01. A sum of Rs. 40,000/- was paid on 6.4.1979, i.e., the day of taking possession and the balance amount as per the agreement was to be paid within one year thereafter. It was also agreed that the first party to the agreement would not dispute the adequacy of the compensation awarded or initiate any proceeding challenging the award passed by the second party. The Land Acquisition Officer is also empowered u/s 16 of the Kerala Land Acquisition Act to make an award. Greater Cochin Development Authority later paid the balance amount on various dates. Pursuant to the notification issued under the Act, second respondent passed Award No. 28 of 1983 in L.A.C.No. 46/1982 on 11.3.1983.

3. Sri B. Dharmadan, Senior Counsel appearing for the appellant took us elaborately through the facts of the case and highlighted the circumstances under which agreement was executed by the father of the appellant, late Mathew. Reference was also made to the judgment of this Court in O.P.No. 3769 of 1988, the judgment of the Division Bench in W.A.No. 622 of 1989 and so on. It is unnecessary to deal with those facts to decide the question posed in this case. This Court is also not justified in examining the validity or otherwise of the agreement entered into by T.P. Mathew with GCDA on 20.12.1979, We have to proceed on the premise that the agreement executed by Mathew and GCDA is valid especially when the execution of the agreement is not disputed.

4. The only question to be considered is whether the person who has already received compensation on the basis of a valid agreement executed would still be entitled to claim additional compensation u/s 28A of the Land Acquisition Act, 1994. The scope of Section 28A of the Act came up for consideration before the Apex Court in Union of India and another Vs. Pradeep Kumari and others, . The Court held that the object underlying the enactment of Section 28A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the Civil Court u/s 18 of the Act. The Court further held that this is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them was obtained orders for payment of higher compensation from the reference Court u/s 18 of the Act. Section 28A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take the advantage of right of reference to the Civil Court u/s 18 of the Act.

5. The law is well settled that while construing the provisions of such a legislation the Court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it. The Apex Court further held as follows:

"A perusal of the provisions contained in Sub-section (1) of Section 28A of the Act would show that after an award is made under Part III whereby the Court allows to the applicant any amount of compensation in excess of the amount

awarded by the Collector u/s 11, a right accrues to a person interested in the other land covered by the same notification under Sub-section (1) of Section 4 who is also aggrieved by the award of the Collector but who had not made an application to the Collector u/s 18, to move an application before the Collector for redetermination of the amount of compensation payable to him on the basis of the amount of compensation awarded by the Court".

In a case where land owner has already executed the agreement within the meaning of Section 16 of the Kerala Land Acquisition Act and an award is passed, can he be characterised as a person who is aggrieved by the award of the Collector. Section 16 of the Kerala Land Acquisition Act is extracted below for easy reference.

Award in case of agreement as to the amount of compensation.

(1) If the Collector and all the persons interested agree, whether before or after the date of publication of the notification under Sub-section (1) of Section 3, as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Provided that an agreement executed before the date of publication of the notification under Sub-section (1) of Section 3 shall not be binding on the persons interested after the expiry of four years from such date.

(2) Such award shall be filed in the Collector's office and shall subject to the proviso to Sub-section (1), be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same.

Agreement was executed u/s 16 of the Act, and if the Collector and all persons interested agree, before or after the date of publication of the notification under Sub-section (1) of Section 3, as to the amount of compensation to be allowed and the Collector shall make an award under his hand for the same. Section 16(2) says that such award shall be filed in the Collector's office and shall subject to the proviso to Sub-section (1) be conclusive evidence as between the Government and all persons interested of the value of the land and the amount Of compensation allowed for the same.

6. We are of the view, as per Section 16(2) if the Collector has rendered an award it shall be conclusive as between the Government and the persons of the value of the land and the amount of compensation allowed for the same. Award of the Collector which has been made conclusive with regard to the value of the amount of compensation cannot be subjected to redetermination u/s 28A of the Act. Section 28A would apply only when person is aggrieved by the award of the Collector. In a case where an award is passed on agreed terms and conditions there is no question of seeking a reference for higher compensation. Such an agreement executed shall not be subjected to redetermination u/s 28A of the Act. We therefore, do not find any illegality in the order rejecting the application

filed u/s 28A of the Land Acquisition Act. The Writ Appeal fails and it is accordingly dismissed.