

(2013) 07 DEL CK 0332

In the Delhi High Court

Case No : Writ Petition (C) 4439 of 2013

Delhi Development Authority

APPELLANT

Vs

Additional District Magistrate/Land Acquisition Collector and
Others

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 46

Land Acquisition Act, 1894 — Section 18, 23(1A), 26, 28, 28A

Citation : (2013) 8 AD 537 : (2013) 202 DLT 209

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : N.N. Aggarwal, Ms. Jaya Goyal, Ms. Manpreet Kaur and Mr. Varun Garg, for the Appellant; Sameer Jain and Mr. Siddhanth Jain, Advocates for Intervener/Land Owner and Mr. Sanjay Kumar Pathak, Advocate for Resp.-1/LAC, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioner/Delhi Development Authority (DDA) questions an order dated 18.12.2012 made by the Land Acquisition Collector, South West, New Delhi, u/s 28A of the Land Acquisition Act, extending the principle which impelled this Court to enhance compensation in L.A. Appeal No. 149/2007 (Major General Kapil Mehra v. Union of India). The impugned order directed identical enhancement in compensation. The brief facts are that the respondents - (hereafter referred to as "applicant") were co-owners of land bearing Khasra No. 1300/1 (old) - 697 (New), measuring 12 bighas, situated in the revenue estate of Village Mehrauli. These and other lands were notified for acquisition on 19.2.1997. A declaration was made u/s 6 on 13.02.1998. After Award notices were issued, the first Award was made on 18.09.1998. Some co-owners of lands had sought a reference u/s 18 for enhancement of compensation. This was eventually adjudicated and disposed of by a judgment dated 24.02.2007. The applicant had earlier preferred an application u/s 28A on

22.05.2007; no final orders however, were made on that. During the pendency of that application on 24.12.2010, enhancement was directed by this Court in Land Acquisition Appeal No. 149/2007 preferred by co-owner, aggrieved by order of the Reference Court. This resulted in market value of lands being determined at Rs. 14,974/- per square yard. The applicant consequently applied afresh on 3.3.2011 u/s 28A.

2. The DDA resisted the application-made in 2011 on several counts. The first argument was that enhancement u/s 28A could be made only if the Reference Court and not the subsequent Appellate Courts directed such enhancement. The second argument was that the application dated 3.3.2011 could not be considered as one u/s 28A and the Court consequently lacked jurisdiction since a previous application had been made and the applicant was not successful in it. The Collector, however, rejected the DDA's contentions. The relevant discussion in the impugned order considered the decisions cited in support of the DDA's contentions; the reasons which impelled the Collector to allow respondent's application are extracted below:-

In the facts of present case, the judgment in Smt. Kalawati, Lal Chand Gupta and Shiv General Finance (P) Ltd. Vs. Union of India (UOI) and Others, is very much relevant as the factual matrix of this case squarely covers the case of the applicant. The findings of the case are reproduced below:-

...normally a person whose land is acquired and thereupon award is made by the LAC fixing the compensation, he should seek enhancement thereof in the manner provided under the Act by resort to provisions of Sections 18, 54 and 28 of the Act.

However, if he is co-owner of the land acquired and other co-owner gets enhanced compensation in appeal etc., he would be entitled to same treatment even if he did not prefer appeal, on the first principles of law that one co-owner is entitled to have the benefit of the enhanced compensation given in respect of other co-owners of the land acquired, which belonged to all of them, jointly.

The scope of 28A of land Acquisition Act came up for consideration before the Hon'ble Supreme Court of India in several cases. In Babua Ram and Others Vs. State of U.P. and Another, as well as in Union of India and another Vs. Pradeep Kumari and others, the Hon'ble Supreme Court of India has observed that such an application can be made in writing by any "aggrieved" person. The said expression would cover any interested person who had failed to make an application for reference u/s 18 and would not be confined to those who received compensation under protest. It was also indicated that Section 28A is a "complete code " in itself providing substantive right to "an aggrieved person" to claim compensation equal to that awarded to his neighbour covered by the same notification u/s 4(1).

In view of the above facts, the petitioners are entitled to the compensation for the land mentioned above at the rate of Rs. 14, 974/- per Sq. Yrd. as has been

awarded by the Hon'ble High Court of Delhi vide Judgment dated 24.12.2010 passed in LA. APP. No. 149/07 titled as Major General Kapil Mehra & Ors. v. UOI & Anr. The applicant is entitled to solatium @ 30% and is also entitled to get interest @ 9% for the first year from 19.02.1997 i.e. the date of notification u/s 4 and thereafter @ 15% p.a. till the date of tender of compensation. The applicants shall further be entitled to additional amount of 12% on the market value fixed u/s 23(1A) of the Act from the date of notification u/s 4 of the Act till the date of making of award.

I re-determined the compensation accordingly u/s. 28A of the Land Acquisition Act, 1894. Application of the applicants allowed. Naib-Tehsildar (L.A.) is directed to place the demand to DDA through Land & Building Department.

3. The DDA argues, through its counsel Mr. N.N. Aggarwal that the impugned order is in error of law. Counsel highlighted that the Land Acquisition Collector lacked jurisdiction to entertain the application u/s 28A. He submitted that recourse to Section 28A could be made only on the occasion when the Reference Court enhances the compensation amount. Counsel stressed upon the phraseology in Section 28A to say that the proceedings in Part-III alone which leads to enhancement can be considered and that subsequent enhancement by higher Courts such as High Court or Supreme Court does not enable the land owner to approach the Collector u/s 28A. In support of this submission, learned counsel relied upon the judgment reported as Union of India Vs. Bant Ram (dead) by L.Rs., , Union of India and another Vs. Pradeep Kumari and others, and Babua Ram and Others Vs. State of U.P. and Another, . The clearest exposition which was relied upon in this regard is to be found in Bant Ram's decision (supra); it is to the following effect:-

Dr. Rajiv Dhawan, learned senior counsel for the respondent has contended that Section 28A would apply not only when an award is made by the Court u/s 26 but also when judgment is made by the High Court u/s 54 of the Act. We find no force in this contention. Section 28A itself specifically refers to applicability of Chapter III; in other words, chapter III would be applicable to a reference made u/s 18 to the court. The marginal note indicates redetermination of the compensation on the basis of the award of the court. Section 3(d) defines "court" to mean a principal civil court of original jurisdiction or a court of special Judicial officer. Sub-Section (I) of Section 28A envisages "allowing applications", i.e., reference application filed u/s 18 in Part III. Moreover Section 54 falls in Chapter VIII of the Act. Therefore, Judgment and decree of the appellate court/High Court does not encompass the award of the Court referred to in Section 28A. The controversy is no longer res Integra. In Babua Ram and Others Vs. State of U.P. and Another, and hosts of other decisions following that, cover the field. Therefore, the conclusion is inevitable that the application for redetermination of the compensation u/s 28A would not lie after the judgment of the High Court u/s 54 of the Act.

4. Learned counsel argued that the subsequent ruling of the Supreme Court in V.

Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and Another, has ignored the binding rulings in Bant Ram and Babua Ram's decision (supra) and is per incuriam. It was argued that the Pradeep Kumari's decision goes contrary to what was declared in Bant Ram and Babua Ram's decision. Learned counsel stated that the reliance placed by the Collector in this case upon the decision in Smt. Kalawati, Lal Chand Gupta and Shiv General Finance (P) Ltd. Vs. Union of India (UOI) and Others, rendered by the Division Bench of this Court is of no avail since Kalavati's decision itself did not consider Bant Ram and Babua Ram's decision.

5. It was urged that an application u/s 28A has to strictly comply with the elements spelt out in Pradeep Kumari's case all of which were correctly noticed by the Collector in the present instance. However, he fell into error in completely ignoring the fact that the respondents had earlier applied and, therefore, could not be permitted to make another application on 3.3.2011 which led to the impugned order being made.

6. This Court has carefully considered the submissions of the petitioners. There is no gainsaying in the fact that in the present instance, the acquisition was made in 1997. The land owner had no doubt moved an earlier application seeking enhancement but restricted to interest. However, that claim was not adjudicated upon; and in the meanwhile significant subsequent development occurred. The co-owner of the suit lands, Major General Kapil Mehra's reference for enhancement was decided on 24.12.2010 by this Court on an appeal against the Reference Court's order. The enhancement resulted in the basic compensation working out to Rs. 14,974/- per square yard. The DDA's contention in this regard is that having preferred an earlier application, it was not open to the respondents to move u/s 28A again. The Court proposes to deal with that contention first. There is no dispute that the enhancement was eventually ordered only on 24.12.2010. If the DDA's contentions about maintainability of the first application is correct, the respondent could not have maintained the earlier application since it did not seek enhancement on compensation but only sought enhancement of rate of interest. Nevertheless, in the present case, that application did not yield any decision; it remained pending. Had the reference court decided the application, the argument would have merited consideration. However, the applicant cannot be any different from one who did not even apply (a class of individual who is concededly covered by Section 28-A). The occasion for seeking enhancement u/s 28-A arose when the actual enhancement was directed, i.e., on 24.12.2010. As a result, this Court holds that the earlier application restricted to the question of interest did not preclude the filing of another application after 24.12.2010; in the present case it was done on 3.3.2011.

7. That brings the discussion to the main contention of the petitioner DDA that an application and consequent proceedings u/s 28A can be premised upon the enhancement ordered by the Reference Court and not in any other further

appellate proceeding. Undoubtedly, there are observations in Babua Ram and Bant Ram's case (supra) in support of DDA's submissions. This Court notices that in Pradeep Kumari's case Babua Ram's decision was noticed. The object and non-discriminatory principle embodied in Section 28A is a benevolent one and has been vividly spoken about in paragraphs 9 & 10 of the Pradeep Kumari's judgment. Especially in paragraph-10, the Court visualized different situations where the application of a land owner could be held to be not maintainable if a restricted interpretation were to be given.

8. Indeed, if the DDA's contention were to be accepted, and the Appellate Court's enhancement be neglected for the purposes of Section 28A, an absurdity would result in that individual landowners in identical situations will be meted out differential treatment based on arbitrary factors. The following table, for example, notes some instances of glaring inconsistencies based on litigative vicissitudes that would result. In terms of the table below, assuming A takes the lead in questioning the award of the Collector, by filing a Section 18 Reference to the Court, or taking the matter further to the Appellate stage u/s 54, this table records the possibilities for other individuals at different stages of the process themselves covered by the same Section 4 notification in terms of Section 28A.

9. Moreover, to test the validity of the DDA's reading, if, as is the case presently, an individual whose Reference is pending is not allowed to receive the benefit of Section 28A, we must compare his/her situation with an individual who has not taken any action to question the Award of the Collector. The result, under this reading, is that the latter is entitled to the benefit while the former is divested of any enhancement granted. Such a reading of the provisions of the Land Acquisition Act, which is to be read liberally to ensure that its beneficial purpose comes to fruition, tends towards the arbitrary treatment of equals unequally. Similarly, if the enhancement is granted by the Appellate Court as opposed to the Reference Court, the DDA's contention that such enhancement should be excluded from the scope of Section 28A leads to an unreasonable and absurd conclusion; that if the Appellate Court grants the enhancement, such enhancement is excluded from the scope of Section 28A, but if that same enhancement is ordered to the same landowners by the Reference Court, it falls within Section 28A. Indeed, the function of the Reference Court as against the functions of the Appellate Court in terms of a comparison between Sections 18 and 54 is identical, i.e. to determine the appropriate compensation. Crucially, the object of Section 28A, to grant a benefit to landowners through increased compensation, is equally applicable to enhancements ordered by the Reference Court and the Appellate Courts, there being no relevant distinction between the two cases. In such a case, drawing a distinction between the enhancements granted u/s 18 or Section 54 is unappealing.

10. In the impugned order, the Collector relied upon a decision in V. Ramakrishna Rao's decision (supra). In that decision, the Supreme Court while speaking about the nature of proceedings u/s 28A stated as follows:-

11. The above reproduced provision represents the Legislature's determination to ensure that the goal of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof is translated into reality, at least in the matter of payment of compensation to those who are deprived of their land for the benefit of the State, its instrumentalities/agencies and even private persons. Section 28A also represents statutory embodiment of the doctrine of equality in matters relating to the acquisition of land. The Act which was enacted in 1894 and was amended after 90 years has the potential of depriving a large segment of the society i.e. the "agriculturist" of their only source of livelihood. The scheme of Section 28A provide some solace to this segment of the society by ensuring that such of the land owners whose land was acquired under the same notification but who could not, on account of poverty, ignorance and other disabilities join others in seeking reference u/s 18 get an opportunity to claim compensation at par with others. This section is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification. To put it differently, this section gives a chance to the land owner, who may not have applied u/s 18 for determination of market value by the Court to seek re-determination of the amount of compensation, if any other similarly situated land owner succeeds in persuading the Reference Court to fix higher market value of the acquired land. Therefore, Section 28A has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land owner who may have, due to variety of reasons not been able to move the Collector for making reference u/s 18 of the Act to get higher compensation if market value is revised by the Reference Court at the instance of other land owners, whose land is acquired under the same notification. Of course, this opportunity can be availed by filing application within the prescribed period.

12. In *Union of India v. Pradeep Kumari* (supra), a three-Judge Bench of this Court held that Section 28A is in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor land owners, who are not able to take advantage of the right of reference to the Civil Court u/s 18 of the Act and such a provision should be interpreted in a manner which advances the policy of legislation.

13. In *Union of India v. Munshi Ram* (supra), a two-Judge Bench considered the meaning of the word "re-determination" appearing in Section 28A and held that compensation payable to the applicant u/s 28A should be at par with what is finally payable to those who sought reference u/s 18 of the Act and if the compensation payable to the latter category is reduced by the superior court, the one who gets higher compensation u/s 28A may be directed to refund the excess amount. What was emphasized by the two-Judge Bench was that redetermination of the amount of compensation u/s 28A must be commensurate with the compensation payable to those who had sought reference u/s 18 and if the higher court reduces the amount of compensation payable in terms of the order of the Reference Court, then those making application u/s 28A must be

asked to refund the excess amount.

11. It is thus evident that the Supreme Court took notice of the decision in Pradeep Kumari's which in turn had referred to in Babua Ram's case. Thus, the Court holds as insubstantial the DDA's submissions that the judgment in Pradeep Kumari's case is a decision on some other issue and that the Supreme Court in the latest judgment in V. Ramakrishna Rao's matter (supra) did not take note of previous binding decision. Another significant aspect is that V. Ramakrishna's decision itself had taken note of Union of India (UOI) Vs. Munshi Ram (Dead) by LRs. and Others, and Kendriya Karamchari Sehkari Greh Nirman Samiti Ltd. Vs. State of U.P. and Another, . In the latter decision too, identical arguments of the said agency that the enhancement to be awarded is to be restricted to what is determined by the Reference Court was expressly rejected.

12. In view of the above discussion, it is held that the petitioner's contentions that the Collector lacked jurisdiction to entertain and adjudicate and impugned order have no force. It is further held that the decision of a Division Bench of this Court in Kalavati's case is not per in curium as is contended. The petition is, therefore, dismissed, as lacking merit.