

**(2012) 03 AP CK 0018**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No : 7905 of 2012**

Eluguri Savithramma Reddy and Dr. Dulipala Ashok Reddy **APPELLANT**

**Vs**

The Land Acquisition Officer and Revenue Divisional Officer at **RESPONDENT**  
Miryalguda Town, Nalgonda District

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**Date of Decision : 23-03-2012**

**Acts Referred:**

Land Acquisition Act, 1894 — Section 11, 12, 18, 18, 19

**Citation : (2012) 03 AP CK 0018**

**Hon'ble Judges : L. Narasimha Reddy, J**

**Bench : Single Bench**

**Advocate : L. Prabhakar Reddy, for the Appellant;**

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## **Judgement**

L. Narasimha Reddy

1. Through a notification dated 25-05-1993, published u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act"), the Government acquired 281 acres of land in various survey numbers of Rangareddygudem Village, P.A. Pally Manal, Nalgonda District for the purpose of construction of a filtration plant and pumping station, to supply water to the city of Hyderabad. The land of the petitioners in Sy.Nos.372, 374 and 389 of the said village was also included in the acquisition. The respondent herein passed an award dated 01-06-1994, fixing the market value at Rs. 9,000/- per acre for dry lands and Rs. 10,500/-for wet lands. At the instance of the owners of other bits of land, covered by the same notification, two references u/s 18 of the Act were made to the Court of Senior Civil Judge, Nalgonda. They were taken up as O.P.Nos.61 and 62 of 1995. Through judgment dated 08-08-2000, the trial Court enhanced the compensation to Rs. 12,000/- for the lands, covered under the reference. The claimants filed A.S.Nos.3790 and 3791 of 2000 before this Court, not only for further enhancement of the compensation, but also claiming compensation for trees and bore-wells that existed upon their lands. The respondent tiled A.S.No.3784 of 2000. Through a common judgment dated 10-11-2004, this Court enhanced the compensation for

the land, to Rs. 28,000/- per acre. The claim for compensation for the bore-well was rejected. So far as the claim for trees is concerned, the matter was remanded to the trial Court for recording of evidence and determination of the compensation. On such remand, the trial Court passed a decree on 26-10-2009, determining the compensation for the trees, at the rate of Rs. 1,000/-per tree.

2. The petitioners obtained copy of the judgment and decree dated 26-10-2009 in O.P.No.62 of 1995 on 17-12-2009, and submitted claims u/s 28A of the Act on 06-02-2010 and 10-02-2010, respectively. Alleging that the applications u/s 28A of the Act are not being considered, the petitioners filed W.P.No.6199 of 2011. The writ petition was disposed of, directing the respondent herein to pass orders u/s 28A of the Act, within a period of three months from the date of receipt of a copy of the order. C.C.No.1318 of 2011 was filed complaining that the respondent did not implement the directions issued by this Court. During the pendency of the Contempt Case, the respondent passed orders dated 31-10-2011, rejecting the application of the petitioners. The Contempt Case was closed, leaving it open to the petitioners to pursue the remedies vis-a-vis the order dated 31-10-2011. Hence, this writ petition.

3. The petitioners contend that the view taken by the respondent that the application u/s 28A of the Act, if at all, ought to have been filed with reference to the judgment and decree dated 08-08-2000 passed in O.P.Nos. 61 & 62 of 1995, and not on the basis of the order passed after remand, cannot be sustained in law. According to them, the latest of the awards/decrees passed by the Civil Court u/s 18 of the Act, in respect of the lands covered by the same notification would constitute the basis for an application u/s 28A of the Act. It is pleaded that once this Court has remanded the matter to a Civil Court, with certain directions, and a decree is passed by the Civil Court after remand, a cause of action would arise for the owner of a land, which is acquired through the same notification.

4. Sri L. Prabhakar Reddy, learned counsel for the petitioners, submits that the respondent passed the impugned order on hyper-technical grounds and contrary to the law laid down by the Supreme Court and this Court. He contends that the language employed in Section 22A of the Act is wide enough to mean that the basis for seeking reference u/s 28A cannot be confined to any award/decrees, that may be passed by a Civil Court. According to the learned counsel, when more than one reference is made, vis-a-vis an award passed by the Land Acquisition Officer, an application u/s 28A can be made with reference to the latest of the award/decrees passed by a Civil Court, even if the owner of a land, who did not seek the reference, had the knowledge of the earliest of the awards/decrees. On the same analogy, learned counsel submits that even if there was only one reference, but the matter was remanded by a superior Court to the Civil Court, an application u/s 28A can be maintained with reference to an award/decrees passed on remand. He has placed reliance upon certain precedents.

5. Learned Government Pleader for Land Acquisition on the other hand, submits that the remand made by this Court in A.S.No.3790 of 2000 and batch was

limited to the one of determination of compensation for trees, and the dispute as the market value for the land has assumed finality, with the judgment dated 10-11-2004, rendered by this Court in the said appeals. He submits that the petitioners could have sought for reference even on the basis of the judgment of this Court, but have, chosen to wait till 2009, when the Civil Court decided the matter, after remand.

6. The petitioners intended to avail the benefit u/s 28A of the Act, It is not in dispute that their lands too were acquired through a notification dated 25-05-1993 and reference at the instance of the owners of some other lands acquired through the same notification was made to the Civil Court. The Civil Court enhanced the compensation from Rs. 9,000/- to Rs. 12,000/- per acre, through its judgment dated 08-08-2000. In the ordinary course of the things, the petitioners ought to have sought for redetermination of compensation for their land u/s 28A of the Act, on the basis of the judgment dated 08-08-2000. For one reason or the other, that did not take place.

7. The claimants in O.P.Nos.61 and 62 of 1995 filed appeals before this Court not only seeking further enhancement of compensation for the land, but also for compensation for the trees and bore-wells. The respondent also filed another appeal, assailing the enhancement of the compensation by the Civil Court. Through common judgment dated 10-11-2004, this Court enhanced the compensation for the land, to Rs. 28,000/- per acre. As regards the claim of compensation for trees, the matter was remanded to the Civil Court. At least, at that stage, the petitioners could have submitted application u/s 28A of the Act. The reason is that an appeal is continuation of the O.P. They did not choose to avail the remedy, at that stage also.

8. Things would have been different altogether, had remand by this Court to the Civil Court been comprehensive, covering the market value for the land also. It is a matter of record that the remand was confined to the determination of compensation for trees. On the basis of the evidence before it, the Civil Court fixed the compensation for the trees, at Rs. 1,000/- per tree, for the first time.

9. Notwithstanding the default on the part of the petitioners to seek re-determination, either with reference to the judgment dated 08-08-2000, rendered by the Civil Court or the one, dated 10-11-2004, passed by this Court, the petitioners could have claimed the benefit u/s 28A of the Act, had their claim been in respect of the trees that existed on their land. That is not so. In clear terms, they wanted re-determination of market value for their land.

10. The text u/s 28A of the Act is too well known. However, it is reproduced for the sake of convenience.

Section 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, subsection (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 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 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 from them a reasonable opportunity of being heard, and make 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.

11. There used to be some uncertainty as to the meaning of the word "award", mentioned in this section. This expression is employed not only to connote the award passed u/s 12 of the Act by the Land Acquisition Officer, but also the decree passed by the Civil Court, on reference. At one point of time, Courts took the view that the period of three months must be reckoned from the date of the earliest of the awards, whether passed by the Land Acquisition Officer, or the Civil Court, after Section 28A of the Act came into force. This was explained by the Supreme Court in *Union of India and another Vs. Pradeep Kumari and others*, It was held that the expression "award" under this part "would invariably mean an award passed by the Civil Court", and that in case many awards are passed by Civil Courts, with reference to the same notification, an application u/s 28A can be filed with reference to the latest of such awards. The same was followed in various other judgments, cited by the learned counsel for the petitioners.

12. There is no difficulty in understanding or applying the said proposition. One can go to the extent of suggesting that even if the owner of a land acquired under a notification published u/s 4(1) of the Act failed to seek reference within three months from the date of the award passed by the Civil Court, on a reference made at the instance of the owner of another piece of land, covered by the notification, he can avail the remedy with reference to the date of the judgment rendered in appeal, if any, preferred. In extreme cases, the remedy can be availed with reference to the date of the award passed by a Civil Court,

after the remand made to it by the High Court or the Supreme Court. The reason is that, in such a case, the matter as regards the determination of compensation cannot be said to have assumed finality.

13. However, the subject-matter of determination on remand must be identical to the claim made for redetermination, u/s 28A of the Act. If the remand was for a limited purpose, such as for determination of the compensation for trees, as in the present case, and the claim u/s 28A is for redetermination of compensation for the land, the limitation does not get saved. The application must be filed within the time stipulated under the provision, from the date of the decree/award of the Civil Court or the judgment rendered by the High Court or the Supreme Court, vis-a-vis the same.

14. Admittedly, in the instant case, the remand was only for determination of trees, whereas the application filed u/s 28A of the Act, by the petitioners was in respect of the land. The respondent has taken the correct view of the matter. The writ petition is accordingly dismissed. The miscellaneous petition filed in this writ petition also shall stand disposed of. There shall be no order as to costs.