
(2011) 02 GUJ CK 0094

In the Gujarat High Court

Case No : Special Civil Application No. 15942 of 2010

Harijan Mohanbhai Naranbhai and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (2011) 02 GUJ CK 0094

Hon'ble Judges : K.A. Puj, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Amar D. Mithani, for Petitioner Nos. 1-2, 2.2.1-3, 3.2.1-4 and 4.2.1-5, for the Appellant; Monali Bhatt, AGP, for the Respondent

Judgement

D.H. Waghela, J.—Rule. Learned AGP waives service of Rule for the Respondents.

2. The Petitioners have approached this Court with the grievance that inspite of the award being made and the amount of compensation being redetermined under the provisions of Section 28A of the Land Acquisition Act, 1894, as early as on 15.10.2008, payment of the due amounts was not being made by the Respondent. According to the undisputed facts on record, the Petitioners' lands have been acquired for construction of Vansoj Tidal Regulatory scheme as early as in the year 1982 and award u/s 11 was made on 26.4.1983. Thereafter reference u/s 18 was made upon application of some of the claimants and award in their favour was made on 22.7.2005 by learned Principal Civil Judge, Veraval, in Land Reference Case No. 104 of 1999 to 106 of 1999. The Petitioners approached the authorities u/s 28A of the Act in September 2005 and the award in their favour was made, as aforesaid, on 15.10.2008. As the Petitioners were not paid any amount towards additional compensation inspite of their requests, representations and reminders, they have approached this Court.

3. There is no dispute about the liability incurred by the Respondent or about calculation of amounts required to be paid to the Petitioners. Since ordinary citizens are approaching this Court with similar grievances in a number of cases,

the Division Bench of this Court (Coram:Honourable Justice Bhagwati Prasad, as his Lordship then was and Justice J.C. Upadhyaya) have in order dated 7.4.2010 in Special Civil Application No. 3575 of 2010 made following observations:

.... To say the least, this number does not appear to be a correct estimation of instances where because of inaction or negligence of the officers the State Government is burdened. We feel that there would be many more cases where the Government Circular dated 10.3.1997 has not been complied by the officers. We therefore, direct the learned AGP to bring these facts to the notice of the Chief Secretary of the State who shall thereupon look into cases where there has been gross non-compliance of the Circular resulting into monetary loss to the Government. The Chief Secretary shall also direct initiation of appropriate proceedings against those officers who are found to be palpably negligent in discharge of their official duties.

4. Earlier to that in *Patel Kantilal Vitthaldas v. State of Gujarat*, another Division Bench to which one of us was a party, observed as under:

8. Thus, so far as the Petitioners' grievance about deciding the application u/s 28A is concerned, it stands redressed and may be finally redressed by 10th June 2001, but the question which has engaged our attention is about the requirement of following the Revenue Department's circular dated 10th March 1997 which is not being implemented in the letter and spirit and it is clear that this circular is being complied with only in breach of it. The reading of this circular would show that this circular was issued with a wholesome purpose in public interest so that the State exchequer may not have to suffer the payment of heavy amount of interest on the amount of compensation awarded by the Courts and keeping in view this wholesome purpose - the laudable purpose and in conformity with the requirement of public interest, it was clearly stated in para 2 of this circular by way of standing instructions to all concerned that the cases in which the power rests with the Land Acquisition Officer itself, the award be accepted and the claimants be paid the compensation within a period of three months; in para 3 while giving reference to the Revenue Department's earlier letter dated 19th October 1985, it was also mentioned that the cases in which the approval of the higher officer or the Government is necessary, even in such cases the application u/s 28A must be sent by the concerned authorities within a period of three weeks for approval from the date of the application and in such cases, within a period of six months the award be accepted and the compensation be paid. It was further held out in this circular that the time schedule fixed in this circular is to be strictly followed and any delay in complying these directions shall be treated as misconduct and the officers who are responsible for causing the delay shall be liable to disciplinary action and departmental inquiry. In para 5 of this circular, it was mentioned that despite this, if there is any delay on the part of the concerned Land Acquisition Officer, or any delay is noticed, the liability shall be fixed so that the amount of interest paid may be recovered from the salary of the concerned officer. It was further

emphasised that the cases of applications u/s 28A shall be monitored by the concerned Collectors and the same shall be taken up for consideration every month and the officer causing any delay in such cases shall be subjected to the disciplinary action.

5. In spite of Government's own circular and the directions of Division Bench of this Court, as aforesaid, the payment of additional compensation is not made to the Petitioners in the facts of the present case for more than two years, even after application u/s 28A being decided by the Special Land Acquisition Officer and that determination having not been even proposed to be challenged or reviewed. Pursuant to the notice issued and interim orders made herein, learned AGP has filed affidavit of Under Secretary (Land Acquisition), Narmada Water Resources, Water Supply and Kalpsar Department to, inter alia, state that pursuant to the directions issued by this Court, a meeting was held on 21st April 2010 in the office of the Government Pleader with the Chief Secretary, Principal Secretary (LR), Revenue, Principal Secretary (R&R), Narmada & Water Resources, Secretary (Narmada) and Special Secretary, Water Resources and other officers, and the related issues were discussed. It is further stated that several subsequent meetings have been held and it was decided by the Principal Secretary, Rehabilitation and Resettlement, Narmada Department, to set up a committee for monitoring the cases filed u/s 28A and stated that the department has found more than 100 cases (in addition to earlier 30 cases) in which there was inaction on the part of the land acquisition officers, and therefore, department called report from the concerned Additional Collector (Narmada). In 26 cases, draft charge sheet is sent to the revenue department by the Narmada Department in June 2010 for issuing charge sheet to the officers concerned. Thus, an attempt is made at showing some action and performance on the part of the officers concerned but it is not the case of the Respondent that the Respondents do not have resources to pay the amounts of additional compensation determined by its own officer nor is it the case of the Respondent that any action is taken for immediate payment in case of the Petitioners in the present case.

6. In the shocking facts of the present case, while the Petitioners' land have been acquired as early as in the year 1982, and reference u/s 18 has been decided on 22.7.2005, the Respondents have taken three years in determining the amount of additional compensation in terms of award of the Court; and even thereafter the payment is not made as yet. The net result of the delay is that out of five original claimants three have passed away and their heirs have come on record. On the other hand, as against total amount of Rs. 2,96,995/- determined to be due upon redetermination, sum of Rs. ,10,69,181/- will be required to be paid by way of interest at the rate of 15% for the period from 7.9.1984 to 7.9.2008. Further amount of interest would fall due because of further delay even as total amount is not proposed to be paid immediately even now. According to the affidavit filed earlier by Deputy Secretary, Narmada Water Resources, Water Supply and Kalpsar Department, admittedly there has been

delay in disbursement of the amount but it was not intentional. The deponent has requested to grant time of one more month for disbursement of amount to the Petitioners.

7. In the above facts and circumstances, it is very clear that by sheer inaction, negligence or deliberate delay of some officers in charge of the disbursement of such amounts, the Petitioners as well as the Respondents have to suffer losses. The Petitioners are admittedly put to expenses of approaching this Court and the dockets of this Court are unnecessarily inflated with such work of an executing Court. The earlier orders and the circular of the government itself do not seem to have been taken seriously by the officers concerned. Therefore, it is necessary and in the interest of justice that such officers should be personally made to pay part of the losses caused to the public and the public exchequer. Therefore, the petition is allowed and Rule is made absolute with the direction that the Petitioners shall be paid within one month the amounts due to them upto the date of payment, pursuant to award dated 15.10.2008 made by Special Land Acquisition Officer, Junagadh, u/s 28A of the Land Acquisition Act, 1894. The Respondent shall also pay, by way of cost, Rs. 5,000/- to each of Petitioner Nos. 1, 2/1, 3/1, 4/1 and 5 within one month from today along with the amounts of compensation. It shall be incumbent upon Respondent No. 1 to hold an enquiry in accordance with law and in terms of its own policy and circular against such of the officers concerned who are, prima facie, found to be responsible for delay in making payment to the Petitioners and recover the amount of cost and the amounts paid by way of interest for the period from the date of award from such officers who may be found to be responsible for the delay and loss to the parties.