

(2020) 12 DEL CK 0081
In the Delhi High Court
Case No : Civil Writ Petition No. 945 Of 2020

Jeet Singh Chauhan

APPELLANT

Vs

Land Acquisition Collector, South East District

RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 12(2), 17, 18, 18(2)(b), 28A

Citation : (2020) 12 DEL CK 0081

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : M.P. Bhargava, N.S. Chechi, Yeeshu Jain, Jyoti Tyagi

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

CM No.3050/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

CM No.32009/2020 (of petitioner for early hearing)

3. For the reasons stated, the application is allowed and disposed of. The writ petition, with the consent of the counsels, is ordered to be taken up for hearing today itself.

W.P.(C) No.945/2020

4. The sole petitioner has filed this petition seeking mandamus to the respondent Land Acquisition Collector (LAC) to forward the reference of the petitioner under Section 18 of the Land Acquisition Act, 1894 to the Reference Court for adjudication on merit.

5. The counsel for the respondent LAC appears on advance notice.

6. It is the case of the petitioner, that (i) the petitioner was the recorded co-owner of land ad-measuring 10 Bighas 17 Biswas in the revenue estate of village Jasola, Tehsil Sarita Vihar, Khasra Number 442 (1-0), 420 Min (4-7), 426 Min (1-09), 427 Min (1-16) and 432 Min (2-05); (ii) the land aforesaid was acquired vide Award no.247/86-87 under Section 4,6 and 17 of the Act vide notification dated 12th May, 1986; (iii) as the land of the petitioner was taken under the urgency clause, the respondent LAC sought to pay 80% of the compensation for such land, estimated by it, to the persons entitled thereto; (iv) as per the dicta of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer AIR 1961 SC 1500, limitation under Section 18 of the Act commences from the date of actual or constructive knowledge of the making of the award; (v) the petitioner, being a co-owner, under protest, accepted the compensation on 24th April, 1987 given by the LAC on the estimated value of the land, in spite of non-service of notice under Section 12(2) of the Act; (vi) the petitioner, being aggrieved by the undervaluation of the land by the respondent LAC, filed application under Section 18 before the respondent LAC, within the stipulated time under Section 18(2)(b) of the Act; (vii) the petitioner, after submission of the application, kept on visiting the office of the respondent LAC, for forwarding his application to the concerned Court for necessary action; (viii) with the passage of time, the petitioner lost track of his application as he developed various illnesses; (ix) in the year 2019, the house of the petitioner was renovated and during which renovation, the petitioner came across the application dated 1st December, 1986 and immediately wrote a letter to the respondent LAC to forward his claim to the Reference Court; and, (x) the petitioner also made queries under the Right to Information Act, 2005 but did not received any reply thereto. Hence, this petition.

7. The counsel for the respondent LAC appearing on advance notice states that the application dated 1st December, 1986 made by the petitioner under Section 18 of the Land Acquisition Act was not a proper application, having been made prior to 24th April, 1987 when the petitioner received compensation. It is stated that before receiving the compensation, the petitioner could not have known what compensation he had received, to be not

satisfied therewith.

8. We have enquired from the counsel for the respondent LAC, when the award was published.

9. The counsel for the respondent LAC states that the award was published on 22nd October, 1986.

10. We have next enquired from the counsel for the respondent LAC, whether not the owner of the acquired land would know the rate at which

compensation was awarded, on the publication of the award, inasmuch as the award fixes the compensation on the basis of per acre or per bigha and

a land owner, from the size of his holding, is able to compute the compensation awarded to him.

11. The counsel for the respondent LAC states that it is only on receipt of compensation on 24th April, 1987 that the petitioner would know how much

compensation he has been awarded. It is further stated that at the time of payment of compensation, the respondent LAC gets a form filled from the

land owner, to disclose whether there is any objection to the compensation awarded or not. She states that she needs to file counter affidavit to

disclose the said facts inasmuch as if the petitioner, while filling up the said form, did not disclose that he was not satisfied with the compensation

received, the petitioner would be bound thereby.

12. We are unable to agree. Once the petitioner had made an application for reference, though after the publication of the award but before receiving

compensation, even if the petitioner in the form, if any filled stated that he was satisfied with the compensation, there can be no estoppel. Even

otherwise there is no estoppel against the statute.

13. We have however enquired from the counsel for the petitioner, why the petitioner remained quiet from December, 1986 till December, 2020.

14. The counsel for the petitioner states that the father of the petitioner was following up the matter of payment of compensation and the reference

petition and was ailing for several years prior to his demise and only now the petitioner learnt of the same.

15. The said arguments are contrary to the pleadings as noticed above and the counsel for the petitioner, after failing to point out any pleadings on the

lines of what is argued, apologizes for the same.

16. The counsel for the petitioner is cautioned for future, to not make any

argument which does not have foundation in pleadings.

17. The counsel for the petitioner has also stated that several other references arising from the same acquisition / award are still pending in the Reference Court.

18. We have enquired from the counsel for the petitioner whether compensation has been enhanced in any case.

19. The counsel for the petitioner replies in the affirmative.

20. We have next enquired from the counsel for the petitioner that if that is so, whether not the remedy of the petitioner is under Section 28A of the Land Acquisition Act.

21. The counsel for the petitioner states that though the remedy under Section 28A of Act is also available but since the petitioner had applied under Section 18 of the Act, he has a right to seek reference which has not been made.

22. We are unable to agree.

23. The right to reference, if any, has become stale and has been lost owing to the delay of 33 years after which this petition is filed.

24. We may notice that the counsel for the respondent LAC has contended that the remedy under Section 28A of the Act would not be available to the petitioner since he had applied under Section 18 of the Act.

25. We are unable to agree with the said contention of the counsel for the respondent LAC also. The respondent LAC cannot, on the one hand contend that the application dated 1st December, 1986 seeking reference was not in accordance with law and / or proper for the reason of having been made prior to receiving the compensation and on the other hand put up a bar to the remedy, if any available to the petitioner under Section 28A of the Act.

26. We thus dismiss this petition with liberty to the petitioner to, if entitled to, invoke his remedies under Section 28A of the Act.

27. The petition is disposed of.