

(2016) 02 KL CK 0090
In the High Court Of Kerala
Case No : W.A. No. 1041 of 2014

Meethal Mohammed Kunhi and Others APPELLANT
Vs
State of Kerala and Others RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, Section 28 (A)(3), Section 28(A)(3), Section 28A, Section 28A(1), Section 28A(2), Section 28A(3), Section 3(d), Section 34, Section 4

Citation : (2016) 2 KerLJ 558 : (2016) 2 KLT 358

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : S. Krishnamoorthy, Advocate, for the Appellant; P.I. Davis, Senior Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J.

1. This writ appeal has been filed against the judgment dated 12/12/2013 in W.P.C. No. 30687/2013 by which the writ petition filed by the petitioners had been dismissed on the ground of laches.

2. The brief facts necessary for deciding the writ appeal are:

"The petitioners" land was acquired for establishment of Naval Academy by issuing a notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the LA Act") dated 22/02/1983. Petitioners did not make an application for reference under Section 18 of the LA Act. Other land holders, whose land was acquired by the same notification, had made an application for reference under Section 18 of the LA Act. The Sub Court, Payyannur disposed of various Land Acquisition References. With regard to LAR No. 94/92, an appeal was also filed in the High Court and the amount of compensation was further

enhanced. Sub Court, Payyannur, in the proceedings under Section 18 of the LA Act in LAR No. 120/87, awarded an amount of Rs. 1,000/- per cent. Again there was an appeal against the said reference order and the land value was further enhanced to Rs. 1,500/-. Petitioners filed two sets of applications dated 11/05/1998 and 28/05/1998 under Section 28A in respect of various items of properties. With regard to the remaining properties, another application was filed on 30/12/2004 and again on 07/10/2006 on the basis of LAR No. 6/99 and 21/05 respectively. The applications under Section 28A were rejected by a Special Land Acquisition Officer vide Annexures A1 to A4. Application under Section 28A submitted by the petitioners on 11/05/1998 was rejected by the Special Tahsildar (LA) on the ground that petitioners' land is not similar to the land involved in LAR No. 120/87. Therefore, enhancement allowed in LAR No. 120/87 cannot be adopted. Petitioners made an application for reference which also was rejected by Special Tahsildar by Ext. P5 order on the ground that the application under Section 28A(3) of the LA Act has not been submitted in form 22A. W.P.C. Nos. 33886/2010 and 33985/2010 were filed by the petitioners challenging the order of the Special Tahsildar rejecting their applications filed under Section 28A(3) and a Division Bench of this Court, by Ext. P8 judgment dated 18/11/2011, allowed both writ petitions and set aside the orders passed by the Special Tahsildar. It was also directed to the Special Tahsildar to reconsider the applications filed by the petitioners under Section 28A(3). Subsequent to the judgment of the High Court, again an order was passed, Ext. P9, by the Special Tahsildar rejecting the applications. Special Land Acquisition Officer submitted that the applications submitted by the petitioners under Section 28A(1) on 11/05/1998 and 28/05/1998, relying on the judgment in LAR No. 120/87 which was originally pronounced on 20/03/1990, was not within time. Similar orders were passed rejecting all other applications filed by the petitioners under Section 28A(3). Aggrieved by the said orders rejecting the applications under Section 28A(3), W.P.C. No. 30687/2013 was filed by the petitioners, which has been dismissed by the learned Single Judge on the ground of laches. Aggrieved by the judgment of the learned Single Judge, petitioners have come up in this writ appeal."

3. Learned counsel for the appellants submits that the grounds given by the Special Tahsildar for rejection of the applications filed by the petitioners under Section 28A(1) as well as the order rejecting their applications filed under Section 28A(3) were both misconceived and not in accordance with law.

4. It is submitted that the applications submitted by the petitioners under Section 28A(1) were not beyond time and the reasons given by the Special Tahsildar in Ext. P9 order, which was passed after the judgment of this Court dated 18/11/2011, were incorrect. L.A.R. No. 120/87 was initially pronounced on 20/03/1990. Thereafter, an appeal was taken and on remand a fresh award was given on 03/09/1997 (A5). Thereafter, the applications under Section 28A(1) were filed by the petitioners after obtaining the certified copy of the judgment. It is contended that the Special Land Acquisition Officer rejected the applications

taking the date for computing the limitation from 20/03/1990, the date of the first award, which is wholly incorrect. It is submitted that when, after the remand, a fresh award has been given, the date of the said award was relevant for computation of limitation. Learned counsel for the appellants has relied on the judgment of the Apex Court in *Union of India v. Smt. Pradeep Kumari* [(1995) 2 SCC 736]. It is further submitted that the dismissal of the writ petition on the ground of laches was also not correct. The learned Single Judge, in fact, in the present case, ought to have exercised the discretion in favour of the petitioners in entertaining the writ petition on merits. Land Acquisition matters ought to have been decided on merits especially when the petitioners have been agitating their claims right from the beginning. Earlier also they had come to this Court by filing a writ petition, which was allowed. It is submitted by the learned counsel for the petitioners that the Special Land Acquisition Officer ought to have considered the applications of the petitioners filed under Section 28A(1) on merit and rejection of the applications on technical ground was wholly incorrect which deprived the petitioners the land value to which they are entitled.

5. Learned counsel for the appellants further contends that the view taken by the Special Land Acquisition Officer, while rejecting one of the applications filed by the petitioners by Annexure A3 order, that an award under Section 28A(3) cannot be the basis for an application under Section 28A(1), is also incorrect. In *District Collector v. Muhammed Kunhi* [, 2012(4) KLT 360] the issue has already been answered by the Division Bench holding that an application under Section 28A(1) can also be made on the basis of an award under Section 28A(3).

6. The learned Special Government Pleader submits that the writ petition was rightly dismissed on the ground of laches since the petitioners filed the writ petition after a period of more than one year and there was no valid explanation given for the delay.

7. The learned counsel for the appellants further submitted that as far as Ext. P9 order is concerned, the applications under Section 28A(3) was rejected by the Special Land Acquisition Officer on the ground that right of reference was available only to those who have not accepted the award under Section 28A(1). It is submitted that the view of the Land Acquisition Officer that since the applications of the petitioners were rejected, there was no occasion to make a reference under Section 28A(3), is also incorrect. It is argued that the order rejecting the applications is also an award for which reference could have been made under Section 28A(3).

8. We have considered the submission of the learned counsel for the parties and perused the records.

9. We have occasion to consider similar issues raised with regard to the same land acquisition notification under Section 4 of the LA Act in W.A. No. 1438/2013, regarding acquisition of land for Naval Academy. We had occasion to consider various grounds in the aforesaid case on which the applications under Section

28A(1) and 28A(3) were rejected. It is useful to refer to the following observations made by us in paragraphs 13 to 16 of the aforesaid judgment:

"13. Now coming to the orders passed by the Special Tahsildar (LA) under Section 28A(1), the order indicates that the rejection has been made on the ground that no application under Section 28A(1) is maintainable on the basis of an award under Section 28A(3). Learned counsel for the appellants has rightly placed reliance on the Division Bench judgment of this Court in District Collector v. Muhammed Kunhi [, 2012 (4) KLT 360]. The Division Bench of this Court considered the above issue and has laid down in paragraphs (19) and (20), which read as under:--

"19. So far as not preferring an application it means making effective application. It does not include an application for reference being dismissed on the ground of limitation, because there is no application fructifying into any reference. In such circumstances, owner can maintain application under S. 28A of the Act as long as other conditions are fulfilled. A person who gets benefit of higher compensation under S. 28A(3) for making a reference to the court as defined in S. 3(d) of the Act and this right cannot be denied.

20. Once application is filed before the Collector, he has to take into account all relevant facts into consideration such as the latest award, date of award, effective application, enhancement or reduction of compensation. As long as the applicant fulfills the conditions envisaged under S. 28A, there will be no embargo to proceed with the application. If an award is passed by Reference Court after remand of the matter by appellate court, it is also an award under S. 28A."

14. The judgment of the Apex Court which has been relied by learned counsel for the appellants in Koyyodan Cheriya Kannan's case (supra) was also a case where the rejection of application under Section 28A(3) was on the ground that it is not in Form 22A. The writ petition in the aforesaid case was also rejected on the ground of delay. The facts of the case has been noticed by the Supreme Court.

"The learned counsel appearing on behalf of the respondents, Ms. Liz Mathew, justified the impugned judgment and order, inter alia, by contending that the applications filed by the appellants were not only not in the prescribed form Rule 22(A) but also the writ petitions were filed belatedly before the High Court and therefore, the learned Single Judge has rightly affirmed the rejection of the claim made by the appellants under Section 28(A)(3) by the Land Acquisition Collector and the order of the learned Single Judge is correctly not interfered with by the learned Division Bench of the Kerala High Court by passing the impugned common Judgment and order by dismissing the appeal by assigning valid reasons and therefore the same need not be interfered with by this Court."

15. The Apex Court was considering the appeal against the judgment of the High Court where the High Court refused to exercise the discretion under Article 226 on the ground of laches. The Apex Court allowing the appeal held that in the facts of the present case, the High Court committed error in rejecting the writ

petition on the ground of delay. Following was observed by the Apex Court in paragraph (3):

"We have heard Mr. Huzefa Ahmadi, learned senior counsel appearing on behalf of the appellants and Ms. Liz Mathew, learned counsel on behalf of the respondents. We are required to examine this matter keeping in view the constitutional and fundamental rights conferred upon the appellant/land losers by the Constitution of India and also the object and the intentment of the provision of Section 28(A)(3) of the Land Acquisition Act of 1894 giving statutory right of claiming compensation on parity as that of similarly placed. The land losers have been solely depending upon the agricultural occupation to eke out their family members livelihood. We have considered the rights of the parties keeping in view the constitutional and fundamental rights of the appellants and examined the correctness of the decision taken by both the Land Acquisition Collector and the constitutional court viz., the High Court of Kerala. The rejection of their applications filed under Section 28(A)(3) of the Land Acquisition Act of 1894 by the Land Acquisition Collector for the reason that the appellants have not filed claim petitions in the Form 22(A), which is prescribed under Rule 16(A) of the Kerala Land Acquisition Rules, which approach of them is highly technical. Time and again, this Court in number of cases has laid down the law that when a litigant approaches a court of law or constitutional court, they are required to examine the substance of the matter having regard to the constitutional and fundamental rights of the constitution referred upon litigants in the matter."

16. The above judgment of the Apex Court is fully supporting the submission raised by the learned counsel for the appellant on both counts. The Apex Court has observed that in such matters, the Court had to examine the substance of the matter and on technical grounds, the writ petition ought not have been rejected. Similar order passed by the Special Tahsildar (LA) rejecting the application under Section 28A(3) was disapproved by the Apex Court in the aforesaid case. The Apex Court had remanded the matter to the Land Acquisition Collector. Following directions were issued by the Apex Court:

"For the foregoing reasons, we set aside the impugned judgment and order passed in the writ appeals and allow the writ petitions. We remand the matter to the Land Acquisition Collector to examine the claim afresh made by the land losers under Section 28(A)(3) of the Land Acquisition Act with reference to the LAR No. 120/87 passed by the reference court. The appellants are at liberty to furnish other particular as prescribed under Form 22A of the Rules as may be necessary to the Land Acquisition Collector within two weeks from the date of receipt of the copy of this order. The Land Acquisition Collector is required to examine the claim of the appellant-land losers within six weeks thereafter with reference to the market value determined in the award passed in favour of the other land owners of their land which was acquired under the notifications along with land of the land losers herein strictly as provided under Section 28 (A)(3) of the Act. After careful examination, if the Land Acquisition Collector finds the

appellant-land losers entitled to the market value determined in the award passed of the similar land owners, the said benefit shall be extended to the appellants also along with the statutory benefits provided under Section 34 of the Land Acquisition Act. If the Land Acquisition Collector rejects their claim, the appellants/land losers are entitled to get the same referred to the Jurisdictional Reference Court for adjudication of the market value of their land on par with the awardee of the Award already issued in favour of other land owners."

10. In W.A. No. 1438/2013, the learned Single Judge had dismissed the writ petition as it was barred by limitation. In the judgment dated 02/12/2014 in W.P.C. No. 34444/2013 [Koyyodan Cheriya Kannan v. District Collector], which arose from the same land acquisition matter, the Apex Court had set aside the order of the Special Land Acquisition Officer rejecting the applications filed under Section 28A(1) and 28A(3) on almost similar ground and directed the Special Land Acquisition Officer to consider the applications afresh. The Apex Court further held that the High Court ought not to have rejected the writ petition on the ground of laches. It is useful to extract the observation of the Apex Court which are to the following effect:

"The applications of the claims under Section 28(A)(3) of the Land Acquisition Act, 1894 are rejected by the Land Acquisition Collector which is affirmed by the High Court on technical grounds which is wholly unjustified. Therefore, the findings and the reasons recorded by the learned Single Judge and the Division Bench in the impugned judgment and orders are not valid in law and therefore, they are liable to be set aside. The said findings and reasons assigned in the impugned judgment and order is that the appellants have approached the Court belatedly and their applications are not filed in the prescribed form are also not tenable in law. The land losers' hardship to approach the court of law for various reasons within the reasonable period cannot be a ground for rejection of their legitimate right of awarding reasonable compensation towards their acquired land. It is very difficult for the land losers to approach the constitutional courts to agitate the matter against the mighty State by engaging lawyer and meeting the legal expenses, which would be very difficult for them."

11. Two other reasons which are given in the present case for rejection of the applications are:

"i) Reference under Section 28A(3) can be made only when the person has not accepted an award under Section 28A(1) and in the present case, the application filed under Section 28A(1) was rejected, there was no award. Hence Section 28A(3) does not apply.

ii) The date on which the first award was given by the Special Land Acquisition Officer in LAR No. 120/87, that is, 20/03/1990, is relevant for computation of the period of limitation and the award given after remand by the High Court is not relevant as long as the petitioners' applications were barred by time."

12. Both the aforesaid reasons given by the Special Land Acquisition Officer for

rejecting the applications are wholly incorrect. The order passed under Section 28A(1) by the Special Land Acquisition Officer is an award which entitles an applicant to make reference under Section 28A(3). In the present case, as we have already noted, by order Annexure A1, the Special Tahsildar while rejecting the application dated 11/05/1998, has held that the land of the petitioners is not comparable to the land involved in LAR No. 120/87. The said rejection was clearly a rejection on merits and an award within the meaning of Section 28A(2). The Special Land Acquisition Officer was wholly incorrect in saying that no reference was maintainable against such an order.

13. As far as the rejection of the applications on the ground that it is barred by time, we having already held that the applications under Section 28A(1) is not barred by time, the matter requires to be re-considered by the Special Land Acquisition Officer afresh. The question of reference shall arise after the award is made by the District Collector under Section 28A(2), after considering the applications of the petitioners on merits. Following the judgment of the Apex Court in Koyyodan Cheriya Kannan (supra) as well as the Division Bench Judgment in Muhammed Kunhi (supra), we are of the view that the present writ appeal deserves to be allowed. Reasons given by the Special Land Acquisition Officer for rejecting the applications filed under Section 28A(1) and 28A(3), having found to be unsustainable, we set aside the orders passed by the Special Land Acquisition Officer on the application filed under Sections 28A(1) and 28A(3) and remit the matter to the Special Tahsildar for deciding the applications filed under Section 28A(1) afresh in accordance with law. The judgment of the learned Single Judge is also set aside.

In the result, the writ petition and the writ appeal is allowed with the following directions:

- "i) Ext. P9 order in W.P.C. No. 30687/2013 is set aside. The orders rejecting the applications filed under Section 28A(1) (Annexures A1 to A4) are also set aside.
- ii) The Special Tahsildar, 3rd respondent, is directed to consider the applications filed by the petitioners under Section 28A(1) afresh, in accordance with law.
- iii) The Special Tahsildar shall endeavor to dispose of the applications on merits as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.
- iv) Parties shall bear the costs."