

(2022) 12 GUJ CK 0079

In the Gujarat High Court

Case No : R/Special Civil Application No. 24792 Of 2022

Mukeshbhai Nathabhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 18, 28A

Citation : (2022) 12 GUJ CK 0079

Hon'ble Judges : Aravind Kumar,CJ;Ashutosh J. Shastri, J

Bench : Division Bench

Advocate : KM Sheth, Hetal G. Patel

Judgement

Aravind Kumar,CJ

1. In this petition, petitioner has sought for direction to the second respondent to decide the application dated 24.09.2014 filed under Section 28 A of the Land Acquisition Act, 1894, on account of in-action on the part of the second respondent, in not considering the said application.

2. We have heard the arguments of Mr. K.M. Sheth, learned counsel appearing for petitioner and Ms. Hetal G. Patel, learned Assistant Government Pleader appearing for the State. Perused the records. It is an undisputed fact that the land of petitioner bearing Block/Survey No. 186 admeasuring 1431 sq.mtrs., situated in Village Medra, Taluka & District Gandhinagar, having been acquired during 2000 for Narmada Project after issuance of Notification under Sections 4 and 6 of the Land Acquisition Act, 1894, (hereinafter referred to as the "Act"). It also resulted in an award being passed on 19.08.2022. However, the writ applicant did not challenge the said award or seek for enhancement of the compensation. Similarly placed persons sought for reference under Section 18 of the Act by filing an application before the jurisdictional Reference Court which was numbered as L.A.R. Case No. 1043 of 2009 and other connected matters. The reference court allowed the application in part by judgment and award dated

06.09.2014. Immediately i.e. on 24.09.2014, the writ applicant filed an application under Section 28A of the Act (Annexure-A) before the second respondent seeking for similar compensation being awarded. The said application was not considered. However, by communication dated 15.10.2014, petitioner was called upon to the furnish copy of the judgment dated 03.08.2014 passed in L.A.R. Case Nos. 1043 of 2009 to 1044 of 2009, which was duly furnished on 05.02.2015. Thereafter, the application filed under Section 28A of the Act was never taken up for consideration. In fact, one of the communication addressed to the writ applicants dated 17.06.2015 (Annexure-D), would clearly indicate that they have received the award, on the basis on which the writ applicants were seeking compensation, yet the said application was not adjudicated and disposed of. Even legal notice is issued to the respondent has gone unanswered. Repeated requests, prayers and visits by the petitioner to the office of the second respondent seems to have not yielded any result, as is evident from the correspondence placed on record. Ultimately, left with no other option, petitioner got issued a legal notice on 17.08.2019 (Annexure-F), calling upon the second respondent to take immediate steps to pass an award. This was followed by another legal notice by way of reminder dated 04.06.2022. This also did not receive response from the second respondent. Hence, left with no other option, petitioner has approached this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

3. The State being alive of such instances where the officials do not take cognizance of the applications filed and allow the said applications to languish for months and years, which results in enormous financial drain on the State, thought fit to issue suitable directions to the authorities and as such, Circular dated 10.03.1997 came to be issued, which was in the public interest and to ensure that State exchequer would not be made to expend the amount for inaction on the part of its officials. We are of the considered view, it would be necessary to refer to the judgment of the co-ordinate Bench rendered in *Patel Kantilal Vitthaladas v. State of Gujarat* reported in 2002 (1) GLR 49, where-under, effect of aforesaid Circular came to be considered and it came to be held as under :-

"8. Thus, so far as the petitioners' grievance about deciding the application under Sec.28-A 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 Oct.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 under Sec.28-A 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 under Sec.28-A shall be monitored by the concerned Collectors and the same shall be taken up for consideration every month and Downloaded on : Mon Dec 12 13:26:20 IST 2022 the officer causing any delay in such cases shall be subjected to the disciplinary action."

4. The aforesaid Circular would clearly indicate that if there is a delay in adjudicating the said application, the liability would be fastened on the officers so responsible so that the amount of interest paid can be recovered from the concerned officer. It is with this laudable object said Circular has been issued by the State for ensuring that tax payers money is spent wisely or for the in-action on the part of the officials, State would not be made to spend tax payers money. This Court has noticed that said Circular is quite often being flouted or ignored and thereby the very purpose for which it came to be issued is being defeated. In these circumstance, we are of the considered view that this is a fit case where this Court would have to examine as to how the application which has been filed under Section 28A of the Act way back on 22.09.2014 has not been considered even after a lapse of eight (8) years in the teeth of Circular above referred to, though we are issuing a direction to second respondent (present incumbent) to dispose of the application filed under Section 28A of the Act, within one (1) week from the date of receipt of writ of this order. We direct the Registry to list this matter after four (4) weeks i.e. on 09.01.2023 to ascertain as to what steps have been taken by the State to fix the responsibility on the concerned officials who are responsible for the present situation from the date of receipt of the application till date, if necessary by initiating appropriate proceedings departmentally. The preparation of charges so issued shall be filed before this Court. We also call upon the Registry to forward this order to the Chief Secretary, Government of Gujarat, for ensuring that there is strict compliance of the Circular dated 10.03.1997 by the concerned, which would save substantial money to the State exchequer and thereby, burden of the State would get

reduced.

Government Advocate is permitted to file memo of appearance within six weeks from today.

Re-list this matter on 09.01.2023.