

(2003) 01 KL CK 0121
In the High Court Of Kerala
Case No : O.P. No. 37097 of 2001

Parangan Madhavi

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 19, 20, 21

Citation : (2003) 1 KLJ 365

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : M. Sasindran and K.P. Harish, for the Appellant; K.T. Abdul Rasheed (GP), for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair

1. The interesting question that has come up for decision in this case is the scope and ambit of Clause 6 of the conditions enumerated by the Apex Court in the decision in Union of India and another Vs. Pradeep Kumari and others, with reference to Section 28A of the Land Acquisition Act introduced through Section 18 of the Amendment Act 68 of 1984 w.e.f. 24-09-1984. For the work of re-alignment of National Highway three bits of property totalling to an extent of 10 cents in Sy. No. 88/58 of Velloor Village was acquired from the petitioner based on notification dt. 09-03-1989. The petitioner did not think it proper to challenge the award passed in the case through a timely request for reference u/s 18. However, other parties, whose similar lands were acquired as part of the same notification, made request for reference and one of them resulted in L.A.R. No. 20 of 1990 of Sub Court, Payyannur. The Reference Court awarded enhanced compensation to the claimant therein. The petitioner then moved an application u/s 28A of the Act on 14-12-1995; but it was rejected as time barred being one filed beyond three months from the date of decision in L.A.R. No. 20 of 1990. Later on the petitioner came to know that enhancement was allowed to another

claimant also in L.A.R. No. 4 of 1995 with reference to the earlier decision in L.A.R. No. 20 of 1990. This time he filed an application u/s 28A before the District Collector within three months from the decision in L.A.R. No. 4 of 1995 itself. This was rejected as per Ext. P3 by the Special Tahsildar (LA) NH, Cannanore on the ground that only one application can be entertained u/s 28A of the Act and that the application filed on 08-04-1997 being the second one cannot be entertained.

2. The learned counsel for the petitioner submitted that the stand taken by the first respondent is against the good intentions and spirit of the amendment introducing new Section 28A and that the inhibition mentioned in the decision in Union of India's case (supra) is only against filing of a second application when a validly filed first application had already been disposed of on the merits.

3. According to the learned Government Pleader, who was heard, such an interpretation is not possible and once an application put in by a claimant is not entertained u/s 28A albeit on the ground of limitation, there is no scope for entertaining a second application.

4. To resolve the controversy in question, reference is necessary to Section 28A of the Act, which reads as follows :

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, sub-section (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 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 section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

5. The aforesaid provision came up for consideration of the Apex Court in Union of India and another Vs. Pradeep Kumari and others, and it was held in para 11 of the judgment as follows :

A person who is entitled to apply u/s 28A belonging to a particular village may come to know of the first award that is made by the Court after the coming into force of Section 28A in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the Court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the cases of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in Court on the date of coming into force of Section 28A and may not be in a position to know, in time, about the first award that is made by the Court after the coming into force of Section 28A. By holding that the award referred to in Section 28A(1) is the first award made after the coming into force of Section 28A, such persons would be deprived of the benefit extended by Section 28A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28A. The object underlying Section 28A would be better achieved by giving the expression "An award" in Section 28A its natural meaning as meaning the award that is made by the Court in Part III of the Act after the coming into force of Section 28A. If the said expression in Section 28A(1) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied :-

(i) An award has been made by the Court under Part III after the coming into force of Section 28A.

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector u/s 11, has been allowed to the applicant in that reference;

(iii) The person moving the application u/s 28A is interested in other land covered by the same notification u/s 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector u/s 18;

(v) the application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved u/s 28A for redetermination of compensation by an applicant.

6. Section 28-A obviously is a beneficial provision brought in to help inarticulate and poor people, who might not have kept track of the progress of the reference

application filed by similarly situated persons. The provision can be given full meaning and intent only by adopting a liberal construction.

7. It is a cardinal principle of construction of statutes that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical or narrow construction on the ground that such construction is more consistent with the alleged object and policy of the Act. An exception to this would be where a literal construction given to the statute would render the provision meaningless. The said rule, according to me, can be applied for implementing observations contained in judgments of Courts also. The object of Section 28A of the Act was certainly to confer a right of making reference by persons who might not have made a reference u/s 18 to get the benefit of enhanced compensation, which other similarly situated persons could get. True, ordinarily an application can be filed for the purpose only once. But then, it should certainly be a valid application. The Rule of Resjudicata may not justly apply to a second application u/s 28A because it is not filed before a Court or other Authority to which the provisions of the CPC are applicable.

8. Clause (vi) in the aforesaid decision would apply ordinarily when a person makes a reference under the Section which gets dismissed. After such dismissal he would not get a right to move for compensation once again. But then the purport of Section 28A is to enable him to get the benefit when some other person makes a reference and that results in a beneficial decision. The Parliament, having enacted such a beneficial provision, it would cause injustice if a literal interpretation is given to the provision concerned. Without Section 28A in the statute book, it is not permissible for a land owner to make a reference and get it answered when he discovers, after years, that another claimant covered by the same notification got a higher amount awarded by the Reference Court. It is to obviate this difficulty that an exception is made u/s 28A giving him a fresh opportunity for making similar claim once such grant to another similarly situated person comes to his notice. Condition (vi) of the judgment of the Apex Court (supra) appears to have been made only to avoid successive claims being made by one and the same person whose claim is found to be without merit once, whereas some other persons get a higher amount from the Reference Court. Such a benefit is certainly not contemplated u/s 28A. All the same the Section grants to a claimant the opportunity to get adjudicated on the merits subject to law of limitation whether he should get the same benefits as allowed to another.

9. It is true that clause (vi) quoted from para 11 of the judgment of the Apex Court aforementioned specifies that only one application can be moved u/s 28A for re-determination of compensation by an applicant. If we look at that observation from the perspective already mentioned above what would be clear is that the reference therein is obviously to a valid application so that a person who gets the benefit of Section 28A through one application should not approach the Court when a more beneficial decision, say with reference to a property of

better potential or proximity, comes to his notice later on. According to me the bar in condition No. (vi) aforementioned will not stand in the way of an applicant like the petitioner seeking the benefit of Section 28A for the first time through a valid application. To put it differently, the words "one application" used by the Apex Court has to be seen as "one valid application". In the instant case, it is true, that the petitioner had moved an application on 09-03-1989, but for all practical purposes it is as if he had not filed any application at all because no consideration of that application on the merits was possible for the reason that it was time barred. As far as the later application dt. 14-12-1995 is concerned, the application was not bad for the said defect because it was within three months from the decision in L.A.R. No. 4 of 1995. I therefore find considerable merit in the contention of the petitioner that clause (vi) in para 11 of the said judgment would apply to an application which conforms to the requirements in clauses (i) to (v) and not to a still born application as presented herein on 09-03-1989. To take a contrary view would be to defeat and negate the purpose behind Section 28A and against the legislative intent behind that provision.

I, therefore, allow the Original Petition and direct that the application filed by the petitioner on 08-04-1997 before the first respondent be treated as a valid application and proceeded with in accordance with law to its logical end. Necessary orders would be passed within a period of one month from the date on which a copy of this judgment is produced before him.