

(2014) 04 GUJ CK 0063
In the Gujarat High Court

Case No : Special Civil Application Nos. 14589, 14591 and 14592 of 2012

Ramabhai Chhaganbhai Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 28A, 4, 6

Citation : (2014) 3 GLR 2767

Hon'ble Judges : V.M. Sahai, J; Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : S.P. Majmudar and Vimal A. Purohit, Advocate for the Appellant; Udit Mehta and Utkarsh Sharma, A.G.Ps, Advocate for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—We have segregated these three cases from this group as the issues involved in these matters are common. All the three matters out of this group are disposed of because the moot question which arises before us is, whether the order dated 5-6-2009 rejecting claim of the petitioners on the ground that their applications under Sec. 28A were delayed by one day or not. The petitioners have filed these petitions praying that:

"(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions quashing and setting aside order dated 5-6-2009 passed by respondent No. 2;

(B) During the pendency and final disposal of the present petition Your Lordships may be pleased to stay disbursement of the amount awarded as per the judgment of learned District Judge dated 29-12-2001 passed in Land Acquisition Reference main No. 953 of 1996;

(C) Pass any such order and/or further orders that may be thought just and proper, in the facts and circumstances of the present case."

2. Brief facts of the case are as narrated:

"By way of the present petition, the petitioner seeks to challenge absolutely illegal and unjustified order dated 5-6-2009 passed by respondent No. 2 herein whereby rejecting the application of the petitioner filed under Sec. 28A of the Land Acquisition Act, 1894 on the ground that the same is time-barred. The said order is passed without considering the facts of the case in its proper perspective and the fact that the application of the petitioner is not barred by the law of limitation. Lands situated at village Sokhda, Tal. Matar, Dist. Kheda were acquired for the purpose of re-alignment of National Highway No. 8."

3. Notifications under Secs. 4 and 6 under the Land Acquisition Act, 1894 were issued, and thereafter, the award was passed in different L.A.Q. cases, including L.A.Q. Case No. 3 of 1993 and the said award is dated 25-1-1996 passed by respondent No. 2 herein.

4. Reference under Sec. 18 of the Act was filed by the concerned land losers wherein in Land Acquisition Reference, main No. 953 of 1996 a judgment was passed by the learned District Judge, Nadiad.

5. First Appeal Nos. 1025 and 2479-2512 of 2006 were preferred before this Hon"ble Court, which were decided vide order dated 14-8-2006 whereby the aforesaid judgment dated 20-12-2001 was confirmed.

6. Petitioner's land situated at aforesaid village Sokhda, Tal. Matar, Dist. Kheda having Block No. 641 admeasuring 0-42-70, was also acquired for the aforesaid purpose.

7. In the aforesaid award dated 25-1-1996 in Appendix-E there is a mention of aforesaid Block No. 641 which Appendix shows the list of lands which have been fragmented due to the land acquisition. The other agriculturists whose lands are acquired in village Sokhda and the land of the present petitioner which is also acquired, are for the same purpose and are covered under the aforesaid notification and award.

8. The petitioner could not file reference under Sec. 18 of the Act, and thereafter, in the said reference, in L.A.R. No. 953 of 1996 vide the aforesaid judgment dated 29-12-2001 compensation is fixed at Rs. 59-50/- per sq.mtr.

9. A reference under Sec. 28A of the Act was filed by the petitioner for the redetermination of the amount of compensation on the basis of the award of the Court, which came to be rejected vide the impugned order dated 5-6-2009 on the ground that the same is time-barred.

It is submitted that the impugned order is contrary to facts and evidence on record.

9.1. It is submitted that the reasoning given in the impugned order is absolutely perverse, unjustified and contrary to the provisions of the Land Acquisition Act, 1894 as well as the Limitation Act.

10. It is submitted that the application of the petitioner under Sec. 28A of the

Act is dated 30-3-2002 and is within the period of limitation as prescribed under the law considering the fact that some time was consumed in getting the certified copy of the aforesaid judgment dated 29-12-2001 of learned District Judge.

11. It is submitted that respondent No. 2 has gravely erred by arriving at a finding that the period of limitation for filing the application under Sec. 28A of the Act by the petitioner expired on 29-3-2002 and the application is filed on 30-3-2002 due to which the same is considered as time-barred.

12. It is submitted that the application for getting the certified copy of the aforesaid judgment of Hon"ble District Court was applied on 19-1-2002 and the same is received on 25-2-2002 and were produced along with the petitioner's application under Sec. 28A of the Act dated 30-3-2002, and therefore, the time consumed in getting the said certified copy ought to have been excluded while counting the period of limitation as prescribed under Sec. 28A of the Act.

13. It is submitted that though initially the petitioner had made a request for changing the lawyer representing him in the aforesaid case, the finding in the impugned order that since the original applicants had made a request for changing their lawyer Shri Arvind S. Patel, all the applications filed by the said lawyer under Sec. 28A of the Act are to be considered as null and void, is an absolutely perverse finding.

14. It is submitted that on the certified copy of the judgment which was provided along with the application of the petitioner dated 30-3-2002 there is a mention of the name of the petitioner as well as Advocate Shri A.S. Patel and thus, the finding in the impugned order that since the Vakalatnama of Shri A.S. Patel is dated 30-3-2002 he could have applied for certified copy of the order of learned District Judge on or after 30-3-2002 is also a perverse finding since the petitioner had appointed the aforesaid Advocate for the purpose of filing the said reference and the certified copy was applied for the purpose of filing reference under Sec. 28A of the Act.

15. It is submitted that respondent No. 2 has gravely erred by arriving at a finding that the application for certified copy may have been made for some other claimant and the said finding is erroneous, because the name of the applicant is also stated on the certified copy of the judgment.

16. It is submitted that merely because the Vakalatnama which was filed in the aforesaid proceedings is dated 30-3-2002, it cannot be said that the certified copy of the judgment of the Hon"ble District Judge is not applied on behalf of the petitioner.

17. It is submitted that the petitioner has a good case on merits and his application under Sec. 28A of the Act is within the period of limitation, if the same is counted after excluding the time consumed in getting the certified copy of the judgment of Hon"ble District Court. Hence, the present petition warranting kind interference of this Hon"ble Court.

18. By way of the present petition the petitioner seeks to invoke the extraordinary jurisdiction vested in this Hon'ble Court under Art. 226 of the Constitution of India and thereby seeks to challenge absolutely illegal, and unjustified order dated 5-6-2009 passed by respondent No. 2 herein whereby rejecting the application of the petitioner filed under Sec. 28A of the Land Acquisition Act, 1894 on the ground that the same is time-barred. It is submitted that the said order is passed without considering the facts of the case in its proper perspective and the fact that the application of the petitioner is not barred by the law of limitation. Hence, being aggrieved by the same, the petitioner is constrained to prefer the present petition.

19. Lands situated at village Sokhda, Tal. Matar, Dist Kheda were acquired for the purpose of re-alignment of National Highway No. 8. It is further submitted that Notifications under Secs. 4 and 6 under the Land Acquisition Act, 1894 were issued, and thereafter, the award was passed in different L.A.Q. cases, including L.A.Q. Case No. 3 of 1993 and the said award is dated 25-1-1996 passed by respondent No. 2 herein.

20. Thereafter, concerned land losers had filed reference under Sec. 18 of the Act wherein Land Acquisition Reference main No. 953 of 1996 the judgment was passed dated 29-12-2001 by the learned District Judge, Nadiad.

21. The petitioners seek to challenge absolutely illegal and unjustified order dated 5-6-2009 passed by respondent No. 2 herein whereby the application of the petitioner filed under Sec. 28A of the Land Acquisition Act, 1894 was rejected on the ground that the same is time-barred. The said order is passed without considering the facts of the case. The fact that the application of the petitioner is not barred by the Law of limitation as also not properly construed.

22. Notifications under Secs. 4 and 6 under the Land Acquisition Act, 1894 ("the Act") were issued, and thereafter, the award was passed in different L.A.Q. cases including L.A.Q. Case No. 3 of 1993 and the award is dated 25-1-1996 passed by respondent No. 2 herein. Reference under Sec. 18 of the Act was filed by the concerned land losers. In Land Acquisition References main No. 953 of 1996 judgment was pronounced by the learned District Judge, Nadiad on 20-12-2001.

23. First Appeal Nos. 1025 and 2479-2512 of 2006 were preferred before this Hon'ble Court, which were decided vide order dated 14-8-2006 whereby the aforesaid judgment dated 20-12-2001 was confirmed.

24. It is further alleged that the petitioner's land was situated at aforesaid village Sokhda, Tal. Matar, Dist. Kheda having Block No. 641 admeasuring 0-42-70, which was also acquired for the aforesaid purpose.

25. In the aforesaid award dated 25-1-1996 in Appendix-E there is a mention of aforesaid Block No. 641. The Appendix shows the list of lands which have been fragmented due to the land acquisition. The other agriculturists, whose lands are acquired in village Sokhda and the land of the present petitioner, which is also

acquired, are for the same purpose and are covered under the aforesaid notification and award.

26. The petitioner could not file reference under Sec. 18 of the Act, and thereafter, in the said reference, in L.A.R. No. 953 of 1996 vide the aforesaid judgment dated 29-12-2001 compensation is fixed at Rs. 59-50 sq.mtr.

27. A reference under Sec. 28A of the Act was filed by the petitioner for redetermination of the amount of compensation on the basis of the award of the Court, which came to be rejected vide impugned order dated 5-6-2009 on the ground that the same is time-barred.

28. It is submitted that the impugned order is contrary to facts and evidence on record and on miscalculating the days for limitation.

29. It is submitted that the reasoning given in the impugned order is absolutely perverse, unjustified and contrary to the provisions of the Land Acquisition Act, 1894 as well as the Limitation Act and against the record and without proper proof.

30. It is submitted that merely because the Vakalatnama which was filed in the aforesaid proceedings is dated 30-3-2002, it cannot be said that the certified copy of the judgment of the Hon"ble District Judge is not applied on behalf of the petitioner. Hence, this petition.

31. Certified copy of the order was applied on 19-1-2002 and received on 25-2-2002. If the time for obtaining certified copy is excluded then the application under Sec. 28A would be within limitation and could not be rejected on ground of delay. If the authorities had considered the time which was spent in getting the certified copy, there is no delay. In the alternative, if there was delay it could even be easily condoned.

32. In the aforesaid circumstances, the application under Sec. 28A shall be freshly considered by the authorities concerned as per the statutory provisions on merits and in accordance with law. These petitions are allowed. The authorities shall decide the case as expeditiously as possible. No order as to costs. Rule is made to the aforesaid extent.