
(1990) 11 GUJ CK 0005
In the Gujarat High Court

Ramjibhai Harkhabhai

APPELLANT

Vs

Second Extra Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 28A, 28A(1), 3(d)

Citation : (1992) 1 GLR 105

Hon'ble Judges : S.B. Majmudar, J; R.K. Abichandani, J

Bench : Division Bench

Judgement

R.K. Abichandani, J.—The petitioner seeks to challenge the impugned order passed by the Second Additional Special Land Acquisition Officer, Ahmedabad on 11th April, 1988 rejecting the application of the petitioner dated 24th March, 1988 made u/s 28A of the Land Acquisition Act (hereinafter referred to as "the Act") on the ground that the Notification u/s 4 of the Act covering the lands belonging to the petitioner was issued prior to the coming into force of the provisions of Section 28A, i.e., prior to 24-9-1984.

2. The lands of the petitioner and others were required for the purpose of constructing a road. The Notification u/s 4 of the Act was issued by the respondent No. 1 on 4th October, 1979 and published on 13th December 1979. Thereafter Notification u/s 6 of the Act was issued on 12-8-1981 and published on 17-9-1981. In the award made on 23rd December 1982, compensation was given to the petitioner at the rate of Rs. 40/- per Are. Some of the other claimants under the same acquisition had made a reference u/s 18 of the Act and the 2nd Extra Assistant Judge, Ahmedabad (Rural), by his judgment and award dated 2nd May, 1987 had awarded to them compensation at the rate of Rs. 8.60 paise per sq. mtr. The petitioner, therefore, filed an application u/s 28A of the Act for re-determination of the amount of compensation paid to him on the basis of the compensation awarded by the Second Extra Assistant Judge, Ahmedabad (Rural) in reference Nos. 241 of 1986 to 276 of 1986 and 67 of 1983.

3. In the impugned order dated 11th April, 1988 at Annexure "A" the only reason

given by the Special Land Acquisition Officer for rejecting the petitioner's application is that since the Notification u/s 4 of the Act in respect of the said land was issued prior to 24th September, 1984 being the date on which the provision of Section 28A of the Act came into force, the petitioner's claim for re-determination could not be accepted,

4. u/s 28A of the Act provision is made for re-determination of the amount of compensation on the basis of the award of the Court. It is provided that where in an award under Part III of the Act, 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 (I) 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. In computing the period of three months within which an application is required to be made to the Collector, the day on which the award was pronounced and the time requisite for obtaining a copy of the award has to be excluded as laid down in the proviso of Section 28A(1). A bare reading of the provisions of Section 28A(1) makes it clear that it has reference to an award made under Part III by the Court which necessarily means that Section 28A would operate only after a reference is made u/s 18 of the Act and an award is made by the Court. The expression "Court" is defined in Section 3(d) of the Act so as to mean a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed a special judicial officer within any specified local limits to perform the functions of the Court under this Act. Therefore, reference to an award of the Court u/s 28A is an award made u/s 18 of the Act by the Court. The provisions of Section 28A came into force with effect from 24th September, 1984 by Section 19 of Act 68 of 1984. It, therefore, means that on the basis of any award made by the Court u/s 18 of the Act after the coming into force of Section 28A any person interested in any other land covered by the same Notification u/s 4 of the Act can make an application u/s 28A for re-determination of amount of compensation on the basis of the amount awarded by the Court. The provisions of Section 28A would cover all the awards made by the Court on and after 24-9-1984 being the date on which the said provision was brought into force. Admittedly the award of the Court was made in Land Acquisition Case No 67 of 1983 and other group matters on 2nd May, 1987 by the Second Extra Assistant Judge, Narol which was after coming into force of Section 28A of the Act. Reference to Notification u/s 4(1) of the Act which is made in Section 28A is only with a view to identify the class of persons interested who can make an application for re-determination of the amount of compensation on the basis of the award of the Court. There is no justification whatsoever for the view that Section 28A of the Act would not apply to cases where Notification u/s 4(1) of the Act is issued prior to the date on which the

said provision was brought into force. Since provision clearly applies only to cases where award is made by the Court after the date on which it was brought into force, there is no reason to refer to the Notifications issued earlier, i.e., prior to the date on which the provision was brought into force for the purpose of determining the applicability of the provision. The emphasis of the provision is on the award made by the Court u/s 18 of the Act and in all cases where the award of the Court is made after the provision was brought into force it would apply with prospective effect. Therefore, even if a Notification u/s 4 is issued before the said provision was brought into force it cannot be said that Section 28A is sought to be applied retrospectively if the award of the Court u/s 18 is declared after the date on which the provision was brought into force. Hence the interpretation sought to be put on Section 28A by the Second Additional Special Land Acquisition Officer in his order dated 11th April, 1988 that the provision applies only to cases where Notification u/s 4(1) is issued after 24-9-1984 being the date on which the provision brought into force is not at all warranted by the said provision. The Second Additional Special Land Acquisition Officer has not considered other aspects of the matter including the one whether the application was made within the prescribed time limit, since he disposed of the application merely on the ground that Section 4 Notification was prior to 24-9-1984. In this view of the matter the impugned order of the Second Additional Special Land Acquisition Officer, Ahmedabad, dated 11th April, 1988 at Annexure "A" will have to be set aside and the matter will have to be remanded for considering the application of the petitioner made u/s 28A of the Act on merits in the light of the observations made in this judgment.

5. We make it clear that the question of limitation prescribed for making of such application and the aspect of condonation of delay, if it arises, may suitably be considered by the Special Land Acquisition Officer in accordance with law. Rule is therefore made absolute accordingly with no order as to costs.