
(1990) 07 KL CK 0059
In the High Court Of Kerala
Case No : O.P. No. 4958 of 1990

Smt. Savithry Amma

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 31-07-1990

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 11, 18, 18, 19, 20

Citation : (1990) 2 KLJ 315

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : Mohan C. Menon, for the Appellant; N. Sankara Menon Govt. Pleader, for the Respondent

Judgement

K.P. Radhakrishna Menon, J.—The reliefs sought for in the O.P. read:-

...this Honourable Court be pleased to issue:

(a) writ of certiorari and quash Ext. P3 order passed by the 3rd respondent, after calling for the records Wading to it;

(b) writ of mandamus commanding the 3rd respondent to entertain Ext. F4 application and refer the matter to the Sub Court, Ernakulam u/s 28A (3) of the Act;

(c) an order of stay of the operation of Exhibit P3 order, pending disposal of the O.P.;

and

(d) such order or direction as this Hon''ble Court deems fit and proper to grant in the facts and circumstances of the case.

Ext. P1 shows that the civil court has enhanced the compensation, awarded in favour of Devaky Anuria and Balakrishnan Panicker for acquiring their lands, which were notified for acquisition (vide the Notification u/s 4, sub-section 1 of

The Land Acquisition Act, for short, The Act, alongwith the land belonging to the petitioner. Having come to know of Ext. P1 judgment, the petitioner preferred an application u/s 28) of the Act before the Collector, which stands rejected by Ext. P3 order The operative portion of Ext. P3 order reads:-

I have perused the records and the enquiry report. The contention contained in the averments of the learned counsels were also considered. The judgment relied on by the applicant is the judgment in I.A.R. 198/86 dt. 30-1-88 of the learned Sub Judge, Ernakulam. According to the judgment the learned Sub Judge has enhanced compensation to Rs. 9527/- per Are for an extent of 7.08 Ares in Sy. No. 453/2 of Kumbalam Village of Kanayannur Taluk for which the Land Acquisition Officer has awarded a land value of Rs. 1800/- per Are. The learned counsel for the applicant has contended that the Court has ordered the enhancement based upon the category of land categorised by the Awarding Officer. The compensation awarded by the Land Acquisition Officer for the land for which enhanced-compensation awarded by the Court in L.A.R. 198/86 is Rs. 1800/- per Are, whereas the compensation awarded by the L.A.O. for the land of the applicant herein is Rs. 1600/- It is evident therefore that the lands of the applicant and the land for which enhancement ordered by the Court are not of the same category as categorised by the L.A.O. though both of them are under the same notification. Enquiry report also corroborates this fact. Therefore the judgment based on which enhancement is claimed is not relevant in this case.

In the above circumstances I find no reason to redetermine the case u/s 28A of the L.A. Act. The application does not merit consideration. Hence it is rejected.

Since there is no award under Sub-section (2) of Section 28 (A), the request to refer the case under sub-section (3) of Section 28A is also rejected.

On going through the above excerpt it is clear that the Land Acquisition Officer rejected the request of the petitioner to have the matter (the request of the petitioner to have the compensation enhanced taking into account the judgment of the court, Ext. P1) referred to the civil court only for the reason that his decision rejecting the application u/s 28A, cannot be said to be an award within the meaning of sub-section 3 of section 28A of the Act.

2. I shall now read relevant parts of Section 28A:- "28A. Redetermination of the amount of compensation on the basis of the award of the court.....

(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 reference u/s

18".

Sub-section 2 would suggest, the learned Government Pleader submits, that in the exercise of the power conferred on him under sub-section 2, the Land Acquisition Officer shall conduct an enquiry and make an award redetermining the amount of compensation payable to the applicant. If that be so, the order refusing to redetermine the amount of compensation on the basis of the compensation awarded by Ext. P1 Judgment, cannot be said to be an award and as such the question as to whether the matter requires to be referred to the civil court for the determination of the court does not arise, the counsel argues. I cannot agree. The object with which this section was enacted, was to see that the person whose land was acquired, received the real market value. There may be cases where a person might, have omitted to make an application u/s 18 to have the question relating to enhancement of compensation referred to the civil court. Until this section was enacted it was not possible for such a person who was also as aggrieved by the award of the Collector as that other person whose application u/s 18 was allowed by the court, enhancing the compensation, to get the compensation awarded to him by the Collector, redetermined on the basis of the said judgment of the court. Section 28A (1) enables such a person to make a written application to the Collector within three months from the date of the award of the court in this regard. Sub-section 2 empowers the Land Acquisition Officer to determine the compensation taking into account the compensation awarded by the court. In the exercise of this power, if the Land Acquisition Officer is of the view that the applicant is not entitled to any amount of compensation in excess of the amount awarded by him u/s 11, notwithstanding the judgment of the court awarding enhanced compensation. Within the meaning of sub-section 1, and consequently rejected his application u/s 28A, are we to understand that the said decision refusing to redetermine the compensation is not an award within the meaning of sub-section 2 of Section 28A ? To my mind the answer is that the said order is also an award like the order redetermining the amount of compensation, with, the only difference that the amount of compensation the applicant will be entitled to get as per the former order will be the same as the one originally awarded whereas as per the latter order the applicant will be entitled to get the amount of compensation redetermined. That that is the intention of the legislature is clear from the plain language used in sub section 2; This sub-section empowers the Collector to conduct an enquiry 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 applicant. The mandate is that the Collector shall make an order determining and not redetermining the amount of compensation payable to the applicant. The Collector under sub-section 2 therefore can either hold that the applicant is entitled to get an enhancement of the compensation or declare that the applicant is not entitled to any amount in excess of the compensation originally awarded. Whether it be in the former case or in the latter, what the Collector does is to make an award determining afresh the amount of

compensation payable to the applicant. In the former case the applicant however would be entitled to get only the compensation originally awarded whereas in the latter the applicant would be entitled to get not only the compensation originally awarded but also the amount of compensation in terms of the amount awarded originally u/s 11. That that is the intention of the legislature is further indicated by sub- section 3. It provides that 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 for the determination of the court and such an application for reference is treated on a par with an application for reference u/s 18. A reference in this connection to the following words employed in this sub-section is profitable:

Any person....., 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 Sections 18 to 28 shall, so far as may be, apply to such reference, as they apply to a reference u/s 18.

Sections 18 to 28 contained in Part III of The Act empower the court to determine the amount of compensation, a claimant is entitled to get on his land being acquired for a public purpose. Any other interpretation would fail to achieve the manifest purpose of the legislation stated supra. We should avoid a construction which would reduce the legislation to futility. It should be remembered in this Connection that the legislature would legislate only for the purpose of bringing about an effective result. (See Maxwell on interpretation of Statutes, 12th edition, page 45). This interpretation would also avoid manifest absurdity or futility which would be the result if the narrower interpretation suggested by the counsel for the Land Acquisition Officer is accepted. It therefore follows that the order refusing to redetermine the compensation payable to the affected party on the basis of the amount of compensation awarded by the court will also be an award within the meaning of sub-sections 2 and 3.

Having understood the position thus, let us see whether the Land Acquisition Officer was justified in not referring the matter to the civil court. As already observed, the order refusing to redetermine the compensation by the Land Acquisition Officer is also an award within the meaning of sub-section 2 of Section 28A and if that be so, the person who is aggrieved by such an order also has the right to approach the Land Acquisition Officer to have the matter referred to the civil court and on such application being made, the Land Acquisition Officer is bound to refer the same to the civil court for disposal in accordance with law.

Ext. P3 therefore is set aside and the third respondent is directed to A refer the application to the civil court for a determination of the compensation in accordance with law.

The O.P. is allowed in the manner indicated above.