

(2023) 06 GUJ CK 0043

In the Gujarat High Court

Case No : R/Special Civil Application No. 2908, 2913, 2916, 2917, 3007, 3009, 3062, 3063, 3095 Of 2023

Vajsibhai Ramabhai Sagar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21, 226, 227
Land Acquisition Act, 1894 — Section 11, 18, 28A

Citation : (2023) 06 GUJ CK 0043

Hon'ble Judges : A.J.Desai, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Makbul I Mansuri, Sabina M Mansuri, Km Antani

Final Decision : Dismissed

Judgement

A.J.Desai, J

[1.0] By way of present group of petitions under Articles 14, 19, 21, 226 and 227 of the Constitution of India, the respective petitioners of Special Civil Application Nos.2908/2023, 2913/2023, 2915/2023, 2917/2023, 3007/2023, 3062/2023, 3063/2023 and 3095/2023 have challenged an order dated 23.06.2022 whereas the petitioner of Special Civil Application No.3009/2023 has challenged an order dated 05.09.2018 passed by respondent No.2 i.e. Deputy Collector, Land Acquisition and Rehabilitation (Irrigation) and Circle Officer, Khambaliya by which respective application under Section 28A of the Land Acquisition Act, 1894 filed by the respective petitioner came to be rejected on the ground of delay caused in preferring said application under Section 28A of the Land Acquisition Act, 1894.

[2.0] Notice came to be issued by the coordinate Bench which was made returnable and ultimately Rule was issued which has been made returnable today.

[3.0] The respondents have appeared through the learned Assistant Government Pleader Mr. K.M. Antani and opposed the grant of reliefs prayed for.

[4.0] The short facts arising from the record of the case are as follows:

[4.1] That, the lands belonged to the petitioner in each case came to be acquired for Und Reservoir of Jamnagar District. After following the procedure provided under Section 28A of the Land Acquisition Act, 1894, award came to be published by the Deputy Collector on 20.10.1994. Huge parcel of lands were acquired for the aforesaid scheme. Some of the land owners, whose lands were acquired, sought for reference under Section 18 of the Land Acquisition Act, 1894 and accordingly, the District Collector referred the matter to the Court of learned Senior Civil Judge, Khambaliya. The learned Senior Civil Judge by his judgment and award dated 03.04.2018 accepted L.R.C. No.227/1995 and allied references in part and allowed the reference cases. None of the petitioners had sought reference however, relying upon the decision of the learned Senior Civil Judge, filed application under Section 28A of the Land Acquisition Act, 1894 on 10.11.2020.

[4.2] By the impugned order the application filed under Section 28A of the Land Acquisition Act, 1894 came to be dismissed only on the ground that the application is filed beyond the period of limitation.

Hence, present petitions.

[5.0] Learned advocate Mr. Makbul Mansuri appearing for the petitioners would submit that the petitioners are ready and willing to forego the interest if application is accepted and additional amount as per the award of the Reference Court is granted to the petitioners. He would submit that under Article 226 of the Constitution of India, the petitioners, who are claiming parity with those land owners whose lands were acquired under the same Notification and award came to be issued, can be granted by extending the period of limitation.

[5.1] He would submit that in similar type of case the Division Bench of this Court in the case of Patel Govindbhai Khodidas vs. Special Land Acquisition Officer & Anr. rendered in Special Civil Application No.7677/2017, vide judgment dated 22.08.2017, has considered the case and by condoning the delay caused in filing application under Section 28A of the Land Acquisition Act, 1894, had granted the said petition. He, therefore, would submit that present petitions be allowed.

[6.0] On the other hand, learned Assistant Government Pleader Mr. K.M. Antani appearing for the respondents has vehemently opposed the present group of petitions. He would submit that the limitation to file an application under Section 28A of the Land Acquisition Act, 1894 is of three months from the date of publication of award by the concerned Court. In the present case, the award was declared on 09.04.2018 wherein the application was made by the respective petitioners on 10.11.2020, which is beyond the prescribed period of 90 days.

[6.1] He would submit that such period cannot be condoned by this Court even in exercise of powers under Article 226 of the Constitution of India. In support of

his above submission, learned AGP has relied upon the decision of the Hon'ble Apex Court in the case of State of A.P. and Another vs. Marri Venkaiah and Others reported in (2003) 7 SCC 280 as well as the decision of the Hon'ble Apex Court in the case of Union of India and Others vs. Mangatu Ram and Others reported in (1997)6 SCC 59. By relying upon these two decisions, learned AGP would submit that period of limitation cannot be extended and person seeking relief under Section 28A of the Land Acquisition Act, 1894 is supposed to file application within a prescribed period of three months from the date of publication of the award by the reference Court. As far as decision of the Division Bench of this Court in the case of Patel Govindbhai Khodidas (Supra) relied upon by the learned advocate appearing for the petitioners is concerned, learned AGP would submit that the facts of the said case were not applicable to the present group of petitions. He would submit that the application under Section 28A of the Land Acquisition Act, 1894 was filed by the owner of the property through his brother which was rejected on that ground and the application which was filed by the original owner subsequent to the period of limitation, the same was accepted. He, therefore, would submit that the petition be dismissed.

[7.0] We have heard learned advocates appearing for the respective parties at length.

It is an undisputed fact that none of the present petitioners have sought reference under Section 18 of the Land Acquisition Act, 1894. The Reference Court declared the judgment and award only on 09.04.2018.

[7.1] As per Section 28A of the Land Acquisition Act, 1894, a written application is required to be submitted for similar compensation under Section 28A of the Land Acquisition Act, 1894 within a period of three months from the date of such award passed by the Court. Section 28A of the Land Acquisition Act, 1894 reads as under:

"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 under section 11, the persons interested in all the other land covered by the same notification under section 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 under section 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) ...

(3) ...”

This provision has been interpreted by the Hon’ble Apex Court in the case of Marri Venkaiah and Others (Supra) wherein it has been specifically held by the Hon’ble Apex Court that a person would be entitled for benefits only if he files application under Section 28A within a period of 90 days. Similar is the ratio laid down by the Hon’ble Apex Court in the case of Mangatu Ram and Others (Supra).

[7.2] In our considered opinion the Authority has committed no error in rejecting application under Section 28A of the Land Acquisition Act, 1894. As far as the decision of the Division Bench of this Court in the case of Patel Govindbhai Khodidas (Supra) relied upon by the learned advocate appearing for the petitioners is concerned, it appears from the said judgment that the application in that case was filed within the period of limitation by the original land owner through his brother but the same was rejected on the ground that the person who filed application under Section 28A Land Acquisition Act, 1894 has not submitted authorization to file the application for and on behalf of the petitioner – original land owner and therefore, the Division Bench entertained the said petition. But, in the present case, the application under Section 28A of the Land Acquisition Act was filed beyond the period of limitation and therefore, said decision of Division Bench cannot be made applicable to the facts of the present case.

[8.0] In view of above discussion, present petitions being devoid of merit stand dismissed. Rule is discharged in each of the petitions.