

(2002) 08 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 3941 of 1991

Vishwanath Harkad and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 28A

Citation : (2003) 2 ALLMR 228 : (2003) 2 BomCR 768 : (2003) 1 MhLj 369

Hon'ble Judges : D.G. Karnik, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.F. Patni, for the Appellant; Gondhalekar, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—The application filed by the petitioners u/s 28A of the Land Acquisition Act, 1894 ("the Act" for short) came to be rejected by the impugned order dated 20th July, 1991, on the grounds that (a) it was filed beyond limitation and (b) the Land Acquisition Officer had passed final Award on 30-6-1980 and therefore, the provisions of Section 28A of the Act were not applicable.

2. There is no dispute that the petitioner's land as shown in the statement "A" to the petition memo came to be acquired for the construction of Dhamore Minor Irrigation Bank Canal as per the notification issued u/s 4 of the Act on 22-8-1977. Final Award was passed on 16-9-1980 and the amount of compensation was received by the petitioners.

3. The petitioners did not apply to the Land Acquisition Officer for reference u/s 18 of the Act but some other landholders, whose lands were also acquired for the said project i.e. Dhamore Minor Irrigation Tank had sought a reference u/s 18 of the Act. Accordingly, the reference was referred to the District Court. It was registered as Land Acquisition Reference No. 104 of 1983. It came to be decided

on 17-6-1988.

4. The petitioners contend that they got the knowledge of the order passed by the learned District Judge enhancing the compensation amount and therefore, they submitted an application to respondent No. 2 to re-determine the compensation amount on the basis of Award passed by the learned District Judge in Land Acquisition Reference No. 104 of 1983 on 17-6-1988. This application was filed on 17-9-1985.

5. Section 28A of the Act which came to be inserted by Act No. 68 of 1984 in the Act provides for the remedy of re-determination of compensation amount on the basis of the Award of the Court and proviso to Sub-section (1) of the said section reads thus :

"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."

In the instant case, the Award was passed on 17-6-1988 and therefore, that date will stand excluded and the limitation period will commence from 18-6-1988. The petitioners submitted an application on 17-6-1988 and undoubtedly, this is within the period of limitation of three months. It is thus clear that the first ground of the impugned order is unsustainable.

6. Sub-section (1) of Section 28A of the Act slates that where in any Award under this Part, the Court allows 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(1) and who are also aggrieved by the Award of the Collector, may approach the Collector for re-determination of the amount on the basis of the Award passed by the Court. This section specifically refers to the Award of the Court enhancing compensation amount over and above the amount awarded by the Collector in his award u/s 11 of the Act. Thus, the cause of action to invoke the remedy u/s 28A accrues only after the District Court passes an Award in a reference made u/s 18 of the Act and it does not accrue when the Land Acquisition Officer or the Collector passes the Award u/s 11 of the Act.

7. In the case of Union of India and another Vs. Pradeep Kumari and others, , it has been held, inter alia, that a person would be able to seek re-determination of the compensation payable to him provided the following conditions are satisfied:

"(i) An award has been made by the court under Part III after coming into force of Section 28-A;

(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 28-A 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 predetermination of amount of compensation is sought; and
- (vi) Only one application can be moved u/s 28-A for redetermination of compensation by an applicant."

The second ground on the basis of which the application filed by the petitioners u/s 28A of the Act came to be rejected cannot be accepted in view of the clear language of Sub-section (1) of the said section. All the conditions as set-out in Pradeep Kumari's case (*supra*) are duly satisfied in the instant case.

8. We have also verified from the reference made in the case of Union of India and Another Vs. Hansoli Devi and Others etc., that the subject-matter of this petition does not fall within the ambit of all the five issues framed for decision of the larger Bench of the Apex Court.

9. For the reasons stated hereinabove, the petition succeeds. Rule is made absolute in terms of prayer Clause (D). We direct that the Collector/ Land Acquisition Officer shall pass the order re-determining the compensation amount on the petitioners application as expeditiously as possible and in any case, within a period of eight weeks from today. Writ to go forthwith. No costs.