(1999) 04 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 172 of 1994

Union of India (UOI)		APPELLANT
	Vs	
Special Land Acquisition Collector and Others		RESPONDENT

Date of Decision: April 1, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 28A

Citation: (1999) 122 PLR 412 : (1999) 3 RCR(Civil) 646

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: N.N. Goswami, Ashutosh Mohunta and Bimla Sangwan, for the Appellant; M.L. Sarin and Gagandeep Singh Bal, for the Respondent

Final Decision: Allowed

Judgement

V.K. Jhanji, J.

This shall dispose of Civil Writ Petitions No. 148, 149, 150, 151, 152, 155, 157, 158, 159, 161, 162, 163, 164, 165, 166, 167, 169, 171, 172, 174, 175, 178, 179, 181, 183, 188, 194, 190, 192, 196, 197, 199, 198 and 200 of 1994. For facility of reference, facts are taken from Civil Writ Petition No. 172 of 1994.

2. Challenge in this writ petition by the Union of India is to the award passed by the Special Land Acquisition Collector u/s 28A of the Land Acquisition Act, 1894, (hereinafter referred to as 1894 Act) redetermining the compensation of the land..

3. For the purpose of establishment of military cantonment, the lands belonging to the respondents at Bhatinda along with the lands of other land-owners were requisitioned under the provisions of Defence of India Act, 1971. Subsequently, in the year 1975, the said lands were acquired under the provisions of Defence of India Act, 1971. The Defence of India Act was replaced and the residual matters following

upon the requisition or acquisition of lands thereunder were brought under the provisions of Requisitioning and Acquisitioning of Immovable Property Act, 1952 (in short the 1952 Act). The compensation in respect of the lands was paid to the respondents and other land owners similarly situated under the provisions of the 1952 Act. Respondents did not make any claim for enhancement of the compensation, but some of the land owners who were not satisfied with the compensation awarded, made reference to the Arbitrator for enhancement of compensation. The Arbitrator appointed u/s 8 of the 1952 Act vide awards dated 19.1.1985 and 20.11.1987 enhanced the compensation. The Arbitrator also awarded solatium at the rate of 30 per cent and interest at the rate of 9 per cent for the first year and thereafter, 15 per cent per annum till realisation. On the basis of awards of the Arbitrator whereby compensation was redetermined, respondents 2 to 5 filed applications u/s 28A of the Land Acquisition Act for redetermination of the compensation of the land acquired. The Special Land Acquisition Collector vide the impugned award accepted the applications and on redetermination, enhanced the compensation. The grievance of the petitioner is that the provisions of 1894 Act are not applicable to the lands acquired under the Defence of India Act or the 1952 Act. Petitioner, thus, has prayed that the impugned award being without jurisdiction, be set aside. Upon notice of the petition, respondents 2 to 5 in their detailed written statement have contended that the writ petition is liable to be dismissed on the ground that the petitioner has suppressed material facts. Respondents 2 to 5 have contended that on acquisition, only compensation was paid but no amount towards interest and solatium was determined. It is contended that the respondents filed Civil Writ Petition No. 4983 of 1976 claiming interest on the amount of compensation and that writ petition was allowed. The Union of India filed SLP No. 74 of 1978 in the Hon''ble Supreme Court which was dismissed on 4.9.1984. Respondents 2 to 5 have further averred that they filed another writ petition, namely C.W.P. No. 1813 of 1978 claiming solatium on the amount of compensation and the said Writ Petition was also allowed on 16.4.1982. It is contended that the right of respondents 2 to 5 to claim interest and solatium has been finally settled inter-parties in the earlier litigation and therefore, the present writ petition is liable to be dismissed. Respondents 2 to 5 have further contended that the writ petition is also liable to be dismissed being highly belated. It is contended that the award impugned is dated 30.5.1988 whereas the writ petition has been filed in January, 1994. It is also contended that simply because the respondents have accepted the compensation will not bar the applicability of Section 28A of the 1894 Act.

4. It is not in dispute that the land belonging to respondents 2 to 5 and other land owners similarly situated, was not acquired under the 1894, but was acquired under the Defence of India Act and compensation determined and paid under the provisions of 1952 Act. Vide the award impugned in this petition, the Collector has redetermined the compensation allegedly in exercise of its powers u/s 28A of the 1894 Act. Section 28A envisages redetermination of compensation by the Collector

and is intended to meant for those land owners who have failed to take advantage of the right of reference to the Civil Court u/s 18 of the 1894 Act. There is no provision like Section 28A of the 1894 Act in the Defence of India Act or the 1952 Act empowering the Collector to reopen an award which has become final and conclusive. The power to redetermine compensation has to be created by a Statute and when so conferred, it has to be exercised in accordance with the statutory provisions. In the present case, the Special Collector obviously has committed an error in assuming jurisdiction u/s 28A of 1894 Act for redetermining compensation in regard to the land acquired under the Defence of India Act. In Union of India (UOI) Vs. Gurbachan Singh and Others, and Union of India (UOI) and Another Vs. Babu Singh and Others, , the Hon''ble Supreme Court in reference to Section 28A of the 1894 Act has held that Section 28A has no application when the land is acquired under the 1952 Act. Their Lordships held that the provisions of the 1894 Act cannot be read into the Statute under which land was requisitioned and acquisitioned. This being the settled position in law, the award impugned in this petition is not sustainable being without jurisdiction.

5. Faced with this situation, Mr. M.L Sarin, Senior Advocate, appearing on behalf of respondents 2 to 5 contended that petitioner is not entitled to extra-ordinary remedy under the writ jurisdiction because there has been suppression of material facts as it has failed to disclose the earlier litigation between the parties. I find no merit in this connection of Mr. Sarin. In this writ petition, petitioner is not making any grievance in regard to compensation which has already been determined and paid to respondents 2 to 5 in respect of their land acquired. It is also not making any grievance in regard to payment of interest and solatium or the order passed in this regard on the writ petitions, previously filed by respondents 2 to 5. The grievance made is only in regard to assuming of jurisdiction by the Special Land Acquisition Collector in redetermining compensation under the provisions of Section 28A of the 1894 Act and that too when the land has not been acquired under the provisions of the said Act. The issue involved in the present writ petition is totally different than the one involved in the writ petition filed earlier by the respondents. I am thus, of the view that there has been no suppression of material facts, disentitling the petitioner to the extra-ordinary remedy under Article 226 of the Constitution of India.

6. Mr. Sarin, next contended that the petitioner is not entitled to the grant of relief under Article 226 of the Constitution of India because the petition has been filed after more than five years of the passing of the award. It is true that the grant of relief under Article 226 is in the discretion of the Court and that the Court may refuse the exercise such discretion because unreasonable delay. This is a rule of convenience and not a rule of law. The Courts have recognised this rule as a self-imposed limitation. The rule is based upon the principle that if during the period of delay any interest accrues in favour of a third party or any third party gets a vested right, then the delay cannot be condoned as it will adversely affect the party

in whose favour the rights are vested. But, where no vested right has accrued in favour of a third party, it can be an important consideration for condoning the delay, if any, in filing a writ petition. A Full Bench of this Court in Rajinder Parshad and Another Vs. The Punjab State and Others, while considering the question of delay and laches in filing a writ petition has held that in this respect, no hard and fast rule can be laid down. Their Lordships in para 9 of Judgment observed;

"..... So it would not be correct to say that merely looking at the question of some delay, the petition must be dismissed off-hand, nor would it be correct to say, as an abstract proposition, that, ignoring delay, the petitioner can insist upon the decision of the case on merits. Such inflexible rules cannot be laid down and what this Court does is, when considering a petition under Article 226, that it takes into consideration the facts and circumstances of the case and delay is one of such circumstances in exercising its judicial discretion for ends of justice in the matter of decision of the petition. The supreme consideration for the exercise of the power and jurisdiction under Article 226 is the ends of justice, and that provides the approach to the exercise of judicial discretion in the matter, which embraces consideration of various aspects, of the controversy, and no limitations as rigid rules or propositions, such as referred to above, can be a fetter to that."

7. In Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, in this context, the Hon''ble Supreme Court observed that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but the rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. Each case must depend on its facts. In the facts and circumstances of this case, I am of the view that the delay in filing the writ petition deserves to be condoned. Firstly, no vested right has accured in favour of a third party and secondly, the writ petition is lying admitted for the last number of years and the same cannot be thrown out at the stage of final hearing on the technical plea of delay and laches, and that too when the order complained of is manifestly erroneous and without jurisdiction.

8. Mr. Sarin further contended that this writ petition was admitted on 6.1.1994 and operation of the impugned award was stayed but after notice, vide order dated 24.10.1994, the claimants were allowed to withdraw the enhanced amount of compensation along with solatium and interest on furnishing security, but the amount was not deposited. It is contended that thereafter, petitioner filed an application for recalling order dated 24.10.1994 but the prayer in that regard was declined. Petitioner filed Letters Patent Appeal and on 10.12.1996, the same was dismissed with costs and a direction was given to the petitioner to deposit the amount within one month but the amount was still not deposited. Petitioner filed a review application against order dated 10.12.1990 but the review application too was dismissed and notice for initiating contempt proceedings against the Assistant

Estate Officer (Defence) was ordered to be issued. Mr. Sarin contended that petitioner undertook to release the compensation to the claimants within one month. It is contended that instead of complying with the order, petitioner filed SLP in the Hon''ble Supreme Court but the same was dismissed on 9.7.1997 and the Hon''ble Supreme Court asked the petitioner to take appropriate action to release itself from the undertaking. Mr. Sarin further contended that the Division Bench vide order dated 8.10.1997 dismissed the review application preferred by the petitioner in this regard. It is contended that because of non-compliance of orders, petitioner is not entitled to any relief. I find no merit in this contention as well. The orders referred to by Mr. Sarin were only interim and while passing the same, the Court had not expressed its opinion on the merits of the case. Otherwise also, the interim orders passed during the pendency of lis are always subject to its final result and remain operative only until the disposal of the case.

9. Lastly, Mr. Sarin contended that in order to challenge the award passed by the Collector u/s 28A of the 1894 Act, petitioner initially filed four writ petitions, but subsequently, three writ petitions, i.e. C.W.P. Nos. 173, 177 and 193 of 1994 were got dismissed as withdrawn. It is contended that the awards impugned in all the four writ petitions were passed by the Special Collector on the four applications filed by respondents 2 to 5 and now, only one writ petition, namely, C.W.P. No. 172 of 1994 has survived and the same cannot be considered to have been filed against the awards passed on the four applications. In answer to these submissions, Mr. Goswami contended that respondents 2 to 5 did file four applications'' u/s 28A of the 1894 Act on which the Special Collector passed only one award and only one writ petition was to be filed, but inadvertently; four writ petitions against the same very respondents were filed. It is contended that in order to avoid duplication, the three writ petitions were got dismissed as withdrawn. On going through the record, I find that one award was given by the Special Collector on the applications filed by respondents 2 to 5 and to challenge the award, only one petition was sufficient, but inadvertently, four writ petition were filed. In order to avoid duplication, if the three writ petitions have been got dismissed as withdrawn, it cannot be contended that awards impugned in Civil Writ Petitions No. 172, 177 and 192 of 1994 have become final qua respondents 2 to 5.

10. In the result, the writ petition is allowed and award, Annexure P-1, set aside. There shall be not order as to costs.