

(2009) 01 AHC CK 0060

Allahabad High Court

Case No: None

Sayeed Alam and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 30, 2009

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 28A, 6
- Limitation Act, 1963 - Section 5

Citation: (2009) 2 AWC 1705 : (2009) 2 UPLBEC 1174

Hon'ble Judges: Ashok Bhushan, J; Arun Tandon, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Ashok Bhushan and Arun Tandon, JJ.

The petitioners before this Court claim to be the recorded tenure holders of plot bearing Khata Nos. 156 and 38. It is stated that the land covered by the aforesaid khata number, was subject-matter of acquisition proceeding under the Land Acquisition Act (hereinafter referred to as "the Act") as per the Notification dated 28.5.1989 issued u/s 6(1) of the Act. It is stated that the petitioner accepted the compensation determined by the Land Acquisition Officer and did not make any reference in that regard u/s 18 of the Act. It is further stated that other tenure holders whose land was also acquired under the same Notification, made a reference qua rate of payment of compensation. The matter was adjudicated under an award dated 16th August, 1999 passed in L.A.R. No. 42 of 1993 the rate of compensation for the land so acquired has been enhanced.

2. On the aforesaid award being made, the petitioner made an application u/s 28A of the Act before the Land Acquisition Act for payment of compensation at the enhanced rates with reference to award dated 16.8.1999. The application so made by the writ petitioner was rejected vide order dated 17.1.2007 (Annexure-3 to the

writ petition) on the ground that against the award dated 16.08.1999, the State of U.P. has preferred First Appeal No. (550) of 2005 before the Hon"ble High Court.

3. Since there was delay in filing of the said appeal by the State, an application u/s 5 of the Limitation Act was also filed. Section 5 application made by the State Government in the aforesaid first appeal was rejected by the Hon"ble High Court vide order dated 17.1.2007. As a result whereof, the appeal stood dismissed being barred by limitation.

4. The petitioner has therefore come up before this Court by means of this writ petition for a writ of mandamus commanding the respondent to consider and decide the application made by the petitioner u/s 28A of the Land Acquisition Act dated 16th August, 1999 in the light of the order passed in L.A.R. No. 42 of 1993 u/s 18 of the Land Acquisition Act.

5. We have heard learned Counsel for the parties and have gone through the record of the present writ petition.

6. A Division Bench of this Court in the case of Nanak and Ors. v. State of U.P. and Ors. 1996 (2) AWC 1237, has laid down the conditions pointwise which are required to be satisfied before an application u/s 28A of the Land Acquisition Act can be entertained. Reference para 17 which is quoted hereinbelow:

17. Thus, in view of the above, we are constrained to direct the respondent No. 5, to issue notices to respondent No. 6, Ghaziabad Development Authority, the other contesting party and after hearing all the parties concerned, to determine whether:

(i) The applications were filed by the petitioners within limitation.

(ii) Petitioners belong to the indigent class of the society for whose benefit, provisions of Section 28A were enacted particularly in the light of the law laid down by the Hon"ble Supreme Court in the cases of Mewa Ram, Scheduled Caste Co-operative Society and Babua Ram (supra).

(iii) The Court's award in L.A.R. No. 304/77, Hemchand (supra) has become final or whether any appeal arising out of the same or any other award in respect of any land covered by the same Section 4 notification dated 16.7.60 is pending before this Court or Supreme Court.

(iv) The nature, location and quality of the land of the petitioners are identical to the land which had been subject-matter of the Court's award in Hemchand (supra).

If all the aforesaid conditions are fulfilled in the cases of the petitioners, the Special Land Acquisition Officer, respondent No. 5 is directed to decide the applications u/s 28A of the Act and dispose them of finally within a period of six months from the date of receipt of a certified copy of this judgment strictly in accordance with law as explained above.

7. The legal position qua maintainability of u/s 28A application has further been explained both by the Hon"ble Supreme Court as well as by the Division Benches of this Court as follows:

8. The scope of provisions of Section 28A was considered by the Supreme Court in [Mewa Ram \(Deceased\) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon](#), and the Court placed particular emphasis on para 2 (ix) of the object and reasons which provided for a special provision for inarticulate and poor people to apply for re-determination of the compensation amount on the basis of the Court award in a land acquisition reference filed by comparatively affluent land owner. The Apex Court observed as under:

Section 28A in terms does not apply to the case of the petitioners ...,They do not belong to that class of society for whose benefit the provision is intended and meant, i.e., inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court u/s 18 of the Land Acquisition Act, 1894. On the contrary, the petitioners belong to an affluent class...

9. The Apex Court approved the law laid down in Mewa Ram (supra) again in [The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others](#), .

10. In [Babua Ram and Others Vs. State of U.P. and Another](#), the Apex Court again approved and reiterated the law laid down in Mewa Ram (supra) and observed as under:

Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28A was to be extended and comparatively affluent who had taken advantage of the reference u/s 18 and the latter as a class to which the benefit of Section 28A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded... It is true that the Legislature intended to relieve hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference u/s 18 which is an existing bar and to remedy it, Section 28A was enacted giving a right and remedy for redetermination.... The Legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under Sub-section (1) of Section 18 due to poverty or ignorance or avoidance of expropriation.

11. A similar view has been taken by a Division Bench of this Court in Nanak and Ors. v. State of U.P. and Ors. 1996 AWC 1237 placing reliance on large number of judgments of the Hon"ble Supreme Court.

12. Thus, it is apparent that the Legislature has carved out an exception in the form of Section 28A and has made a special provision to grant some relief to a particular

class of society, namely poor, illiterate, ignorant and inarticulate people. The provision has been made only for little Indians. The provisions of Section 28A refers to the "person interested" which means the original owner and that original owner interested must further be a person aggrieved by the award of the Collector.

13. In [G. Krishna Murthy and others Vs. State of Orissa](#), D. Krishna Vani and Anr. v. State of Orissa (1995) 2 SCC 735 ; [Union of India and another Vs. Pradeep Kumari and others](#), and [U.P. State Industrial Development Corpn. Ltd. Vs. State of U.P. and Others](#), it has been held by Hon"ble Supreme Court that a person who prefers a Section 18 reference cannot maintain an application u/s 28A of the Act.

14. In [Des Raj \(Deceased\) through L.Rs. and Others Vs. Union of India \(UOI\) and Another](#), it was held by the Hon"ble Supreme Court that if a person has applied u/s 18 of the Act and pursued the matter further, he is not entitled to maintain the application u/s 28A for redetermination of compensation. The Court further held that it is mandatory to file the application within prescribed limitation, which runs from the date of the Award u/s 18 of the Act. While deciding the said case the Court placed reliance upon its earlier judgments, including [The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others](#),

15. In [State of Andhra Pradesh and Another Vs. Marri Venkaiah and Others](#), the Hon"ble Supreme Court has dealt with the issue of limitation and held as under:

Plain language of the aforesaid section would only mean that the period of limitation is three months from the date of the award of the Court. It is also provided that in computing the period of three months, the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application u/s 28A is to be filed within three months from the date of the award by the Court by only excluding the time requisite for obtaining the copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

16. While deciding the said Case Court placed reliance on its earlier Judgment in Tota Ram v. State of U.P. and Ors. (1997) 6 SCC 280 : 1998 (1) AWC 344 (SC). The Court further rejected the contention that limitation would run from the date of knowledge distinguishing the earlier judgments on fact and law in [Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another](#), and [State of Punjab Vs. Mst. Qaisar Jehan Begum and Another](#),

17. In [Union of India \(UOI\) Vs. Munshi Ram \(Dead\) by LRs. and Others](#), the Apex Court has laid down the law that such an application is maintainable provided a person has not filed an application u/s 18 of the Act. The Court held that Section 28A seeks to confer the benefit of enhanced compensation on those owners who did not seek reference u/s 18.

18. From the facts of the present case, we find that the application in fact was made by the petitioner even before the date the appeal filed by the State before this Court was finally decided. Further, we find that requisite averments qua petitioner being illiterate and other conditions referred to above be satisfied need examination.

19. We are, therefore of the opinion that interest of substantial justice would be served if the petitioners' application is reconsidered in the light of the conditions specified by the Division Bench of this Court in the case of Nanak (supra) and the law as noticed above within 12 weeks from the date a certified copy of this order is filed before Additional District Judge who shall examine the correctness of the averments made and satisfying himself with the requirement of law as explained above. Fresh final order may be passed on the application accordingly without being influenced with the order dated 17.1.2007.

20. With the aforesaid observation, the writ petition is disposed of.