

(2006) 03 GAU CK 0021

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No. 290 of 1997

Kamakhya Ranjan Das and
Others

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision: March 20, 2006

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 18, 19, 20, 21

Citation: (2006) GLT 350 Supp

Hon'ble Judges: A.B. Pal, J

Bench: Single Bench

Advocate: P.B. Dhar and P. Dhar, for the Appellant; T.D. Majumdar, for the Respondent

Final Decision: Allowed

Judgement

A.B. Pal, J.

Heard Mr. P. B. Dhar, learned Counsel along with Ms. P. Dhar, learned Counsel for the Petitioners and Mr. T. D. Majumdar, learned Counsel for the Respondents.

2. Certain lands of the eight Petitioners herein were acquired for a public purpose by the second Respondent herein, the Land Acquisition Collector, North Tripura district, Kailashahar by notification issued in the month of May, 1980. In the same land acquisition proceeding, lands of other persons also including that of one Ajit Kumar Barman appearing in S1. No. 106 of the notification were also acquired. At the end of the said proceeding, an award was made at flat rate and the Petitioners received the amount, but due to ignorance, they did not present any prayer for making a reference u/s 18 of the Land Acquisition Act (for short, "the Act") to the learned L. A. Judge for enhancement of the amount of compensation though they were not satisfied with the amount awarded. But one of the owners of the acquired land, namely, Ajit Kumar Barman preferred a prayer for making a reference u/s 18 of the Act which was duly done and the learned L. A. Judge decided the said reference on a

compromise in the Lok Adalat determining Rs. 9,000/- per kani. After the said order dated 3.3.96 by the learned L. A. Judge, North Tripura, in Civil Misc. (LA) 1 of 95, the Petitioners herein presented a prayer before the L. A. Collector for re-determining the amount of compensation u/s 28A of the Act. The said prayer of the Petitioners did not find favour. As the L.A. Collector did not act in accordance with the provision of Section 28A of the Act for re-determination of the rate of compensation, the present writ petition has been filed seeking a direction to the LA. Collector to re-determine the amount of compensation in terms of the said provision.

3. In the counter affidavit filed by the Respondents, it has been admitted in para 13 that after the judgment of the learned L.A. Judge enhancing the amount to Rs. 9,000/- per kani for the acquired land, the L.A. Collector had received petitions from the Petitioners herein for re-determination of the rate of compensation u/s 28A of the Act on 4.7.96. But as the prayers were not within time, the L.A. Collector did not act upon them. It is the case of the Respondents herein that as per provision u/s 28A of the Act, every such petition for re-determination has to be filed within a period of three months from the date of passing the order of the learned L.A. Judge which is the foundation of the claim. Thus, the claim of re-determination being barred by limitation, the prayers deserved no consideration. Accordingly, the Respondents have prayed for dismissal of the present writ petition as not maintainable.

4. The controversy has, thus, been confined to the only question whether the petitions for re-determination of the rate of compensation u/s 28A of the Act were within time. Section 28A of the Act provides as follows:

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 u/s 11, the persons interested in all the other land covered by the same notification u/s 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 u/s 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 redetermined 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) 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 Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

5. It is, thus, clear that the period of limitation is three months from the date of award of the court for the purpose of filing a petition for re-determination. Admittedly, in the case on hand, Petitioners filed their petitions on 4.7.96 after a period of 122 days from 3.3.96 when the learned L.A. Judge passed the order of enhancement following the compromise in the Lok Adalat. The period taken for obtaining the certified copy of the judgment is to be added to the statutory period of ninety days. The Petitioners applied for certified copy of the said order on 4.5.96, the certified copies were ready for delivery on 3.6.96 and were actually delivered on 10.6.96. If the date of ready for delivery is taken as the cut off date, then a period of 31 days were required for obtaining certified copy. If this period is added to three months or 90 days, the total period the Petitioners were entitled to get was 121 days which means there was a delay of one day ($122 - 121 = 1$). But, if the date of delivery of the certified copy being 10.6.96 taken into consideration, then indisputably those petitions were very much within time. There cannot be any dispute that the Petitioners had just claim regarding re-determination of the rate of compensation in terms of the provisions of the Section 28A of the Act. Therefore, the intention of the Legislature is bound to frustrate if too technical a view is taken in computing the period of limitation. Nothing is there on record whether the Petitioners were duly notified about the date of delivery or when the certified copies were actually made ready. According to the prevailing practice, when certified copies are made ready, the concerned office notifies to the Petitioners and only thereafter it is the duty of the Petitioner to obtain the same. In the given facts and circumstances of this case, particularly in the absence of anything to the contrary, it may be presumed that 2/3 days were certainly required to notify the Petitioners that the certified copies were ready for delivery. The fact remains that the certified copies were actually delivered on 10.6.96 and if it could be shown that there was no delay on the part of the Petitioners to take delivery of the certified copy immediately after they were notified, the period has to be computed taking 10.6.96 as the cut off date for the purpose of computing the total period taken for obtaining certified copy.

6. In view of the above position and having a closer look to the legal provision containing in Section 28A of the Act, I am of the considered view that the petitions of all the Petitioners submitted to the L. A. Collector for re-determination of the rate of compensation u/s 28A of the Act were within time and, therefore, there was no embargo on him to proceed to redetermine the compensation in terms of the said provision.

7. For the reasons foregoing, this writ petition has merit and accordingly, the same is allowed directing the L.A. Collector, North Tripura district, the second Respondent

herein, to re-determine the rate of compensation of the lands of the Petitioners acquired in the said proceeding in accordance with law and in terms of the provision contained in Section 28A of the Act. No cost.