

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 24.05.2011

+ WP(C) No. 3595/2011 and CM Nos.7523/2011

YUDHVIR SINGH ...PETITIONER

Through: Mr.N.S.Dalal, Advocate

Versus

LAND ACQUISITION COLLECTOR ...RESPONDENT

Through: Mr.Sanjay Poddar, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

SANJAY KISHAN KAUL, J. (ORAL)

CM No.7523/2011

Allowed subject to just exceptions.

+ WP (C) No.3595/2011

1. The petitioner seeks to raise a legal plea that he is entitled to maintain an application for enhanced compensation under Section 28-A of the Land Acquisition Act, 1894 ('the said Act' for short) even though filed admittedly beyond three (3) months of the date of the award on the ground that it was filed within three months of the date of the knowledge of the award. In substance the plea is that it is the date of knowledge of the petitioner which is material for purposes of filing an application under Section 28-A of the said Act to claim parity in respect of compensation qua persons who had sought and obtained enhanced compensation.
2. The factual matrix is limited. The petitioner was owner of the land in question, which was situated in Village Dhaka. The land was sought to be acquired by issuance

of a notification u/Section 4 of the said Act on 13.11.1959, which was followed by a declaration dated 22.11.1962 issued under Section 6 of the said Act. An award no.1557, in this regard, was passed on 30.03.1963. The petitioner never preferred a reference for enhancement of compensation. Other aggrieved land owners from the same village and in respect of the same award, sought a reference. These persons are stated to have succeeded ultimately in a decision rendered by this Court in RFA No.23/1970 vide order dated 24.04.1987. This fact is stated not to be within the knowledge of the petitioner till 26.06.2008, when he applied for a certified copy and obtained the same on 04.07.2008. The petitioner thereafter filed applications under Section 28-A of the said Act on 10.07.2008 and 12.08.2008. The aforesaid applications were not entertained. The last communication in this behalf (which is the impugned communication) is dated 13.01.2010. The impugned communication/order reads as under:

“ With reference to your applications dated 10.07.2008 and 12.08.2008 on the subject mentioned above. In this regard, I am to inform you that your applications have been dismissed on the ground that the judgment of ADJ and Hon’ble High Court on the basis of which you have sought the compensation u/s 28-A of LA Act were passed on 15.02.08, 24.07.87 and 14.02.02 respectively and you have filed applications on 10.07.08 and 12.08.08 after a considerable gap of time as prescribed in LA Act.”

3. The petitioner being aggrieved has filed the present writ petition under Article 226 of the Constitution of India.
4. An aggrieved party is entitled to seek a reference *inter alia* in respect of the quantum of compensation under Section 18 of the said Act.
5. Section 28-A of the said Act was introduced with effect from 24.09.1984 to give benefit of an award which may have been made in respect of a decision made in a reference where other land owners from the same village and in respect of the same award had sought such a reference and succeeded. The objective was to give parity. The said Section reads as under:

“28-A. 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) 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, required 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 under section 18.”

6. A reading of the aforesaid Section thus provides that in order to avail of the benefit of Section 28-A of the said Act, an application has to be made within three months of the date of the award. The proviso stipulates that the time to be excluded for making such an application is only the time spent in obtaining a copy of the award.
7. The aforesaid provision was interpreted even more beneficially in a judgment of the Supreme Court in UOI & Anr. v. Pradeep Kumari & Ors.; (1995) 2 SCC 736. The legal position propounded is that where more than one award is made by the Court, an applicant under Section 28-A of the said Act can avail of the benefit by taking last award into consideration and moving an application within the time stipulated from such last award. In arriving at this conclusion, the beneficial

nature of legislation has been taken into consideration as set out in para 8 of the said judgment, which reads as under:

“8. We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of Section 28-A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under Section 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act. Section 28-A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the civil court under Section 18 of the Act. In relation to beneficent legislation, the law is well-settled that while construing the provisions of such a legislation the court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of

curtailing the benefit conferred by it. The provisions of Section 28-A should, therefore, be construed keeping in view the object underlying the said provision.”

8. Learned counsel for the petitioner submits that the aforesaid observations should result in even more beneficial interpretation and thus the date of knowledge should be taken into account as is often done in respect of different provisions while calculating limitation. Learned counsel has also relied upon the observations made by the Supreme Court in a more recent judgment in V.Ramakrishna Rao v. Singareni Collieries Company Limited and Anr.; (2010) 10 SCC 650 where mere pendency of the application was held not to deny the legitimate rights to seek enhancement of compensation.
9. Learned counsel for the LAC, on the other hand, submits that the effect of the provisions cannot go beyond what the legislature has stipulated, and that the proviso to Section 28-A of the said Act itself makes it clear how the period of limitation is to be calculated for purposes of making an application under Section

28-A of the said Act. Thus, no other period is to be excluded from the time stipulated of three months than what is specifically stated in the proviso.

10. Another aspect which has been raised by learned counsel for LAC is that the petitioner seeks to rely upon the judgment of the High Court for making the application under Section 28-A of the said Act while the benefit is to be made available only on the basis of an award rendered. Learned counsel states that in case a reference court gives enhanced compensation and the beneficiaries are aggrieved further, they may prefer an appeal, but the application to be filed by other land owners seeking to avail of benefit of Section 28-A of the said Act has to be within a period of three months from the date of the award passed by the civil court and such an application is to be kept pending till the final conclusion of the matter. This is so in view of the judgment of the Supreme Court in Babua Ram v. State of UP; (1995) 2 SCC 689.

11. Learned counsel has also drawn our attention to a subsequent judgment of the Supreme Court in Bhagti

(Smt.) (deceased) through her LR Jagdish Ram Sharma v. State of Haryana; (1997) 4 SCC 473 which has referred to the judgment in Babua Ram v. State of UP's case (supra). It has been held that Section 28-A of the said Act does not apply in case of an order made by the High Court and the claimant can seek re-determination of compensation only on the basis of an award of the reference court and not the judgment of the High Court.

12. We find that in view of the aforesaid legal principles set out, the Supreme Court itself has answered all the issues which are now sought to be raised by the petitioner. No doubt, Section 28-A of the said Act has been construed as a beneficial legislation, but to what extent such a benefit has to be granted, has been discussed in UOI & Anr. v. Pradeep Kumari & Ors.'s case (supra). The Supreme Court has gone thus far and not further. In view of the relevant provision having been fully interpreted, in our considered view, it is not open to this Court to extend the contours of the beneficial legislation any further specifically in view

of the mode and manner in which the legislature in its wisdom has enacted the said provision. The decision in Bhagti (Smt.) (deceased) through her LR Jagdish Ram Sharma v. State of Haryana's case (supra) also stands in the way of the petitioner as the very premise on which the petitioner seeks to contend his case, is that, the relevant date is the date of decision of the High Court, which is not so, as the relevant date would be the date of decision of the reference court. Since the appeal is of the year 1970, the reference court's decision would be at least of 1970 or earlier.

13. Learned counsel for the petitioner at this stage has also sought to raise the issue of the petitioner being the only son of the original land owner and thus pleads that the date of knowledge would be, according to him, when he acquired knowledge of the decision of the High Court.

14. In our considered view, this is a self-defeating argument for the reason that the petitioner only steps into the shoes of his father, who is stated to be the

original land owner and the original land owner never took steps in accordance with law to seek parity of compensation and thus the petitioner cannot be better off than the original land owner. The judgment in UOI & Anr. v. Pradeep Kumari & Ors.'s case (supra) makes it absolutely clear that the limitation for moving an application under Section 28-A of the said Act will begin to run only from the date of the award on the basis of which re-determination of compensation is sought which in turn would imply that the date of knowledge is immaterial. Para 11 of the said judgment reads as under:

“11. Since the cause of action for moving the application for redetermination of compensation under Section 28-A arises from the award on the basis of which redetermination of compensation is sought, the principle that “once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court” can have no application because the limitation for moving the application under Section 28-A will begin to run only from the date of the award on the basis of which

redetermination of compensation is sought.”

(emphasis is ours)

15. We may note that the judgment in UOI & Anr. v. Pradeep Kumari & Ors.'s case (supra) over-ruled the judgment in Babua Ram v. State of UP's case (supra) only to the limited aspect of conferring the benefit of limitation to the claimant on the basis of the first award as against the last award.
16. In the writ petition, the petitioner has also made a reference to one of the orders passed on 15.02.2008 and claims that the application filed in July, 2008 is just after 8 months {ground (v) of the writ petition}. However, no copy of this order dated 15.02.2008 has been annexed to the writ petition nor there is a reference of such an order in the application filed under Section 28-A of the said Act annexed as Annexure P-1 to the writ petition. We are thus unaware as to what is the nature of this order. Be that as it may, even if this order is taken into account, the application is way beyond the period of three months.

17. In view of the aforesaid settled legal position, we
find no merit in the writ petition.

18. Dismissed.

SANJAY KISHAN KAUL, J.

MAY 24, 2011
dm

RAJIV SHAKDHER, J.