

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No. 19 of 2009

PETITIONERS :

- 1. Shri Matilal Bhowmik,**
S/O. Late Chandrasagar Bhowmik,
H/O. Late Chandi Rani Bhowmik,
Resident of Indranagar Coloney,
P.O. Abhoynagar, P.S. East Agartala,
Agartala, West Tripura,
- 2. Smti. Chandrani Bhowmik(Mitra),**
W/O. Sri Ranjan Mitra,
D/O. Late Chandi Rani Bhowmik,
Resident of Indranagar Banglarmath,
P.O. Indranagar, P.S. East Agartala,
Agartala, West Tripura,
- 3. Smti. Indrani Bhowmik,**
W/O. Sri Partha Bhowmik,
D/O. Late Chandi Rani Bhowmik,
Resident of Chandrapur,
P.O. Reshambagan,
P.S. East Agartala,
Agartala, West Tripura.
- 4. Smti. Debjani Bhowmik,**
W/O. Sri Rajesh Bhowmik,
D/O. Late Chandi Rani Bhowmik,
Resident of Ananganagar,
P.O. Bimangarh, P.S. Airport,
Agartala, West Tripura.

BY ADVOCATES :

Mr.S. Deb,
Mr.S. Choudhury,
Mr. S. Datta,
Mr. B. Debnath,

- *VS* -

RESPONDENTS :

- 1. The Union of India,**
represented by the A.D.E.O.,
Agartala, West Tripura.
- 2. The Land Acquisition Collector,**
West Tripura, Agartala.

BY ADVOCATES :

Mr.A. Lodh,
Mr.T. Datta Majumder,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing : **18.06.2015.**

Date of delivery of
Judgment & order : **15.07.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

Two issues have been emerged in this writ petition for decision of this Court, namely:

(1) Whether application dated 31.08.2004 filed by the petitioner under Section 28A of the Land Acquisition Act (for short 'L.A. Act') seeking redetermination of compensation was time barred?

(2) Whether the Land Acquisition Collector (for short 'L.A. Collector') was bound to make a reference under sub-Section (3) of Section 28A of the L.A. Act in the event of rejection of the petition under sub-Section (1) of Section 28A of the L.A. Act on the ground of limitation?

2. Heard learned senior counsel, Mr. S. Deb, assisted by learned counsel, Mr. S. Datta for the petitioners and learned counsel, Mr. A. Lodh, for the respondent No.1 and learned Government Advocate, Mr. T. D. Majumder for the respondent No.2.

3. It is an admitted position that land belong to Charubala Devi(Debnath) and Chandi Rani Bhowmik, the predecessor of the present petitioners, at Mouja-Kunjaban, under Agartala Sheet No.1, 2 and 3, was acquired for Army project. Compensation awarded by the L.A. Collector was inadequate and many awardees sought reference under Section 18 of the L.A. Act, but the predecessor of the petitioners did not seek any reference under Section 18 of the L.A. Act. Civil Rule No.39 of 1992 was preferred by Nagesh Chandra Debnath and legal heirs of Charubala Devi and in that case learned counsel of petitioner Nos.2 and 3 submitted that they may avail the benefit of Section 28A of the L.A. Act. The judgment in Civil Rule No.39 of 1992 was passed on 12.03.1992. It is contended by the petitioners that Chandi Rani Bhowmik made application under Section 28A of the L.A. Act seeking redetermination of compensation on 31.08.2004. Since no action was taken on that application, a writ petition being W.P.(C) No.393 of 2004 was filed and in that case respondent No.2 after appearance submitted that the application was processed and on that ground the writ petition was disposed of. It is the case of the petitioners that Chandi Rani Bhowmik sought redetermination based on a judgment passed on 16.05.2006 in L.A. Appeal No.48 of 1999, whereunder a judgment dated 29.07.1998 passed in Misc.(L.A.) No. 63 of 1997 was upheld.

4. The respondents contended that the writ petition itself is vague, frivolous and vexatious. It is contended that the

petitioner did not approach the L.A. Collector in time as prescribed under Section 28A of the L.A. Act and hence, the L.A. Collector by a reasoned order held that the petition was time barred.

5. Neither copy of the Notification under Section 4 of the L.A. Act nor copy of the declaration under Section 6 of the L.A. Act has been produced by the petitioners along with the writ petition. The writ petition, it appears, is filed in the air without annexing the relevant documents for fair adjudication. From the submission of learned counsel of both side it appears that a vast area of land under Mouja-Kunjaban sub-Division-Agartala was acquired for Army Project and lands belong to Charubala Devi(Debnath) and Chandi Rani Bhowmik were also acquired. It is stated in the writ petition that neither Charubala Devi nor Chandi Rani Bhowmik preferred any prayer for reference under Section 18 of the L.A. Act. There were numerous references on the basis of the prayers made by other land owners and L. A. Judge adjudicated upon those references and awarded compensation @ Rs.24,000/- per kani. It is contended by the petitioners that Chandi Rani Bhowmik preferred application under Section 28A on 31.08.2004 seeking redetermination on the basis of earlier award.

6. In para 6 of the writ petition it is stated that the last judgment was passed on 16.05.2006 in L.A. Appeal No.48 of 1999 and by that judgment award passed on 29.07.1998 in

Misc.(L.A) No.63 of 1987 was affirmed. Neither any copy of the judgment in L.A. Appeal No.48 of 1999 and Misc.(L.A.) No.63 of 1987 has been filed along with the writ petition nor any copy of the petition dated 31.08.2004 under Section 28A is filed along with writ petition to see whether there was any such award made by the L.A. Judge and affirmed by the High Court in appeal and application dated 31.08.2004 was made with reference to those judgments. The petitioners placed on record a copy of petition dated 20.11.2007, which is marked as Annexure-2 to the writ petition and that petition, as it appears, was seeking condonation of delay in filing the petition under Section 28A of the L.A. Act.

7. Section 28A of the L.A. Act reads 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 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, 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 under section 18."

8. The provision itself has prescribed the period of limitation for preferring a petition under Section 28A of the L.A. Act. There is no scope of condonation of delay in filing an application under Section 28A of the L.A. Act. The L.A. Collector by impugned order dated 27.05.2008 held that petition dated 31.08.2004 under Section 28A of the L.A. Act was filed after about two years four months seeking redetermination and after detailed discussion of all aspects, the L.A. Collector held that the petition was time barred. In the order passed by the L.A. Collector, I find that the petitioner relied on a judgment and award dated 22.04.2002 in Case No. C.M.Appl. Nos.250 of 2001, 251 of 2001 and 252 of 2001 passed by the High Court, Agartala Bench, which was preferred by the Union of India against Sri Nagesh Chandra Debnath in Misc.(LA) Case No.161/1992 (analogous) dated 31.10.1997 passed by the L.A. Judge. Since the petitioner did not file the copy of the application dated 31.08.2004 and copy of the judgment on the basis of which redetermination was sought, there is no scope to have a judicial review of the order passed by the L.A. Collector.

9. Learned senior counsel, Mr. Deb has submitted that there were numerous references under Section 18 of the L.A. Act in which the L.A. Judge passed order determining compensation @ Rs.24,000/- per kani. Appeals were filed by the respondents

in the High Court and several appeals were disposed of. The petitioners may take advantage of any one of the judgments and prefer application under section 28A of the L.A. Act. In support of his contention, learned senior counsel, Mr. Deb has referred the case laws between (1) **Union of India & anr. V. Hansoli Devi & ors.**, reported in **(2002) 7 SCC 273**, (2) **State of Tripura & anr. V. Roopchand Das & ors. And Sudhir Debnath & ors.**, reported in **(2003) 1 SCC 421** and (3) **Kendriya Karamchari Sehkari Grah Nirman Samiti Limited, Noida V. State of Uttar Pradesh & anr.**, reported in **(2009) 1 SCC 754**.

10. On the other hand, learned counsel, Mr. Lodh and learned Government Advocate, Mr. Datta Majumder for the respondents submitted that the writ petition itself is not maintainable since the petitioner did not clearly and categorically state the facts and also did not produce the supporting documents. From the impugned order dated 27.05.2008 (Annexure-1 to the writ petition), submitted learned counsel of the respondents, that it is evident the petition under Section 28A of the L.A. Act was filed after two years four months and so, the L.A. Collector rightly held that the petition is time barred.

11. Burden lies on the petitioner to show that there was an award passed by the L.A. Judge under a reference made under Section 18 of the L.A. Act or an order passed by the High Court in appeal and within the period of limitation as prescribed

under Section 28A of the L.A. Act the application for redetermination under Section 28A of the L.A. Act is filed. The petitioner has neither made clear statement in the writ petition nor filed documents to show that within the prescribed period of limitation the impugned application dated 31.08.2004 was filed by the petitioner, Chandi Rani Bhowmik for redetermination of the compensation on the basis of previous award. A petition for redetermination must be filed within the period of limitation as prescribed under Section 28A of the L.A. Act. If there were several references and/or appeals, the petitioners may take advantage of latest one and file the petition for redetermination. But the petition must be filed within the limitation or otherwise there is no scope of consideration for condoning the delay. The impugned order dated 27.05.2008 passed by the L.A. Collector, which is challenged in this writ petition, shows that there was a petition for condonation of delay, which was not at all permissible in law.

12. The Supreme Court in the case of **Hansoli Devi(supra)** in para 6 of the judgment has held :-

"6. As has been stated earlier, in Jose Antonio Cruz case the High Court had followed the decision of this Court in Union of India V. Pradeep Kumari referred to supra, but the two learned Judges doubted the correctness of ratio in Pradeep Kumari and had referred the matter to a larger Bench of five learned judge. When the cases had been placed before the learned Chief justice, the Chief Justice was not persuaded to constitute a larger Bench of five learned Judges and on the other hand directed that the cases be placed before a three-Judge Bench and then ultimately the three-Judge Bench disposed of the matter by judgment dated 20-11-1996, since reported in Jose Antonio. Out of the two questions referred to by the two-Judge Bench, the Court answered the first

question by observing that there is no difference of opinion on the question that the period of limitation would start to run from the date of the reference court order and the period of three months would start from the order of the reference court and not from the order of the court passed in appeal against the same. On the second question, as to whether successive awards would give a fresh cause of action, as was held in Pradeep Kumari case the Court held that the three-Judge Bench in Pradip Kumari case had departed from the view taken earlier in two cases by two-Judge Benches viz. in Babua Ram and Karnail Singh and further observed that if and when the question arises in an appropriate case, perhaps a reference to a five-Judge Bench may become necessary. The aforesaid observation indicates that the three-judge Bench in Jose Antonio Cruz doubted the correctness of the ratio in pradeep Kumari case that if successive awards are passed by the reference court, then it is open to the person who wants to take the benefit of filing an application under Section 28-A to choose any one of those awards and can make an application within three months from the date of the said award."

13. In the case of **Roopchand Das & ors. and Sudhir Debnath & ors.(supra)**, the Supreme Court has held that when more than one award passed by Reference Court under Section 18 on different dates in respect of lands covered by the same notification, the limitation can be computed from the date of latest award on the basis whereof redetermination may be sought.

14. The case of **Kendriya Karamchari Sehkari Grah Nirman Samiti Limited, Noida(supra)** is on a different context and the ratio is not applicable in the facts of the present case.

15. The Supreme Court in the case of **State of A.P. & anr. V. Marri Venkaiah & ors.**, reported in **(2003) 7 SCC 280** has held that limitation begins to run from the date of the award and not from the date of knowledge of the award. The Court has

further held that Section 28A is a beneficial provision, but the benefit should be availed within stipulated time to avoid uncertainty and to give finality to the award. In that reported case where application was filed after a few years, it was rejected. We may gainfully refer here paras 7 and 8 of the judgment, which read as follows :-

"7. 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 under [Section 28-A](#) is to be filed within three month from the date of the award by the Court by only excluding the time requisite for obtaining copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

8. Further, the judgment rendered by the High Court is contrary to the decision rendered by this Court in [Tota Ram v. State of U.P. \(1997\) 6 SCC 280](#), wherein this Court held that limitation begins to run from the date of the award and as per the proviso the time taken for obtaining the certified copy of the award and the decree is to be excluded in computing the period of three months. The Court held that in view of the express language the question of knowledge does not arise and, therefore, the plea of the petitioner that limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. Same view is expressed by this Court in [Union of India v. Mangatu Ram and Ors \(1997\) 6 SCC 59](#) and [Jose Antonio Cruz Dos R. Rodriguese and Anr. v. Land Acquisition Collector, \(1996\) 6 SCC 746.](#)"

16. The petitioner challenged impugned order dated 27.05.2008 passed by the L.A. Collector, but no material is placed to show that the application under Section 28A of the L.A. Act was made within limitation, rather it appears that the petitioner herself filed petition for condonation of delay before the

L.A. Collector and, therefore, I am of considered opinion that the order passed by the L.A. Collector dated 27.05.2008 (Annexure-1 to the writ petition) has no infirmity and hence, point No.1 is decided against the petitioner.

17. Regarding point No.2, I am of considered opinion that there is no question of any reference under sub-section (3) of Section 28A of the L.A. Act unless there was redetermination of compensation either in positive or negative by the L.A. Collector. Where the petition itself was dismissed on the ground of limitation, there was no scope of considering the petition on merit. If the petition was in time and it was considered by the L.A. Collector on merit, then the question would come for making a reference under sub-section (3) of Section 28A of the L.A. Act. Since the petition was dismissed on the ground of limitation, there was no question of making a reference under sub-Section (3) of Section 28A of the L.A. Act. Point No.2 accordingly, decides against the petitioner.

18. The writ petition, therefore, stands dismissed with cost of Rs.5,000/- (Rupees five thousand).

JUDGE