

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.41266 of 2015

ORDER:

The petitioners filed this Writ Petition to declare the action of respondents in not paying compensation to petitioners in terms of the Award No.7/1990-91 and 67/1988-89 dt.30-05-2011 under Section 28-A of the Land Acquisition (Amendment) Act 68 of 1984 (for short "the Act") and to direct the respondents to pay compensation as awarded by 4th respondent in the said Award along with accrued interest and other benefits as per the Act from the date of acquisition i.e. 09-12-1988 till date of payment.

2. Petitioners owned Ac.0.03½ guntas and Ac.0.11¾ guntas in Sy.Nos.301 and 294 of Mallampally Village of Mulug Mandal of Warangal District. Petitioners' lands were acquired by 4th respondent for excavation of DBM-38 under Kakatiya Canal of SRSP Stage-I and form part of extent Ac.14.18¼ cents notified under the Land Acquisition Act, 1894. An award was passed on 31-03-1989 vide Award No.7/1990-91 and 67/1988-89 in File No.E/320/1999.

3. Certain other persons, whose lands were also acquired for the said project, had also been awarded compensation under the same Award dt.31-03-1989. They filed applications under Section 18 of the

Act for reference to the Civil Court seeking enhancement of compensation. This reference was numbered as O.P.No.50 of 1992 by the II Additional Subordinate Judge, Warangal. While the Land Acquisition Officer had granted compensation of Rs.8,000/- per acre for dry land, this was enhanced to Rs.22,500/- per acre by the Civil Court.

4. After the petitioners filed applications under Section 28-A of the Act, a fresh Award dt.30-05-2011 was passed and the compensation was enhanced to Rs.22,500/- per acre for dry land of the petitioners. The

4th respondent worked out the differential compensation payable to petitioners and other land owners as Rs.9,74,447/- as on 28-05-2011 by applying the judgment dt.08-09-1997 in O.P.No.50 of 1992 of the Civil Court. Having determined that this amount is payable to petitioners, till date the compensation has not been paid to petitioners in spite of several representations submitted by them. Therefore petitioners were constrained to file this Writ Petition.

5. Learned counsel for petitioners contended that the action of respondents in not paying compensation after the Award dt.30-05-2011 was passed taking into account the determination made by the Civil Court in O.P.No.50 of 1992 is arbitrary, illegal and violates Articles 14 and 300-A of the Constitution of India. He also relied upon the decision of a Division Bench of this Court in **Marri Venkaiah**

and others Vs. The Special Deputy Collector (Land Acquisition), Srisailam Left Bank Channel Unit-2, Gandamvarigudem, Nalgonda District and others^[1],

wherein it was held that application under Section 28-A should be filed within a period of three months from the date of the knowledge of the award of the Civil Court, and the limitation begins to run from such date of knowledge and not from the very date of passing of the award as such by the Civil Court.

6. Counter affidavit is filed by 4th respondent contending that even though re-determination of the land value was done by proceedings

dt.30-05-2011 of the 4th respondent, it was only a draft award which required approval of the 3rd respondent and that 3rd respondent had negated the draft award proposals stating that Section 28-A applications were filed by petitioners with a delay of 260 days from the date when the Civil Court determined compensation i.e. 08-09-1997 in O.P.No.50 of 1992. According to respondents, applications under Section 28-A of the Act were filed by petitioners on 25-05-1998, which is beyond the period of three months from the date of decision of the Civil Court on 08-09-1997, which ended on 08-12-1997.

7. Section 28-A of the Act states:

“28-A. Redetermination 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 lands covered by the same notifications 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 required 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 enquiry 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 appellants.

(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 Section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

8. This provision has been interpreted by this Court in **Marri Venkaiah and others** (1 supra). This Court held that the intention of the legislature in enacting the said provision is to safeguard the interests of the poor inarticulate villagers, who, because of their illiteracy, ignorance etc., could not avail of the benefit given to them under Section 18 of the Act, by giving them one more opportunity to file application for re-determination of compensation. In view of this object, it held

that the provision should be construed liberally and it cannot be said that such a claimant should file it within three months from the date of the award of Civil Court as if he is a party to it. It interpreted the said provision to mean that the application for re-determination under Section 28-A of the Act is to be filed within a period of three months from the date of knowledge of the award of the Civil Court and not from the date of passing of award as such. It held that the words "*three months from the date of the award of the Court*" used in sub-section (1) of Section 28-A of the Act need to be interpreted liberally to mean "*from the date of knowledge of the award passed by the Civil Court*" and that the limitation begins to run from such date of knowledge of the award only and not from the date of passing of the award by the Civil Court.

9. It is not denied that petitioners that they are not parties to the award passed by the Civil Court. Counsel for petitioners contended that petitioners came to know of it on 17.11.1997 and made application for getting certified copy thereof. This is not disputed by respondents.

10. The proviso to Section 28-A of the Act states that for calculating the period of three months specified in sub-Section (1) thereof, the time requisite for obtaining copy of the award should be excluded.

11. The petitioners have placed on record the certified copy

of the order dt.08-09-1997 in O.P.No.50 of 1992, which was submitted along with application under Section 28-A of the Act to the 4th respondent, which clearly indicates that the copy application was made on 17-11-1997 and it was made ready on 23-05-1998, more than six months later. After the certified copy of the order was delivered to petitioners on 23-05-1998, they filed applications under Sections 28-A of the Act two days later, on 25-05-1998.

12. Therefore if the time taken in obtaining certified copy of the order of the Civil Court is excluded, the applications filed by petitioners for re-determination of compensation on 25-05-1998 clearly come within the three months period stipulated in sub-Section (1) of Section 28-A of the Act.

13. That was why 4th respondent in the draft award No.7/1990-91 and 67/1988-89 dt.30-05-2011 opined that the applications of the petitioners under Section 28-A of the Act were within time and computed the amount payable to petitioners and others as Rs.9,74,447/-. But in the counter affidavit filed on behalf of respondents, the respondents have not taken note of the proviso to Section 28-A of the Act and erroneously opined that the application for re-determination of compensation was filed with delay of 260 days.

14. In this view of the matter, the action of 3rd respondent in

not approving the draft award passed by 4th respondent on 30-05-2011 is illegal, arbitrary and contrary to the provisions of the Act as amended by Act 68 of 1984.

15. Consequently, the Writ Petition is allowed with costs of Rs.3,000/- (Rupees Three Thousand only) ; the 3rd respondent is directed to approve the draft award dt.30-05-2011 passed by the 4th respondent; and pay the compensation determined therein along with accrued interest and other benefits as per the provisions of the Act from 09-12-1988 i.e. the date of acquisition till date of payment.

16. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-03-2016

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[\[1\]](#) 1994(1) ALT 491 (D.B.)