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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3381/2013

RAJ PAL

.... Petitioner

Through Mr. Srinivasa Rao, Adv.

versus

LAND ACQUISITION COLLECTOR & ANOTHER

..... Respondent

Through Mr.Yeeshu Jain and Ms.Jyoti Tyagi,
Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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31.08.2016

Petitioner is aggrieved by the fact that his application under Section 28A of the Land Acquisition Act, 1894 had been dismissed summarily on the ground that since he had preferred an application under Section 18 of the said Act and the same was pending before the concerned Additional District Judge his application under Section 28A of the said Act could not be entertained.

Learned counsel for the petitioner submits that in fact he has filed no application under Section 18 before the Additional District Judge (LAC Court). This has been countered by the respondent. The respondent along with counter affidavit has placed on record the aforementioned alleged application filed by respondent which is admittedly an unsigned application. Contention of the respondent is that this is a typed copy and that is why it is unsigned. Vehement contention of the petitioner is that he has never signed this application

and in fact he had never filed such an application. He has filed an affidavit to the said effect categorically stating that he had not filed any reference petition under Section 18 of the said Act qua his land.

Learned counsel for petitioner in support of his submission that since there is no application filed by him under Section 18 of the said Act his case under Section 28A of the said Act should be considered on merits has relied upon the judgment of the Apex Court reported as 2002(2) Supl. SC 324 Union of India Vs. Hansoli Devi and Ors. The Apex Court while dealing with the provisions of Section 28A of the said Act had noted herein as under:

“It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provisions, it would cause great injustice if a literal interpretation is given to the expression “had not made an application to the Collector under Section 18” in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In

fact in Pradeep Kumari's case the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated- "the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered."

There is no doubt to this beneficial provision which has been engrafted by the legislature to seek enhancement of compensation. The categorical submission of the learned counsel for the petitioner is that there is no reference petition filed by him under Section 18 of the said Act. Perusal of the record shows that even along with the counter affidavit of the respondent the application which has been appended is an unsigned application. Thus, this Court presumes that there is no application in law which has been filed before the reference court.

Accordingly, the case of the petitioner under Section 28A of the said Act be answered on merits. The matter is remanded back to the Land Acquisition Collector (LAC) who shall decide the application of the petitioner on merits. The submission of the respondent that the application is yet pending before the reference Court is answered by holding that if there is any such application pending before the LAC the same shall not be decided as the petitioner is permitted to take recourse to the provisions of Section 28A of the said Act. No further orders are called for in this petition.

Parties to appear before the Court of Land Acquisition

Collector on 19.9.2016 at 2.00 p.m..

Application of the petitioner will be decided by the LAC within
an outer limit of four months from today.

Petition disposed of.

INDERMEET KAUR, J

AUGUST 31, 2016

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