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

+ W.P.(C) 7144/2013

Decided on 27th April, 2016

DAYA NAND & ORS

..... Petitioners

Through : Mr. B. D. Sharma, Adv.

versus

UNION OF INDIA & ANOTHER

..... Respondents

Through : Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for LAC.

Mr. Ajay Verma, Sr. Standing
Counsel with Mr. Vaibhav Mishra,
Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Petitioners are the legal representatives of Late Shri Rishal Singh, whose land was acquired vide award no.18/1997-98 dated 23rd December, 1997. Late Shri Rishal Singh collected the compensation of acquired land to the extent of his share. He did not file any reference petition under Section 18 of the Land Acquisition Act, 1894 (for short hereinafter referred to as 'Act'). However, his co-sharers filed the reference petition under Section 18

of the Act in respect of their share, which was disposed of by the Learned Additional District Judge, Delhi vide award dated 26th April, 2006 whereby compensation was enhanced. At that time, Shri Rishal Singh was alive. However, he did not file any application under Section 28-A of the Act for re-determination of the compensation in terms of the award dated 26th April, 2006 of the Court. Shri Rishal Singh died on 3rd June, 2008. Thereafter, petitioners filed an application under Section 28-A of the Act before the Land Acquisition Collector on 6th September, 2010 for redetermination of the amount of compensation on the basis of award dated 26th April, 2006 of the Court.

2. The application of the petitioners has been rejected by the Land Acquisition Collector vide order dated 13th June, 2003, being time barred.

The order reads as under:

“This is with reference to your petition u/s 18 in respect of award no.18/1997-98 of village Tikri Kalan, which is received in this office on dated 06/09/2010.

In this regard, it is to inform that the Award/Judgment announced by ADJ in case titled Nahar Singh Vs UOI, LAC no.155/04 of village Tikri Kalan which was announced on 26/04/2006. You filed an application for U/s 28A of LA Act,

1984 on dated 06/09/2010 which is beyond the permissible period according to Section u/s 28A of the Land Acquisition Act, 1984.

Hence, the said petition is time barred so the same is rejected.”

3. Relevant it would be at this stage, to refer and rely on the section 28-A of the Act, which reads as under:-

"28A. 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 **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 computation 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 interest 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 Section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

(emphasis supplied)

4. A bare perusal of section 28-A (1) makes it clear that application for redetermination has to be filed within three months from the date of award of the Court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award. No power vests in the Land Acquisition Collector to condone the delay.

5. In this case, admittedly, the application was not filed by Late Shri Rishal Singh, during his lifetime, within three months of the Award of the Court. Only after the death of Late Shri Rishal Singh, petitioners have filed application after four years and five months of the passing of award by the

Court. Re-determination has been sought on the basis of award dated 26th April, 2006 passed in the reference petition under section 18 of the Act of the co-sharers of Late Shri Rishal Singh. The application, on the face of it, is barred by time.

6. In State of Andhra Pradesh & Ors. Vs. Marri Venkaiah & Ors., AIR 2003 SC 2949, Supreme Court held that the statute provides limitation of 3 months from the date of award by the court excluding the time required for obtaining the copy from the date of award. It has no relevance so far as the date of acquisition of knowledge by the applicant is concerned. In view of the express language of the statute, the question of knowledge did not arise and, therefore, the plea of the applicants that limitation of 3 months would begin from the date of knowledge, was clearly unsustainable and could not be accepted.

7. In Popat Bahiru Govardhane and Others Vs. Special Land Acquisition Officer & Anr., (2013) 10 SCC 765, in the context of delay of four days in filing the application under section 28-A of the Act, Supreme Court in paras. 13 & 16 held as under:-

“13. This Court in Union of India Vs. Mangatu Ram and Tota Ram Vs. State of U. P., dealt with

the issue involved herein and held that as the Land Acquisition Collector is not a Court and acts as a quasi-judicial authority while making the award, the provisions of the 1963 Act would not apply and therefore, the application under Section 28-A of the Act has to be filed within the period of limitation as prescribed under Section 28-A of the Act. The said provisions require that an application for re-determination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award.

16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.””

8. Learned counsel for the petitioners has vehemently contended that another award of the Court dated 26th December, 2010 was passed in respect of the same acquisition, therefore, period of limitation would commence from the date of subsequent award. He has placed reliance on Union of India & Anr. Vs. Pradeep Kumari & Ors., (1995) 2 SCC 736 wherein, in para nos.11 & 12, it has been held as under:-

“11. Since the cause of action for moving the application for re-determination of compensation under Section 28A arises from the award on the basis of which re-determination 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 28A will begin to run only from the date of the award on the basis of which re-determination of compensation is sought.

12. We are, therefore, unable to agree with the view expressed in Babua Ram and Karnail Singh that application under Section 28-A for redetermination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28-A. In our opinion, the benefit of redetermination of amount of compensation under Section 28-A can

be availed of on the basis of any one of the awards that has been made by the court after the coming into force of Section 28-A provided the applicant seeking such benefit makes the application under Section 28-A within the prescribed period of three months from the making of the award on the basis of which redetermination is sought. The first contention urged by Shri Goswamy in support of the review petitions is, therefore, rejected.”

(emphasis supplied)

9. Pradeep Kumari (Supra), in my view is in the context of different facts and is no help to the petitioners, inasmuch as, it goes against the petitioners. As per this judgment the benefit of redetermination of the amount of compensation under Section 28-A can be availed of on the basis of any one of the awards that has been made by the Court after the coming into force of Section 28-A, provided the applicant seeking such benefit makes the application within the prescribed period of three months from the date of making of the award, on the basis of which redetermination is sought. In this case, re-determination under Section 28-A of the Act was sought by the petitioners on the basis of award dated 26th April, 2006 passed by the Court of Learned Additional District Judge in the case of co-sharers. In the application filed before the Land Acquisition Collector reference of this

award has been made and not of subsequent award. Even otherwise application of the petitioners is seven months after the subsequent award.

10. For the aforesaid reasons, I am of the view that the Land Acquisition Collector has rightly rejected the application of the petitioners being barred by time.

11. Writ petition is dismissed.

A.K. PATHAK, J.

APRIL 27, 2016

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