

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

% Date of decision: 8th November, 2017

+ W.P.(C) 464/2015

RAJINDER SINGH & ORS. Petitioners

Through: Mr. I.S. Dahiya, Adv.

versus

LAND ACQUISITION COLLECTOR (NEW DELHI)
& ORS

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mr. Sunil
Kumar Jha and Mr. Kushal Raj Tater,
Advs. for R1.
Mr. Rajesh Kumar and Mr. Nikhil
Kumar, Advs. for R2.
Ms. Shobhana Takiar, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J (ORAL)

1. This is a petition filed by the petitioners under Article 226 of the Constitution of India seeking a writ of mandamus and a direction to quash the order dated 2nd February, 2012 passed by the Land Acquisition Collector District (North-West) (At present District New Delhi) by which the application filed by the petitioners under Section 28 (A) of the Land Acquisition Act, 1894 was dismissed. A direction is also sought to the respondents to decide the application of the petitioners under Section 28 (A)

afresh and re-determine the market value of the acquired land of the petitioners on the basis of Award / Judgment dated 26th October, 2006 passed by Sh. Yashwant Kumar, Additional District Judge, Delhi in LAC No. 281/1/06 titled as Hukam Chand and Ors. v. Union of India where market value of the land which was acquired by the same Notification and by the same Award has been fixed at Rs.10 per sq. yd. as against market value initially fixed by the Land Acquisition Collector in his Award no. 883 of Village Mohd. Pur, Munirka, Delhi and direction to the respondents to re-determine the market value / compensation to be paid to the petitioners according to their share.

2. It is the case of the petitioners that Shri Bahala S/o Shri Mokham R/o Village Mohd. Pur Munirka, Delhi was the recorded owner of the land comprising in Khasra/Field No.1302/1076/646(0-08), 1314/386(4-05), 425 (4-04), 550(8-01), 1304/1028(0-14), 1099/665(0-17), 1024/291(0-14), 1029/593(0-12), 1308/906(1-09), 1005/415(2-19), 370 (9-14), 379 (4-10), 380 (2-03) and 1310/236(3-05), total measuring 43 bighas 15 biswas, situated in the revenue estate of Village Mohd. Pur Munirka, Delhi. A notification under Section 4 of the Land Acquisition Act was issued on 8th March, 1957 followed by declaration under Section 6 of the Act, on the same date, to compulsorily acquired the land of Village Mohd. Pur Munirka, Delhi, including the land of predecessor-in-interest of petitioners for the purpose of Housing Scheme of the Ministry of Works, Housing & Supply, Govt. of India. Thereafter, Award under Section 11 of the Land Acquisition Act was made in the year 1962 by the Land Acquisition Collector, bearing No.833 of village Mohd. Pur Munirka, Delhi and by this award the land was finally acquired by the Govt.

The Land Acquisition Collector fixed the market value of the acquired land stated below:-

- i) Land categorized in block-I (A) @ Rs.4/- per. Sq. yard.
- ii) Land categorized in block-II (B) @ Rs.3.75/- per. Sq. yard.
- iii) Land categorized in block-III (C) @ Rs.3/- per. Sq. yard.
- iv) Land categorized in block-IV (D) @ Rs.5.60/- per. Sq. yard.

3. The compensation so assessed by the Land Acquisition Collector for the aforesaid land of Shri Bahala in his name was paid to him. Shri Bahala expired on 12.08.1962. Therefore, he could not file any reference under Section 18 of the Land Acquisition Act. It is the case of the petitioner that the compensation Awarded by the LAC is inadequate & low and does not represent the true & correct market value of the acquired land of predecessor-in-interest of the petitioners. The 1894 Land Acquisition Act was amended & new provisions by virtue of under Section 28-A of the Land Acquisition Act, have been incorporated, thereby the land owners, who had not applied for a reference under Section 18 of the LA Act, have been given a right to apply under Section 28A of the Land Acquisition Act to get compensation at par with those, who have got a higher compensation, because of the enhancement allowed by the reference Court or by the higher court in appeal. It is also the case of the petitioners that on 26th October, 2006, Shri Yashwant Kumar, learned ADJ Delhi, in LAC No.281/1/2006, titled as Hukam Chand versus Union of India was pleased to enhance the market value @ Rs.10/- per sq. yard against Rs.4/- per sq. yard for the land categorised in block-I (A), Rs.3.75/- per.sq.yard for the land categorized in block-II (B), Rs. 3/- per sq. yard for the land categorized in

block-III (C) & Rs.5.60/- per sq. yard for the land categorized in block-IV (D) fixed by the Land Acquisition Collector as on the date of notification under Section 4 of the LA Act, dated 8th March, 1957, in Award No.883 of Village Mohd. Pur Munirka, Delhi. The legal heirs of late Shri Bahala on 6th February, 2007 had filed an application under Section 28-A of the LA Act on the strength of judgment dated 26th October, 2006 passed in LAC No.281/1/2006, titled as Hukum Chand versus Union of India & claimed the re-determination of the market value/compensation of their acquired land @ Rs.10/- per sq. yard with all statutory benefits. After hearing the parties i.e. Delhi Development Authority and Director General of CPWD Nirman Bhawan, the application under Section 28-A of the LA Act, 1984, dated 6th February, 2007 was rejected on 2nd/9th February, 2012. On 7th March, 2012 the petitioners again filed petition/application under Section 28A(3) of the Land Acquisition Act, against the order/award dated 02/09.02.2012 after receipt a communication of order by which their application under Section 28A of the LA Act, was rejected. On 22nd July, 2014 the office of ADM/LAC, New Delhi, 12/1 Jam Nagar House, has communicated to one of the legal heir of Late Shri Bahala namely Shri Rajinder Singh R/o House No.185, Village Munirka, Delhi, that their application on the subject “Petition under Section 28A (3) of the Land Acquisition Act, 1984, title as Rajinder Singh & Others versus Union of India & others” has been dismissed. Counsel for the petitioners submits that the order dated 2nd February, 2012 is liable to be set aside as the same has been passed without applying the law in its correct perspective.

4. Counsel for the petitioners further submits that one of the basic reasons for rejecting the application was that the Award was never challenged by Shri Bahala, the original land owner from whom the land was taken by the Government. Another reason for rejecting the application filed under Section 28 was that Shri. Bahala did not challenge the Award through reference under Section 18 of the Land Acquisition Act, 1894. It has been held that there was no protest against the payment made to Sh. Bahala and thus in fact, Shri Bahala had accepted the Award given by the Land Acquisition Collector at the relevant time. Based on the above analogy, the Land Acquisition Collector held that the petitioners had fallen into the shoes of the original owner and their rights would thus be limited. Para 20 of the impugned order dated 9th February, 2012 reads as under:

“The award of the Collector was never challenged by Shri Bahala, the original land owner from whom the land was taken over by the Government. Sh. Bahala did not challenge the award through reference U/s 18 of the Land Acquisition Act. I could also not find any kind of protest against the payment made to Sh. Bahala in the records placed before me. Alternatively, it is obvious that Sh. Bahala has accepted the award given by the Land Acquisition Collector at that time. The legal heirs step into the shoes of the original owner. Their rights are limited to the extent. It is succeeded by them from the original owner. So, in this case, the rights of the successors are limited to the rights of the original owners. It appears that the original owner was satisfied with the award so are the successor. After hearing both the parties and considering facts and circumstances of the case, I am of the view that the petitioners in this case are residents of Delhi, the Capital State of India. They are living in the heart of the city. So the Section 28A does not apply to the case of the petitioner. They do not belong to that class of society for whose benefit the provision is intended and meant as is clear from the

observations discussed above. As stated in Para 14, the provisions of Section 28A is specially enacted for the benefit of farmers who are poor, illiterate and ignorant and inarticulate. The petition cannot be included in any of these categories. So, I am not inclined to accept their petition. Copy of the order be sent to both the parties.

Accordingly, the petition is dismissed.”

5. Mr. Rajesh Kumar, learned counsel appearing for the respondent CPWD has opposed this petition. He reiterates the reasoning given by the Land Acquisition Collector and submits that the acquisition with respect to the land in question has attained finality. He further submits that neither the acquisition proceedings were challenged by Shri Bahala, the original owner of the land during his lifetime nor he made an application seeking enhancement of compensation under Section 18 of the Land Acquisition Act, 1894. It is also contended by Mr. Kumar that there is nothing on record to show that at any point of time, Shri Bahala had objected to the proceedings.

6. Learned counsel for the petitioners submits that the objections so raised by the learned counsel for the CPWD has been laid to rest by a decision rendered by the Constitution Bench in the case of ***Union of India v. Smt. Hansoli Devi reported in AIR 2002 SC 3240***, Para 6 of which reads as under:

“6. Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collectors with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to

make an application when some other land owner's application for reference is answered by the reference Court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner.” (emphasis added)

7. A careful reading of Para 6 of **Hansoli Devi (supra)** would show that receipt of compensation with or without protest pursuant to the Award of the Land Acquisition Collector is of no consequences for the purpose of making a fresh application under Section 28 (A) of the Act. It has also been held that even if a person has not filed an application under Section 18 and accepted the compensation with or without protest, he would be entitled to make an application under Section 28 (A) of the Land Acquisition Act. The same view was reiterated by the Supreme Court in the case of **V. Ramakrishna Rao v. The Singareni Collieries Company Ltd. and Anr. reported in 2011 SCCR 49**, Para 11 of which reads as under:

“11. If sub-section (3) of Section 28A is interpreted keeping in view the object sought to be achieved by enacting the provision for removing inequality in the matter of payment of compensation, it must be held that a person who is not satisfied with an award made under Section 28A(2) can make an application to the Collector under Section 28A(3) for making a reference to the Court as defined in Section 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made under Section 28A(2) read with Section 28A(1) the applicant becomes entitled to receive compensation at par with other land owners. There is nothing in the plain language of Section 28A(3) from which it can be inferred that a person who has not accepted the award made under Section 28A(2) is precluded from making an

application to the Collector with the request to refer the matter to the Court. Of course, the Court to which reference is made under Section 28A(3) will have to bear in mind that a person who has not sought reference under Section 18 cannot get compensation higher than the one payable to those who had sought reference under that section.”

8. For the above reasons and in the light of the observations made by the Supreme Court in the case of **Smt. Hansoli Devi (supra)** and **V. Ramakrishna Rao (supra)**, we set aside the impugned order dated 2nd February, 2012 passed by the Land Acquisition Collector District (North-West) (At present District New Delhi) and remand the matter back to the Land Acquisition Collector, Delhi who will decide the application filed by the petitioners under Section 28 (A) of the Act afresh within 60 days from the receipt of this order. The petition stands disposed of.

No costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 08, 2017/jg