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

Reserved on: 17.07.2017
Pronounced on: 24.07.2017

+ W.P.(C) 5761/2014

RAM PHAL

..... Petitioner

Through : Sh. Charanjit Sharma, Advocate.

versus

UNION OF INDIA AND ANR

..... Respondents

Through : Sh. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi, Advocate, for L&B/LAC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner complains of discrimination in the matter of compensation assessed and granted for his land, expropriated under the Land Acquisition Act, 1894 (hereafter “the Act”) because for the same parcel of land, his co-owner received a higher rate of compensation; he therefore seeks redress under Article 226 of the Constitution of India, by these proceedings.

2. The respondent State (hereafter “NCT”) issued a notification for acquisition of lands which included khasra nos. 116/23/2(3-10), 24(4-16), 25(4-4), 126/3/2(3-10), 4(4-16), 5(4-16), 8(4-16), 9/2(2-16), 12(4-12),

13(4-12), 14(4-12), 16(4-16), 17(4-16), 18(4-16), 19(4-16), 20(4-16), 21(4-16), 22(4-16), 23(4-16), 24/1(3-16), 25/1(3-8), 127/16(4-16), 17/2(3-16), 24(4-16), 25(4-16), 142/4(4-12), 5(4-12), 6(4-16), 7(4-16), 155/1/1(3-3), 2(4-8), 3(4-5) and 10(4-3) situated in the revenue estate of Village Bawana, Delhi- (hereafter referred to as “suit lands”), on 15 November, 1996. A declaration confirming that notice, under Section 6, was issued on 21 November, 1996. Based on materials available and evidence led, the Collector assessed the market value of the land, for compensation purposes, in an award dated 02/07/1997 fixing the market value of the land @ ₹ 1,86,500/- (Rs. One Lakh Eight Six Thousand Five Hundred only) per bigha for "A" category of said acquired land and ₹1,61,500/- (Rs. One Lakh Sixty One Thousand Five Hundred only) per bigha for "B" category of said acquired land. The petitioner was dissatisfied by this assessment of market value and applied for reference (for higher compensation) to the court, under Section 18. This reference was decided on 3 December 2015 (LAC Case No. 207/2001 re-numbered as 150/2004), the court held that the market value assessed by the Collector was proper and adequate. The petitioner did not pursue the matter further and let it rest.

3. In the meanwhile, the petitioner's co-owner, i.e., Bhagwana had similarly sought a reference to the court (LAC Case No. 135/2001 re-numbered as 213/2003). The court, in a judgment dated 30 September 2005, too, rejected this reference. Here too, it was held that market value of the land @ ₹ 1,86,500/- (Rs. One Lakh Eight Six Thousand Five Hundred only) per bigha for "A" category of said acquired land and ₹1,61,500/- (Rs. One Lakh Sixty One Thousand Five Hundred only) per bigha for "B" categories

were justified. However, Bhagwana was not content. He, along with several landowners, appealed to this court (LAA 29-30/2006) which was allowed, partly by common judgment and appeal, when the court disposed of a batch of cases, on 11 May, 2005. This court held that all land-owners were entitled to a uniform rate of compensation, ₹1,99,904.68 P per bigha for all kinds of land thereby resulting in enhancement at the rate of ₹ 13,404.68 P per bigha for Category A land and ₹ 38,404.68 per bigha for category 'B' land.

4. The petitioner contends that he is co-owner of suit lands, and refers to the award, as well as the reference court's order in his case, which he compares with that of Bhagwana's award and judgment of the reference court, to establish complete identity of suit lands as the subject matter of compensation assessment in both cases. He argues that though Bhagwana was able to appeal to this court, he was not. Citing the judgment of this court, he urges that its existence was unknown to him all the while; when he became aware, he approached this court, by these proceedings. It is urged that having regard to the principles underlying Section 28A of the Land Acquisition Act, and more importantly, Article 14 of the Constitution of India and given the total similarity between his case and that of Bhagwana, the benefit of this court's judgment too should be given to him.

5. Besides re-iterating the submissions and grounds, counsel appearing for the petitioner states that the statutory interest payable for enhanced compensation would be given up in the present case for the period 11 May, 2006 till the filing of the present petition, because the remedy under Section 28A was not availed in time. It is stated however, that in all other respects, *vis a vis* compensation and other benefits payable under the Act should be

given to the petitioner, in parity with Bhagwana, in keeping with the spirit and letter of Section 28A. The petitioner cites *Kalawati, Lal Chand Gupta and Shiv General Finance (P) Ltd. v Union of India* AIR 2004 Del 351 in support of his submission.

6. The Government of NCT of Delhi did not file any return, despite repeated opportunities. It does not dispute that this court delivered a common judgment, directing a uniform rate of compensation based on a common market value determination. What it states is that the petitioner cannot be granted relief, given the express provisions of Section 28A. It is stated firstly that having not filed an appeal and not even approached the Collector within the time stipulated by that provision, the petitioner is precluded from claiming enhancement, the sole channel for which is Section 28A. It is also submitted that whereas there might be a common market value for lands in the same village, fact determination on other aspects is a must, for which the law requires the procedure under Section 28A to be followed.

7. Section 28A of the Land Acquisition Act, 1894, allows an interested person to receive the same amount of compensation at par with other land-owners whose compensation amounts are enhanced under Section 18 or otherwise. For this purpose, the question of whether an application is required to be filed for claiming compensation under Section 28A has been addressed in the case of *Rajaram Gajanan v. Special Land Acquisition Officer* 2001(2) (Mh.L.J.) by the Bombay High Court. In the present case, the Respondents contended that while a redetermination of the amount of compensation had been done, the Petitioners being the land owners could

take advantage of this unless they filed an application separately under Section 28A. The Court, rejecting this submission, held:

“The view that we propose to take is also fortified from the language of sub-section (2) which clearly indicates that the Collector on receipt of the application made under sub-section (1) is obliged to conduct an enquiry after giving notice to all the persons interested in the land in question. The purpose of giving notice to all the interested persons with regard to the land in question is obvious, inasmuch as, all the interested persons would get reasonable opportunity of being heard and can persuade the Collector to make an Award in their favour determining the amount of compensation in terms of Award passed in respect of the neighbouring land. In other words, what appears to us is that, one of the interested person can move an application under Section 28A of the Act so as to ignite the process of redetermination of the amount of compensation on the basis of the Award passed in respect of some other land under the same Notification. This provision, obviously takes colour from the spirit of Article 14 of the Constitution of India, for to provide equal market value in respect of all the lands under the same Notification issued under Section 4 of the Act. Understood thus, the only possible view that can be taken in the context of this provision is that, one of the interested person can initiate the proceedings for redetermination of the amount of compensation under the said provisions, and if such an application is moved, it is obligatory on the Collector to give notice to all the interested persons and provide them reasonable opportunity of being heard before making an Award determining the amount of compensation payable in respect of the land in question. It would be preposterous to hold that an interested person, although entitled for a notice under sub-section (2) of the Act, before

redetermination is done by the Collector, albeit at the instance of one or more interested persons, but such person who appears before the Collector in response to the notice received under sub-section (2) of the Act would be denuded of his right of being treated equally with other interested persons who only happen to be the applicants and responsible for initiating the proceedings. Such an interpretation cannot be countenanced at all, for even sub-section (3) would clearly throw light on the plain language of subsection (3) of the Act, it would appear that any person interested in the land is entitled to carry the matter by way of reference. If the Legislature wanted to restrict the benefit under the said provision only to the person who had made application under sub-section (1), in that case, surely the Legislature would not have employed the expression "any person" in sub-section (3) but would have restricted to "aggrieved applicant." In our view, as the said provision obligates the Collector to give notice to all the interested persons before redetermination of the compensation; and once a person appears before the Collector pursuant to such notice, surely such a person cannot be deprived of the benefit of redetermination of the amount. Moreover, the redetermination of the amount is done in respect of market value of the land, in terms of the award passed in respect of the neighbouring land falling under the same Notification under Section 4, but not with regard to the share of the person who makes the application under the said provisions.

Once redetermination is made, it is irrelevant as to at whose instance the same has been done, but the respondents/authorities are under an obligation to give benefit of the said redetermination to all the interested persons irrespective of whether they had preferred any application or not. Only this approach would fulfill the letter and spirit of Section 28A of the Act. On this interpretation, the only possible

and permissible view is that, all persons who are interested in the land in question would be entitled to share the benefit arising on account of the redetermination award on pro rata basis as per their respective entitlement and none of the interested person whether co-owner or a tenant can be deprived of the benefit merely on the ground that he had not preferred any application under Section 28(1) of the Act.”

However, in 2007, the same High Court expressed a contrary view in *Shrikrishna v. State of Maharashtra* 2008(3) Mah LJ. In that case, the Court placed reliance on the judgment in *Babua Ram and Others v. State of U.P.*(1995) 2 SCC 689. In *Babua Ram*, the Supreme Court held that:

“As regards claim for higher compensation, sub-section (1) of section 28A envisages the awarding of higher compensation by the Court on reference under section 18 in excess of the amount awarded under section 11 by the Collector. The aggrieved person must be the person interested in all other lands covered by the same notification of section 4(1) and the amount of the compensation determined by the Court is relatable to the land similarly situated, possessed of the same value or potentialities etc. Despite their failure to seek and secure reference under section 18, they became entitled to make an application in writing to the Collector within the prescribed three months limitation. Therefore, any other non-applicant is not entitled to the benefit of the award of the Collector made on redetermination under sub-section (1) of section 28A. The contention of B. D. Aggrawal, learned counsel for the claimants, that all persons despite their failure to make an application for redetermination of the compensation, are entitled to compensation under the redetermined award under sub-section (1) of section 28A, is without substance. It is

accordingly rejected. Sub-section (1) of section 28A would apply only to a person who had failed to seek and secure reference under section 18 when one or other persons similarly interested in the land covered under the same notification published under section 4(1) received on reference under section 18 higher compensation in an award under section 26 and should make a written application under section 28A(1). The Collector then is enjoined to redetermine the compensation in the manner laid in section 28A(1) and to make an award under section 28A(2).”

8. Those invoking Section 28A should apply for enhanced compensation. For cases of land acquisition that do not fall under Section 28A, i.e, where the award has been enhanced by the Appellate Courts and not a Reference Court, this Court in *Kalawati* (*supra*, relied upon by the petitioner) granted compensation to co-owners on the basic principle of parity and equality amongst co-owners of the land. In this case, the enhancement of compensation was granted by the High Court. In order to avail the benefit of the same, a co-owner of the land sought relief from the High Court. The Court held that:

“Reading of the aforesaid judgment makes it clear that it was treated as the first principles of law that a co-owner is entitled to have the benefit of the enhanced compensation given to the other co-owners qua the same land acquired which belonged to all of them, jointly. It can thus be clearly concluded that this judgment is the authority for the proposition that even if the case does not fall strictly within the ambit of Section 28A of the Act, still on the principle of parity, another exception is carved out, namely, when the acquired land belongs to co-owners

jointly, which is subject matter of acquisition, all the co-owners are to be given the same compensation and they cannot be treated differentially.”

Thus, in instances where Section 28A is not applicable, compensation can be granted to maintain parity between similarly situated owners.

9. This court is supported by consistency of precedent of a previous Division Bench ruling, in its conclusion that the petition should succeed. What the State sets up in defense is procedure- i.e., that the petitioner did not approach the Collector within the time, that without an application enhanced compensation – based on parity is shut out to a land owner, etc. Lost within the procedural morass here is the basic principle of equality. The landowner whose property is expropriated has agency over his litigation; no more. He has no wherewithal to find out whether an adjacent landowner succeeds in reference proceedings or the High Court; much would depend on his personal relationship with that landowner. Likewise, co-owners may be forthcoming about information; but then, they may not also share information. If there is no source given by law, or provided by the State for a landowner to access such information, that would be useful to him or her, to apply under Section 28A, its benevolent objective is completely undermined. Till that stage, the absence of mechanism (for information to all in such matters) can result in unintended violation of Article 14. However, when the State, mulishly displays intransigence – as in the present case, insisting that the landowner is precluded because of the letter of Section 28A, though all landowners covered by the notification are to enjoy a

uniform compensation rate based on a common market value, declared by the High Court, it directly and with intent violates Article 14. In short, procedure trumps justice; form succeeds over substance: a conclusion incompatible with the Constitution of India. If one keeps in mind that Article 28A is but a statutory enactment, though in a limited manner, of the larger equality principle under Article 14 of the Constitution, it is evident that the state's denial of enhanced compensation, based on this court's previous judgment in Bhagwana -the co-owner's appeal- is arbitrary.

10. In view of the foregoing discussion, this petition has to succeed. However, since the petitioner's identity and entitlement based on documents needs to be verified, the concerned Collector is directed to make the necessary inquiries and assess the compensation amount due. The petitioner shall, however, be disentitled to interest for the period 31-12-2006 to 26-7-2014, when no steps were taken by him to agitate his rights. Except this period, he shall be entitled to parity with the amounts paid to Bhagwana vis-à-vis the period(s) for calculation purposes. This exercise shall be completed within 3 months and the amounts paid to the petitioner, within that period.

The writ petition succeeds and is allowed to the above extent.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 24, 2017