

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.Nos.8554 and 8867 of 2017

COMMON ORDER :

Heard Sri A. Sudarshan Reddy, counsel appearing on behalf of Sri D. Kodanda Rami Reddy, counsel for petitioners in both the Writ Petitions; and the learned Government Pleader for Revenue for respondents, in both the Writ Petitions.

2. The petitioners herein are residents of Chapalavaripalle Hamlet of Pothapi village of Nandalur Mandal, Y.S.R. Kadapa District.

3. The petitioners possessed lands and structures therein. The structures of the petitioners were notified for acquisition under Section 4(1) Notification of the Land Acquisition Act, 1894 on 08.12.1995 for Somasila Project. Thereafter, in a fire accident, some of the structures of the petitioners got destroyed.

4. On that basis, the respondents paid only *ex gratia* to the petitioners through an Award No.4/97-98 dt.14.01.1998.

5. However, some of the persons, similarly situated like the petitioners, had sought a reference under Section 18 of the Land Acquisition Act, 1894, and one such reference was numbered as L.A.O.P.No.68/2000 before the Senior Civil Judge, Rajampet, Y.S.R. Kadapa District, which was subsequently referred to the Special *Lok Adalat* at Kadapa under Section 21 of the Legal Services Authorities Act, 1987.

6. In proceedings dt.13.03.2007, the said Bench of the *Lok Adalat* passed an Award granting higher amount towards compensation than what was granted in the Award to the parties in the L.A.O.P.No.68/2000.

7. After obtaining copies of the said Award dt.13.03.2007, passed in L.A.C.No.128/2007, the petitioners filed application under Section 28-A of the Land Acquisition Act for re-determination of compensation on par with the parties in L.A.O.P.No.68/2000 on 21.06.2007.

8. The 3rd respondent acknowledged receipt of the same and then issued proceedings Ref.D/184/2007, dt.20.12.2007, rejecting the applications of the petitioners under Section 28-A on the ground that petitioners are not entitled to receive any benefit thereunder of higher compensation since they had already received *ex gratia* amount.

9. The petitioners contend that this action of the respondents is illegal, arbitrary and violative of Section 28-A of the Land Acquisition Act, 1894; and that the respondents cannot reject petitioners' applications in such an arbitrary fashion.

10. A reading of the order dt.20.12.2007, passed by the 3rd respondent, indicates that structures which had been notified for publication in 1995 got gutted in a fire accident in the year 1996; however *ex gratia* was paid to the owners of structures, and the petitioners are not entitled to re-determination of compensation under

Section 28-A of the Act on par with the owners of the structures in L.A.O.P.No.68/2000.

11. This is reiterated in the counter-affidavit filed by the respondents also.

12. It is important to note that the acquisition of the structures dates back to the date of the notification issued under Section 4(1) of the Act on 08.12.1995, and if the structures were intact on the said date and got gutted only subsequently, the petitioners cannot be denied lawful compensation for the structures under the Act. So, the very payment of *ex gratia* to them on the basis of the fire accident in 1996 appears to be arbitrary, illegal and violative of Article 14 and the provisions of the Land Acquisition Act, 1894.

13. Section 28-A states as under :

“28-A. Re-determination 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 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 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 interested 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 Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.”*

14. It is not the case of respondents that the applications of petitioners for re-determination of compensation made under Section 28-A of the Act are filed beyond time of ninety (90) days fixed under the Act.

15. Therefore, it is not open to the respondents to deny the benefit of re-determination of compensation conferred on them under Section 28-A of the Act.

16. Though a plea of laches is raised in the counter-affidavit in view of the decision of the Supreme Court in **Tukaram Kana Joshi and others v. M.I.D.C. and others**¹ that substantial justice cannot be allowed to be defeated by technical plea of delay when no third-party

¹ 2013 (2) A.L.D. 7 (S.C.)

interests are involved, the said plea raised by the respondents also cannot be entertained.

17. Accordingly, the Writ Petitions are allowed. The Order dt.20.12.2007 in Ref.D/184/2007 of the 3rd respondent is set aside. The respondents are directed to pay compensation to the petitioners in both the Writ Petitions on par with the petitioners in L.A.O.P.No.68/2000, which was adjudicated on 13.03.2007 in L.A.C.No.128/2007 of the Special *Lok Adalat*, Kadapa within four (04) months from the date of receipt of copy of the order and pay the same to the petitioners. No order as to costs.

18. As a sequel, miscellaneous petitions pending if any in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.08.2018

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