

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

% Date of decision: 11th July, 2018

**+ LA.APP. 76/2018 & CMs No.13332/2018 (for stay) & 13333/2018
(for condonation of 115 days delay in filing the appeal)**

UNION OF INDIA

..... Appellant

Through: Mr. Biraja Mahapatra and Mr. T.K.
Nagar, Advs.

Versus

PURAN SINGH & ORS

..... Respondents

Through: Mr. Vikas Mehta and Mr. Tanvir
Nayar, Advs. for R-1 to 12.
Ms. Sukhbeer Kour Bajwa, Adv. for
R-13/DDA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment [dated 30th August, 2017 in LAC No.216/2016 of the Court of Additional District Judge (ADJ)-04, South West District, Dwarka Courts, New Delhi] on a reference under Section 28A(3) of the Act for enhancement of compensation for the acquired land of the respondent at village Dhoolsiras, New Delhi.

2. The appeal, along with an application for condonation of 115 days delay in filing thereof, came up before this Court first on 9th April, 2018 when notice thereof was ordered to be issued.

3. The counsel for the respondents No.1 to 12 and the counsel for respondent No.13 Delhi Development Authority appear.

4. The counsels have been heard.

5. The respondents no.1 to 12 were the *bhumidars* of land in Village Dhoolsiras, New Delhi with respect to which Notifications for acquisition were issued and an award made. The respondents no.1 to 12 did not seek reference under Section 18 of the Act. However, in reference under Section 18 sought by others, whose land had been acquired by same Notifications and was subject matter of the same award, the compensation enhanced. The respondents no.1 to 12 then applied under Section 28A(1) and were awarded the same compensation as enhanced by the Reference Court in reference under Section 18 sought by said others. The respondents no.1 to 12 thereafter applied under Section 28A(3), and of which, reference was made. In the meanwhile the 'others' aforesaid, being not satisfied with enhancement in compensation granted to them by the Reference Court, preferred appeals to this Court and then to Supreme Court and vide orders in which appeals, further enhancement in compensation was granted. The Reference Court, in reference under Section 28A(3) aforesaid, granted the enhancement in compensation to respondents no.1 to 12 as ultimately awarded by the Supreme Court with respect to the other land subject matter of the same Notifications and award.

6. To be able to understand the contention of the counsel for the appellant, it is appropriate to set out Section 28A herein below. The same is as under:

“28A. 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, required 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.”

7. The contention of the counsel for the appellant is, that under Section 28A, persons who have not sought reference under Section 18 of the Act within the prescribed time, though are entitled to enhancement in compensation which has been given by the Reference Court but are not entitled to further enhancement in compensation which may have been given by the High Court or by the Supreme Court in appeals against the judgment of the Reference Court. It is contended that only “one application under Section 28A is contemplated and not two applications”.

8. I have drawn attention of the counsel for the appellant to

a) Section 28A(1) which entitles a person, whose land has been acquired and who has missed the bus to seek reference under Section 18, to, within three months of the date the Reference Court passes an award/order/judgment enhancing compensation with respect to other land subject matter of same Notification under Section 4, apply to the Collector for redetermination of compensation on the basis of such award/order/judgment;

b) Section 28A(2) which mandates the Collector to, on application aforesaid, conduct an enquiry and make an award determining the compensation payable; and,

c) Section 28A(3), which permits such persons to, even after being awarded enhanced compensation by the Collector under Section 28A(2), seek further reference and to which reference, Sections 18 to 28 are made applicable.

9. I have further drawn attention of the counsel for the appellant, to Section 26(2) of the Act constituting, the award/order/judgment on a

reference under Section 18, a judgment and decree within the meaning of Section 2(9) and Section 2(2) respectively of the CPC, and, to Section 54 of the Act providing for appeal against such award/decreed/judgment on a reference under Section 18, as a decree, to the High Court and against the judgment of the High Court, to the Supreme Court.

10. I have enquired from the counsel for the appellant;

a) whether not, the award/order/judgment on a reference under Section 18 having been conferred the status of a judgment and decree and whereagainst remedy of appeal is available, the principle of merger of/in orders of Appellate Court apply;

b) and if so, whether not the award/order/judgment on a reference under Section 18 be merged in order/judgment in appeal thereagainst;

c) and upon which merger, the ultimate judgment on such reference under Section 18, even if be of the Supreme Court, be the “award of the court” within the meaning of the said expression in Section 28 (1);

d) and if so, whether not the Reference Court, while deciding a reference under Section 28(3) be required to follow the judgment in appeal against award/order/judgment on an earlier reference under Section 18 with respect to other land covered by same Notification, even if be of Supreme Court, and award compensation in exercise of powers under Section 28A(3) on basis thereof.

11. The counsel for the appellant, though agrees, but contends that a reference under Section 28A(3) can be sought only if the Collector, under Section 28A(2), has awarded compensation lesser than the compensation

awarded by the Reference Court in an earlier reference under Section 18 and not if the Collector, under Section 28A(2), has awarded the same compensation as the Reference Court. It is argued that the Collector in the present case, on the respondents No.1 to 12 applying under Section 28A(1), awarded the same compensation to the respondents No.1 to 12 as had been awarded by the Reference Court.

12. Accepting the aforesaid contention would however amount to reading the language of Section 28A(3) as “any person who, under Section 28A(2), has not been awarded the same compensation as awarded by the Reference Court....”. On the contrary, the Legislature has not laid down any such limitation and has permitted an applicant under Section 28A(1) to seek reference under Section 28A(3), if does not accept the enhancement awarded by the Collector under Section 28A(2) on application under Section 28A(1). The same would amount to twisting the language of the Statute.

13. The counsel for the appellant draws attention to para 4 of ***Bhagti Vs. State of Haryana*** (1997) 4 SCC 473 and to portion thereof in turn citing para 4 of ***Scheduled Caste Coop. Land Owning Society Ltd. Vs. Union of India*** (1991) 1 SCC 174 as under:

“It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the Court in the reference under Section 18 and an application in that behalf has to be made to the Collector within 30 days from the date of the award.”

14. Supreme Court, in the aforesaid judgment, was dealing with Section 28A(1) and not with Section 28A(3) and did not have any occasion to consider Section 28A(3) and thus the said judgment cannot be relied upon for the argument urged.

15. The counsel for the appellant has also drawn attention to para 10 of ***Union of India Vs. Pradeep Kumari*** (1995) 2 SCC 736 and particularly to the following part thereof:

“If the said expression in Section 28-A(1) is thus construed, a person would be able to seek redetermination of the amount of compensation payable to him provided the following conditions are satisfied :

- (i) An award has been made by the court under Part III after the coming into force of Section 28-A;*
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;*
- (iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;*
- (iv) The person moving the application did not make an application to the Collector under Section 18;*
- (v) The application is moved within three months from the date of the award on the basis of the redetermination of amount of compensation is sought; and*
- (vi) Only one application can be moved under Section 28-A for redetermination of compensation by an applicant.”*

and has contended that only one application under Section 28A is permitted and the application for further enhancement under Section 28A(3)

would amount to a second application.

16. No merit is found in the aforesaid reliance also. Supreme Court, in the aforesaid passage was construing Section 28A(1) and it was in the context thereof that it was held that only one application can be moved. Section 28A(3) was not for consideration in the said judgment also. Rather, the ratio otherwise of the said judgment is that if all the land owners whose land has been acquired vide the same Notification and/or with respect to which the same award has been made are not granted parity in payment of compensation for acquisition of land, it would result in perpetuating inequality and to remove which Section 28A was introduced in the Act in the year 1984.

17. The counsel for the respondents No.1 to 12 has referred to paras 13 & 17 of *V. Ramakrishna Rao Vs. Singareni Collieries Company Limited* (2010) 10 SCC 650 and to para 6 of *Inderjeet Singh Hansrao Vs. Union of India* (2002) 65 DRJ 31 (DB) and which also negate the interpretation aforesaid agitated by the counsel for the appellant.

18. In my view, the language of Section 28A read with Section 26(2) and 54 of the Act do not leave any ambiguity.

19. Else, it is not in dispute that vide the impugned judgment, the respondents No.1 to 12 have been awarded compensation at the same rate as awarded by the Supreme Court with respect to land of others acquired by the same Notification/award.

20. No other argument has been urged.

21. There is no merit in the appeal.

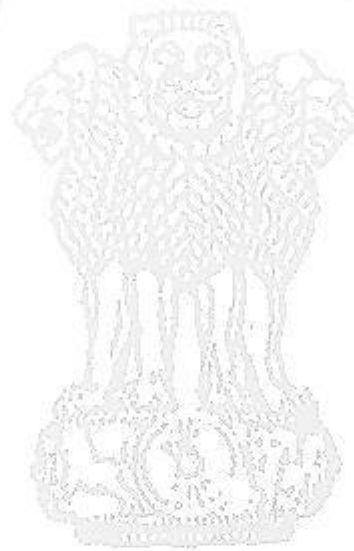
22. Dismissed.

No costs.

JULY 11, 2018

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RAJIV SAHAI ENDLAW, J.



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