

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.184 OF 2023

Goa Industrial Development
Corporation,
Through its Managing Director
Mr. Mekala Chaityana Prasad,
Aged 33 years, EDC Complex, Patto
Plaza, Panaji Goa.

... Petitioner

Versus

1) Mrs Goretti Leonilda Sobrinho
Silveira,
Major in age, wife of Cosme
Silveira,
R/o, Jaee Juee Apts, Opp.
Tilak Stadium, Vasco Da Gama,
Mormugao, Goa.

2) The Special Land Acquisition
Officer,
Goa IDC, Having office at GIDC,
Patto-Panaji

... Respondents

Mr H. D. Naik, Advocate *with Mr A. Naik, Advocate for
the Petitioners.*

Mr D. Vernekar, Advocate *for Respondent No.1.*

CORAM: M. S. KARNIK, J.

DATED : 5th July 2023

ORAL JUDGMENT:

1. The petitioner is Goa Industrial Development Corporation ('GIDC' for short). The challenge in this petition under Article 227 of the Constitution of India is to the order

dated 20.07.2023 passed by the respondent no.2-Special Land Acquisition Officer, Goa IDC rejecting the objection raised by the petitioner that the application filed by the respondent no.1-claimant, for re-determination of compensation is barred by limitation.

2. The brief facts necessary for deciding the controversy are thus. The lands were sought to be acquired for industrial estate which included the land belonging to respondent no.1 being survey no.190/8(P) and 192/1(P) totally admeasuring 2467 sq. metres. The award was made by the Land Acquisition Officer under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act' for short) determining compensation of ₹50/- per square metre.

3. Respondent no.1 did not file any reference under Section 18 for enhancement of compensation to the Reference Court. However, some other landowners, under the very same Section 4 Notification under which the land of the respondent no.1 was also subject matter of acquisition, had preferred a reference under Section 18 of the said Act before the Reference Court. By the Award dated 21.07.2009, the Reference Court enhanced the compensation from ₹50/- per square metre to ₹700/- per square metre.

4. Thereafter, the respondent no.1 filed an application for enhancement of compensation. The respondent no.2, on 13.08.2009, informed the respondent no.1 that the application is not being entertained since the same was not

filed within time in the office of the respondent no.2 and hence, the same cannot be forwarded to the District court under Section 18 of the said Act. It was mentioned in the said communication that the respondent no.1 may refer the case under Section 28A as and when the cases of the interested parties are settled/decided by the District and Sessions Court.

5. The respondent no.1 made an application on 26.10.2009 to the respondent no.1 under Section 28A of the said Act for re-determination of compensation.

6. The objection was raised by the petitioner before the respondent no.2 that the application is beyond three months from the date of Award i.e. 21.07.2007 and, therefore, the same should not be entertained in view of the express provisions of Section 28A(a) of the said Act prescribing limitation.

7. The respondent no.2, for the reasons mentioned in the impugned order held that the application is within time, thereby rejected the objection of the petitioner that the application is time barred.

8. Learned counsel Shri Naik for the petitioner, assailing the impugned order, submitted that the application under Section 28(A) is clearly beyond the period of 3 months from the date of award of the Reference Court and, therefore, the impugned order calls for interference. Learned counsel further submitted that the respondent no.2 ought to have construed Section 28A of the said Act strictly in view of the

mandate prescribed therein. Learned counsel further submitted that there was nothing on record to indicate when the certified copy of the award was applied for and hence, the reasoning of the respondent no.2 that the time spent in obtaining the certified copy has to be excluded is fallacious. It is submitted that no certified copy of the award was placed on record. Learned counsel submitted that respondent no.2 would be virtually entertaining a time barred application under Section 28A of the said Act which is impermissible.

9. Mr Vernekar , learned counsel for the respondent no.1, on the other hand, supported the impugned order and invited my attention to the reasons therein to submit that the present petition is devoid of merit.

10. Heard learned counsel. Perused the petition memo and the annexures.

11. In order to appreciate the context in which the submissions were advanced by learned counsel, it would be apposite to refer to the provisions of Section 28A(1) of the said Act which reads thus:-

`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)

(3)'

12. It would be pertinent to quote the relevant observations of the respondent no.1 while rejecting the objection of the petitioner as regards filing the application beyond the period of 3 months, which read thus:

'The respondents are claiming that there is a delay of 7 days in filing the said application as the award was passed by the Ld District Court on 21/07/2009 and the application came to be submitted on 27/10/2009.

The applicant have produced the Judgement by Ld. District Judge in Land Acquisition case No 60 of 2008, wherein the Judgement is delivered on 21st day of the month of July of the year 2009.

The normal time given for delivery of the certified copy of Judgment is usually 7 days which can be seen from the Judgement of the Hon'ble High Court in First Appeal No.223 of 2009, 229 of 2009 and 232 of 2009 dated 2nd Dec 2014 produced on record, where the last page shows dates as under.

*Date on which the copy was
applied for : 17/12/2004*

Date given for taking delivery : 24/12/2004

On perusal of page 11 of the Judgement of Ld District Judge-2 in Land Acquisition Case No.60 of 2008 it can be seen that the Judgement copy on record, was signed on 25/07/2009 which date appears below the signature of the Ld. Judge.

If we consider 7 days for delivery of the certified from the date of application say 21/07/2009, the date of delivery of certified copy comes to 28/07/2009 and the application is filed on 27/10/2005 which is well within the time limit of 3 months considering the fact that July and August months have 31 days.

Hence the application under Section 28-A is allowed since it is filed within 3 months as required and the question of condonation of delay doesn't arise.'

13. I have gone through the copy of the award dated 21.07.2009 on the basis of which the application under Section 28A for re-determination of the amount of

compensation is preferred by the respondent no.1. Though from the award it is indicated that the same is signed on 21.07.2009, on the next page of the award under the heading, 'Bill of Costs', the signature of the Reference Court is dated 25.07.2009. The respondent no.2 took into consideration the period of 7 days in delivering the certified copy of the award from the date of application. There is nothing on record to indicate that the copy of the award dated 21.07.2009 was received by the petitioners prior to 28.07.2009.

14. The view of the respondent no.2 in observing that the application is filed within 3 months from the date of the award cannot be said to be unreasonable or perverse to warrant interference. I, therefore, do not find any merit in this petition to warrant interference in the exercise of this Court's jurisdiction under Article 227 of the Constitution of India. The view taken in the facts of the present case by the respondent no.2 is a possible view in aid of justice for the respondent no.1 who sought re-determination of the amount of compensation on the basis of the award of the Court made in favour of similar situate landholder under Section 28A of the Land Acquisition Act.

15. Learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of ***Jose Antonio Cruz Dos R. Rodrigues and another v/s. Land Acquisition Collector and another***¹. In my opinion, the decision is distinguishable on facts, as in the present case, the

¹ 1996 Supp(8) SCR 910

application made by the respondent no.1 is held to be within the time stipulated under Section 28A of the said Act.

16. I do not see any merit in the Writ Petition. The Writ Petition is dismissed.

17. Rule is discharged. No order for costs.

M. S. KARNIK, J.

MARIA SUZANA
REBELLO

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