

GIRIMALLAPPA

v.

THE SPECIAL LAND ACQUISITION OFFICER M & MIP &  
ANR.

(Special Leave Petition (C) No. 21397 of 2012)

JULY 16, 2012

**[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]**

*LAND ACQUISITION ACT, 1892:*

*s.28-A - Re-determination of compensation on the basis of award of court - Held: The area of land acquired makes it clear that the petitioner was a man of means - He did not file a reference u/s 18 of the Act, but his application u/s 28-A of the Act was entertained - However, as the said order has not been challenged by the respondent(s), Supreme Court cannot examine the issue further, even if the order is totally unwarranted - Besides, petitioner's claim in the first appeal before the District Judge had been to the tune of Rs.24,000/- per acre which had been allowed - In appeal before the High Court, no specified amount was demanded by the petitioner - The memo of appeal reveals that Rs.25 was paid as court fee - High Court dealt with the issue elaborately taking note of the earlier proceedings so far including the order passed u/s 28-A of the Act and condonation of delay of 1717 by the first appellate court - SLP is also delayed by 154 days, though the said delay has been condoned - Mere making a reference in the memo of appeal that the High Court had awarded a higher amount in respect of a land covered by the same Notification u/s 4 of the Act, is not enough - Claimant has to satisfy the court that his land was similar in quality and had same geographical location or was situated in close vicinity of the land covered by the exemplar relied upon by him - In the instant case, no such attempt has ever been made by the petitioner - Thus, it is not that a meritorious case has been*

A *thrown out and the cause of justice stood defeated - It cannot be said that the High Court preferred technicalities over substantial justice - Constitution of India, 1950 - Art. 136 - Delay/laches.*

B *State of Orissa & Ors. v. Chitrasen Bhoi* 2009 (14) SCR 558 =JT 2009 (13) SC 388 - relied on

*Chandrashekhar & Ors. v. Addl. Special Land Acquisition Officer* 2009 (10) SCR 505 =AIR 2009 SC 3012 - held inapplicable

C *Godrej Sara Lee Limited v. Assistant Commissioner (AA) & Anr.* 2009 (4) SCR 1183 = (2009) 14 SCC 338; and *Harcharan v. State of Haryana*, AIR 1983 SC 43; *Delhi Administration vs. Gurudeep Singh Uban* 2000 (2) Suppl. SCR 496 = 2000 AIR 3737 - referred to.

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**Case Law Reference:**

2009 (14) SCR 558                      relied on                      para 5

2009 (10) SCR 505                      held inapplicable para 12

E 2009 (4) SCR 1183                      referred to                      para 13

AIR 1983 SC 43                      referred to                      para 14

2000 (2) Suppl. SCR 496 referred to                      para 17

F CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 21397 of 2012.

G From the Judgment & Order dated 12.9.2011 of the High Court of Karnataka Circuit Bench at Gulbarga in Misc. Second Appeal No. 510 of 2010 (LAC).

Kiran Suri, Aparna Mattoo, Nakibur Rahman for the Appellant.

H The Order of the Court was delivered

**O R D E R**

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1. Delay condoned.

2. Facts and circumstances giving rise to this petition are that:

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A. A huge area of land was notified under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called the 'Act') on 30.5.1984 including the petitioner's land measuring 11 Acres 32 Guntas at Gobbur (K) Village in District Gulbarga for the purpose of construction of a tank. The possession of the said land has been taken by the respondent authorities on 23.6.1985. The Land Acquisition Collector made an Award under Section 11 of the Act fixing the market value of the land at the rate of Rs. 3800/- per Acre.

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B. One LAC Case No. 500 of 1993 filed by another person was decided by the Reference Court under Section 18 of the Act on 28.9.1994. While placing reliance on the same, the petitioner filed application under Section 28-A of the Act. The said application was allowed fixing the market value of the dry land at the rate of Rs.10000/- per Acre. Petitioner preferred a further reference against that order claiming Rs.45000/- per Acre for dry land and Rs.75000/- per Acre for irrigated lands. The said reference was decided vide order dated 27.9.2003 assessing the market value at the rate of Rs. 15000/- per Acre for dry land and Rs.21500/- per Acre for irrigated land.

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C. Aggrieved from the said reference award, petitioner preferred LAC Appeal No. 64 of 2008 before the District Judge, Gulbarga, seeking enhancement of compensation assessing the market value of the land at the rate of Rs.24000/- per Acre which stood allowed vide judgment and decree dated 27.10.2009.

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D. Petitioner filed MSA No. 510 of 2010 against the said judgment and decree dated 27.10.2009 before High Court

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A which has been dismissed by the impugned judgment and order dated 12.9.2011.

Hence, this petition.

B 3. Ms. Kiran Suri, learned counsel appearing for the petitioner, vehemently submitted that courts cannot defeat the claim based on substantial justice on mere technicalities. Learned counsel would submit that when technicalities are pitted against substantial justice, the latter must prevail; in case C petitioner was entitled for a higher compensation, awarding a lesser amount of compensation, tantamounts to expropriation of the property in violation of mandate of Article 300-A of the Constitution of India. Petitioner has been deprived the higher compensation as he could not afford to pay the court fees though he was entitled for higher compensation claimed by him.

D 4. Record of the case reveals that petitioner's land measuring 11 Acres 32 Guntas had been acquired though there is nothing on record to show as to whether petitioner had some more land. But the area of land acquired makes it clear that E petitioner was a man of means. We fail to understand, in case, he did not file a reference under Section 18 of the Act, under what circumstances his application under Section 28-A of the Act could be entertained.

F 5. This Court in *State of Orissa & Ors. v. Chitrasen Bhoi*, JT 2009 (13) SC 388, considered this aspect and held :

G "The scope of provisions of Section 28-A of the Act was considered by this Court in *Mewa Ram v. State of Haryana* AIR 1987 SC 45, and the Court placed emphasis particularly on para 2 (ix) of the object and reasons of the Amendment Act, 1987 which provided for a special provision for inarticulate and poor people to apply for re-determination of the compensation amount on the basis of the court award in a land acquisition reference filed by H comparatively affluent land owner. The Court observed as

under:

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Section 28-A in terms does not apply to the case of the petitioners..... They do not belong to that class of society for whose benefit the provision is intended and meant, i.e. inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court under Section 18 of the Land Acquisition Act, 1894.

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This Court approved and reiterated the law laid down in *Mewa Ram (Supra) in Scheduled Caste Cooperative Land Owning Society Ltd. Bhatinda v. Union of India & Ors*, AIR 1991 SC 730. In *Babua Ram & Ors. v. State of U.P. & Anr.* (1995) 2 SCC 689, this Court again reiterated the law laid down in *Mewa Ram (Supra)* observing as under:-

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Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28-A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28-A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded..... It is true that the legislature intended to relieve hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference under Section 18 which is an existing bar and to remedy it, Section 28-A was enacted giving a right and remedy for re- determination.....The legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under sub-section (1) of Section 18 due

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A to poverty or ignorance or avoidance of expropriation.

B Thus, it is apparent that the legislature has carved out an exception in the form of Section 28-A and made a special provision to grant some relief to a particular class of society, namely poor, illiterate, ignorant and inarticulate people. It is made only for "little Indians". (Emphasis added)

C 6. Petitioner cannot claim, by any means to fall under the said category of "little Indians". However, as the said order has not been challenged by the respondent(s), we cannot examine the issue further, even if the order is totally unwarranted.

D 7. Petitioner's claim in the first appeal before the learned District Judge had been only to the tune of Rs.24000/- per Acre. The prayer before the learned District Judge in LAC No. 64 of 2008 reads as under:

E "Hence, it is prayed that the Hon'ble Court may kindly be pleased to set aside the order passed by the court below in LAC No. 193/01 and enhance it to Rs.24,000/- per Acre with all statutory benefits and excluding the interest for the delayed period in the interest of justice for which the appellants shall ever pray."

F 8. It may be pertinent to mention here that while hearing the appeal, the learned District Judge at Gulbarga condoned the delay of 1717 days in filing the appeal.

G 9. In the appeal before the High Court, no specific amount was demanded by the petitioner. The prayer made before the High Court reads as under:

H "Therefore, it is most humbly prayed that the Hon'ble Court may be pleased to allow this appeal and modify the judgment and Award dated 27.10.2009 passed in L.A.C. Appeal No. 64/2008 by the learned III Addl. District Judge

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at Gulbarga, modifying the judgment and award dated 27.9.2003 passed in LAC No. 193/2001 by the Prl. Civil Judge (Sr.Dn.) Gulbarga and pass any other appropriate orders, in the interest of justice."

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10. Thus, it is apparent that no specific demand was raised by the petitioner before the High Court. The Memo of Appeal reveals that Rs.25/- was paid as the court fees. The High Court dealt with the issue elaborately taking note of earlier proceedings/orders including the order passed under Section 28-A of the Act, and condonation of delay of 1717 days by the first appellate court. Finally the High Court held that the claim itself was restricted to Rs. 24000/- per Acre. There was no justification to interfere as the claim of the petitioner stood fully satisfied by the order passed in the first appeal.

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11. This special leave petition is filed with a delay of 154 days, with an explanation that petitioner suffered from the ailment and could not approach the court within limitation.

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12. The question does arise as to whether such a vague prayer can be entertained by the court. The memo of appeal before the High Court does not even reveal as to what was his demand. Reliance is being placed on the judgment of this Court in *Chandrashekhar & Ors. v. Addl. Special Land Acquisition Officer*, AIR 2009 SC 3012, wherein after considering the earlier judgments, this Court held that court should not be too technical in awarding the compensation in case there is a shortfall of court fees. The said judgment is not an authority on the proposition advanced before us in this petition that court is bound to enhance the amount of compensation though no specific amount is demanded by the petitioner.

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13. It was not a case where an order could be challenged on the ground that the same is a nullity for want of competence of the issuing authority and proper pleadings including appropriate grounds challenging the same have been taken, but no prayer has been made for quashing the said order. In

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A such an eventuality the order can be examined only after considering the statutory provisions involved therein. The court may reach a conclusion that the order suffers from lack of jurisdiction. (See: *Godrej Sara Lee Limited v. Assistant Commissioner (AA) & Anr.*, (2009) 14 SCC 338).

B 14. In case, the petitioner was serious about the matter, he could have amended the Memo of Appeal and that application could have been considered sympathetically by the High Court as held by this Court in *Harcharan v. State of Haryana*, AIR 1983 SC 43.

C 15. The facts mentioned in this petition depict entirely different picture and it gives an impression as if the High Court had not enhanced the compensation though demanded by the petitioner for want of payment of court fees which he could not afford to pay due to paucity of funds.

D 16. The case relied upon by Ms. Kiran Suri is the case where the prayer was for a particular enhancement and it was further made clear that the applicants therein could not afford to pay the court fees for financial constraints. In the instant case, the first appeal filed by the petitioner was barred by 1717 days and the delay was condoned. This petition is also barred by 154 days. Petitioner for the reasons best known to him did not make the demand for a specific enhancement. Mere making a reference in the Memo of Appeal that the High Court had awarded a higher amount in respect of a land covered by the same Notification under Section 4 of the Act, is not enough. The claimant has to satisfy the court that his land was similar in quality and had same geographical location or was situated in close vicinity of the land covered by the exemplar relied upon by him. In the instant case, no such attempt has ever been made by the petitioner. Thus, it is not that a meritorious case has been thrown out and the cause of justice stood defeated.

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H More so, the exemplar cited first time before the High Court in Second Appeal has not been referred to in the First Appeal.

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In absence thereof, it is beyond imagination as how findings recorded by the first Appellate Court could be termed as perverse and be a subject matter of appeal. A

17. Justice is an illusion as the meaning and definition of 'justice' varies from person to person and party to party. Party feels having got justice only and only if it succeeds before the court, though it may not have a justifiable claim. B

Justice is the virtue, by which the Society/Court/Tribunal gives to a man what is his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity to some obligatory law for the reason that human actions are found to be just or unjust as they are in conformity with or in opposition to the law. (Vide: *Delhi Administration v. Gurudeep Singh Uban*, AIR 2000 SC 3737). C D

18. Thus, in view of the above, we do not see any justification to accept the submission on behalf of the petitioner that the High Court preferred technicalities over substantial justice. E

Petition lacks merit and is accordingly dismissed.

R.P. SLP dismissed. F