

BIR WATI & ORS.

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v.

UNION OF INDIA & ANR.

(Civil Appeal No. 8938 of 2011)

AUGUST 17, 2017

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[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Land Acquisition Act, 1894 – ss.18, 28-A – When an application of a landowner u/s.18 is dismissed on the ground of delay then the said landowner is entitled to make an application u/s.28-A if other conditions prescribed therein are fulfilled – One of the requirements to apply to the Collector u/s.28-A of the Act is to make an application within three months from the date of the award passed in other cases – In this case, three months already expired and the appellants were not able to make the application within three months or thereafter till date – However, having regard to the peculiar facts and circumstances of the case wherein firstly, the bread earner of the appellants’ family died during the pendency of the proceedings before the Collector long back; secondly, one of the appellants also expired during pendency of this appeal; and thirdly, all the appellants were illiterate and unaware of the proceedings in question for years even after passing of the award and were also unaware of the legal and procedural requirements prescribed in the Act – Therefore, exercising power u/Art.142 of the Constitution, permission is granted to appellant to apply u/.28-A – Constitution of India – Art. 142.

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Disposing of the appeal, the Court

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HELD: This is a fit case to allow the appellants to make an application to the concerned Collector under Section 28-A of the Act within three months from the date of receipt of this judgment i.e. on or before 17.12.2017 praying therein for payment of compensation to them in the light of the enhanced compensation, if already found awarded to other landowners in these very acquisition proceedings by the reference Court. This indulgence to apply under Section 28-A of the Act is granted to the appellants by this Court in exercise of powers conferred under Article 142

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A of the Constitution with a view to do complete and substantial justice to the appellants. The Collector shall decide the application once made by the appellants within three months and release the payment of compensation in favour of appellants after making proper verification about their family relations with the original claimant etc. [Paras 15-17] [651-G, H; 652-A-C]

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Union of India & Anr. v. Hansoli Devi & Ors. (2002) 7 SCC 273 : [2002] 2 Suppl. SCR 324 – relied on

Case Law Reference

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[2002] 2 Suppl. SCR 324 relied on Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8938 of 2011.

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From the final Judgment dated 09.03.2006 passed by the High Court of Delhi at New Delhi in L.A. (App) Nos. 587-589 of 2005.

Sudhir Naagar, Adv. for the Appellant.

Ms. Rachana Srivastava, Ms. Monika, Sukrit R. Kapoor, Ms. Nitya Madhusoodanan, Vishnu B. Saharya, Viresh B. Saharya (for M/s Saharya & Co.), Advs. for the Respondents.

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The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. This appeal is filed against the final judgment and order dated 09.03.2006 passed by the High Court of Delhi at New Delhi in L.A. Appeal Nos. 587-589 of 2005 at Chandigarh in C.R. No. 3823 of 2005 whereby the High Court dismissed the appeal filed by the appellants herein affirming the order dated 21.04.2005 of the Additional District Judge, Delhi in L.A.C. No. 21 of 2000 dismissing the reference petition filed by the appellants-claimants under the Land Acquisition Act as barred by limitation.

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2. The facts of the case lie in a narrow compass. They, however, need mention in brief to appreciate the short controversy involved in the appeal.

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3. The appellants are legal representatives of one Jugal Kishore. On 06.04.1964, the appropriate Government (Delhi) issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred

to as “the Act”) for acquiring a huge track of land in nearby areas of Delhi. The acquisition was for a public purpose, viz., “planned development of the area”. A

4. It was followed by the declaration issued under Section 6 of the Act on 15.06.1965 followed by issuance of notices under Sections 9 and 10 of the Act to all the interested persons whose lands were acquired pursuant to the aforementioned notifications. The Land Acquisition Officer passed the award (award No. 1934-C/Suppl/80-81) on 06.02.1981. In the award, the Land Acquisition Officer (LAO) fixed the rate at Rs.20/25 per square yard=Rs.2250/- per Bigha for paying the compensation to the landowners for their land. B

5. The land belonging to Jugal Kishore was also acquired in these acquisition proceedings along with other lands. Jugal Kishore, unfortunately, expired pending these proceedings leaving behind his legal representatives (appellants herein). So far as the present appellants are concerned, they were not aware of the passing of the award because they were neither present when the award was passed and nor were served with the notice of the award under Section 12(2) of the Act and nor did they receive any notice in the name of Late Jugal Kishore. C D

6. It was for this reason that though the award was passed way back on 06.02.1981, the appellants received the compensation pursuant to the said award on 13.04.1998 almost after 18 years. The appellants then on 16.5.1998 applied to the Collector under Section 18 (2) of the Act and prayed therein for making a reference to the Civil Court for re-determination of the compensation determined by the LAO. The Collector forwarded this application to the District Judge, New Delhi. It was registered as L.A.C No. 21/2000. E F

7. The Additional District Judge, by order dated 21.4.2005 dismissed the reference as barred by time. Since the reference was dismissed as being barred by limitation, the merits of the case were not gone into. The appellants carried the matter in appeal to the High Court under Section 54 of the Act. The High Court, by impugned judgment, dismissed the appeal and upheld the order of the Additional District Judge. In the opinion of the High Court also, the reference made by the appellants was barred by limitation as prescribed under Section 18 and was thus rightly dismissed by the Civil Court. Against this order, the G

A appellants (landowners) felt aggrieved and filed the appeal by way of special leave petition in this Court.

B 8. As stated by the learned counsel for the appellants, several other landowners whose lands were also acquired along with the appellants' land pursuant to Section 4 and 6 notifications referred supra, had filed reference application to the Civil Court against the award dated 06.02.1981. The Civil Court by award re-determined the compensation and enhanced it to Rs.12,000/- per Bigha. It was stated that the Government accepted the award of the reference Court (Civil Court) and paid the enhanced compensation to those landowners.

C 9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to dispose of the appeal with the following observations and directions:

D 10. In **Union of India & Anr. Vs. Hansoli Devi & Ors.**, (2002) 7 SCC 273, a two Judge Bench of this Court referred three specific questions to the larger Bench of Five Judges for answer. These three questions read as under:

E **"1. (a) Whether dismissal of an application seeking reference under Section 18 on the ground of delay amounts to 'not filing an application' within the meaning of Section 28-A of the Land Acquisition Act, 1894?**

F **(b) Whether a person whose application under Section 18 of the Land Acquisition Act, 1894 is dismissed on the ground of delay or any other technical ground is entitled to maintain an application under Section 28-A of the Land Acquisition Act?**

G **2. Whether a person who has received the compensation without protest pursuant to the award of the Land Acquisition Collector and has not filed an application seeking reference under Section 18 is 'a person aggrieved' within the meaning of Section 28-A?"**

11. So far as question 1 (b) with which we are concerned here, it was answered in Para 10 which reads as under:

"10. So far as Question 1(b) is concerned, this is really the same question, as in Question 1(a) and, therefore, we

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reiterate that when an application of a landowner under Section 18 is dismissed on the ground of delay, then the said landowner is entitled to make an application under Section 28-A, if other conditions prescribed therein are fulfilled.”

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12. In the light of aforesaid law laid down by this Court, one cannot dispute that so far as the appellants are concerned, notwithstanding dismissal of their reference application as being barred by limitation by the reference Court and the High Court, they still have a right to apply under Section 28-A of the Act to the Collector for re-determination of the compensation payable to them on the basis of the compensation awarded by the reference Court to other similarly situated landowners whose land was acquired along with the appellants' land.

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13. It is true that one of the requirements to apply to the Collector under Section 28-A of the Act is to make an application within three months from the date of the award passed in other cases.

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14. In this case, three months have already expired and the appellants were not able to make the application within three months or thereafter till date. However, having regard to the peculiar facts and circumstances of the case wherein we find that firstly, the bread earner of the appellants' family namely Jugal Kishore died during the pendency of the proceedings before the Collector long back; secondly, one of the appellants also expired during pendency of this appeal as reported; and thirdly, all the appellants are illiterates and unaware of the proceedings in question for years even after passing of the award and are also unaware of the legal and procedural requirements prescribed in the Act. It is due to these reasons, we are of the view that the appellants are entitled for indulgence.

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15. In the light of the foregoing discussion, we are of the view that this is a fit case to allow the appellants to make an application to the concerned Collector under Section 28-A of the Act within three months from the date of receipt of this judgment i.e. on or before 17.12.2017 praying therein for payment of compensation to them in the light of the enhanced compensation, if already found awarded to other landowners in these very acquisition proceedings by the reference Court.

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16. This indulgence to apply under Section 28-A of the Act is granted to the appellants by this Court in exercise of our powers conferred

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A under Article 142 of the Constitution which we do with a view to do complete and substantial justice to the appellants.

B 17. Let the Collector entertain the application, if made by the appellants within three months from the date of the order under Section 28-A of the Act and hold an inquiry as contemplated under Section 28-A of the Act for determining the compensation, if found payable to the appellants under the Act. However, the appellants would not in such a case be entitled to claim any interest of any nature due to delay on their part. The Collector shall decide the application once made by the appellants within three months and release the payment of compensation as directed hereinabove in favour of appellants after making proper
C verification about their family relations with the original claimant etc.

18. With these directions, the appeal stands disposed of finally with no order as to cost.

Devika Gujral

Appeal disposed of.