

SUPREME COURT OF INDIA

Model Economic Township Ltd.

Vs.

Land Acquisition Collector

SLP(Civil)No.618 of 2018

(Uday Umesh Lalit and Naveen Gupta,JJ.,)

26.02.2019

ORDER

Uday Umesh Lalit,J.,

1. In the present case, pursuant to notification under Section 4 of the Land Acquisition Act, 1894 (“the Act” for short) issued on 19.05.2008, followed by declaration under Section 6 of the Act on 26.05.2008 in respect of 136 acres of land, award was declared on 21.12.2009 granting “IHTS compensation @ 25,00,000/- per acre. Applications seeking reference under Section 18 of the Act were preferred by many landholders but the petitioner (formally known as M/s. Reliance Haryana SEZ Limited) holding about 15 acres of land did not prefer any such application.

2. The Reference Court by order dated 16.11.2011 raised compensation to Rs.41,81,500/- per acre, whereafter an application was preferred by the petitioner on 01.2.2012 seeking redetermination of compensation under Section 28-A(1) of the Act. Said application was allowed on 06.03.2014 granting to the petitioner same benefits in terms of the order of the Reference Court. The Collector had proceeded on the footing that no further challenge was pending and the assessment made by the Reference Court had attained finality.

3. At the instance of the landholders, in the meantime, the matters had travelled to the High Court, which enhanced the compensation on 24.05.2016 to Rs.2,80,00,000/- per acre in respect of comparable lands covered under the same notification. The determination by the High Court was challenged by the State and the landholders. Special Leave Petitions filed by State namely SLP (Civil) CC Nos. 23630-23668 of 2016 titled *State of Haryana and anr etc. vs. Moti Sagar and Ors. Etc. Etc.* and all other connected matters were dismissed by this Court on 05.01.2017. Later, Civil Appeal Nos. 11814-11864 of 2017 titled *State of Haryana and ors. Etc. Vs. Ram Chander and Anr Etc.* preferred by landholders came to be disposed of on 05.09.2017 whereunder this Court deducted 15% towards development from the compensation awarded by the High Court. In respect of comparable lands i.e. lands from village Dhankot the compensation thus got reduced to 2,38,00,000/- per acre. A separate order was passed in respect of Civil Appeal No. 15015 of 2017 titled *Moti Sagar and ors. Vs. State of Haryana and ors.* on 10.10.2017.

4. After the judgment of the High Court, the petitioner filed CWP No.23688 of 2016 praying for quashing of the order dated 06.03.2014 and prayed for redetermination of compensation in terms of the judgment of the High Court. It was asserted:

“That the said award dated 06.03.2014, Annexure P- 5, however, has been made in the teeth of the ratio of law, as laid down by the Hon’ble Supreme Court in *Babua Ram v. State of U.P.*; (1995) 2 SCC 689, vide which it was held that the finality of the determination of compensation in a given case of acquisition and assessment of compensation is attained with the decree of the appellate court, be it the Hon’ble High Court of the Hon’ble Supreme Court, and the decree of the trial court gets merged in the decree of the appellate court, which alone is executable. In the said judgment, the Hon’ble Supreme Court was, thus, pleased to hold that when an appeal is pending in the High Court or its appellate forum, the learned Collector should stay his hands in the meanwhile in the matter of redetermination of compensation till the appeal has been finally disposed of and he should redetermine the compensation, in the cases of redetermination of the amount of compensation on the basis of the said award of the reference court only when the final judgment and decree of the appellate forum have been made. In the instant matter also, the first appeals against the said Reference Court Award dated 16.11.2011, Annexure P-3, since were already pending before this Hon’ble Court on the day which the said subject Award dated 06.03.2014, Annexure P-5, was passed by the Respondent, therefore, the Respondent ought to have instead awaited the decision of this Hon’ble Court in those first appeals, before disposing of the said application for redetermination of the amount of compensation on the basis of the said award of the Court filed by the Petitioner immediately, which exercise was in the teeth of the aforesaid settled principles of law, as the said Award dated 16.11.2011, Annexure P-3, had not yet attained finality and was a subject matter of appeals before a superior court, i.e. this Hon’ble Court. The said subject Award dated 06.03.2014, Annexure P-5, passed by the Respondent was thus a premature attempt of redetermination of the amount of compensation on the basis of the award of the Court, contrary to the law laid down by the Hon’ble Supreme Court in *Babua Ram’s case (supra)*.”

5. Said Writ Petition came to be dismissed by the High Court on 10.10.2017. It was observed by the High Court:

“ The petitioner herein is a limited company. Once it could file application under Section 28A of the Act just within the time permitted under Section 28A of the Act after the award was announced by the Reference Court, it cannot be claimed that it was not knowing the status of other cases or the remedy against the award passed by the Collector on application under Section 28A of the Act. Section 28A(3) of the Act provides that in case either of the parties is aggrieved against the award passed by the Collector, it can file application for reference of the dispute to the Court. The aforesaid remedy was not availed of by the petitioner. The period thereof expired long back.”

6. The aforesaid judgment dated 10.10.2017 is presently under challenge. After hearing learned counsel for both sides, on 06.02.2019 this Court posed certain questions on which response from the petitioner was sought. The questions were posed as those factual details were not available on record. Thereafter, an affidavit was filed giving answers to said questions as under:-

“4. That the petitioner submits the following response to the issues in terms of the aforesaid order dated 06.02.2019:

(a) Whether any application for reference was preferred after the disposal of application under Section 28A of the Act?

Response: No.

(b) Was the petitioner aware while the application under Section 28A of the Act was pending consideration that the appeals were preferred and were pending in the appellate court?

Response: No.

(c) When did the petitioner come to know for the first time about the pendency or disposal of the appeals by the High Court?

Response: The petitioner never came to know of the pendency of the appeals before the High Court till disposal of its application under Section 28A on 06.03.2014. The petitioner came to know about the disposal of the said appeals for the first time on 03.08.2016.

The Petitioner had received a notice dated 04.07.2016 in respect of one of its subsidiary company namely Nemita Commercial Private Limited, under sec. 9 of the Land Acquisition Act, 1894 from the office of the Land Acquisition Collector, Urban Estate, Haryana for hearing with regard to land acquisition pertaining to Village Sihi Hadbast no. 108, Tehsil Manesar, District Gurgaon/Rewari. This land acquisition arose out of a notification under sec. 4 dated 07.08.2013 and notification under sec. 6 dated 05.08.2014. This hearing was scheduled to be held on 03.08.2016. It was during this hearing on 03.08.2016 that the representative of the Petitioner, Shri Satyawar, came to know about the decision of the Hon'ble High Court dated 24.05.2016 in Moti Sagar & Ors. v. State of Haryana and Anr. (RFA no. 1580 of 2012) filed by the other landowners. It is pertinent to note that the petitioner's application under section 28A and the hearing held on 03.08.2016 pertaining to Nemita Commercial Private Limited was heard in the same office of the Land Acquisition Collector. Thereafter, the Petitioner contacted Shri Shailendra Jain, Sr. Adv. who had also argued on behalf of the writ petitioners in Moti Sagar and engaged him to argue the writ petition bearing C.W.P. No. 23688 of 2016 (O&M) challenging the order dated 06.03.2014 whereby the application under section 28A filed by the petitioner was disposed off. English translation and true copy of the notice dated 04.07.2016 are being annexed herewith and marked as ANNEXURE 'B' (pages 11 to 13). In support, the affidavit of the aforesaid representative of the Petitioner, Shri Satyawar is also filed along with the present

affidavit.

(d) When was the writ petition filed in the High Court? Response: The petitioner had filed its writ petition on 15.11.2016.”

7. Relying on the decision of this Court in *Bharatsing s/o. Gulabsingh Jakhad and Ors. Vs. State of Maharashtra and Ors*¹. it is contended by the petitioner that the Collector ought to have kept the application under Section 28A of the Act pending till the appeals were decided and that for the failure of the Collector on that count, the petitioner ought not to be put to prejudice. It is, therefore, submitted that the order dated 06.03.2014 be set aside; the entire exercise under Section 28A be undertaken de novo keeping in mind the compensation as awarded by the High Court (as scaled by this Court later).

8. In *Bharatsing*¹ the award was passed on 04.06.1977. The Reference Court allowed enhancement vide decision dated 01.10.1992, whereafter application under Section 28A of the Act was preferred on 31.12.1992. Said application was decided on 25.10.2000 that is almost eight years after the application was preferred. Around this time, cross appeals preferred by the landholders as well as the State against the decision of the Reference Court were pending in the High Court. These appeals were disposed of by the High Court on 23.03.2009 granting compensation at an enhanced rate of Rs.18000 per acre. Soon thereafter, second application under Section 28A of the Act was preferred on 27.05.2009 seeking benefit under the judgment of the High Court dated 23.03.2009. This second application came to be dismissed by the High Court. This Court affirmed the view that second application under Section 28A could not be preferred but found that the disposal of the first application under Section 28A on 25.10.2000 was not in conformity with the law laid down by this Court in *Babua Ram vs. State of U.P. and other*² subsequent cases. In the facts of the case, this Court, therefore directed that the original application preferred on 31.12.1992 be considered afresh.

9. During the pendency of the present matter, this Court had summoned the original record to apprise itself as to the circumstances in which the application under Section 28A of the Act was taken up for consideration by the Collector. The record indicates that the Collector was given to understand that no appeal or further challenge was pending consideration before any superior court and that the matter had attained finality.

10. It is neither the case of the petitioner nor it is even remotely contended that despite being aware of such pending challenge, the Collector had proceeded with the matter and decided the application under Section 28A. It is also not the case that the petitioner had made the Collector aware or brought it to the notice of the office about pendency of such matter/further challenge. The petitioner approached the High Court on 15.11.2016 only after the compensation was enhanced by the High Court to the level of Rs.2,80,00,000/- per acre in respect of comparable lands vide judgment dated 24.5.2016. Again, there is nothing in the petition as to why the petitioner took so much time to realise that the course undertaken by the Collector was not in keeping with the principles laid down by this Court. Looking to the profile of the petitioner which is a limited company, it can certainly be said to be having resources to equip itself with adequate knowledge on the front. The

explanation offered by the petitioner in the affidavit pursuant to the direction issued on 06.02.2019, in our view, is not satisfactory. The explanation that the petitioner became aware for the first time on 03.08.2016 does not appear to be correct and reliable. Again, if Shri Satyawar who swore the affidavit as whole-time Director of the petitioner-company, was aware on 03.08.2016 that the compensation stood enhanced by the High Court vide judgment and order dated 24.05.2016, there is no reason why the filing of the writ petition was delayed till 15.11.2016. For an entity who held more than 10% of the land under acquisition the way it conducted itself does not inspire any confidence. The idea under Section 28A is certainly to extend benefit of equal compensation to landholders who, for some reasons had not preferred appropriate applications for Reference in time but for a company having profile such as the petitioner, inaction on the front followed by delay in filing petition in the High Court, in our view, disentitles the petitioner from claiming any relief under Article 226 of the Constitution.

11. The High Court was, therefore, justified in rejecting the petition. We see no reason to interfere. This Special Leave Petition is dismissed.

Judgment Referred.

¹(2018) 11 SCC 0092

²(1995) 2 SCC 0689