

A.F.R.
Reserved on 17.7.2023
Delivered on 11.8.2023

Court No. - 3

Case :- WRIT - C No. - 22731 of 2023

Petitioner :- Rajendra Prasad Sharma

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ram Krishna Pandey, Kripa Shankar Shukla

Counsel for Respondent :- C.S.C., Archit Mandhyan, Suresh C. Dwivedi

Hon'ble Siddhartha Varma, J.

Hon'ble Arun Kumar Singh Deshwal, J.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Kripa Shankar Shukla, learned counsel for the petitioner and Sri Suresh C. Dwivedi, learned counsel for respondent No.3 and learned Standing Counsel for respondents No. 1 & 2.

2. By means of the present petition, the petitioner is seeking direction to the respondents to pay compensation awarded by order dated 27.2.2023 passed by respondent No.2, u/s 28A of the Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894").

3. Factual matrix arising out of the present case is that the petitioner was the co-sharer of 1/3 share of plot No. 235 area 4 bigha 17 biswa, situated at Village Chharra Rafatpur, Aligarh. The aforesaid plot was acquired by notification dated 27.4.1984 issued u/s 4(1) of the Act, 1894, followed by notification u/s 6 of the Act, 1894 for the construction of a new market yard of respondent No.3. Collector determined the rate @ Rs.16.66 per sq. yard. Though the petitioner received the compensation under protest, he did not file reference u/s 18 of the Act, 1894 because of his poor financial condition, but his co-sharers in plot No. 235 had filed

reference against the award of Collector u/s 18 of the Act, 1894 which was allowed on 21.8.1998, in Land Acquisition Reference (L.A.R.) No. 36 of 1990 (*Bhagwati Prasad and others vs. State of U.P. and others*), by which the compensation was enhanced by fixing rate @ Rs. 100 per sq. yard. Aggrieved of the aforesaid, the petitioner moved an application on 31.8.1998 u/s 28A(1) of the Act, 1894 before respondent No.2 for redetermination of compensation on the basis of judgement passed in L.A.R. No. 36 of 1990. During the pendency of the aforesaid application of the petitioner, respondent No.3 filed an appeal against the order of reference court award dated 21.8.1998 before this Court bearing Appeal No. 609 of 1998 (*Krishi Utpadan Mandi Samiti vs. Bhagwati Prasad and others*), and claimants have also filed cross objection against the aforesaid award of reference court. The High Court, after hearing the aforesaid appeal, dismissed the appeal of respondent No.3 but partly allowed the cross-appeal of the claimants on 8.9.2015 by granting additional compensation of Rs.80,000/- to the claimants. The co-sharer of the petitioner, not satisfied with the judgement of the High Court dated 8.9.2015, had preferred Civil Appeal No. 10225-10226 of 2018 before the Hon'ble Supreme Court, and the Apex Court was pleased to allow the same by order dated 5.10.2018 fixing the compensation of the land @ Rs.120 per sq. yard. The petitioner for getting the benefit of the enhanced rate of compensation, determined by the Supreme Court, also moved an additional application before respondent No.2 on 18.12.2018 as part of his earlier pending application u/s 28A(1) of the Act, 1894. Respondent No.2, by order dated 2.5.2022, rejected the application of the petitioner filed u/s 28A(1) of the Act, 1894. Feeling aggrieved by the order dated 2.5.2022, the petitioner filed Writ Petition No. 20476 of 2022 (*Rajendra Prasad Sharma vs. State of U.P. and others*) before this Court, and the same was allowed by order dated 6.8.2022 and respondent No.2 was directed to pass a fresh order on the application of the petitioner u/s 28A(1) of the Act, 1894, after hearing all the parties. In pursuance of the order of the High

Court dated 6.8.2022 passed in Writ Petition No. 20476 of 2022 filed by the petitioner, respondent No.2 passed an order dated 27.2.2023 by which he allowed the application of the petitioner u/s 28A(1) of the Act, 1894 and redetermined the compensation @ Rs. 103.34 per sq. years along with other statutory benefits.

4. Submission of the learned counsel for the petitioner is that despite the order dated 27.2.2023 of respondent No.2 for redetermination of compensation, the same was not paid to him.

5. Learned counsel for respondent No.3 contended that as respondent No.3 has filed reference u/s 28A(3) of the Act, 1894 against redetermined award dated 27.2.2023 by respondent No.2, therefore, till the decision of the aforesaid reference enhanced amount of compensation cannot be disbursed to the petitioner. However, learned Standing Counsel has stated that S.L.O. has already written a letter dated 27.2.2023 to respondent No.3 to deposit the compensation as per the order dated 27.2.2023 so that the same could be disbursed to the petitioner. But it is respondent No.3 who has not deposited the compensation of the petitioner, and for these reasons, the same could not be paid to him.

6. Learned counsel for respondent No.3, in support of his contention, relied upon the judgement of this Court passed in **First Appeal No. 305 of 2021 (U.P. Avas Evam Vikas Parishad vs. Mohd. Yakoob and others; AIR 2022 ALL 291)** decided on 3.6.2022 and contended that the Division Bench while passing the above judgement clearly observed that at the instance of the beneficiary of the acquired land, though appeal u/s 54 of the Act, 1894 is not maintainable, there is a remedy to file an application for reference u/s 28A(3) of the Act, 1894. It was further submitted by learned counsel for respondent No.3 that Hon'ble Supreme Court in the judgement of *Shekhar Resorts Ltd. vs. Union of India*, reported in *MANU/SC/0015/2023* as well as this High Court in *Yogesh Agarwal vs. Estate Officers and others* reported in *MANU/UP/1620/2015* held that

that no party can be left remediless for operation of law, therefore, in absence of any other provision against the order passed u/s 28A(2) of the Act, 1894, application for reference is maintainable u/s 28A(3) of the Act, 1894 at the instance of beneficiary of acquired land.

7. In reply to the objection of respondent No.3, learned counsel for the petitioner specifically submitted that the application for reference u/s 28A(3) of the Act, 1894 against the order passed u/s 28A(2) is not maintainable at the instance of the beneficiary of the acquired land because that provision is for the benefit of land owners whose land has been acquired and the beneficiary does not come within the definition of 'interested person'. It was further submitted by learned counsel for the petitioner that even if it is accepted for the sake of argument that the reference is maintainable, even then reference court cannot reduce the amount of compensation as determined by the Collector because of the provision of Section 25 of the Act, 1894. Therefore, there is no reason to file an application for reference by the respondent No.3 u/s 28A(3) of the Act, 1894, and the entire exercise is being conducted by respondent No.3 just to delay the disbursal of the amount of compensation to the petitioner.

8. After considering the submission as well as on perusal of record, the only issue for determination in the present case arises is whether the application for reference under Section 28A (3) of the Act, 1894 is maintainable at the instance of the beneficiary of land (respondent no.3). It would be relevant to reproduce Section-28A of the Act, 1894 and the same is being reproduced as under :

“[28A. Redetermination 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 redetermined 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.***”

9. From the perusal of Section 28A(3) of the Act, 1894, it appears that two parts of this provision are necessary. First is “**any person who has not accepted the award**” and second is “**provisions of Sections 18 and 28 of the Act, 1894 shall also be applied to such reference**” as they are applied to reference under Section 18 of the Act, 1894. Therefore, from the above part of Section 28A(3) of the Act, 1894, it is clear that this provision is almost *pari materia* with Section 18 of the Act, 1894 regarding reference against the award of Collector u/s 18 of the Act, 1894. For the maintainability of the application for reference, a person must be personally interested; therefore, the word 'any person' mentioned in Section 28A(3) of the Act, 1894, can be interpreted as the 'person interested' who has not accepted the award. Section 18 of the Act, 1894, being a relevant provision for this controversy, is being reproduced as under :

“18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector,

require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

3. Without prejudice to the provisions of sub-section (1) the Land Reforms Commissioner may, where he considers the amount of compensation allowed by the award under section 11 to be excessive, require the Collector that the matter be referred by him to the Court for determination of the amount of compensation.

Explanation.- In any case of land under Chapter VII the requisition under this sub-section may be made by the Land Reforms Commissioner at the request of the company on its undertaking to pay all the costs consequent upon such requisition.

4. The requisition shall state the grounds on which objections to the award is taken and shall be made within six months from the date of the award.”

10. Term ‘**person interested**’ has been defined by the Hon'ble Supreme Court in the judgement of *Himalayan Tiles and Marbles Pvt. Ltd. Vs. Francis Victor Coutinho (dead)* reported in *(1980) 3 SCC 223* and *Union of India and another Vs. Sher Singh and others* reported in *(1993) 1 SCC 608*. In both the judgements, the Hon'ble Supreme Court though clearly held that the ‘person interested’ also includes the beneficiary of land; therefore, they also have the right to be heard or to file an objection before the court during reference by taking into consideration **Section 50(2) of the Act, 1894** which is being reproduced as under:-

“(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.”

11. Paragraph No.14 of the judgement in ***Himalayan Tiles (supra)*** is also being quoted as below :

“Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person or whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefor because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by s. 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.”

12. The above view, taken in ***Himalayan Tiles (supra)***, was approved in the judgement of the ***Union of India and another Vs. Sher Singh and others (supra)***.

13. From the above judgements, it is very clear that Hon'ble Supreme Court treated the beneficiary as a person interested in compensation for the purpose of hearing them at the time of hearing of reference before the court, but the Hon'ble Court did not observe that the beneficiary of the acquired land will also be treated as person interested for the purpose of filing application for reference either u/s 18 or 28A(3) of the Act, 1894 against the award of Collector because proviso of Section 50(2) of the Act, 1894 clearly provides that no such local authority or company shall be entitled to demand a reference u/s 18 of the Act, 1894. Therefore, there is a specific statutory bar on the part of the beneficiary of acquired land to make any reference u/s 18 of the Act, 1894. This Court is of the opinion that bar also applies on reference u/s 28A(3) of the Act, 1894.

14. Though this Court, in the judgement of ***U.P. Avas Evam Vikas Parishad vs. Mohd. Yakooob and others (supra)*** observed that appeal u/s 54 of the Act, 1894 against the award of Collector u/s 28A of the Act, 1894 is not maintainable, but also observed that remedy u/s 28A (3) of the Act, 1894 is available to the beneficiary without considering the proviso of Section 50(2) of the Act, 1894. Even though there was no issue before the court in the above judgement whether the application for reference under 28A(3) of the Act, 1894 is maintainable at the instance of the beneficiary, therefore, proviso of Section 50(2) of the Act, 1894 was not placed before the court and for that reason that could not be considered. Therefore, the above judgement relied upon by respondent no.3 can be said to be *per incuriam* because of non-consideration of the statutory bar of proviso of Section 50(2) of the Act, 1894. Hon'ble Supreme Court in the judgement of ***Sandeep Kumar Bafna vs. State of Maharashtra and another***, reported in (2014) 16 SCC 623 observed in paragraph No.19 as under:-

“It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since

without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Coequal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.”

15. Similarly, Hon'ble Supreme Court, in the case of ***Sri Jagannath Temple Managing Committee vs. Siddha Math and others***, reported in **(2015) 16 SCC 542** observed in paragraph No. 35 as under:-

“It becomes clear from a perusal of the case law adverted to by the learned senior counsel appearing on behalf of the appellant Temple Committee that a judgment can be said to be per incuriam when it is passed in forgetfulness or ignorance of a statute operating in that field. The notification dated 18.03.1974 vested the estates of Lord Jagannath, Puri in the State Government in view of the amended provision of the proviso to Section 2(oo) of the OEA Act, 1951 inserted by way of an Amendment in the year 1974. The judgment in the case of Lord Jagannath was passed only on consideration of the OEA Act, 1951. The provisions of the Temple Act, 1955, which is the principal Act that applies to the Lord Jagannath Temple, Puri were not adverted to at all.”

16. Therefore, from the legal position discussed above, it is clear that if the judgement is rendered in ignorance of any statutory provision, then that will be deemed to be per incuriam and will not have a binding effect on that particular issue. Therefore, the judgement rendered by the Division Bench of this Court in ***U.P. Avas Evam Vikas Parishad vs. Mohd. Yakooband others (supra)*** has no binding effect on the issue of maintainability of application for reference u/s 28A(3) of the Act, 1894 against the order of the Collector passed u/s 28A(2) of the Act, 1894.

17. Even the contention of learned counsel for the petitioner regarding Section 25 of the Act, 1894 also appeared to be correct because once there is specific bar u/s 25 of the Act, 1894, the court shall not award compensation less than the amount awarded by the Collector, therefore, the amount of compensation determined by the Collector u/s 28A(2) of the Act, 1894 cannot be reduced by the reference court u/s 28A(3) of the Act, 1894. Therefore, permitting such an application on the part of the beneficiary of acquired land will amount to frustrating the intention of the legislature. From the perusal of the order of respondent No.2, it is also clear that before passing the order u/s 28A(2) of the Act, 1894, respondent No.3 was heard; therefore, proper opportunity of hearing was accorded to respondent No.3.

18. In view of the above considered position, this Court is of the view that application for reference u/s 28A(3) of the Act, 1894 is not maintainable at the instance of respondent No.3 and this Court, in the judgement of *U.P. Avas Evam Vikas Parishad vs. Mohd. Yakoob and others (supra)* has not laid down any law regarding the maintainability of such application on the part of the beneficiary of the acquired land.

19. Accordingly, this writ petition is **allowed**, and direction is issued to respondent No.3 to forthwith release the awarded amount u/s 28A(2) of the Act, 1894 by order dated 27.2.2023 within a period of one month from the date of receiving a certified copy of this order along with interest as per Section 34 of the Act, 1894.

Order Date :- 11.8.2023

Vandana

(Arun Kumar Singh Deshwal,J.) (Siddhartha Varma,J.)