

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 29808 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE R.H.SHUKLA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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BHAICHANDBHAI DHARMA & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR KM SHETH for Petitioner(s) : 1 - 2.

Ms. ARCHANA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,2&4

MR HARIN P RAVAL for Respondent(s) : 3

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE R.H.SHUKLA

Date : 31/01/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.H.SHUKLA)

RULE. Ms. Archana Raval, learned AGP, waives service of rule on behalf of respondents Nos. 1, 2 & 4.

2. The present petition has been filed by the petitioners for the prayer, inter alia, that action on the part of respondent No. 2 of not deciding the application of the petitioners under Sec. 28A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), Annexure-A, is illegal, arbitrary and against the law. It is further prayed by way of interim relief for a similar direction that respondent No.2 may be directed to decide the application of the petitioners under Sec. 28A of the Act and also pay the amount of compensation with consequential benefits.

3. The short facts of the case, briefly summarised, are that the land of the petitioners is situated at village Jankol, Taluka Deesa, District Banaskantha bearing Revenue Survey No. 93 admeasuring 4269 sq. mtrs., which have been acquired by the respondents for the public purpose of construction of Deesa Air Field. The notification under Sec. 4 of the Act was published on 2.8.1986 and the notification under Sec. 6 of the Act was published on 21.1.1987. The award was declared on 24.3.1988. Some of the claimants, whose lands have been acquired by the same notification, filed a reference application under Sec. 18 of the Act, being Land Acquisition Case Nos. 729/88 to 752/88 and Land Acquisition Case Nos.

756/88, 758/88 to 770/88. The Reference Court partly allowed those reference applications filed by the claimants by order dated 2.5.1992 awarding an additional compensation.

4. It is contended that as the present petitioners had not filed the reference applications under Sec. 18 of the Act, they filed an application under Sec. 28-A of the Act to the respondent No. 2 on 9.7.1992 praying that they should be awarded the amount of compensation as per the judgment of the Reference Court in the aforesaid Land Acquisition Case Nos. 729/88 to 752/88 and Land Acquisition Case Nos. 756/88, 758/99 to 770/88. The said application made by the petitioners is at Annexure-A to the petition. It is the case of the petitioners that thereafter the respondents need not decide the said application. It is also stated that against the judgment of the Reference Court, the respondents filed an appeal before this Court being First Appeal Nos. 2091/93 to 2101/93 and this Court, while determining the market value, modified the order of the Reference Court. The said order of this Court was carried further before the Hon'ble Apex Court by way of SLP (Civil) No. 18183/97 to 18463/97 and the said SLP came to be dismissed by the Apex Court by an order dated 5.1.1998, Annexure-B. Therefore, it has been contended that in spite of repeated requests made from time to time by the petitioners, the respondent No. 2 did not decide the application filed by them under Sec. 28-A of the Act and, therefore, the

present petition has been filed for appropriate relief seeking direction to decide the said application.

5. An affidavit-in-reply has been filed by the respondent No. 2 contending, inter alia, that none of the fundamental or legal rights of the petitioners have been violated. It has been specifically contended, referring to the provisions of Sec. 28-A of the Act, that the petitioners have filed an application under Sec. 18 of the Act on 30.3.1989 and the same has been rejected by an order dated 1.4.1989 passed by respondent No. 2 produced with the affidavit-in-reply at Annexure-R-I.

6. It has, therefore, been contended that the petition contains wrong statement on oath and the petitioners have made mis-statement and misguided the authorities as well as this Court inasmuch as in para 2 of the petition the petitioners have made a statement that they have made an application under Sec. 28-A of the Act on 9.7.1992, which has not been decided. However, the petitioners have made an application under Sec. 18 of the Act to the Collector, which was beyond the period of limitation and was therefore rejected. It is specifically contended in the reply affidavit that the application under Sec. 18 filed by the petitioners seeking reference dated 30.3.1989 was not filed within 6 weeks from the date of the notice under Sec. 12(2) which was issued on 1/ 2.4.1988 and, therefore, as it

was not within the period of limitation, it was turned down. It has been further contended, referring to the provisions of Sec. 28-A of the Act, that the original record was obtained by the deponent and verified and as the petitioners were not complying with both the conditions of Sec. 28-A, the application of the petitioners dated 9.7.1992 (Annexure-A) was rejected by an order dated 2.1.2008. It has also been contended that when the application was made by the petitioners, the original record was lying with the Assistant District Government Pleader, Palanpur and it could not be verified by the officer concerned at the relevant time whether the petitioners have made reference application under Sec. 18 or not and, therefore, after verification, as the application under Sec. 18 was filed by the petitioners, the application made by the petitioners dated 9.7.1992 under Sec. 28A of the Act has been rejected by the impugned order dated 2.1.2008, Annexure-G (Annexure-VI with the affidavit-in-reply).

7. An affidavit-in-rejoinder is also filed by the petitioners. In the affidavit-in-rejoinder it has been specifically contended that if the respondents were relying upon the application under Sec. 18 of the Act, then there was no question of waiting from 1992 to 1998 for a decision of the Hon'ble Supreme Court. If the petitioners were not entitled, then it was open to pass an appropriate order in the year 1992, wherein the record was already available. A reference is made to the correspondence or

communications for contending that the application under Sec. 28-A was prolonged and the impugned order has been passed contrary to the provisions of the law. It has been contended that there is no provision that application under Sec. 28-A of the Act is required to be made along with the certified copy of the award. It has been contended that there are various judgments, including a judgment reported in 2005(1) GLH 88 and, therefore, it has been reiterated that the present petition may be allowed.

8. Learned advocate Mr. K.M. Sheth for the petitioners submitted that the application under Sec. 28-A of the Act have not been decided, which has led to filing of the present petition. He referred to the correspondence and the averments in the petition that from time to time they were summoned, but it was not decided. Learned advocate Mr. Sheth referred to and relied upon the judgment of the Apex Court in the case of **Union of India and another v. Hansoli Devi and another**, reported in (2002)7 SCC 273, and referring to Head Note A, specifically emphasised the observation, "dismissal of an application seeking reference under S. 18 on ground of delay, held, amounts to having "not made an application within the meaning of S. 28-A - That being so, a person whose application under S. 18 is dismissed on ground of delay or any other technical ground would be entitled to maintain an application under S. 28-A - If a person has not made an application to the Collector under S. 18, then, irrespective of whether he had

received, with or without protest, the compensation pursuant to the award of Land Acquisition Officer, he would be a "person aggrieved" entitled to make an application under S. 28-A." Learned advocate Mr. Sheth, relying upon the observations made in this judgment strenuously submitted that the application under Sec. 28-A of the petitioners (Annexure-A) ought to have been decided long before and as it has not been decided, the present petition has been filed. He also pointed out that after the notice was issued in the petition, and after some time, all of a sudden, the said application was rejected by the impugned order dated 2.1.2008 (Annexure-G).

9. Ms. Archana Raval, learned AGP for the State, referred to the pleadings and particularly the averments made in the petition and pointed out that since the petitioners have not filed an application under Sec. 18, they filed the application under Sec. 28-A of the Act on 9.7.1992. Therefore, referring to the affidavit-in-reply, Ms. Raval strenuously submitted that the petitioners have not come with clean hands and the doctrine of *suppressio veri suggestio falsi* would be attracted and the petition deserves to be dismissed on that ground alone.

10. Learned AGP Ms. Raval also, referring to the provisions of Sec. 28-A of the Act, submitted that such an application can be made or entertained when an application under Sec. 18 has not been made. She submitted that as the petitioners have made an

application under Sec. 18 already, which has been turned down, the present application dated 9.7.92 (Annexure-A) under Sec. 28-A of the Act was liable to be rejected and, therefore, the impugned order was passed after verification of the record, which was not traceable for some time.

11. Learned AGP Ms. Raval has referred to and relied upon the judgment of the Apex Court in the case of **G. Krishna Murthy and others v. State of Orissa** reported in AIR 1995 SC 1436 in which it has been observed that land owners who did not file appeal cannot apply for redetermination under S. 28-A. Similarly, she has also referred to and relied upon the judgment of the Apex Court in the case of **Babua Ram and others v. State of U.P. and another** reported in (1995)2 SCC 689 and also in the case of **D. Krishna Veni and another v. State of Orissa and others**, (1995)2 SCC 734.

12. In view of the rival pleadings and submissions, the short point which is required to be considered is whether the present petition seeking direction to the respondents for deciding the application under Sec. 28-A, which has been pending since long, could be granted or not.

13. The main thrust of the arguments made by learned AGP Ms. Raval about the *suppressio veri and suggestio falsi* and the petitioners having not come with clean hands stating that an application under Sec. 18 of

the Act has already been made, which is rejected, is also required to be considered. It is not in dispute that an application under Sec. 18 was made by the petitioners way back in 1988, which was rejected by the order, which is produced with the affidavit-in-reply. Thereafter, when the judgment and award came to be passed by the Reference Court on 2.5.1992, the petitioners filed an application under Sec. 28-A of the Act dated 9.7.1992 at Annexure-A. Therefore, the moot question which has been much emphasised is whether the application filed by the petitioners under Sec. 28-A could be entertained and the rejection thereof, pending the petition, is legal or not.

14. This aspect has been discussed and deliberated by the Hon'ble Apex Court in a judgment in the case of **Hansoli Devi and anr.** (supra), which has been referred to by the learned advocate for the petitioners. This very issue was also dealt with by the Hon'ble Apex Court and as there were differences in the opinion by the 2 Benches of the Hon'ble Apex Court, that is, in the case of **Union of India v. Pradeep Kumari**, (1995)2 SCC 736, and in the cases of **Jose Antonio Cruz Dos R. Rodriguese v. Land Acquisition Collector**, (1996)6 SCC 746 and **Jose Antonio Cruz Dos R. Rodriguese v. Land Acquisition Collector**, (1996)1 SCC 88 and, therefore, a reference came to be made and the matter was referred to the 3-Judge Bench. Thereafter, both the judgments in the aforesaid two cases were decided by a 3-Judge Bench

raising the doubts about the correctness of the ratio in **Pradeep Kumari's** case (supra) and, therefore, the matter was referred to the Full Bench and that is how in the present case of **Hansoli Devi and another** (supra) a larger Bench of five judges dealt with this aspect referring to the earlier judgments and the scope of Sec. 28-A of the Act.

15. The Hon'ble Apex Court in this judgment, referring to Sec. 28-A of the Act, has specifically observed, "bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might have not made a reference earlier under Section 18, and therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get he right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible

for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount.....When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly, answer Question 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application with the meaning of Section 28-A of the Land Acquisition Act, 1894."

16. In light of these clear observations made by the **Hon'ble** Apex Court discussing and deliberating about the legislative intent of the Parliament for the beneficial construction and interpretation, the present petition deserves to be allowed, as it squarely covers the point.

17. Another facet is that the application under Sec.28-A of the Act made by the petitioners for making a claim on the basis of reference cases referred to hereinabove, which were challenged before the Hon'ble High Court by way of First Appeal Nos. 2091/93 to 2101/93 and the High Court had modified and the said order of the Hon'ble High Court was also

carried before the Hon'ble Apex Court, which was confirmed as the SLP was dismissed. Therefore, on this aspect there is a final verdict inasmuch as the judgment of the Hon'ble High Court has been affirmed by the Hon'ble Supreme Court. The petitioners' application under Sec. 28-A of the Act is required to be considered accordingly.

18. In the result, the petition is allowed. The impugned order at Annexure-A dated 2.1.2008 rejecting the said application at Annexure-A made by the petitioners under Sec. 28-A of the Act is hereby quashed and set aside. Respondent No. 2 and/or the respondent authorities are directed to decide afresh the application of the petitioners under Sec. 28-A in light of the judgment of this Court in First Appeal Nos. 2091/93 to 2101/93, which has been confirmed by the Apex Court for the purpose of further compensation/award. The respondent authorities shall decide the said application under Sec. 28-A of the Act made by the petitioners at Annexure-A afresh within a period of 6 weeks.

Rule is made absolute accordingly. No order as to costs.

(A.M. Kapadia, J.)

(R.H. Shukla, J.)

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