

Balakrishnan Vs. Spl. Tahsildar

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SooperKanoon Citation : sooperkanoon.com/727734

Court : Kerala

Decided On : Aug-04-2006

Reported in : 2006(3)KarLJ1000

Judge : Thottathil B. Radhakrishnan, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 11, 18, 28A and 28A(1)

Appeal No. : W.P. No. 20727 of 2006

Appellant : Balakrishnan

Respondent : Spl. Tahsildar

Advocate for Def. : Aloyshious Thomas, Government Pleader

Advocate for Pet/Ap. : B. Premnath (E), Adv.

Disposition : Petition allowed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Heard the learned Counsel for the petitioner and the learned Government Pleader.

2. Petitioner challenges Ext.P6, a decision by the respondent-an officer exercising powers of Collector under the [Land Acquisition Act, 1894](#) (hereinafter referred to as the 'Act).

3. Petitioner's land was acquired under the Act. An award was passed by the Court in relation to certain lands covered by the same notification under Section 4(1) of the Act. The land value was increased. The petitioner, accordingly, invoked Section 28A of the Act relying on the said award of the Court and sought that the amount of compensation payable to him may be predetermined on the basis of the amount of compensation awarded by the Court.

4. By the impugned Ext.P6, the respondent found that the application filed by the petitioner under Section 28A of the Act is within time, but that the copy of the award produced along with the application is not one applied for and obtained by the petitioner or as authorised by him. Accordingly, the application under Section 28A of the Act has been rejected without accepting the explanation of the petitioner in Ext.P5 that the applicant of the certified copy was the clerk of the advocate of the petitioner.

5. As already noticed, the respondent has concluded that the application of the petitioner was within the time prescribed. If that be so, the question that requires to be immediately considered is as to whether the application of the petitioner could be rejected on account of the production of the certified copy of the Court's award that has been applied for and obtained by any person other than the petitioner.

6. Section 28A(1) of the Act including proviso thereto, reads as follows:

28A. Re-determination 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 re-determined 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.

7. A person, who satisfies the conditions prescribed in Section 28A(1) is entitled to make a written application under that provision within 3 months from the date of the award of the Court. Such an application has necessarily to be made relying on an award passed by the Court, in relation to certain other lands covered by the same notification. Sub-section 1 of Section 28A does not require the applicant to produce the certified copy of the award on the basis of which, the relief is sought for. What if, the Collector is, otherwise, aware of the award of the Court? Therefore, an application for predetermination of the amount of compensation under Section 28A cannot be rejected merely on the ground that the application is not accompanied by the award of the Court on the basis of which the relief is sought for, though it would be advisable and most desirable that the certified copy of the Courts award is produced, since such material would cling to the issue. However, an application which is within the time prescribed under Section 28A(1), cannot be rejected on the ground that the application is not accompanied by the certified copy of the award of the Court, applied for and obtained by or on behalf of the person invoking Section 28A of the Act. There is no room in the said statutory provision in the Act to insist on any such condition. The grant of the relief under the said law is not prescribed or circumscribed as conditional on the production of the certified copy of the award of the Court, that too, one applied for and obtained by the person invoking Section 28A(1) of the Act. So much so, having found that the application is within time, the rejection of the application on the ground that the certified copy of the award of the Court, which was produced along with the application, was applied for and obtained by some other person is not sustainable. The impugned Ext.P6 is, therefore, liable to be quashed.

8. Incidentally, it is appropriate to refer to the proviso to Section 28A(1). The said proviso authorises the exclusion of certain period of time in computing the period of 3 months prescribed for the application under Section 28A(1). The exclusion so

provided is of the period on and from the day on which the award was pronounced by the Court and the time requisite for obtaining a copy of the award. Though there is no express requirement in Section 28A(1) that the application has to be accompanied by the certified copy of the award of the Court, as applied for and obtained by the applicant, the thrust of the proviso to Section 28A(1) is that the benefit of the exclusion of time allowed by the said proviso can be availed only by a person who produces, along with his application the certified copy of the award of the Court, applied for and obtained by him or on his behalf. Hence the production of certified copy of the award of the Court, applied for and obtained on an application, by or on behalf of the person applying under Section 28A(1) is relevant only in a case where exclusion of time is sought for by the applicant relying on the proviso to Section 28A(1).

9. In this case, as already noticed, the Collector had come to the conclusion that the application was within time. Therefore, insistence for the production of the certified copy of the award of the Court as applied for and obtained by the petitioner or on his behalf is illegal.

10. In the result, the impugned Ext.P6, to the extent it holds that Ext.P1 application of the petitioner under Section 28A(1) of the Act cannot be allowed because the certified copy of the award, of the court, produced along with the application is not one applied for and obtained by him or on his behalf, is quashed. It is clarified that the finding in Ext.P6 that the application is within time is sustained. Accordingly, it is directed that the respondent shall, following this judgment, act on the certified copy of the award of the Court as produced by the petitioner and decide on Ext.P1 application, in accordance with law. Having regard to the fact that Ext.P1 application was filed more than 9 years ago, it is directed that a final decision shall be taken thereon within a period of two months from the date of receipt of the certified copy of this judgment.

The Writ Petition is allowed as above. No costs.