

Court No. - 3

Case :- WRIT - C No. - 7218 of 2019

Petitioner :- Tejpal Singh And 5 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shri Krishna Mishra

Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

Hon'ble Pankaj Kumar Jaiswal,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

(Per : Dr. Yogendra Kumar Srivastava,J.)

1. Heard Sri Shri Krishna Mishra, learned counsel for the petitioners and Sri Suresh Singh, learned Additional Chief Standing Counsel appearing for the State respondents.

2. By means of the present writ petition, a direction has been sought to respondent no.4/Additional District Magistrate (Land Revenue) Noida, Gautam Budh Nagar to take a decision on the application of the petitioners dated 26.09.2014 filed under Section 28A of the Land Acquisition Act, 1894¹ within a stipulated period and a further direction to the respondents to redetermine the compensation awarded to the petitioners at the rate of Rs.297/sq. yard i.e. the rate determined in terms of the judgment and order passed in First Appeal No.326 of 2009.

3. The brief facts of the case are set out herein below.

4. Pursuant to a notification dated 22.03.1983 issued under Section 4(1) of the Act, 1894 an award was made on 09.05.1985 by the Special Land Acquisition Officer, Ghaziabad in respect of certain land parcels situate in Village Chhalera Khadar, Pargana and Tehsil Dadri, District Ghaziabad (now part of District Gautam Budh Nagar).

¹ The Act, 1894

5. It is submitted by the learned counsel for the petitioners that against the award dated 09.05.1985 the predecessors in interest of the petitioners did not file any application under Section 18 of the Act, 1894. However, against the award certain other persons filed applications giving rise to land acquisition references which were decided by the District Judge, Gautam Budh Nagar vide order dated 31.01.2003, and the compensation amount was redetermined.

6. Against the the judgment and order dated 31.01.2003 passed by the District Judge, Gautam Budh Nagar in the land acquisition references, a First Appeal No.326 of 2009 was filed before this Court which came to be decided vide judgment dated 24.07.2014 and the compensation amount was again redetermined. Claiming the benefit of the redetermination of compensation amount in terms of the judgment and order dated 24.07.2014 passed in First Appeal No.326 of 2009, an application under Section 28A was filed by the petitioners on 26.09.2014 making a prayer for granting them benefit of redetermination of compensation amount in terms of the order passed in First Appeal No.326 of 2009. The present writ petition has been filed seeking a direction to respondent no.4 to take a decision on the application dated 26.09.2014 filed by the petitioners under Section 28A and for redetermination of the compensation awarded to the petitioners and payment of the same on the basis of rates redetermined in terms of the judgment and order passed in First Appeal No.326 of 2009 decided on 24.07.2014.

7. Learned counsel for the petitioners submits that the application under Section 28A of the Act, 1894 filed on 26.09.2014, was within the three months period of limitation from the date of the judgment/order dated 24.07.2014 passed in

First Appeal No.326 of 2009, and accordingly, the respondent no.4 be directed to decide the pending application under Section 28A. In this regard, reliance has been placed upon a judgment of this Court in *First Appeal No.522 of 2009 (Pradeep Kumar Vs. State of UP & Anr.)* and connected appeals decided on 21.04.2016 to contend that the Court as referred under Section 28A would necessarily include the first appellate court as the appeal under Section 54 is a continuation of the original proceedings.

8. *Per contra*, learned Additional Chief Standing Counsel submits that the three month period of limitation provided to file an application under Section 28A of the Act, 1894 is to be reckoned from the date of the award made by Reference Court, and in this case the Reference Court having made the award on 31.01.2003, the application dated 26.09.2014 filed by the petitioners was highly time barred, and no direction as sought by the petitioners could be issued.

9. In order to appreciate the controversy, we may refer to the relevant statutory provision as contained under Section 28-A of the Act, 1894.

“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.

(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, require 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."

10. The core question which arises in the present case is as to whether the three months limitation for filing the application under Section 28A of the Act, 1894 is to be reckoned from the date of the award made by the Reference Court or the date of the judgment of the High Court in the first appeal.

11. A plain reading of Section 28A would show that where in an award under Part III, 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.

12. The expression "Court" has been defined under Section 3(d) of the Act, 1894 to mean "a principal Civil Court of original jurisdiction".

13. It is thus clear that the redetermination can be claimed only in reference to an award passed by the "Court" under Part III of the Act, 1894 which comprises Sections 18 to 28A. The

expression “Court” which has been referred under Section 28A is the Court as defined under Section 3(d) to mean “a principal Civil Court of original jurisdiction”. It clearly goes to show that the award which is being referred to under Section 28A(1) is the award made by Reference Court alone. The application under Section 28A thus cannot be filed for redetermination of compensation on the basis of the award as made by the High Court in the first appeal.

14. In this regard we may refer to the judgment in the case of ***Babua Ram & Ors. Vs. State of UP & Anr.***², the relevant portion of which is being extracted below:-

“19. The next question is as to when the period of limitation of three months begins to run under Section 28-A and whether successive awards made by civil court at different times in respect of the land covered by the same notification furnish separate causes of action for making applications under Section 28-A. Let us consider the meaning of the words “an award under this part” referred to in Section 28-A(1) which is Part III of the Act. The heading to that part begins by reference to court and its procedure. The ‘court’ means a principal civil court of original jurisdiction or a special judicial officer appointed to perform the functions of the court under the Act as becomes clear as is noticed already. What are the matters to be considered in determining the compensation on a reference made to it under Section 18, is detailed in Section 23 while matters to be neglected in determining such compensation are indicated in Section 24. By operation of sub-section (2) of Section 26, the award made determining the amount of compensation shall be deemed to be a decree while the statement of the grounds of every such award is deemed to be the judgment, for the purpose of Code of Civil Procedure. The above perspectives from Part III make it clear that the award of the court is that of the civil court of original jurisdiction in that part. It is a decree for the purpose of an appeal under Section 54 which falls in Part VIII of the Act (Miscellaneous). The decree as defined in Section 2(2) CPC is the decree of the High Court, which shall be appealable to the Supreme Court under Articles 132, 133 and 136 read with Order 45 CPC. Hence, the award of the court referred to in sub-section (1) of Section 28-A is only the award of the civil court of original jurisdiction or of judicial officer performing the functions of such court under the Act on reference received by it under Section 18 and an award and decree pronounced under Section 26 of the Act.

Since, the judgment and decree of the High Court under Section 54 or of this Court do not come in Part III of the Act, they stand excluded from an award envisaged under sub-section (1) of Section 28-A. The aggrieved interested person, therefore, is entitled to the right and remedy of making an application under Section 28-A for redetermination of compensation for his acquired land only on the basis of the award of the civil court or judicial officer which is a judgment and decree under Section 26 when such award grants compensation in excess of the amount awarded by the Collector under Section 11. When such an application is made in writing by the aggrieved person, notwithstanding the fact of his having received compensation under Section 31 without protest and of not availing the right and remedy of the reference under Section 18, the redetermination of the compensation under Section 28-A(1) is required to be done.”

15. The aforementioned judgment was followed in the case of ***Union of India & Ors. Vs. Karnail Singh & Ors.***³, and it was held that the limitation of three months for making an application for redetermination of compensation must be computed from the date of earliest award made by the Civil Court and not the judgment of the Appellate Court. The relevant observations in this regard are as follows:-

*“5. Thus, it would be clear that cause of action for making an application under Section 28-A would arise when an award has been made by the civil court, on a reference under Section 18, enhancing the compensation over and above the amount awarded by the Collector in his award under Section 11 and the earliest of the successive awards would furnish the starting period of the limitation of three months as provided in the proviso to Section 28-A(1). It is seen that the earliest award was made on 31-7-1979 by which date the Amendment Act had not come into force. The Land Acquisition (Amendment) Act, 1984 (68 of 1984) has given prospective operation to Section 28-A from 24-9-1984. Therefore, it does not furnish any right to the claimants to make any application after the Act has come into force. The latter award dated 15-3-1990 does not give any fresh right or cause of action to file an application under Section 28-A(1). The question then is whether the claimants are entitled to make an application after the appeal was allowed by this Court from appeals arising from one of the references. This question also was considered in the same judgment and it was held that it does not furnish any cause of action. This was also the view of another three-Judge Bench of this Court in *Scheduled Castes Cooperative Land Owning Society v. Union of India* (1991) 1 SCC 174. Therefore, we are of*

the firm view that the judgment and order of this Court enhancing the compensation on 24-8-1987 does not furnish any cause of action to make the application under Section 28-A.”

16. We may take note of the fact that in a subsequent judgment a three-Judge Bench of the Supreme Court in ***Union of India & Anr. Vs. Pradeep Kumari & Ors.***⁴ disagreed with the view expressed in ***Babua Ram*** (supra) and ***Karnail Singh*** (supra) and it was held that the benefit of redetermination of the amount of compensation under Section 28A can be availed of on the basis of any of the awards that had been made by the Court. The relevant observations made in the judgment are as follows:-

“12. We are, therefore, unable to agree with the view expressed in Babua Ram [(1995) 2 SCC 689] and Karnail Singh [(1995) 2 SCC 728] that application under Section 28-A for redetermination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28-A. In our opinion, the benefit of redetermination of amount of compensation under Section 28-A can be availed of on the basis of any one of the awards that has been made by the court after the coming into force of Section 28-A provided the applicant seeking such benefit makes the application under Section 28-A within the prescribed period of three months from the making of the award on the basis of which redetermination is sought...”

17. In the aforementioned judgment the Court also laid down the conditions which were required for filing an application under Section 28A. The observations made in the judgment are being extracted below:-

“10. ...The object underlying Section 28-A would be better achieved by giving the expression “an award” in Section 28-A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of Section 28-A. If the said expression in Section 28-A(1) is thus construed, a person would be able to seek redetermination of the amount of compensation payable to him provided the following conditions are satisfied:

- (i) An award has been made by the court under Part III after the coming into force of Section 28-A;*
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under*

Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28-A for redetermination of compensation by an applicant.”

18. In ***Jose Antonio Cruz Dos R. Rodriguese & another. Vs. Land Acquisition Collector & another***⁵ a three-Judge Bench of the Supreme Court held that the limitation of three months for making application for redetermination of compensation must be computed from the date of award of Reference Court on the basis of which redetermination is sought and not from the order of the Appellate Court dealing with the appeal against the award of the Reference Court. We may refer to the relevant observations made in this regard:-

“2. The question which arises for determination in these two appeals is whether the period of three months prescribed for making an application for redetermination of the amount of compensation under Section 28-A of the Land Acquisition Act, 1894 (hereinafter called 'the Act') begins to run against the applicant from the date of the award under Section 18 of the Act or even from the date of the decision of the appeal, if any, preferred against the award...

3. Before examining the decisions of this Court on which the High Court has placed reliance, we deem it appropriate to first examine the plain language of Section 28-A extracted earlier. Section 28-A was inserted as the last section in Part III entitled “Reference to Court and Procedure thereon” by Act 68 of 1984. Part III begins with Section 18 which provides that if an interested person does not accept the award made by the Collector under Section 11 of the Act, he may, by a written application to the Collector, require that the matter be referred for determination of the court. Section 2(d) defines the expression ‘Court’ to mean the principal civil court of original jurisdiction unless a Special Judicial Officer has been appointed. Therefore, the court referred to under Section 18

can only mean the principal civil court of original jurisdiction. Section 23 then sets out the matters to be taken into consideration in determining the compensation to be awarded for the acquired land, and Section 24 indicates the matters to be omitted from consideration. Section 26 provides that the award shall be in writing signed by the Judge which shall be deemed to be a decree within the meaning of clauses (2) and (9) of Section 2 of the Civil Procedure Code, 1908. Section 27 provides for costs to be awarded and Section 28 provides for payment of interest on excess compensation. We then come to Section 28-A. The first part of the section begins with the words "Where in an award under this part, Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11" which clearly indicate that the legislature was talking of an award made under the provisions of Part III, i.e., an award under Section 11 and therefore, in that context, reference to 'Court' can only mean the court to which a reference is made by the Collector under Section 18. This position is further clarified when the section refers to compensation awarded in excess of the amount awarded under Section 11 of the Act. The second part of the section then addresses "the persons interested in all the other land covered by the same notification ... and who are also aggrieved by the award" and permits them to make a written application to the Collector "within three months from the date of the award of the Court" requiring him to redetermine the amount of compensation on the basis of the amount awarded by the Court, notwithstanding the fact that they had not sought a reference under Section 18 of the Act. Thus, the newly added section seeks to give the same benefit, which a person who had sought a reference and had secured the Court's award for a higher amount of compensation had received, to those who had, on account of ignorance or financial constraints, not sought a reference under Section 18. In the latter part of the section also, reference is to the award under Section 11 and later, to the award of the Reference Court under Section 18 of the Act. Therefore, the court referred to therein is again the court referred to in Section 2(d) of the Act, i.e., the principal civil court of original jurisdiction. The plain language of Section 28-A, therefore, prescribes the three months' period of limitation to be reckoned from the date of the award by the Court disposing of the reference under Section 18, and not the appellate court dealing with the appeal against the award of the Reference Court."

19. The contention that Section 28A of the Act, 1894 would also apply to a judgment made by the High Court under Section 54 was repelled in the case of *Union of India Vs. Bant Ram*⁶ and it was reiterated that redetermination of compensation can

⁶ (1996) 4 SCC 537

be claimed only on the basis of an award under Section 18 and not the judgment passed by the High Court under Section 54, and it was held as follows:-

*“4. ...the learned Senior Counsel for the respondent has contended that Section 28-A would apply not only when an award is made by the court under Section 26 but also when judgment is made by the High Court under Section 54 of the Act. We find no force in this contention. Section 28-A itself specifically refers to applicability of Chapter III; in other words, Chapter III would be applicable to a reference made under Section 18 to the court. The marginal note indicates redetermination of the compensation on the basis of the award of the court. Section 3(d) defines ‘court’ to mean a principal civil court of original jurisdiction or a Court of Special Judicial Officer. Sub-section (1) of Section 28-A envisages “allowing applications”, i.e., reference application filed under Section 18 in Part III. Moreover Section 54 falls in Chapter VIII of the Act. Therefore, judgment and decree of the appellate court/High Court does not encompass the award of the court referred to in Section 28-A. The controversy is no longer res integra. *Babua Ram v. State of U.P.* [(1995) 2 SCC 689] and hosts of other decisions following that, cover the field. Therefore, the conclusion is inevitable that the application for redetermination of the compensation under Section 28-A would not lie after the judgment of the High Court under Section 54 of the Act.”*

20. The view that Section 28A does not apply to an order made by the High Court and that the claimant could seek redetermination of the compensation only on the basis of the award of the Reference Court and not the judgment of the High Court was reiterated in *Bhagti (Smt.) (deceased) Vs. State of Haryana*⁷. It was further held that an application for redetermination of compensation that was filed within three months from the date of the judgment of the High Court but beyond the limitation from the date of the award of the Reference Court, was not maintainable. The observations made in this regard in the aforesaid judgment are being extracted below:-

“6. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred with the right

⁷ (1997) 4 SCC 473

to apply for redetermination under Section 28-A(1). But all those who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the Reference Court are not entitled to avail of the remedy under Section 28-A. Equally, the right and remedy of redetermination would be available only when the Reference Court under Section 18 has enhanced the compensation in an award and decree under Section 26. Within three months from the date of the Reference Court excluding the time taken under the proviso, the applicant whose land was acquired under the same notification but who failed to avail of the remedy under Section 18, would be entitled to avail of the right and remedy under Section 28-A. The order and judgment of the High Court does not give such right. Thus, this Court held that Section 28-A does not apply to an order made by the High Court for redetermination of the compensation. Thus, we hold that the question of reference to the Constitution Bench does not arise. The claimants are not entitled to make an application for redetermination of compensation under Section 28-A(1) after the judgment of the High Court; nor are the claimants entitled to avail of that award which is more beneficial to the claimants, i.e., the High Court judgment.”

21. The view taken in the judgments of **Bant Ram** (supra) and **Bhagti** (supra) has been followed in a subsequent judgment in **State of Orissa & Ors. Vs. Chitrasen Bhoi**⁸, and it was stated as follows:-

“11. In Bhagti v. State of Haryana [(1997) 4 SCC 473] this Court held that a claimant can seek redetermination of compensation on the basis of the award of the Reference Court and not the judgment of the High Court and further held that only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred with the right to apply for redetermination under Section 28-A(1) of the Act. The same view has been reiterated in Union of India v. Bant Ram [(1996) 4 SCC 537].”

22. We may also refer to the judgments in **Smt. Kamla Tomar Vs. State of UP & 2 Ors.**⁹ and **Dheer Singh & 3 Ors. Vs. State of UP & 3 Ors.**¹⁰, wherein Coordinate Division Benches of this Court have taken the same view.

23. The aforementioned proposition of law that an application under Section 28A can be made only on the basis of the

⁸ (2009) 17 SCC 74

⁹ 2017 (3) ADJ 659

¹⁰ 2017 (3) ADJ 545

judgment made by the Reference Court was thereafter reiterated in *Bharatsing & Ors. Vs. State of Maharashtra and Ors.*¹¹ following the judgments in the case of *Pradeep Kumari* (supra) and *Jose Antonio Cruz* (supra).

24. The precise question as to whether an application under Section 28A of the Act, 1894 for redetermination of compensation can be filed within the period of three months from the date of judgment of the High Court or the Supreme Court passed in appeal under Section 54 of the Act, 1894 fell for consideration in a recent judgment in the case of *Ramsinghbhai (Ramsangbhai) Jerambhai Vs. State of Gujarat & Anr.*¹², and it was held as follows:-

“1. ...Whether an application under Section 28A of the Land Acquisition Act, 1894 (for short “the Act”) for redetermination of the compensation can be filed within a period of 3 months from the date of judgment of the High Court or Supreme Court passed in appeal under Section 54 of the Act is the question that arises for consideration in this case.

2. Section 28-A(1) of the Act reads as follows:

“28-A. 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.”

(emphasis supplied)

11 (2018) 11 SCC 92

12 (2018) 16 SCC 445

3. It is clear from the opening words of the provision that the redetermination under Section 28-A is available only in respect of an “award” passed by the “court” under Part III of the Act, comprising Sections 18 to 28-A (both inclusive). The “Court” referred to in Section 28-A of the Act is the Court as defined under Section 3(d) to mean “... a Principal Civil Court of Original Jurisdiction ...”. Thus, the judgment of the appellate court is not within the purview of Section 28-A. It is also to be noted that the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the award passed by the Reference Court under Part III of the Act. [See *Jose Antonio Cruz Dos R. Rodriguese v. LAO* [(1996) 6 SCC 746]. In its recent judgment in *Bharatsing v. State of Maharashtra* [(2018) 11 SCC 92 : (2018) 5 SCC (Civ) 44], this Court has surveyed the decisions on this issue and reiterated the legal principle.

4. What the appellant seeks is redetermination of compensation under the Act in terms of the judgment in *Ramsingbhai v. State of Gujarat* [2014 SCC OnLine Guj 5840 : 2015 AIR CC 1046] of the High Court passed under Section 54 of the Act. In view of the settled legal position which we have explained above, the appellant is not entitled to such a relief; his entitlement, if any, is only in terms of Section 28-A of the Act based on the award of the Reference Court.”

25. In view of the aforesaid discussion, it is legally well settled that the application under Section 28A for redetermination of compensation is to be filed on the basis of the award passed by the Reference Court and not on the basis of the judgment of the High Court in first appeal.

26. In the case at hand, the application under Section 28A having admittedly been filed on 26.09.2014 after the petitioners came to know of the judgment dated 24.07.2014 passed in First Appeal No.326 of 2009, the application was clearly much beyond the prescribed period of three months from the date of the award of the Reference Court i.e. 31.01.2003.

27. The question which now falls for consideration is as to whether the application filed under Section 28A of the Act, 1894 can be entertained even if it is filed beyond the prescribed time period of three months from the date of award of the Reference

Court.

28. The proviso to sub-section (1) of Section 28A only provides for exclusion of the time requisite for obtaining a copy of the award, and does not provide for extension of the time period on any other ground. This issue was considered in the case of *State of A.P. Vs. Marri Venkaiah and Ors.*¹³, and it was held that the limitation of three months period would not commence from the date of acquisition of knowledge of the award. The relevant observations made in the judgment are as follows:-

"7. Plain language of the aforesaid section would only mean that the period of limitation is three months from the date of the award of the court. It is also provided that in computing the period of three months, the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application under Section 28-A is to be filed within three months from the date of the award by the court by only excluding the time requisite for obtaining the copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

x x x x x

10. In our view, with regard to the first contention that Section 28-A is a beneficial provision, there cannot be any dispute. However, the advantage of the benefit which is conferred is required to be taken within the stipulated time. A landowner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within the prescribed time. He must at least be vigilant in making efforts to find out whether the other landowner has filed any reference application and if so, what is the result. If that is not done then the law cannot help him. Admittedly, in the present case, award enhancing the compensation was pronounced by the civil court by order dated 29-11-1984 and applications were filed on 27-11-1989 i.e. after a lapse of 5 years. In such case, as the applicant was having an opportunity of knowing the award and/or he was required to make efforts of knowing about such proceedings, he must be presumed to have had knowledge of the award. If the contention of the learned counsel for the respondents is accepted, it will create total vagueness and

uncertainty as the landowners can claim that they have come to know of the award after a long lapse of time and, therefore, the application even though beyond time may be entertained. If such applications are entertained, there may not be any finality to the award and payment of compensation. Result may be that such proceedings may adversely affect where land is acquired by the Government for a project which is to be carried out by local bodies.

11. *The learned counsel for the respondents relied upon the decision of this Court in Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer [AIR 1961 SC 1500 : (1962) 1 SCR 676] which is approved by a three-Judge Bench in State of Punjab v. Qaisar Jehan Begum [AIR 1963 SC 1604 : (1964) 1 SCR 971]. In that case, the Court interpreted the proviso to Section 18 of the Act and held that clause (a) of the proviso was not applicable in the said case because the person making the application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under Section 12(2) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to the second part of the proviso which provides that such application can be made within six months from the date of the Collector's award. In the context of the scheme of Section 18 of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge, actual or constructive, of the party affected by the award was an essential requirement of fair play and natural justice. Therefore, the second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.*

12. *The aforesaid reasoning would not be applicable for interpretation of Section 28-A because there is no question of issuing notice to such an applicant as he is not a party to the reference proceeding before the court. The award passed by the court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the court to issue notice to the landowners who have not initiated proceedings for enhancement of compensation by filing reference applications; maybe, that their lands are acquired by a common notification issued under Section 4 of the Act. As against this, under Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award."*

29. In the aforementioned case the judgments in *Jose Antonio*

Cruz Dos R. Rodriguese and another Vs. Land Acquisition Collector and another, Union of India Vs. Mangatu Ram¹⁴ and Tota Ram Vs. State of UP¹⁵ were relied upon and the earlier judgments in **Harish Chandra Raj Singh Vs. Land Acquisition Officer¹⁶** and **State of Punjab Vs. Qaisar Jehan Bagum¹⁷** were distinguished.

30. The question with regard to applicability of Section 5 of the Limitation Act, 1963¹⁸ to proceedings before the Collector under Section 28A of the Act, 1894 was considered in the case of **Popat Bahiru Govardhane and Ors. Vs. Special Land Acquisition Officer and another¹⁹**, and it was reiterated that the Act, 1963 applied to courts and not to *quasi judicial* authorities. It was also held that it was not permissible to extend the period of limitation on equitable grounds if the statute does not permit the same. The relevant observations made by the Supreme Court in the aforementioned case are as follows:-

“8. The sole question for the consideration of the Court is whether limitation for filing the application for redetermination of the compensation under Section 28-A of the Act would commence from the date of the award or from the date of knowledge of the court's award on the basis of which such application is being filed?

x x x x x

*10. The issue involved herein is no more res *integra*. The appellants' case before the High Court as well as before us has been that the limitation would commence from the date of acquisition of knowledge and not from the date of award. Though, Shri Gaurav Agarwal, learned counsel for the appellants, has fairly conceded that there is no occasion for this Court to consider the application of the provisions of the Limitation Act, 1963 (hereinafter called “the 1963 Act”) inasmuch as the provisions of Section 5 of the said Act.*

x x x x x

13. This Court in Union of India v. Mangatu Ram [(1997) 6 SCC

14 (1997) 6 SCC 59

15 (1997) 6 SCC 280

16 AIR 1961 SC 1500

17 AIR 1963 SC 1604

18 The Act, 1963

19 (2013) 10 SCC 765

59 : AIR 1997 SC 2704] and *Tota Ram v. State of U.P.* [(1997) 6 SCC 280] dealt with the issue involved herein and held that as the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the 1963 Act would not apply and, therefore, the application under Section 28-A of the Act, has to be filed within the period of limitation as prescribed under Section 28-A of the Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award.

14. In *State of A.P. v. Marri Venkaiah* [(2003) 7 SCC 280 : AIR 2003 SC 2949], this Court reconsidered the aforesaid judgments including the judgment in *Harish Chandra Raj Singh* [AIR 1961 SC 1500] and held that the statute provides limitation of 3 months from the date of award by the court excluding the time required for obtaining the copy from the date of award. It has no relevance so far as the date of acquisition of knowledge by the applicant is concerned. In view of the express language of the statute, the question of knowledge did not arise and, therefore, the plea of the applicants that limitation of 3 months would begin from the date of knowledge, was clearly unsustainable and could not be accepted. The Court also rejected the contention of the applicants that a beneficial legislation should be given a liberal interpretation observing that whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within the time-limit prescribed under the statute. Such an applicant must at least be vigilant in making efforts to find out whether the other landowners have filed any reference application and if so, what is the result thereof. If that is not done then the law cannot help him. The ratio of the judgment in *Harish Chandra Raj Singh* [AIR 1961 SC 1500] was held to be non-applicable in case of Section 28-A of the Act.

“11. ...In that case, the Court interpreted the proviso to Section 18 of the Act and held that clause (a) of the proviso was not applicable in the said case because the person making the application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under Section 12(2) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to the second part of the proviso which provides that such application can be made within six months from the date of the Collector's award. In the context of the scheme of Section 18 of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge, actual or constructive, of the party affected by

the award was an essential requirement of fair play and natural justice. Therefore, the second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.

12. *The aforesaid reasoning would not be applicable for interpretation of Section 28-A because there is no question of issuing notice to such an applicant as he is not a party to the reference proceeding before the court. The award passed by the court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the court to issue notice to the landowners who have not initiated proceedings for enhancement of compensation by filing reference applications; maybe, that their lands are acquired by a common notification issued under Section 4 of the Act. As against this, under Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award."*

A similar view has been reiterated by this Court in Des Raj [(2004) 7 SCC 753 : AIR 2004 SC 5003] and Chitransen Bhoi [(2009) 17 SCC 74].

x x x x x

16. *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*

(See Martin Burn Ltd. v. Corpn. of Calcutta [AIR 1966 SC 529], AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma [(2012) 13 SCC 792 : AIR 2013 SC 30]."

31. In the present case, the petitioners in terms of their application dated 26.09.2014 have sought redetermination of compensation under Section 28A of the Act, 1894 in terms of the judgment of the High Court dated 24.07.2014 passed in First

Appeal No.326 of 2009.

32. In view of the legal position which we have discussed above, the petitioners are not entitled to such a relief, inasmuch as entitlement, if any, in terms of Section 28A is to be based on the award of the Reference Court. Moreover, the Reference Court having made the award on 31.01.2003, the application dated 26.09.2014 filed by the petitioners under Section 28A is much beyond the three months period provided for making the application.

33. Accordingly, no direction as sought by the petitioners in terms of the relief clause of the present writ petition can be granted. The writ petition is devoid of merits and is **dismissed**.

Order Date :- 8.3.2019

Shahroz

(Dr. Y.K. Srivastava,J.) (Pankaj Kumar Jaiswal,J.)