

Union Of India vs Pushpavathi & Ors. Etc. on 6 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1032, 2018 (3) SCC 28, AIR 2018 SC (CIVIL) 1421, (2018) 3 MAD LW 720, (2018) 5 MAH LJ 570, (2018) 2 PAT LJR 197, (2018) 1 GUJ LH 488, 2018 (131) ALR SOC 33 (SC), 2018 (2) KCCR SN 187 (SC)

Author: Abhay Manohar Sapre

Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1622-1631 OF 2018
[Arising out of SLP (C) Nos.4689-4698 of 2012]

Union of India & Anr. .. Appellants

Versus

Pushpavathi & Ors.Etc. .. Respondents

WITH

CIVIL APPEAL Nos. 1632-1641 OF 2018
[Arising out of SLP (C) Nos.20089-20098 of 2012]

AND

CIVIL APPEAL Nos.1642-1643 OF 2018
[Arising out of SLP (C) Nos.21043-21044 of 2012]

JUDGMENT

Abhay Manohar Sapre, J.

In CIVIL APPEAL NOS. OF 2018 [Arising out of SLP (C) Nos.4689-4698 of 2012]

1. Leave granted.

2. These appeals arise from the final judgment and order dated 08.07.2009 passed by the High Court of Judicature at Madras in W.A. Nos. 1384 to 1392 and 1755 of 1999 whereby the Division Bench of the High Court dismissed the writ appeals filed by the appellants herein and affirmed the order dated 13.04.1999 passed by the Single Judge of the High Court in W.P. Nos.5486-5494 of 1999 and order dated 13.07.1999 in W.P. No.11806 of 1999.

3. The issue involved in these appeals is short and in order to appreciate the same, few relevant facts need mention hereinbelow.

4. The first appellant is the Union of India through Secretary, Revenue Department, Pondicherry and the second appellant is the Revenue Officer-cum-Land Acquisition Officer. The appellants herein were respondents whereas the respondents herein, who are the landowners, were writ petitioners in the writ petitions before the High Court.

5. In exercise of the powers conferred under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), the Government of Pondicherry on 22.12.1986 issued a Notification seeking to acquire land bearing Survey No.2 Pt. of an extent of 3 Hec. 83 Ares 50 Cen situated in village Pillaichavadi, Pondicherry for public purpose, namely, establishment of Central University (Phase-V). This was followed by a declaration issued under Section 6 of the Act on 12.03.1987. The acquired land included the lands belonging to the respondents herein.

6. The Land Acquisition Officer (LAO) passed an Award (No.2/1987) under Section 11 of the Act on 01.06.1987 and determined the compensation for the land acquired at the rate of Rs.318/- per Are.

7. One landowner—Govindammal, whose land was also acquired under the same notification, dissatisfied with the rate of compensation awarded by the LAO, sought reference under Section 18 of the Act to the Civil Court for re-determination of the rate of compensation for his acquired land. The Reference Court, by its award dated 09.05.1989 in reference case No. L.A.O.P. No.337/88 enhanced the rate of compensation of the acquired land from Rs.318/- per are to Rs.1000/- per Kuzhi (Rs. 1868/- per Are).

8. The respondents (landowners) having come to know of the passing of the award by the Reference Court enhancing the compensation referred above filed applications under Section 28A of the Act to the Collector (LAO) on 08.08.1991 for re- determination of compensation payable to them for their acquired land in the aforementioned acquisition proceedings.

9. Though the Collector made an enquiry, as contemplated under Section 28A of the Act, on the applications made by the respondents but no final orders were passed. The respondents, therefore, filed writ petitions (W.P No. 10649 of 1996 etc.) in the High Court at Madras.

10. The High Court, by order dated 19.08.1998 allowed the writ petitions in part and directed the Collector to dispose of the applications filed by the respondents under Section 28A of the Act. The Collector accordingly disposed of the applications by passing orders on different dates between 15.11.1994 and 22.11.1994 and re-determined the compensation payable to the respondents.

11. The respondents, having noticed that the Collector though re-determined the compensation but had failed to award interest on compensation under Section 28 or Section 34 of the Act, felt aggrieved of the orders of the Collector and filed a representation to the Collector praying therein for award of interest on the compensation. By order dated 14.12.1998, the Collector rejected the respondents' representation.

12. Felt aggrieved, the respondents filed writ petitions in the High Court and challenged therein the legality and correctness of the order dated 14.12.1998 of the Collector declining to award interest on the compensation determined by him under Section 28-A proceedings.

13. The appellants herein, who were the respondents in the said writ petitions, raised a preliminary objection about the maintainability of the writ petitions filed by the respondents. Their main contention was that the remedy of the respondents herein in such case lies in applying for making a reference to the Civil Court as provided under Section 28A (3) read with Section 18 of the Act. It was contended that if the respondents (landowners) were aggrieved by the order of the Collector, which declined to award the interest on the compensation, their appropriate remedy was to seek a reference to the Civil Court as provided under Section 28A(3) of the Act, it being a statutory remedy available to them under the Act but not in filing the writ petitions under Article 226 of the Constitution.

14. The Single Judge by order dated 13.04.1999, overruled the preliminary objection, allowed the writ petitions on merits and awarded the interest as claimed by the respondents. The Union of India, being aggrieved by the order of the Single Judge, filed intra court appeals before the Division Bench. By impugned judgment, the Division Bench dismissed the writ appeals and affirmed the order of the Single Judge (Writ Court). It is against this judgment, the Union of India has filed these appeals by way of special leave before this Court.

15. Heard Mr. R. Venkataramani, learned senior counsel for the appellants and Mr. G. Sivabalamurugan and Mr. P. Jegan, learned counsel for the respondents.

16. Mr. R. Venkataramani, learned senior counsel for the appellants while assailing the legality and the correctness of the impugned judgment, reiterated the same submissions, which were unsuccessfully urged before the High Court.

17. While elaborating his submissions, learned counsel contended that the High Court erred in entertaining the writ petitions for deciding the issue raised therein on merits.

18. According to learned counsel, the issue relating to non-award of the interest by the Collector under Section 28A(2) proceedings is triable only by the Reference Court (Civil Court) in the reference proceedings, therefore, the remedy of the respondents (landowners) was to approach the Collector under Section 28A(3) of the Act for making a reference to the Civil Court under Section 18 of the Act and then pursue the issue further in the forums provided under the Act but not in filing the writ petitions before the High Court.

19. Learned counsel urged that the non-award of interest by the Collector/LAO under Section 11 or Section 28A(2) proceedings being a part of the award, it attracts the rigour of Section 18 of the Act.

20. Learned counsel urged that if there is any error noticed in the award, the same can be challenged only before the Civil Court in the reference proceedings under Section 18 or Section 28A(3) of the Act, as the case may be.

21. Learned counsel urged that when the Act is a complete code in itself and provides therein a statutory remedy of reference under Section 18 read with Section 28A(3) of the Act for determination of all the issues pertaining to compensation payable to the landowners for their acquired land, the High Court should not have entertained the writ petitions and instead granted liberty to the respondents (landowners) to take recourse to the remedy of reference to the Civil Court under Section 28A(3) of the Act.

22. In reply, learned counsel for the respondents (landowners) supported the reasoning and the conclusion arrived at by the High Court in the impugned judgment and contended that no case is made out for any interference in the impugned judgment.

23. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeals. In our view, the reasoning and the conclusion arrived at by the High Court appears to be legal and proper.

24. The short question, which arises for consideration in these appeals is, if the Collector declines to award interest on the compensation under Section 28A proceedings to the landowners, which is the legal remedy available to the landowners against such order—the landowners should approach the Civil Court in reference under Section 28A(3) read with Section 18 of the Act or should file writ petition under Article 226 of the Constitution.

25. In order to decide the question arising in these appeals, some relevant sections need mention. These Sections are Sections 11, 18, 23, 26, 28, 28-A and 34 of the Act which are mentioned verbatim infra. Section 11 “11 Enquiry and award by Collector (1) :- On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under the Act.

Section 18

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 persons 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.

Section 23

23. Matters to be considered in determining compensation (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration— first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1) secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Section 26

26. Form of awards :- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908).

Section 28

28. Collector may be directed to pay interest on excess compensation. —If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

Section 28A 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.

Section 34 34 Payment of interest:- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest

thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

26. Section 11 deals with making of enquiry and award by the Collector. This section provides three Heads under which the award is to be made, namely,

(i) the true area of the land; (ii) the compensation which in his opinion is payable to the landowners;

(iii) the apportionment of the compensation among all the persons interested in the land.

27. Section 18 provides a remedy to those persons, who have not accepted the award of the Collector passed under Section 11 of the Act. Such persons can request the Collector to make reference to the Civil Court to decide the issues. These issues are:

first - relating to measurement of the land, second -

the amount of compensation, third - the persons to whom the compensation is payable and fourth - the apportionment of the compensation among the persons interested.

28. Section 23 of the Act provides six factors, which are required to be taken into consideration by the Court while determining the compensation. Sub-sections (1A) and (2) provide for payment of statutory compensation payable to every landowner in addition to the market value of the land. Under sub-section (1A), the landowner is paid the compensation at the rate of 12% p.a. of the market value of the land whereas under sub-section(2), he is paid at the rate of 30% of the market value of his land.

29. Section 26 provides the form of awards. It provides that, first it shall specify the amount awarded under clause first of sub-section(1) of Section 23 and also the amounts, if any, awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts.

30. There are two sections, which deal with the payment of interest, namely, Section 28 and Section

34. So far as Section 28 is concerned, it deals with the payment of interest on excess compensation. It empowers the Civil Court to award interest on the excess amount awarded over and above the amount by the Collector. It empowers the Court to direct the Collector to pay interest at the rate of

9% p.a. on such excess amount awarded by the Court from the date on which the Collector took possession of the land to the date of payment of such excess amount into Court. The proviso to Section 28 further enables the Court to award interest on such excess amount if the conditions specified in the proviso are fulfilled in any acquisition proceedings in relation to the land.

31. So far as Section 34 is concerned, it deals with another mode of payment of interest to the landowners. It provides that if compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay interest at the rate of 9% per annum from the time of so taking possession until it shall have been so paid or deposited. Proviso to this section, however, empowers the Collector to pay interest at the rate of 15% p.a., if the conditions specified therein are fulfilled in any acquisition case.

32. Section 28A provides for re-determination of the amount of compensation on the basis of the award of the Court. It enables the landowners to approach the Collector to re-determine the amount of compensation payable to them on the basis of the award passed by the Court in the cases of other persons alike them whose lands were also acquired under the same notification of Section 4 and who approached the Court for re-determination of the amount of compensation payable to them whereas other landowners did not approach the Court along with them. Such landowners are given a right to make an application within 3 months from the date of such award of the Court to the Collector and claim therein the same compensation which was awarded to other landowners by the Court. Sub-section(2) of Section 28A empowers the Collector to conduct an inquiry and make an award determining the amount of compensation payable to such landowners. Sub-section(3) of Section 28A empowers the landowners to approach the Collector to refer his/their case to the Court in case he/they is/are aggrieved by the award passed by the Collector under sub-section(2) of Section 28A of the Act.

33. From the perusal of the aforementioned sections, it is clear that while determining the compensation payable to the landowners, the Collector is required to take into consideration three factors, which are specified under Section 11 whereas the Court is required to take into consideration six factors specified under Section 23(1) of the Act. These factors vary from case to case.

34. Likewise, we find that Sections 28 and 34, which deal with payment of interest on the awarded sum, are attracted in the case where the conditions specified under the respective sections are fulfilled by the landowner in his case.

35. Similarly, the reference to the Court under Section 18 is made by the Collector only when there is a dispute as to the measurement of the land or to the amount of the compensation or as to the person(s) to whom the compensation is payable and lastly, regarding the apportionment of the compensation amongst the persons interested in claiming compensation.

36. In our considered opinion, the dispute relating to non-award of the interest to the landowners, whether under Section 28 or Section 34 is not a dispute, which falls under Section 18 or/and 28A(3) of the Act. In other words, a reference under Section 18 can only be made by the Collector in respect of those issues, which are specified under Section 18.

37. A dispute relating to non-award of interest payable to the landowners under Section 28 or/and Section 34 of the Act is not specified under Section 18 and hence it is not capable of being referred by the Collector to the Civil Court under Section 18 of the Act. It is also for the reason that payment of interest is statutory in character and being statutory, it is mandatory for payment once conditions specified under Sections 28 or/and 34 are fulfilled.

38. It is true that once the interest is awarded by the Court under section 28 or by the Collector under Section 34 of the Act, it becomes the part of the award. However, it is hardly of any significance and has no bearing for deciding the question of remedy to challenge issue relating to the non-award of interest.

39. As mentioned above, such issue is required to be decided keeping in view the wording of Section 18 of the Act, which specifies the issues on which the reference can be made to the Court and non-award of interest is not the issue specified in Section 18 of the Act. In this view of the matter, no reference can be made to the Court to decide the issue of non-award of interest under Section 18 of the Act.

40. The aforementioned reasoning, in our view, equally applies to the cases falling under Section 28A(2) and (3) of the Act because any dispute, whether arising under Section 11 or 28A(2), is referable to the Civil Court in reference by the Collector under Section 18 of the Act.

41. This Court explained the object and scope of Sections 28 and 34 succinctly in the case of Shree Vijay Cotton & Oil Mills Ltd. vs. State of Gujarat, (1991) 1 SCC 262 in the following words:

“16. There is inherent evidence in the wording of Sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that “the Collector shall pay the amount awarded with interest at 6 per cent per annum...” The legislative mandate is clear. It is a directive to the collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest amount is to be included in the award-decree as prepared under Section 23(1) read with Section 26 of the Act. Similarly Section 28 provides “the award of the court may direct that the Collector shall pay interest”. Here also the award under Section 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid under Section 34 and also under Section 28 is of different character than the compensation amount under Section 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation under Section 23(1) which is an award-decree under Section 26, is subject to the rules of Procedure and Limitation. The rules of procedure are hand-maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.”

42. In the light of the foregoing discussion, we are of the considered opinion that the dispute in relation to non-award of interest can be raised by an aggrieved person only by taking recourse to Article 226 of the Constitution in writ petition. In other words, reference under Section 18 or Section 28A(3) cannot be considered to be an alternative statutory remedy available to the landowner for getting the question of non-award of interest payable under Sections 28 or/and 34 of the Act decided by the Civil Court.

43. This Court in the case of Delhi Development Authority vs. Mahender Singh & Anr. , (2009) 5 SCC 339 has also taken the same view, which we have taken above, in the following words:

“12. In view of what has been indicated above, the conclusion is irresistible that while exercising jurisdiction under Article 226 of the Constitution there is no scope for direction to pay interest in a manner not contemplated by either Section 28 or 34.”

44. In view of the foregoing discussion, we are of the view that the High Court was right in entertaining the writ petitions filed by the respondents (landowners) and was eventfully right in allowing the same on merits.

45. Learned counsel for the appellants did not question the impugned judgment on merits, therefore, we need not examine the issue involved in the writ petitions on merits.

46. In the light of the foregoing discussion, we find no merit in these appeals. The appeals thus fail and are accordingly dismissed.

In C. A. Nos. OF 2018 @ SLP (C) Nos.20089-20098 of 2012 & C. A. Nos. OF 2018 @ SLP (C) Nos.21043-21044 of 2012] Leave granted.

These appeals are directed against the final judgment and order dated 22.03.2010 passed by the High Court of Madras in W.P.(c) Nos.5596 to 5605 of 2010 and dated 02.12.2011 in W.P.(c) Nos. 1556-1557 of 2006 whereby the Single Judge of the High Court disposed of the writ petitions filed by the respondents herein on the basis of the order dated 08.07.2009 passed in W.A. Nos.1384 to 1392 and 1755 of 1999.

In view of judgment passed in civil appeals @ S.L.P.(c) Nos.4689-4698 of 2012, these appeals fail and are accordingly dismissed.

.....J (R.K. AGRAWAL)J. (ABHAY MANOHAR SAPRE)
New Delhi, February 06, 2018