

13. Accordingly, the writ petition is dismissed.

Hon'ble J.J. Munir, J.)

14. Consequences to follow.

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**(2023) 5 ILRA 1664**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 10.08.2022**

**BEFORE**

**THE HON'BLE RAJESH BINDAL, C.J.**  
**THE HON'BLE J.J. MUNIR, J.**

Writ-C No.20901 of 2022

**Kunwar Pal @ Kumar Pal           ...Petitioner**  
**Versus**  
**State of U.P. & Ors.               ...Respondents**

**Counsel for the Petitioner:**  
 Sri Kripa Shankar Shukla

**Counsel for the Respondents:**  
 Sri Rajeev Singh (S.C.), Ms. Archi Agarwal

**Civil Law- The Land Acquisition Act, 1894- Section 28A(1)- The proviso to Section 28A(1) aforesaid mandates exclusion from the period of three months limitation, for the purpose of making an application to the Collector, the day on which the Reference Court makes the award and the time spent in obtaining a certified copy thereof- The petitioner is entitled to the exclusion of 36 days spent in obtaining a certified copy of the award on the basis of which he had moved the Special Land Acquisition Officer under Section 28A of the Act-The order of the Special Land Acquisition Officer, holding the proceedings under Section 28A of the Act to be barred by time, is manifestly illegal. (Para 5)**

**Writ petition allowed. (E-15)**

(Delivered by Hon'ble Rajesh Bindal, C.J.  
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1. This writ petition is directed against an order of the Special Land Acquisition Officer (Sanyukt Sangathan), Aligarh dated 30.04.2022 rejecting the petitioner's application under Section 28A of the Land Acquisition Act, 1894 (for short, 'the Act') as time barred.

2. Heard Mr. K.S. Shukla, learned counsel for the petitioner, Mr. Rajeev Singh, learned Standing Counsel appearing on behalf of Respondent Nos. 1 and 2 and Ms. Archi Agarwal, learned counsel appearing on behalf of Respondent No. 3.

3. The petitioner, Kunwar Pal made an application to the Collector-cum-Land Acquisition Officer, Aligarh dated 29.01.2001 saying that his land comprising Khasra No. 7/0-2-0, Khasra No. 10/0-4-0, Khasra No. 27(m)/0-10-0 and *Khasra* No. 414 (m)/1-14-0 admeasuring a total of 2 *Bigha 2 Biswa* situate at village Talaspur Kalan, Post Quarsi, Pagrama & Tehsil Koil, District Aligarh was acquired by the State for the purpose of Planned Industrial Development by the Uttar Pradesh State Industrial Department Corporation, Kanpur. It was the petitioner's case that in LAR No. 70 of 1993, Mahendra Singh and others vs. State of U.P. and others, the XIth Additional District Judge, Aligarh while deciding the reference under Section 18 of the Act relating to the same notification 4(1) through which the petitioner's lands were acquired vide his judgment and award dated 25.10.2000 enhanced the compensation to Rs. 50 per square yard together with a proportionate increase in the other statutory entitlements. The petitioner claims that he was entitled to redetermination of the compensation payable to him as originally awarded, in

accordance with the award made by the Court as aforesaid.

4. The Special Land Acquisition Officer noticed that the petitioner had made his application under Section 28A of the Act on the basis of the judgment and award of the Court dated 25.10.2000, on 29.01.2001. The Land Acquisition Officer held that upon an examination of the certified copy of the Court's award, on the foot of which the application under Section 28A(1) of the Act was moved, it is evident that the application has been made beyond the period of three months from the date of the award, contrary to what is envisaged under Section 28A of the Act. In the opinion of the Special Land Acquisition Officer, the application under Section 28A of the Act, was time barred. It is on the aforesaid reasoning that the impugned order has been passed rejecting the application under Section 28A as barred by time.

5. Mr. Shukla, learned counsel for the appellant has taken us through the application under Section 28A, in particular, the averments in paragraph no. 6 thereof and also through a photostat of the certified copy of the judgment and award passed by the XIth Additional District Judge, Aligarh in LAR No. 70 of 1993 that was filed before the Special Land Acquisition Officer in support of the application under Section 28A of the Act. From a perusal of the folio, that is part of photostat of the certified copy at page no. 21 of the paper book, we find that an application for the certified copy of the Reference Court's order was made on 20.12.2000, and, it was ready on 25.01.2001. Delivery of the copy was taken on 25.01.2001. In the circumstances, the time spent in preparation of the certified

copy of the Reference Court's award, that is the basis of the invocation of jurisdiction under Section 28A of the Act, has to be excluded from the period of limitation. This is precisely what is stated in paragraph no. 6 of the application under Section 28A of the Act. The proviso to Section 28A(1) aforesaid mandates exclusion from the period of three months limitation, for the purpose of making an application to the Collector, the day on which the Reference Court makes the award and the time spent in obtaining a certified copy thereof. The time spent in obtaining the certified copy of the Reference Court's award between 20.12.2000 and 25.01.2001 is 36 days which have to be added to the available period of limitation of three months, reckoned from the date of award passed by the Court. If those 36 days are added, the application dated 27.01.2001, based on the award dated 25.10.2000, would be well within the period of three months prescribed under Section 28A(1) of the Act. Clearly, the petitioner is entitled to the exclusion of 36 days spent in obtaining a certified copy of the award on the basis of which he had moved the Special Land Acquisition Officer under Section 28A of the Act. Thus, the order of the Special Land Acquisition Officer, holding the proceedings under Section 28A of the Act to be barred by time, is manifestly illegal.

6. There is an added remark in the impugned order that Gata No. 414 has not at all been acquired. That is a matter of evidence. The impugned order has thrown out the application under Section 28A of the Act at the threshold, without affording the petitioner any opportunity to produce evidence. Once the proceedings under Section 28A of the Act are restored to file of the Special Land Acquisition Officer under our orders made hereby, the Special

Land Acquisition Officer will afford opportunity to the petitioner to produce evidence in support of his case. The Special Land Acquisition Officer may thereupon decide the issue.

7 In the circumstances, this petition **succeeds** and is **allowed**. The impugned order dated 30.04.2022 passed by the Special Land Acquisition Officer (Sanyukt Sangathan), Aligarh, Annexure 4 to the writ petition, is hereby **quashed**. The application under Section 28A of the Act is restored to file of the Special Land Acquisition Officer (Sanyukt Sangathan), Aligarh to be heard and determined in accordance with law after affording the parties due opportunity.

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**(2023) 5 ILRA 1666**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 09.05.2023**

**BEFORE**

**THE HON'BLE J.J. MUNIR, J.**

Matters Under Article 227 No. 4747 of 2019  
(CIVIL)

**Smt. Jeera Devi & Anr. ...Petitioners**  
**Versus**  
**A.D.J. Court No. 12 Varanasi & Ors.**  
**...Respondents**

**Counsel for the Petitioners:**

Sri Brij Raj, Sri Atul Dayal (Sr. Advocate)

**Counsel for the Respondents:**

Sri Shambhu Nath, Sri Pratik J. Nagar, Sri Triveni Shanker, Sri Awadhesh Kumar

**Civil Law- Civil Law-Code of Civil Procedure,1908-Order 23 Rule 1, Order 1 Rule 10- Whether the fact notwithstanding that a colluding plaintiff and a defendant may have contrived to**

**defeat a third party's rights and the plaintiff, to effectuate that purpose, makes an application to unconditionally withdraw the suit under Order XXIII Rule 1 of the Code, can the third party in jeopardy be permitted to be substituted for the withdrawing plaintiff and granted leave to prosecute the suit; or in any event, impleaded as a plaintiff under Order I Rule 10 of the Code and permitted to pursue the suit?- the Registry is directed to place the matter urgently before His Lordship the Hon'ble The Chief Justice for constitution of a larger Bench. (Para 10 & 31) (E-15)**

**List of Cases cited:**

1. Meera Rai Vs Additional Sessions Judge & ors.2017 (12) ADJ 817
2. Smt. Raisa Sultana Begam & ors.Vs Abdul Qadir & ors.AIR 1996 Allahabad 318
3. The Sunni Central Board Vs Sri Gopal Singh Visharad 2010 ADJ 1 (SFB)(LB)
4. M/s. Auto Oil Company & anr. Vs Indian Oil Corporation Ltd. & ors.2011 (5) ADJ 800
5. Bhajan Lal & ors.Vs Smt. Rajmala Daughter of Kamta Prasad 2013 (2) ALJ 476
6. Rajendra Prasad Gupta Vs Prakash Chandra Mishra & ors.(2011) 2 SCC 705
7. Smt. Kanteshwari Tiwari (Dead) through L.Rs. Vs Badri Prasad & ors.2013 (98) ALR 76
8. M. Siddiq (dead) through legal representatives (Ram Janmabhumi Temple case) Vs Mahant Suresh Das & ors.(2020) 1 SCC 1
9. Anurag Mittal Vs Shaily Mishra Mittal (2018) 9 SCC 691
10. Gopal Krishna Indley Vs 5th A.D.J., Kanpur & ors.AIR 1981 All 300
11. Ganga Saran Vs Civil Judge, Hapur, Ghaziabad & ors.AIR 1991 All 114