

Mewa Ram (Deceased) by His Lrs and Others

Vs

State of Haryana Through The Land Acquisition Collector, Gurgaon

Special Leave Petition (Civil) No. 13379 of 1983 with Special Leave Petitions (Civil) Nos. 13397 and 13446 of 1983 and 7536 of 1984

26.08.1986

ORDER

1. In these special leave petitions which are much belated, the only question was whether the court should entertain the petitions despite the delay and grant special leave merely because this Court in *Paltu Singh v. State of Haryana* and *Nand Kishore v. State of Haryana* [CA Nos. 1251 and 1252 of 1982, both decided on April 1, 1982] enhanced the rate of compensation for the adjacent land acquired to Rs. 17.50 per square yard. The petition of Mewa Ram is barred by 1079 days, that of Pat Ram by 1146 days and of Ram Sarup by 1098 days. We heard the matter thrice on the question whether there was any sufficient cause for condonation of delay under section 5 of the Limitation Act, 1963. We were not satisfied that there was any cause much less sufficient cause within the meaning of Section 5 of the Limitation Act for condonation of delay. The petitioners then took time to file further and better affidavits explaining the unexplained, inordinate delay in moving the court.

2. At the resumed hearing Shri S.N. Kacker, learned counsel for the petitioners, confines his submission to the change in law by the introduction of Sections 25 and 28-A by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) and places particular emphasis on para 2(ix) of the Objects and Reasons, to the effect :

Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek redetermination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act.

3. The learned counsel contends on the strength of the provisions contained in Sections 25 and 28-A that the Court should not be unduly technical and deprive the citizens of their legitimate claims. In support of his submission he relies on certain observations made by this Court in *Madras Port Trust v. Hymanshu International by its proprietor v. Venkatadri (dead) by LRs.* [(1979) 4 SCC 176] to the effect that plea of limitation by the government to defeat just claims of citizens should not be countenanced. We are afraid, the contention cannot prevail.

4. Shri Kacker, learned counsel for the petitioners, with his usual fairness, accepts that Section 28-A in terms does not apply to the case of the petitioners for more than one reason. In the first place, they do not belong to that class of society for whose benefit the provision is intended and meant i.e.

inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court under Section 18 of the Land Acquisition Act, 1894. On the contrary, the petitioners belong to an affluent class, and they are not persons who have been deprived of property without payment of compensation. The petitioners had all applied for reference under Section 18 of the Act and the civil court by adopting a different basis for computation, namely, treating the land to be potential building site, substantially enhanced the amount of compensation. On appeal, there was further enhancement by the High Court. The petitioners have withdrawn large sums of money at each stage. For instance, the petitioner Mewa Ram withdrew on February 6, 1976 consequent upon the award of the Land Acquisition Collector Rs. 1,19,000, an additional sum of Rs. 28,938.20 on March 23, 1978 after the judgment of the learned Additional District Judge, and Rs. 2,75,105.42 after the judgment of the High Court between December 11, 1981 and February 13, 1982. The judgment of the High Court not having been appealed from has admittedly become final. Evidently, the petitioners felt satisfied with the enhanced amount of compensation as awarded by the High Court @ Rs. 12.25 per square yard because they did not apply for grant of special leave under Article 136 of the Constitution for more than three years. Merely because this Court in the two cases of Paltu Singh and Nand Kishore [CA Nos. 1251 and 1252 of 1982, both decided on April 1, 1982] enhanced the rate of compensation to Rs. 17.50 per square yard, could not furnish a ground for condonation of delay under Section 5 of the Limitation Act.

5. Furthermore, there is no provision in the Act apart from Section 28-A for reopening of an award which has become final and conclusive. No doubt Section 28-A now provides for the redetermination of the amount of compensation provided the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made before him within thirty days from the date of the award, and the right is restricted to persons who had not applied for reference under Section 18 of the Act. If these conditions were satisfied, the petitioners could have availed of the remedy provided under Section 28-A of the Act. In that event Section 25 would ensure to their benefit. Any other view would lead to disastrous consequences not intended by the legislature.

6. The decision in Madras Port Trust case [(1979) 4 SCC 176] is clearly distinguishable. The question involved there was as to the right of refund of the amount of wharfage, demurrage and transit charges which admittedly became exigible. The Court granted special leave on the condition that the Madras Port Trust would refund the amount irrespective of the result of the appeal. At the hearing the Court declined to go into the question whether the claim of the trader for such refund was barred by Section 110 of the Madras Port Trust Act, 1905, and added : (SCC p. 177, para 2)

The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen.

The Court then said : (SCC p. 177, para 2)

It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens.

This is mere expression of a hope and does not lay down any universal rule of application that the government is prevented from pleading limitation as a bar. On the other hand, the Court itself

observed in the Madras Port Trust case [(1979) 4 SCC 176] that "if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded it has to be upheld by the Court". Obviously, the petitioners cannot plead their own laches as a ground sufficient for condonation of delay.

7. There is no reason for us to grant special leave in these cases which are hopelessly barred by time and there is no justification for condonation of inordinate delay.

8. The special leave petitions are accordingly dismissed with costs.

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