

Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda,

Vs

Union of India and others

Spl. Leave Petn. No.1599 of 1989

(M. M. Punchhi, A. M. Ahmadi JJ)

18.09.1990

JUDGMENT

AHMADI J

1. The land belonging to the petitioner-society formed part of a large chunk of land admeasuring 2243.52 acres which came to be acquired for the establishment of a military cantonment at Bhatinda. The notification under S. 4(1) and the declaration under S. 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') were issued and, published in the Government Gazette on October 9, 1974 and October 10, 1974, respectively. Thereafter, notices were issued under S. 9 and after hearing the objectors the Land Acquisition Officer made his Award granting compensation at rates varying between Rs. 4,500/- and Rs. 16,000/- per acre, depending on the situation of the lands which were divided into three belts A, B and C by the Land Acquisition Officer. As many as 161 references were made by the Land Acquisition Officer under S. 18 of the Act to the Additional District Judge, Bhatinda who while upholding the belting increased the compensation. The compensation awarded in the references ranged between Rs. 5,625 and Rs. 20,000 per acre. Against this Award appeals were filed in the High Court. The learned Single Judge who heard the appeals divided the lands into two belts and awarded compensation for the first belt up to the depth of 500 meters from the road at Rs. 15 per square yard i.e. 72,600/- per acre and fixed a flat rate of Rs. 25,000/- per acre for the remaining area. In addition, he awarded solatium at 15% and interest at 6% per annum. While passing that order the learned Judge gave the following direction:

"All this, however, is subject to the claims made by them in their memorandum of appeals and cross-objections and the court fee paid thereon."

Some of the claimants filed Letters Patent Appeals against the Award made by the learned single Judge. These appeals were partly allowed in that the compensation awarded at the flat rate of Rs. 25,000/- was raised to Rs. 8 per square yard i.e. Rupees 38,720/- per acre. While making that order it was observed as under:

"However, the enhancement would not exceed the amount claimed in these appeals on which court-fee has already been paid."

2. The petitioners had filed R.F.A. No.274 1981 against the decision of the Additional District Judge, Bhatinda in the reference made under S. 18 of the Act. In paragraph 11 of the memo of appeal the petitioner had stated as under:

"That though the market price of the acquired land is not less than Rs.80,000/-per acre but the appellants are not in a position to pay a huge amount of court-fee. Thus the appellants now claim an enhancement of Rs. 4,00,000/ - on the whole of their land over and above what has been paid by the learned Additional District Judge, Bhatinda."

It was, therefore, prayed that the petitioners be paid an additional sum of Rs. 4,00,000/- over and above the compensation awarded by the Additional District Judge, Bhatinda with 15% solatium and interest as permitted by law from the date of taking possession till actual payment. In view of the direction contained in the order of the learned Single judge extracted above, the additional compensation awarded in appeal to the petitioner-society was restricted to Rs. 4,00,000/ - in respect of which court-fee of Rs. 6248 / - was paid. The decision of the learned Single judge was rendered on November 10, 1981. Thereafter the matter rested there. But, after a lapse of almost six years the petitioner-society preferred an application, being Civil Misc. No. 75-C/ 1 of 1987 in R. F. A. No. 274 of 1981 purporting to be under Ss. 149, 152 and 153 read with S. 151 of the Code of Civil Procedure, praying that the society be allowed to make good the deficiency in the court-fee and the judgment and decree dated November 10, 1981 in R.F.A. No. 274 of 1981 be so amended as to grant additional compensation with enhanced solatium and interest as per the amendment made in the Act by Act No. 68 of 1984. Several such claims made by those whose lands were acquired came up for hearing before the Division Bench of the High Court of Punjab & Haryana. Before the Division Bench the observations of this Court in *Bhag Singh v. Union Territory of Chandigarh*, (1985) Suppl 2 SCR 949: AIR 1985SC 1576, were pressed into service. The flow of similar fresh applications persuaded the Division Bench to take the view that having regard to the importance of the question, it would be desirable if a larger bench were to examine the same; more so because there was a conflict of opinion expressed by members constituting the bench while sitting singly in certain other cases. Accordingly, the learned chiefjustice of the High Court before whom the papers were laid constituted a Full Bench which was presided over by him. The decision of the Full Bench was rendered on may 17, 1988. All such applications were dismissed. while dismissing the applications, the Full Bench took note of certain directions given by this Court but refused to exercise its inherent jurisdiction on the apprehension that such relief, if granted, will encourage the practice of not paying the court-fee in the hope that as and when the valuation is determined in appeal they will invoke the jurisdiction under S. 151 of the Code for paying court-fee and 'receiving enhanced compensation. The Full Bench thought that such an undesirable practice should not be encouraged but should be put an end to at the earliest. At the same time, the Full Bench conceded that if the claimants were to file an appeal before this Court, this Court may perhaps exercise its jurisdiction and grant relief. It, therefore, felt that 'the Government should take notice of this situation and grant the compensation as prayed for by them after redetermining the same in accordance with the judgment of this case and pay the same as an ex gratia payment instead of driving the parties to the Supreme Court. The Full Bench hastened to add that this observation will not be treated as a precedent or ratio decidendi and shall be restricted to cases arising under the notification dated October 9, 1974.

3. On the basis of the above Full Bench decision when the petitioner-society's application came up

before the Full Bench it passed the following order on May 17, 1988:

"C. Misc. No. 75/ C-1-87 in R.F.A. No. 274 of 1981 is dismissed subject to the observations recorded in C. Misc. No. 1512 of 1985 in L.P.A. No. 235 of 1982."

4. We may first deal with the contention based on the newly added S. 28A inserted by Amending Act 68 of 1984 with retrospective operation from April 13, 1982. Under this Provision where compensation awarded by the Collector under S.11 is enhanced by the Court in reference under S. 18, the persons interested in the acquired land who were not parties to the reference may, by a written application to the collector made within three months from the date of the award of the court, request the Collector to redetermine the amount of compensation payable to them on the basis of the amount awarded by the Court. On receipt of such an application the Collector is expected to conduct an inquiry and make an award redetermining the amount of compensation payable to the applicants. Any person who does not accept the award so made may, by written application to the Collector, require that the matter be referred for the determination of the Court whereupon the provisions of Ss. 18 and 28 shall, so far as may be, apply to such reference as they apply to a reference under S. 18. It is obvious on a plain reading of sub-section (1) of S. 28A that applies only to those claimants who had failed to seek a reference under S. 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the Court in the reference under S. 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply for a reference under S. 18 of the Act are conferred this right to apply to the Collector for redetermination and not all those like the petitioners who had not only sought a reference under S. 18 but had also filed an appeal in the High Court against the award made by the reference court. The newly added S. 28A, therefore, clearly does not apply to a case where the claimant has sought and secured a reference under S. 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of S. 28A, finds support from the judgment of this Court in *Mewa Ram (deceased) by his Lrs.v. State of Haryana*, (1986) 3 SCR 660 : (AIR 1987 SC 45).

5. The second contention is based on the observations of this Court in *Bhag Singh* (AIR 1985 SC 1576) (supra). In that case also the appellants had restricted their claim in the first appeal to the High Court by paying lesser court-fee. After the judgment of the learned single Judge, the appellants realised that they were entitled to benefit of enhanced compensation which was denied to them as they had restricted their claim by paying a lesser court-fee. They kept the matter alive by filing a Letters Patent Appeal along with several others who too were dissatisfied with the amount awarded by the learned Single Judge. The Division Bench of the High Court affirmed the judgment of the learned Single Judge in regard to the rate of compensation for the land comprising the belt having proximity to the road, but with regard to the land situate in the other belt, it enhanced the compensation to Rs. 38,720/- per acre as stated earlier. Since the Division Bench also restricted the benefit of the enhanced compensation to claimants who had paid the proper court-fee, the appeal preferred by the appellants was dismissed. The appellants did not rest there but carried the matter to this Court by way of special leave. It will be clear from the above facts that unlike the present petitioner-society the appellants in that case kept the matter alive. In the Civil Appeal arising out of the said special leave petition this Court made the following observations on which considerable reliance is placed (at 1578 of AIR):

"We are of the view that when the learned Single Judge and the Division Bench took the view that the claimants whose land was required by the State of Punjab under the notifications issued under Ss. 4 and 6 of the Act were entitled to enhanced

compensation and the case of the appellants stood on the same footing the appellants should have been given an opportunity of paying up deficit court-fee so that like the other claimants they could also get enhanced compensation at the same rate as the others. The learned Single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court-fee."

This Court pointed out that since the case was not between two private parties and the claim was directed against the Government for payment of compensation for expropriated land the State Government was bound to pay compensation on the basis of the market value of the acquired land and if according to the judgments of the learned Single Judge and the Division Bench the market value 'was higher than that awarded by the Collector or the reference court there was no reason to deny to the appellants the benefit of payment of that market value because to deny the same would tantamount to permitting the State Government to acquire land at a rate below the market value. On this line of reasoning this Court allowed the appellants to pay the deficit court-fee and receive compensation at the higher rate. In the present case, however, the petitioner-society while preferring the appeal stated in paragraph 11 of the Memo of Appeal that their claim for enhanced compensation was restricted to Rs. 4,00,000/- over and above the amount awarded by the reference court. It is further stated in that paragraph that according to the appellants the market value of the land is not less than 80,000 per acre but as the appellants are not in a position to pay the huge court-fee, they are restricting their claim to Rs. 4,00,000/ -. This was a conscious decision on the part of the present appellant. The averment in that paragraph about their incapacity to pay the court-fee is doubtful having regard to the fact that the appellants had received a substantial amount by way of compensation under the award made by the Collector as well as the reference court. Be that as it may, the fact remains that though the appellants were aware that the market value was higher, they deliberately restricted their claim to Rupees 4,00,000 and after the appeal was disposed of by the learned Single Judge on November 10, 1981 they allowed the matter to rest and did not carry the same by way of an appeal to the Division Bench. It was long after the decision rendered by this Court in Bhag Singh's case (AIR 1985 SC 1576) that the appellants filed an application in 1987 to permit them to pay the deficit court-fee and claim the benefit of the difference in higher rate of compensation awarded by the learned Single Judge. Possibly they were inspired by the afore quoted observations of this court Bhag Singh's case. As stated earlier. Bhag Singh had kept their matters alive by preferring Letters Patent Appeals and thereafter approaching this Court under Article 136 of the Constitution. On the other hand the present petitioners rest content with the amount claimed and received by them in paragraph 11 of their Memo appeal even after the decision of the learned Single Judge. Therefore, the case of the petitioners is clearly distinguishable on facts from the case of Bhag Singh on which reliance is placed.

6. In Mewa Ram (AIR 1987 SC 45) (supra) the appellants preferred special leave petitions, though belatedly, to seek enhanced compensation on the basis of this Court's decision in Paltu Singh v. State of Haryana and Nand Kishore v. State of Haryana. (Civil Appeals Nos. 1251 and 1252 of 1982 both decided on April 1, 1982). Mewa Ram's petition was delayed by 1079 days, Patram's petition was delayed by 1146 days and Ram Swaroop's petition was delayed by 1098 days. This Court observed

that since the appellants had allowed the judgment of the High Court to become final they were evidently satisfied with the enhanced compensation awarded by the High Court and merely because this court had further enhanced the compensation in the said two cases, it did not furnish a ground for condonation of delay under S. 5 of the Limitation Act. Therefore, in similar circumstances this Court did not condone the delay which was shorter than the delay in this case as the link had snapped since the appellants had acquiesced in the judgment of the High Court and had allowed it to become final. The petitioners herein were satisfied with the amount of Rs. 4,00,000/- and did not apply to pay the deficit court-fee soon after the judgment of the learned Single Judge was rendered in 1981 but did so after a lapse of almost six years in 1987. The Full Bench of the High Court, therefore, rightly held that to permit payment of deficit court-fee for recovering enhanced compensation after a lapse of almost six years under its inherent jurisdiction would encourage the practice of not paying the court-fee in the hope that as and when the valuation is determined in appeal the jurisdiction of the court can be invoked under S. 151 of the Code and the benefit of enhanced compensation can be reaped by making good the deficit court-fee. We think in the facts and circumstances of the case this view taken by the Full Bench of the High Court cannot be assailed.

7. Lastly, it may be mentioned that a demand for solatium and interest at the higher rate allowed by the amended provisions of the Act was made but in view of the recent judgment of this Court in *Union of India v. Raghubir Singh (dead) by Lrs.* (1989) 2 SCC 764: (AIR 1989 SC 1933), the submission could not be pressed as in the present case the matter had concluded long before April 13, 1982.

8. In view of the above we do not see any merit in this petition and dismiss the same with no order as to costs.

9. Before we part, we may point out that the petitioner-society comprises of members belonging to the Scheduled Caste. Their land was expropriated for a public purpose. In law we are unable to entertain their claim as that would open tip flood gates for similar application in innumerable cases which may have become final. Nonetheless, as pointed out by the Full Bench of the High Court, the Government is not precluded from paying the balance amount ex gratia to the society those members belong to the economically deprived segment of the society. A copy of this Judgment may be sent to the concerned department by a letter pointing out these observations for appropriate action.

Petition dismissed.

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