

Jose Antonio Cruz Dos R. Rodrigues and Another

Vs

Land Acquisition Collector and Another

SLPs (C) No. 24435 of 1995 with No. 24584 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

13.11.1995

ORDER

1. Shri Mehta, learned counsel appearing for the petitioners contends that notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was published on 3-10-1969 and the award under Section 11 was made in the case of his clients on 2-8-1972 determining compensation under Section 23(1) at Rs. 1.25 per sq. mt. for Plot No. 23 admeasuring 24,721 sq. mts. Subsequently, successive awards for other lands acquired under the same notification were made, on 4-6-1985 at Rs. 5 per sq. mt., on 14-10-1985 at Rs. 9 per sq. mt. and another judgment and decree on 31-8-1987 by the High Court in Appeal No. 11 of 1986 uniformly fixing the compensation at Rs. 5 per sq. mt. Yet another reference under Section 18 was decided on 27-7-1989 by the reference court at Rs. 5 per sq. mt. Though he filed the application on 13-5-1987, in view of the decision of this Court in Union of India v. Pradeep Kumari, any one of the awards or each successive award including the judgment and decree of the High Court would give right and cause of action to the petitioner-claimant to make application under Section 28-A. so, it cannot be dismissed on the ground of delay. The views of the Land Acquisition Officer and the High Court are wrong in law.

2. Section 28-A says that where in an award under this part, the court allowed the application under Section 18 and awarded higher compensation, notwithstanding that the claimant had not made an application under Section 18, he can make an application "within three months from the date of the award of the court" requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court. The proviso prescribes the mode of computation of period of three months which says that :

"... 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."

3. The contention of the learned counsel is that any one of the successive awards including the judgment and decree of the High Court would give right and cause of action to the petitioner to make an application under Section 28-A. Therefore, there is no bar of limitation. A Bench of two Judges of this Court in Babua Ram v. State of U. P. has held that the period of limitation begins to run when the award on a reference under Section 18 was first made by the reference court and the limitation of three months requires to be computed from the date of the first award and successive awards do not save the limitation if it has already expired by efflux of time. The same view was reiterated in another judgment in Union of India v. Karnail Singh. This view was subsequently overruled by a Bench of three Judges.

4. In view of the contention raised by Shri Mehta, the following questions are required to be considered :

1. Whether the award of the Court, i.e., civil court made under Section 26 on reference under Section 18 would also include judgment and decree of the appellate court under Section 54?"

2. Whether each successive award or judgment and decree (if answer on Question No. 1 is positive) would give cause of action to file application under Section 28-A; if so construed, does not such a construction violate the language used in Section 28-A when Parliament advisedly did not use such expressions?

5. These questions require examination by a larger Bench of five Judges as the interpretation of Section 28-A on the limitation of three months often arises in many a case throughout the country.

6. Issue notice to the respondents returnable in four weeks. Petitioner is permitted to take out notice by dasti service in addition.

7. We direct the Registry to place the cases before Hon'ble the Chief Justice of India to constitute a larger Bench of five Judges. Since these questions are arising in a number of matters frequently, instead of keeping them pending, it is desirable that they may be disposed of at an early date.