

Hukum Chand and Others

Vs

State of Haryana and Others

Civil Appeals No. 7118 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

02.04.1996

ORDER

1. Leave granted.

2. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published on 24-3-1971. The Collector under Section 11 passed his award on 10-7-1971. Thereon, the appellant along with others sought and had reference to the Additional District Judge under Section 18. After further enhancement of the award under Section 26, the appellants had not carried the matter in appeal to the High Court under Section 54. Some other claimants filed RFA No. 1326 of 1978 wherein the High Court had enhanced the compensation to Rs. 135 per sq. yd. Subsequently, after two years, the appellant had filed applications under Section 28-A to the Land Acquisition Officer who in his award in LC Case No. 51 of 1991 by order dated 10-5-1993 dismissed the application. On revision filed by the appellants in CR No. 2659 of 1993, the High Court of Punjab and Haryana by order dated 21-9-1993 dismissed the petition. Thus this appeal by special leave.

3. The only question is : whether the Land Acquisition Officer was right in refusing to award the compensation to the appellants @ Rs. 135 per sq. yd. pursuant to the order passed by the High Court in RFA No. 1326 of 1979. Section 28-A(1) of the Act reads thus :

"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 redetermined 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."

4. A reading thereof clearly indicates that after making of an award under Section 11 by the Collector, if the claimant had not made a written application under Section 18 within limitation, but

one of the claimants arising out of the same notification published under Section 4(1) of the Act, aggrieved against the award made on application and hold the reference under Section 18 and when the civil court has enhanced the compensation, persons who did not make the applications under Section 18 and received the compensation under Section 31 without protest, Section 28-A(1) gives him right to make a written application under Section 28-A(1) within three months from the date of the award made by the Reference Court. Under its proviso, the time taken to obtain its certified copy from the date of making the application to the date of supplying the award shall be excluded. In other words, the aggrieved persons who had received the compensation without protest but did not avail of the remedy of reference under Section 18, if one of the claimants arising from the same notification published under Section 4(1) of the Act, had the benefit of enhanced compensation from the Reference Court, the non-applicant has been empowered under Section 28-A(1) to avail of the remedy under Section 28-A by an application made within three months from the date of the award of the Reference Court to seek enhanced compensation. In this case, admittedly, the appellants have availed of the remedy of reference under Section 18 and had the compensation enhanced. Thereafter, they did not pursue appellate remedy under Section 54 to the High Court for further enhanced compensation but some of the claimants pursued the appellate remedy and had further enhanced the compensation at Rs. 135 per sq. yd. Having not availed of the remedy under Section 54, the appellants are not entitled to make an application under Section 28-A(1) to seek the same benefit of the enhanced compensation. The remedy under Section 28-A(1) is available only when the compensation was enhanced under Section 26 award and judgment in Part III of the Act and the same is not available when it was enhanced under Section 54 of the Act. This Court in *Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India* [(1991) 1 SCC 174] had held that the claimants who availed of the remedy under Section 18 are not entitled to additional amount under Section 28-A when the High Court enhanced the compensation. Similar view was also expressed in *Babua Ram v. State of U.P.* [(1995) 2 SCC 689]. The appellants are, therefore, not entitled to make the applications under Section 28-A for further enhancement. The Land Acquisition Officer and the High Court have rightly refused to grant the relief of enhanced compensation on a par with the other claimants. The further contention that the appellants are invidiously discriminated to (sic by) the payment of same compensation on a par with others violating the equality guaranteed under Article 14 of the Constitution is no longer *res integra*. This was concluded against the aggrieved persons by majority judgment of this Court in *K.S. Paripoornan (II) v. State of Kerala* [(1995) 1 SCC 367] and *Babua Ram case* [(1995) 2 SCC 689].

5. The appeals are accordingly dismissed. No costs.