

Union of India

Vs

Bant Ram (dead) by Lrs

Civil Appeals No. 7757 of 1996

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

22.04.1996

ORDER

1. Leave granted.

2. Heard learned counsel on both sides.

3. The notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published on 10-7-1979. The award under Section 11 was made on 13-3-1981. The respondents received the compensation without protest. The dissatisfied claimants moved an application under Section 18. On reference, the compensation was enhanced under Section 26 on 6-11-1985. Dissatisfied therewith, the claimants went in appeal to the High Court. On 21-5-1987, the High Court further enhanced the compensation. The respondents filed an application under Section 28-A of the Act on 4-12-1987. The Collector determined the compensation based on the judgment of the High Court by an award dated 28-2-1989. When the award was called in question in writ petition, the High Court by impugned order dated 13-7-1994 in WP No. 10987 of 1993 dismissed the petition. Thus, the appeal against the said order.

4. Dr. Rajeev Dhavan, the learned Senior Counsel for the respondent has contended that Section 28-A would apply not only when an award is made by the court under Section 26 but also when judgment is made by the High Court under Section 54 of the Act. We find no force in this contention. Section 28-A itself specifically refers to applicability of Chapter III; in other words, Chapter III would be applicable to a reference made under Section 18 to the court. The marginal note indicates redetermination of the compensation on the basis of the award of the court. Section 3(d) defines 'court' to mean a principal civil court of original jurisdiction or a Court of Special Judicial Officer. Sub-section (1) of Section 28-A envisages "allowing applications", i.e., reference application filed under Section 18 in Part III. Moreover Section 54 falls in Chapter VIII of the Act. Therefore, judgment and decree of the appellate court/High Court does not encompass the award of the court referred to in Section 28-A. The controversy is no longer *res integra*. *Babua Ram v. State of U.P.* [(1995) 2 SCC 689] and hosts of other decisions following that, cover the field. Therefore, the conclusion is inevitable that the application for redetermination of the compensation under Section 28-A would not lie after the judgment of the High Court under Section 54 of the Act.

5. The respondents filed the writ petition for the enforcement of the award in question. The writ petition was allowed on 12-11-1992 and in contempt proceedings the counsel appearing for the Union of India undertook, at the pain of contempt, to deposit the amounts. On that basis, it is contended that the order of the High Court having been allowed to become final, it is not open to the Union of India to resist the award. We find no force in the contention. The above writ petition

was only by way of an execution. Since the order passed by the Collector under Section 28-A is found to be non est, being devoid of jurisdiction, the payment of the amount, at pain of contempt, or even otherwise, does not disentitle the Union of India to assail the validity of the award.

6. It is then contended that there are laches on the part of the appellants from 1992 to 1996 and that, therefore, this Court should decline to interfere with the matter. We find it difficult to give acceptance to the contention. Since the respondents have already filed SLP against the original order, laches do not stand in the way.

7. The appeals are accordingly allowed. The order of the High Court and award under Section 28-A are set aside. The appellants are entitled to the restitution of the amount, if it is already withdrawn by the respondents. No costs.