

SUPREME COURT OF INDIA

State of Orissa & Ors

Vs.

Chitrasen Bhoi

C.A.No.1271of 2002

(Dalveer Bhandari and B.S. ChauhanJJ.)

16.07.2009

ORDER

1. An application i.e. I.A. No. 3 has been filed by the Central Institute of Fresh Water Acqua-Culture (CIFWA), Bhubaneswar under the Indian Council of Agriculture Research (ICAR) for their impleadment as Respondent. Mr. V.K. Rao, learned counsel appearing for the applicants has submitted that the land in dispute in fact had been acquired for the said applicants, therefore, the applicants be impleaded as parties in this appeal. Learned counsel appearing on behalf of the non-applicants have no objection in this regard. Consequently, the applicants are impleaded as Respondent Nos. 2 and 3 in this appeal. The I.A. is accordingly allowed and disposed of. Appeal No.1271 of 2002

2. This appeal has been preferred against the judgment and order of the division Bench of the Orissa High Court dated 23.2.1999 allowing the writ petition filed by the respondent for seeking direction to the Land Acquisition Collector to consider his application under Section 28A of the Land Acquisition Act, 1894 (hereinafter called 'the Act').

3. The facts and circumstances giving rise to this appeal, as stated in the petition, are that a huge area of land was notified under section 4 of the Act in the official Gazette of the State of Orissa dated 1.1.1973 (Annexure-5). The acquisition was sought for establishment of the Central Institute of Fresh Water Acqua-Culture, i.e., a Fish Farm. Declaration under section 6 of the Act in respect of the said land was made on 9.7.1973 and was published in the official Gazette dated 11.7.1973. The Land Acquisition Collector made award, so far as the land of the present respondent no.1 is concerned, on 31.7.1975 assessing the market value of the land @ Rs.2500/- per acre. Respondent no.1 did not agitate the matter further, however, other persons whose lands stood notified by the same notification under section 4 and declaration under section 6 of the Act filed the reference under section 18 of the Act and the same was decided vide Award dated 5.1.1995 assessing the market value of the land @ Rs.10,000/- per acre while deciding Misc. Case No.362/94. The respondent filed application under Section 28A of the Act on 21.3.1995 claiming the same market value for his land. The Land Acquisition Collector vide order dated 11.3.1997 rejected the said application. Being

aggrieved the respondent filed the writ petition which has been allowed by the High Court. Hence, this appeal.

4. Shri J.S. Attri, learned senior counsel for the appellant - State of Orissa has raised a large number of issues contending that the application under Section 28A of the Act had rightly been rejected by the Collector as the same was not maintainable. It had been filed at a belated stage i.e. after more than 20 years of the date of award made under Section 11 of the Act. The High Court has held that the application under section 28A had been filed within limitation, however, the Collector has been directed to decide the said application, provided, it is found to be maintainable. The order itself is contradictory as the issue of maintainability solely depends upon the issue of limitation and no other issue can be examined by the Collector. Therefore, the High Court ought to have dismissed the petition.

5. On the other hand, Shri M. Samantaray, learned counsel appearing for the respondent no. 1 has vehemently opposed the petition contending that the High Court has rightly held that the application had been filed within limitation and therefore, no interference is required. The appeal is liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. Grievance has been raised by learned counsel for the appellant State that application under Section 28-A of the Act was filed after 20 years and therefore it was not maintainable. Law requires that the application be filed by the eligible person within three months from the date of the reference award, on the basis of which the application is being filed. The issue of limitation in this regard is no more *res integra*.

8. In State of *Andhra Pradesh & Anr. Vs. Marri Venkaiah & Ors¹*, this Court has dealt with the issue of limitation and held as under:-

"Plain language of the aforesaid section would only mean that the period of limitation is three months from the date of the award of the court. It is also provided that in computing the period of three months, the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application under Section 28-A is to be filed within three months from the date of the award by the court by only excluding the time requisite for obtaining the copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.....In our view, with regard to the first contention that Section 28-A is a beneficial provision, there cannot be any dispute. However, the advantage of the benefit which is conferred is required to be taken within the stipulated time. A landowner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not

¹AIR 2003 SC 2949

finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within the prescribed time. He must at least be vigilant in making efforts to find out whether the other landowner has filed any reference application and if so, what is the result. If that is not done then the law cannot help him...."

While deciding the said case the Court placed reliance upon its earlier judgments in *Tota Ram Vs. State of U.P. & Ors*², *Union of India & Ors. Vs. Mangatu Ram & Ors*³, and *Jose Antonio Cruz Dos R. Rodrigues Vs. Land Acquisition Collector & Anr*⁴. The Court further rejected the contention that limitation would run from the date of knowledge distinguishing its earlier judgments on fact and law in *Raja Harish Chandra Raj Singh Vs. Deputy Land Acquisition Officer*⁵, and *State of Punjab Vs. Qaisar Jehan Begum*⁶.

9. In *Bhagti (Smt.) (Deceased) through L.Rs. v. State of Haryana*⁷, this Court held that a claimant can seek redetermination of compensation on the basis of the award of the Reference Court and not the judgment of the High Court and further held that only those claimants who had failed to apply for a reference under section 18 of the Act are conferred with the right to apply for redetermination under section 28A(1) of the Act. The same view has been reiterated in *Union of India v. Bantram (dead) by L.Rs*⁸. In *Union of India & Ors. vs. Karnail Singh & Ors*⁹, a Bench of two Hon'ble Judges of this Court held that provisions of Section 28A of the Act, as inserted by Act No.68 of 1984, is prospective in nature and do not apply to an award made by civil court prior to 24.9.1984. The limitation of three months for making application for redetermination of compensation is to be computed from the date of earliest award made by the civil court.

However, a three Judges' Bench of this Court in *Union of India & Anr. vs. Pradeep Kumari & Ors*¹⁰ overruled the judgment in *Union of India vs. Karnail Singh (supra)*¹¹ to the extent that application for redetermination may be filed within three months from the date of first award of the Reference Court observing that intention of the Legislature was not to restrict the benefit of the amended law, to the extent that a claimant has to apply within limitation from the date of the first award of the Reference Court. Thus, it is permissible even to make an application on the basis of a subsequent Reference Court Award. However, it must be within the limitation from the date of making of the said subsequent award. This view was further clarified by this Court in the *State of Tripura & Anr. v. Roopchand Das & Ors*¹².

10. In the instant case, admittedly the application was filed within 3 months from the date of reference award, the applicant - Respondent No. 1 had relied upon. The appellant had not laid down any factual position as under what circumstances the application was time barred. Therefore, no interference is required on this ground.

²(1997) 6 SCC 280

⁴AIR 1997 SC 1915

⁶AIR 1963 SC 1604

³ AIR 1997 SC 2704

⁵AIR 1961 SC 1500

⁷(1997) 4 SCC 473

⁸ (1996) 4 SCC 537

¹⁰ (1995) 2 SCC 736

⁹ (1995) 2 SCC 728

¹² (2003) 1 SCC 421

11. Admittedly, the High Court has directed the Land Acquisition Collector to decide the application under Section 28A of the Act provided it is found to be maintainable; however, the issue of limitation would not be agitated/ considered. In such a fact situation the question does arise as to whether the Land Acquisition Collector can still examine the maintainability of the application and if so, on what grounds?

12. The scope of provisions of Section 28-A of the Act was considered by this Court in *Mewa Ram Vs. State of Haryana*¹³, and the Court placed emphasis particularly on para 2 (ix) of the object and reasons of the Amendment Act, 1987 which provided for a special provision for inarticulate and poor people to apply for re-determination of the compensation amount on the basis of the court award in a land acquisition reference filed by comparatively affluent land owner. The Court observed as under: "Section 28-A in terms does not apply to the case of the petitioners..... 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.

13. This Court approved and reiterated the law laid down in *Mewa Ram (Supra) in Scheduled Caste Cooperative Land Owning Society Ltd. Bhatinda Vs. Union of India & Ors*¹⁴. In *Babua Ram & Ors. Vs. State of U.P. & Anr*¹⁵, the Apex Court again reiterated the law laid down in *Mewa Ram (Supra)* observing as under:- "Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28-A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28-A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded..... It is true that the legislature intended to relieve hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference under Section 18 which is an existing bar and to remedy it, Section 28-A was enacted giving a right and remedy for re- determination.....The legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under sub-section (1) of Section 18 due to poverty or ignorance or avoidance of expropriation." (Emphasis added).

14. Thus, it is apparent that the legislature has carved out an exception in the form of Section 28-A and made a special provision to grant some relief to a particular class of society,

namely poor, illiterate, ignorant and inarticulate people. It is made only for "little Indians". The provisions of Section 28-A refer to the "person interested" which means the original owner and that original owner interested must further be a person aggrieved by the award of the Collector. In *G. Krishna Murthy & Ors. Vs. State of Orissa*¹⁶, *D Krishna Vani & Anr Vs. State of Orissa*¹⁷, *Union of India & Anr. Vs. Pradeep Kumari & Ors*¹⁸, and *U.P. State Industrial Development Corporation Ltd. Vs. State of U.P. & Ors*¹⁹, it has been held by this

¹³AIR 1987 SC 45 ¹⁵(1995) 2 SCC 689 ¹⁷(1995) 2 SCC 735
¹⁴(1995) 2 SCC 766 ¹⁶(1995) 2 SCC 733 ¹⁸AIR 1995 SC 2259
¹⁹AIR 1991 SC 730

Court that a person who prefers Section 18 reference cannot maintain an application under Section 28-A of the Act. The benefit of such an exceptional rule cannot be extended to such persons as it would be against the public policy. In *Union of India Vs. Shivkumar Bhargava & Ors*²⁰, this Court observed that the benefit of the State policy which confers certain beneficial rights on a particular class of person is meant only for the person whose land was acquired and by necessary implication "the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of" the State policy.

15. Placing reliance upon the aforesaid judgments a similar view has also been taken by this Court in *Kendriya Karamchhari Sehkari Grah Nirman Samiti Ltd., Noida Vs. State of Uttar Pradesh & Anr*²¹.

16. In *Des Raj & Ors. Vs. Union of India & Anr*²², it was held by this Court that if a person has applied under Section 18 of the Act and pursued the matter further, he is not entitled to maintain the application under Section 28-A for re-determination of compensation. The Court further held that it is mandatory to file the application within prescribed limitation, which runs from the date of the Award under Section 18 of the Act. While deciding the said case the Court placed reliance upon its earlier judgments, including *Scheduled Caste Co-operative Land Owning Society Ltd. (supra)*.

17. In *Union of India Vs. Munshi Ram & Ors*²³, this Court has laid down the law that such an application is maintainable provided a person has not filed an application under Section of the Act. The Court held that Section 28-A seeks to confer the benefit of enhanced compensation on those owners who did not seek Reference under Section 18 of the Act. In fact, under the said provision they are entitled for enhanced compensation decreed by the Reference Court and further as the decreed amount stands modified in appeal by the higher Courts.

18. Therefore, it is evident that an application under Section 28-A has to be dealt with by the Land Acquisition Officer keeping in mind the aforesaid settled legal propositions.

19. Thus, it is evident that the submission made by learned counsel for the appellant that the Land Acquisition Collector is bound to enhance the compensation without considering any other fact, as the application has been held to have been filed within limitation, is preposterous.

20. In view of the above, we do not find any force in the appeal. The appeal stands dismissed leaving the parties to bear their own costs. The Land Acquisition Collector shall consider the issue of maintainability of the application filed by respondent in the light of the aforesaid settled legal proposition expeditiously without considering the issue of limitation. Needless to say that newly added respondents, namely Indian Council of Agricultural Research (ICAR) & Central Institute of Fresh Water Acqua- Culture (CIFWA) shall also be heard at the time of disposal of the application filed by respondent no. 1. No cost.

²⁰*AIR 1995 SC 812* ²²*(2004) 7 SCC 753*

²¹*(2009) 1 SCC 754* ²³*AIR 2006 SC 1716*