

(2007) 03 AHC CK 0164
In the Allahabad High Court

Chandra Kishori

APPELLANT

Vs

The State of U.P. and Uttar Pradesh Avas Evam Vikas
Parishad

RESPONDENT

Date of Decision : 07-03-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28A, 4, 6

Citation : (2007) 5 ADJ 215 : (2007) 3 AWC 2306 : (2007) 3 UPLBEC 111

Hon'ble Judges : Umeshwar Pandey, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—This writ petition has been filed challenging the order dated 23.02.2004, by which Reference Court rejected the application of the petitioner u/s 28A of the Land Acquisition Act, 1894 (hereinafter called the Act).

2. The facts and circumstances giving rise to this case are that the land of the petitioner was acquired under the provisions of the Act issuing Notification u/s 4 on 04.05.1973 and Declaration u/s 6 on 04.08.1973. The Award was made, against which some of the persons interested filed Reference u/s 18 of the Act which was decided on 11.12.1991 by the Court concerned. On the basis of the said Reference Award dated 11.12.1991 petitioner filed an application u/s 28A of the Act claiming the same rate for her land which was rejected vide impugned judgment and order of the Reference Court holding it to be not maintainable only on the ground that the application was not maintainable as the petitioner had not filed application u/s 18 of the Act before the Reference Court. Hence this petition.

3. Admittedly, Section 28A is made for the poor, ignorant and inarticulate people who being little Indian cannot afford to file a Reference u/s 18 of the Act. However, the issue is as to whether such a poor person is to be examined by the Court. But, it is admittedly only for those who had not filed the application for Reference u/s 18 of the Act. The Reference Court placed reliance upon certain judgments of the Hon'ble Supreme Court wherein it has been held that the

application u/s 28A can be maintained provided an application u/s 18 had been filed. It does not be a correct preposition of law.

4. Section 28A of the Act was inserted in the Act by Amendment Act No. 68 of 1984 and it provides for re-determination of the amount of compensation on the basis of the award of the Court in respect of a land which has also been acquired in the same land acquisition proceedings if the applications are filed within a period of three months from the date of the award of the Court.

5. The scope of provisions of Section 28A was considered by the Supreme Court in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, and the Court placed particular emphasis on para 2(ix) of the object and reasons 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 Apex Court observed as under:

Section 28A 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 u/s 18 of the Land Acquisition Act, 1894. On the contrary, the petitioners belong to an affluent class....

6. The Apex Court approved the law laid down in Mewa ram (Supra) again in The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, .

7. In Babua Ram and Others Vs. State of U.P. and Another, , the Apex Court again approved and reiterated the law laid down in Mewa Ram (Supra) and observed as under:

Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28A was to be extended and comparatively affluent who had taken advantage of the reference u/s 18 and the latter as a class to which the benefit of Section 28A 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 u/s 18 which is an existing bar and to remedy it, Section 28A was enacted giving a right and remedy for redetermination.... 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.

8. A similar view has been taken by a Division Bench of this Court in Nanak and

Ors. v. State of U.P. and Ors. 1996 AWC 1237 placing reliance of large number of judgments of the Hon''ble Supreme Court.

9. Thus, it is apparent that the legislature has carved out an exception in the form of Section 28A 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 28A refers 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.

10. In G. Krishna Murthy and others Vs. State of Orissa, D Krishna Vani and Anr. v. State of Orissa (1995) 2 SCC 735 ; Union of India and another Vs. Pradeep Kumari and others, and U.P. State Industrial Development Corpn. Ltd. Vs. State of U.P. and Others, it has been held by Hon''ble Supreme Court that a person who prefers a Section 18 reference cannot maintain an application u/s 28A of the Act. The benefit of such an exceptional rule cannot be extended to the petitioners as it would be against the public policy. In a similar situation, the Hon''ble Supreme Court in Union of India v. Shivkumar Bhargava and Ors. AIR 1995 SC 812 , observed that the benefit of 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.

11. In Des Raj (Deceased) through L.Rs. and Others Vs. Union of India (UOI) and Another, it was held by the Hon''ble Supreme Court that if a person has applied u/s 18 of the Act and persued the matter further, he is not entitled to maintain the application u/s 28A 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 u/s 18 of the Act. While deciding the said case the Court placed reliance upon its earlier judgments, including The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others,

12. In State of Andhra Pradesh and Another Vs. Marri Venkaiah and Others, , the Hon''ble Supreme 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 u/s 28A 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.

13. While deciding the said case Court placed reliance on its earlier judgment in Tota Ram v. State of U.P. and Ors. (1997) 6 SCC 280 . The Court further rejected

the contention that limitation would run from the date of knowledge distinguishing the earlier judgments on fact and law in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and State of Punjab Vs. Mst. Qaisar Jehan Begum and Another,

14. In Union of India (UOI) Vs. Munshi Ram (Dead) by LRs. and Others, , the Apex Court has laid down the law that such an application is maintainable provided a person has not filed an application u/s 18 of the Act. The Court held that Section 28A seeks to confer the benefit of enhanced compensation on those owners who did not seek Reference u/s 18. 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.

15. The order impugned dated 23.02.2004 has been passed by the Reference Court placing reliance upon the judgments of the Hon''ble Supreme Court in Bhagti (Smt) (Deceased) through her Lrs. Jagdish Ram Sharma Vs. State of Haryana, and Vishav Bandhu Gupta and Anr. v. State of Haryana and Anr. 2002 (1) CRC 145, wherein the Hon''ble Supreme Court has observed that if a person has not filed the Reference u/s 18 of the Act he cannot maintain the application u/s 28A. The view taken by the Hon''ble Supreme Court in these two cases is apparently in contravention of the statutory provision itself and also run counter to the law laid down by the Hon''ble Supreme Court referred to herein above. The said judgments do not lay down the correct legal proposition.

16. In view of the above, the order impugned cannot be sustained in the eyes of law and is liable to be quashed.

17. The petition succeeds and is allowed. The impugned order dated 23.02.2004 is hereby set aside. The case is remitted to the learned Reference Court to redetermine the whole issue addressing itself to the issue of maintainability, limitation, and then to decide on merit. In view of the fact that long time has elapsed and the land has been acquired long back, learned Reference Court is requested to decide the controversy at the earliest.

18. Learned Standing Counsel and Shri Shrikant, Advocate, appeared for respondents.