
(1995) 01 SC CK 0119

In the Supreme Court Of India

Case No : Civil Appeal No. 1696 of 1995

D. Krishna Veni and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (1995) 2 JT 512 : (1995) 1 SCALE 683 : (1995) 2 SCC 734 : (1995) 1 SCR 488 : (1995) 1 UJ 520

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : Y.P. Rao, for the Appellant; A.K. Panda, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted.

2. Notification u/s 4(1) of the Land Acquisition Act 1 of 1894 for short 'the Act' was published on August 11, 1971 acquiring about 700 acres of land in Golabandha Buxi Palli, Vikrampur in Ganjam Dist. of Orissa State. By award dated October 18, 1976, the Land Acquisition Officer determined the market value. On reference u/s 18, the learned subordinate judge confirmed the award of the Collector at the rate of Rs. 80 per fruit bearing tree and Rs. 60 per non fruit bearing tree as full value in addition to the compensation of the land by his award and decree dated August 21, 1986. The appellant did not carry the matter in appeal. When others filed the appeal u/s 54 of the Act, the High Court had enhanced the compensation to the fruit bearing tree at Rs. 990/- and Rs. E 650/- for non fruit bearing tree by its judgment and decree dated December 12, 1989. Therefore, the appellants filed an application u/s 28-A of the Land Acquisition Act on May 23, 1990 for redetermination. The Land Acquisition Officer dismissed the application and thereafter the High Court by its order dated February 8, 1993 confirmed the same in O.J.C. p No. 965/92. Thus this appeal by Special leave.

3. It is contended that when the High Court awarded higher compensation by operation of Section 28-A of the Land Acquisition Act, the appellants also are entitled to the same benefit. The point is now squarely covered by two judgments of this Court in *Scheduled Castes Co-operative Land Owning Society Ltd., Bhatinda v. Union of India and Ors.* reported in AIR 1991 SC 738 and *Babua Ram and Others Vs. State of U.P. and Another*, . Therefore, the appellants having failed to avail of the remedy of appeal and having already availed the remedy of reference u/s 18, they are not entitled to seek redetermination of the compensation on the basis of award of the High Court granting enhanced compensation. Section 28-A would apply to the claimants who received the compensation without protest and faced with statutory bar of reference and would not apply to those who had already availed the remedy of reference and got no benefit or lesser benefit thereunder. Equally the bar of res judicata clearly would apply to the appellants. The application u/s 28-A is, therefore, not maintainable. The Collector and the High Court rightly refused to grant the amount on par with the judgment of the High Court.

4. The appeal is accordingly dismissed. No costs.

5. Leave granted.

6. The notification u/s 4(1) of the Land Acquisition Act was published on August 11, 1971 acquiring about 700 acres of land in Golabandha Buxi Palli, Vikrampur in Ganjam District of Orissa State. By his award dt. June 22, 1974, the Land Acquisition Officer determined the market value. On reference u/s 18, the learned Subordinate Judge confirmed the award of the Collector by his award and decree dt. January 31, 1985. The appellants did not carry the matter in appeal. When others filed the appeal u/s 54 of the Land Acquisition Act before the High Court, the High Court enhanced the compensation to the fruit bearing trees at Rs. 990/- and Rs. 650/- for non fruit bearing trees by its judgment dt. April 21, 1992. Thereafter the appellants filed application u/s 26 of the Land Acquisition Act on November 21, 1992 for redetermination. The Land Acquisition Officer dismissed the application and thereof, the High Court by its order dt. April 30, 1993 confirmed the same in O.J.C. No. 24/93. Thus this appeal by special leave.

7. It is contended that when the High Court awarded higher compensation by operation of Section 28-A of the Land Acquisition Act, the appellants also are entitled to the same benefit. The point is now squarely covered by two judgments of this Court in *Scheduled Castes Co-Operative Land Owning Society Ltd. Bhatinda v. Union of India and Ors.* reported in AIR 1991 SC 738 and *Babua Ram and Others Vs. State of U.P. and Another*, . Therefore, the application u/s 28-A is not maintainable. The Collector and the High Court rightly refused to grant the amount on par with the Judgment of this Court.

8. The appeal is accordingly dismissed. No costs.