
(2010) 10 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4543 of 1985

Jagir Kaur and others

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 132, 133, 136
Land Acquisition Act, 1894 — Section 11, 18, 26, 28, 28A

Citation : (2011) 163 PLR 263

Hon'ble Judges : Jasbir Singh, J; Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—Vide order dated August 23, 1985, applications, moved by the petitioners, for redetermination of compensation for their acquired land on the basis of judgment, passed by this Court in Regular First Appeal No.254 of 1982, on December 16, 1983, were dismissed. Petitioners have filed this writ petition to quash the above said orders (Annexures P-4 to P-6) and with a further prayer that directions be issued to the respondent to pay enhanced compensation to them as per provisions of Section 28-A of the Land Acquisition Act, 1894 (in short the "Act").

2. Admittedly, after passing of an award by the Collector on April 30, 1980, the petitioners moved an application u/s 18 of the Act, which was referred to the competent Court for adjudication and vide judgment dated October 29, 1981, the District Judge, Patiala, ordered the payment of Rs.50,000/- per Acre towards compensation for the land under acquisition. The petitioners remained satisfied and did not file any appeal against the above said order. Other right holders went in appeal against the judgment, passed by the District Judge on October 29, 1981, which were allowed by this Court vide judgment dated December 16, 1983, and compensation was enhanced to Rs.65,340/- per Acre. At that stage, the petitioners filed applications (Annexures P-1 to P-3) on July 4, 1985, before

the respondent to enhance compensation upto the amount awarded by this Court,

3. After hearing counsel for the parties, we are of the view that the petitioners are not entitled to get any relief as prayed by them. Relevant provision of Section 28-A(1) of the Act read thus:

"28-A. Re-determination of the amount of compensation on the basis of the award of the Court.- (1) 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 u/s 11, the persons interested in all the other land covered by the same notification u/s 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 u/s 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 re-determined 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. Admittedly, in this case, petitioners had filed an application u/s 18 of the Act for enhancement of compensation. That application was referred to the competent Court and on their request, compensation was enhanced to the extent of Rs.50,000/-per Acre.

5. Thereafter, the petitioners did not file any appeal against that order. As per settled law, to a land-owner, who has availed remedy under the provisions of Section 18 of the Act and thereafter failed to lay challenge to the award, passed by the Court, benefit of Section 28-A of the Act cannot be extended. The provisions of Section 28-A of the Act along with Section 18 of the Act came up for consideration before the Hon"ble Supreme Court in Des Raj (Deceased) through L.Rs. and Others Vs. Union of India (UOI) and Another, , wherein it was observed as under:

"12. In our view, the appellants are not entitled to claim enhanced compensation pressing into service the provisions of Section 28-A of the Act. The learned counsel for the appellants before the High Court did not press the claim of the appellants on this ground as recorded in the impugned judgments, having not made the applications within the prescribed time.

Moreover, benefit of Section 28-A is available only to the parties who had not sought reference u/s 18 of the Act for enhancement of the compensation. This provision is not available to persons who seek reference u/s 18 of the Act for enhancement of the compensation and do not challenge judgment of the Reference Court or the judgment of the High Court thereafter. A Bench of three learned Judges of this Court in The Scheduled Caste Co-operative Land Owning

Society Ltd., Bhatinda Vs. Union of India and others, , in this regard, in para 4, has held thus: (SCC p. 178)

"4 ...Any person who does not accept the award so made may, by written application to the Collector, require that the matter be referred for the determination of the court whereupon the provisions of Section 18 and 28 shall so far as may be apply to such reference as they apply to a reference u/s 18. It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference u/s 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the court in the reference u/s 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply for a reference u/s 18 of the Act are conferred this right to apply to the Collector for redetermination and not all those like the petitioners who had not only sought a reference u/s 18 but had also filed an appeal in the High Court against the award made by the Reference Court. The newly added Section 28-A, therefore, clearly does not apply to a case where the claimant has sought and secured a reference u/s 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of Section 28-A finds support from the judgment of this Court in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, .

13. This Court again in the case of Babua Ram and Others Vs. State of U.P. and Another, following the decision in Scheduled Caste Coop. Land Owning Society Ltd. (supra) in para 36 has stated thus: (SCC p. 719)

"36.The next question is whether an interested person who sought and secured reference u/s 18 but was either unsuccessful and filed no appeal or had carried in appeal but unsuccessful, would be entitled to redetermination when the compensation was enhanced by the appellate court either u/s 54 or on further appeal under Articles 132, 133 and 136 of the Constitution. In Mewa Ram case (supra) this Court held in paragraph 5 that Section 28-A provides for the determination of amount of compensation subject to the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made-before him within 30 days from the date of the award u/s 26 and the right is restricted to persons who had not applied for reference u/s 18 of the Act. If these conditions are satisfied, the petitioner could have availed of the remedy provided u/s 28-A of the Act."

6. Their lordships of the Supreme Court held that after taking chance by availing the provisions of Section 18 of the Act without any further action, a landlord is not entitled to get benefit u/s 28-A of the Act thereafter. Furthermore, it is coming out from the records that application u/s 28-A of the Act was moved on July 4, 1985, for redetermination of compensation on the basis-of an order, passed by this Court on December 16, 1983. Admittedly, application was moved beyond a period of three months, as envisaged under the provisions of Section

28-A of the Act. The same was barred by limitation. No case is made out for interference. Dismissed.