
(2008) 11 SC CK 0091

In the Supreme Court Of India

Case No : Civil Appeal No's. 6850-6851 of 2003

Kendriya Karamchari Sehkari Greh Nirman Samiti Ltd.

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17, 18, 19, 20

Citation : AIR 2009 SC 1677 : (2009) AIRSCW 1207 : (2009) 1 AWC 615 Supp : (2009) 4 MLJ 492 : (2009) MPLJ 532 : (2008) 15 SCALE 293 : (2009) 1 SCC 754 : (2008) 8 Supreme 704

Hon'ble Judges : D. K. Jain, J;C. K. Thakker, J

Bench : Division Bench

Advocate : J.C. Gupta, Vinay Gupta, Vikas Khurana and Bela Maheshwari, for the Appellant; Shail Kumar Dwivedi, A.A.G., Vishwajit Singh, Ritesh Agarwal, Ravindra Kumar, Manoj Kumar Dwivedi, Gunnam Venkateswara Rao and Ravi Prakash Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, J.—In the present group of appeals, the appellants have challenged the judgment and final order dated September 03, 2001 passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 31958 of 2001 and companion matters as also the order dated January 04, 2002 passed in Review Civil Miscellaneous No. 85091 of 2001 and cognate matters.

2. Since common questions of fact and law have been involved in all these appeals, it is appropriate to deal with and decide them by a common judgment.

3. To appreciate the controversy raised by the appellants, it may be appropriate to narrate the facts of the case in Civil Appeal Nos. 6850-6851 of 2003. According to the Kendriya Karamchari Sehkari Grah Nirman Samiti Ltd.('the Samiti' for short)-appellant herein, proceedings under Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of 325.353 acres of land of village Chhalera, Pargana & Tehsil Dadri, District Gautam Budh Nagar had

been initiated. The land was sought to be acquired for public purpose, viz., Planned Development of New Okhla Industrial Development Authority (NOIDA), Gautam Budh Nagar. Preliminary notification u/s 4 read with Section 17 of the Act by applying urgency clause, was issued on October 30, 1987. It was published in the Official Gazette on February 27, 1988. The final notification u/s 6 read with Section 17 of the Act was issued on June 12, 1989 and published in Official Gazette on December 14, 1989. Notices were published in the newspaper indicating acquisition of land of various land-owners on February 05, 1990. Award was made by the Special Land Acquisition Officer, NOIDA, District Ghaziabad in terms of Dispute No. 135 of 1988-92 on February 04, 1992. According to the appellant, the Land Acquisition Officer awarded compensation to the land-owners at the rate of Rs. 43.64 ps. per sq. yard. It may be stated that according to the appellant-Samiti, it purchased a part of the land on November 15, 1990. The land was transferred in the name of the Samiti. It is the case of the appellant Samiti that several land-owners were not satisfied with the amount of award offered by the Land Acquisition Officer and they sought Reference u/s 18 of the Act. More than 50 such References, therefore, came up for consideration before the Reference Court. The Court of the Additional Upper District Judge-X, Ghaziabad by judgment and order dated August 28, 2000 enhanced the compensation awarded to the land-owners by holding that the land-owners were entitled to a sum of Rs. 148.75 ps. per sq. yd. with 30% solatium and 12% interest per annum. It was also observed that the amount paid pursuant to the award passed by the Land Acquisition Officer would be adjusted while making payment by the authorities as per the order in Reference.

4. So far as the appellant-Samiti is concerned, it could not make Reference along with other land-owners u/s 18 of the Act. It, therefore, filed an application through its President Charan Singh, son of late Budh Singh on September 06, 2000 to the Additional District Magistrate (Land Acquisition), Gautam Budh Nagar u/s 28A of the Act, inter alia, praying therein that the land of the applicant had been acquired for public purpose, the applicant, who was the President of the Samiti, had purchased the land from the Samiti in December, 1990 and his name had also been entered in the Revenue Record. It was also stated by him that he could not challenge the Award passed by the Land Acquisition Officer. The Reference Court, however, decided the Reference in other cases and granted enhanced compensation. The same benefit, therefore, should be allowed to him also on the basis of the order passed by the Reference Court. The said application was made on September 06, 2000 i.e. within a period of three months from the date of decision in the Reference.

5. The main grievance of the applicant was that though in the light of the decision of Reference Court allowing the Reference and granting enhanced compensation to other land- owners, the appellant also ought to have been granted the similar benefit and he ought to have been paid additional amount as held by the Reference Court, no decision had been taken by the Additional District Magistrate and his application was kept pending. According to the

applicant, probably it was done keeping in view the fact that being aggrieved by the order passed by the Reference Court, the authorities preferred appeal being FAO No. 456 of 2001, etc. and the order passed by the Reference Court was challenged in the High Court. It also appears that the High Court entertained those appeals and also passed interim order of stay on September 17, 2001. By the said order, operation of the order passed by the Reference Court was stayed on condition that NOIDA would deposit the entire amount awarded under the Reference within two months from the date of the order. The claimants were permitted to withdraw 25% of such amount without furnishing security and further 25% on furnishing security. The remaining amount (50%) was ordered to be invested in Fixed Term Deposit in a Nationalized Bank.

6. The appellant also felt that the action of keeping pending the application of the appellant instituted u/s 28A of the Act was taken in pursuance of policy decisions taken by the State vide two Government Orders, dated January 14, 1994 and June 13, 2001. According to the appellant, the Government Orders provided that if an order passed by a Reference Court enhancing compensation is challenged by the authorities and the matter is pending before a High Court or the Supreme Court and an application u/s 28A has been made by the persons who had not sought Reference, such applications should be kept pending till the matter is finally disposed of by the High Court as well as by the Supreme Court and no enhanced compensation should be paid to the applicants u/s 28A of the Act at the enhanced rate.

7. The appellant being aggrieved by the non-disposal of his application u/s 28A of the Act, because of Government Orders, challenged the validity of both the Government Orders dated January 14, 1994 and June 13, 2001 by filing Writ Petition No. 31958 of 2001 in the High Court of Judicature at Allahabad. Similar writ petitions were filed by other land-owners.

8. The Division Bench of the High Court, however, on a totally irrelevant and extraneous ground, viz., that the underlying object of Section 28A of the Act was to protect 'little Indians' who because of their poverty and ignorance, could not file an application seeking Reference u/s 18 of the Act which was not the position in the case on hand. According to the High Court, since the petitioner before the High Court could not be said to be a 'little Indian' who could not seek Reference due to 'poverty or ignorance', his application was liable to be dismissed. The Court, in this connection, referred to and relied upon a decision of the said Court in Nanak Chand and Ors. v. State of U.P. (1996) 2 All WC 1294. The petition was accordingly dismissed.

9. The appellant was convinced that the High Court was wholly wrong in dismissing the writ petition on the ground which was not at all germane or relevant and Nanak Chand had no application as it was decided in completely different set of circumstances. He, therefore, filed Review Petition but by a cryptic order even Review Petition was dismissed. The appellant, therefore, has approached this Court by filing the present appeal.

10. Similar question has been raised by the appellants in all other matters.

11. On April 12, 2002, notice was issued. Similar notices were issued in other matters. Leave was granted on August 29, 2003. The matters were thereafter placed for final hearing and that is how the matters are before us.

12. We have heard learned Counsel for the parties.

13. The learned Counsel for the appellants submitted that the order passed by the High Court was totally erroneous and wholly ill- founded. The question before the High Court was not as to maintainability of application u/s 28A of the Act. The controversy was limited to the validity or otherwise of Government Orders of 1994 and 2001. The High Court misconstrued the prayer of the appellants and dismissed the petition which was illegal and improper. The counsel also urged that the High Court was wrong even in interpreting Section 28A of the Act as held by this Court in several cases. The only requirement of application u/s 28A of the Act is that an order must have been passed by a Reference Court under the Act and the person moving an application u/s 28A must not have sought such Reference. Admittedly, in the instant case, the Award passed by the Land Acquisition Officer and the offer made by him was not accepted by certain land-owners and the Award was challenged by them. The appellant was not one of those land-owners. Reference Court enhanced the amount of compensation. It was, therefore, open to the appellant to seek similar relief by invoking Section 28A of the Act. He, accordingly, made an application. The Additional District Magistrate did not reject the application of the appellant on the ground that no such application was maintainable. He, however, did not decide it. The grievance of the appellant-landowner was limited to a direction to the Additional District Magistrate to decide the application. The High Court, however, held that the application filed by the appellant u/s 28A was itself not maintainable which has caused serious prejudice to the appellant.

14. The counsel submitted that the underlying object of Section 28A of the Act is to treat equals equally and the point is concluded by several pronouncements of this Court. Hence, even if a person is not poor or 'little Indian', he cannot be deprived of the benefit of Section 28A. On that ground also, the order passed by the High Court deserves to be set aside. A prayer was, therefore, made to quash and set aside order passed by the High Court as also two Government Orders challenged in the writ petition by issuing a writ of mandamus ordering the respondents to act as per the order passed by the Reference Court, to decide the application u/s 28A of the Act and to pay enhanced compensation to the appellants.

15. The learned Counsel for the respondent-authority, on the other hand, supported the order passed by the High Court. He submitted that the Statement of Objects and Reasons behind enacting Section 28A of the Act was explicitly clear. The provision has been inserted in the Act with a view to protect 'little Indians' who due to poverty or ignorance of law could not challenge the Award

passed by the Land Acquisition Officer by seeking Reference. If a person who is otherwise aware of legal provisions and is in a position to challenge the Award by seeking Reference u/s 18 of the Act, he cannot take advantage of his own inaction or negligence by claiming enhanced compensation in favour of other persons who had sought Reference. It was also submitted that in any case, after the decision by the Reference Court, if the State or acquiring body has challenged the legality and validity of the enhanced amount of compensation in the High Court or in the Supreme Court and the matter is sub judice, no amount can be paid to an applicant who has made an application u/s 28A of the Act inasmuch as the main controversy and the order on the basis of which such application is made is pending adjudication before the superior Court. The action of the Collector of not deciding the application, thus, is strictly in accordance with law as also equitable and no prejudice can be said to have been caused to the applicant.

16. It was also submitted that an application u/s 28A of the Act can be made only by 'person interested'. In the instant case, according to the respondents, notification u/s 4 was issued in 1987 and notification u/s 6 was issued in 1989. Even according to the appellant, he purchased the property in November, 1990 i.e. after both the notifications were issued and published. He, therefore, by no stretch of imagination, can be termed as 'person interested'. On that ground also, the application u/s 28A of the Act, was not maintainable and the appellant could not have filed a writ petition nor he could have challenged the order passed by the High Court since he had no interest in the land when the land was acquired. On all these grounds, it is submitted that, the appeals deserve to be dismissed.

17. Having heard learned Counsel for the parties, in our opinion, the appeals deserve to be partly allowed.

18. It is no doubt true that a preliminary objection has been raised by the respondents as regards locus of the appellant herein. According to the respondents, application u/s 28A was filed (Civil Appeal No. 6850 of 2003) by Charan Singh, son of late Shri Budh Singh in his individual capacity and not for and on behalf of the Samiti and such an application was not maintainable. The contention of the appellant, on the other hand, is that the objection raised by the respondents is not well founded inasmuch as the application, which is produced on record, itself expressly recites that the application has been made by the Samiti 'through its President' Charan Singh. It is true that the land was purchased by the appellant from the Samiti and his name had been entered in Revenue Record. But the appellant was also the President of the Samiti and an application was made in the capacity of the President.

19. We would have entered into the said question provided it had been considered by the High Court and appropriate decision had been taken thereon. The High Court, however, has not decided the maintainability or otherwise of application and locus standi of the appellant herein. The High Court, relying on

Nanak Chand, dismissed the writ petition holding that the petitioner before the Court could not be said to be a "little Indian" who could not seek Reference u/s 18 of the Act because of "poverty and ignorance". We, therefore, leave the question of maintainability of application u/s 28A of the Act by the appellant open.

20. So far as interpretation of Section 28A is concerned, it may be stated that the said provision came to be inserted by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) with effect from September 24, 1984.

21. The said Section reads as under;

28A. 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 him 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.

(2) The Collector shall, on receipt of an application under Sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under Sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

22. In the Statement of Objects and Reasons, for insertion of Section 28A, it was, inter alia, observed;

Considering that the right of reference to the civil court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent land-owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an

opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court u/s 18 of the Act.

23. The provision came up for consideration before this Court in several cases. In the leading case of *Mewa Ram(Deceased) by his Lrs. & Ors. v. State of Haryana through The Land Acquisition Collector, Gurgaon*, (1986) 4 SCC 151, this Court held that having regard to the Statement of Objects and Reasons of the Amendment Act, it is clear that Section 28A is intended and meant for the inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of Reference to Civil Court u/s 18 of the Act. It was also held that the provision was not intended to reopen an Award which had attained finality and was of binding nature.

24. Again, in *The Scheduled Caste Co- operative Land Owning Society Ltd., Bhatinda v. Union of India and others*, (1991) 1 SCC 174, the Court held that once a claimant has sought and secured a Reference u/s 18 of the Act and an order is passed, he cannot thereafter invoke Section 28A of the Act for re-determination of compensation.

25. In the well known decision in *Babua Ram & Ors. v. State of U.P. & Anr.*, (1995) 2 SCC 689, this Court considered the question in detail. It was held that before Section 28A of the Act can be invoked, a person must show that he is person interested and is aggrieved as in respect of other lands covered by the same notification u/s 4, higher compensation has been awarded. An aggrieved person who had not made an application for Reference u/s 18 of the Act thus becomes entitled to apply u/s 28A of the Act. The right to an aggrieved person u/s 28A arises only when the Reference Court grants compensation in excess of the amount awarded by the Collector u/s 11. It was also observed that such an application can be made in writing by any 'aggrieved' person. The said expression would cover any interested person who had failed to make an application for Reference u/s 18 and would not be confined to those who received compensation under protest. It was also indicated that Section 28A is a 'complete Code' in itself providing substantive right to 'an aggrieved person' to claim compensation equal to that awarded to his neighbour covered by the same notification u/s 4(1).

26. In *Union of India & Anr. v. Pradeep Kumari & Ors.*, (1995) 2 SCC 736, this Court discussed the object underlying Section 28A of the Act and observed that such object would be better achieved by giving the expression 'an award' in Section 28A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of Section 28A. If the said expression in Section 28A(1) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied;

- (i) An award has been made by the court under Part III after the coming into force of Section 28A;
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector u/s 11 has been allowed to the applicant in that reference;
- (iii) The person moving the application u/s 28A is interested in other land covered by the same notification u/s 4(1) to which the said award relates;
- (iv) The person moving the application did not make an application to the Collector u/s 18;
- (v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and
- (vi) Only one application can be moved u/s 28A for re-determination of compensation by an applicant.

27. A Constitution Bench of this Court in *Union of India (UOI) & Anr. V. Hansoli Devi & Ors.*, (2002) 7 SCC 273 held that dismissal of an application seeking reference u/s 18 on the ground of delay also would not come in the way of the claimant for re-determination of compensation u/s 28A of the Act. Such person can be said to be a "person aggrieved" and would be entitled to make an application to receive compensation provided the conditions of the said section are complied with.

28. From the aforesaid decisions, in our judgment, the law is well settled and it is that against an award, if the Reference Court allows the applicant and awards any amount of compensation in excess of the amount awarded by the Land Acquisition Officer u/s 11 of the Act, any person interested in the land covered by the same notification may make an application u/s 28A of the Act within the period specified in the said section and may seek the same relief which has been granted to other land-owners by the Reference Court.

29. We are, however, of the considered opinion that the appellant is not entitled to the relief he prayed in the writ petition before the High Court as well as before us in the present proceedings so far as the direction to decide his application u/s 28A of the Act is concerned. It is true that once Reference Court decides the matter and enhances the compensation, a person who is otherwise eligible to similar relief and who has not sought Reference, may apply u/s 28A of the Act. If the conditions for application of the said provision have been complied with, such person would be entitled to the same relief which has been granted to other persons seeking Reference and getting enhanced compensation. But, it is equally true that if Reference Court decides the matter and the State or acquiring body challenges such enhanced amount of compensation and the matter is pending either before the High Court or before this Court (Supreme Court), the Collector would be within his power or authority to keep the application u/s 28A of the Act

pending till the matter is finally decided by the High Court or the Supreme Court as the case may be. The reason being that the decision rendered by the Reference Court enhancing compensation has not attained 'finality' and is sub judice before a superior Court. It is, in the light of the said circumstance that the State of U.P. issued two Government orders on January 14, 1994 and June 13, 2001.

30. We see no illegality in keeping the applications u/s 28A of the Act pending till the issue is finally settled by the Court and a decision has been arrived at.

31. The point is no longer *res integra*. In *Babua Ram*, a similar contention was raised before this Court. It was submitted on behalf of the claimant invoking Section 28A of the Act that once a Reference Court enhances the compensation and a person similarly situated makes an application u/s 28A of the Act, the Collector is bound to decide the application and grant enhanced compensation. It was, therefore, submitted that the Collector/ Land Acquisition Officer was under obligation to re-determine compensation by granting benefit of the order of the Reference Court.

32. Negating the contention, this Court observed;

However, with a view to avoiding uncertainty and fluctuation, it would be appropriate that, the Collector, while paying compensation u/s 31, should explain in vernacular language of the claimant informing all persons interested in the compensation that they have a right to protest the compensation determined under s. 11 before receiving the same; has right to seek reference in writing u/s 18 to the civil court and that the application should be made expressing the specific objections in writing within the limitation prescribed u/s 18. In case of his failure to avail of the same, he would not be entitled to further right and remedy to seek higher compensation. In case the claimant to be illiterate, it should be properly explained to him in his mother tongue. The statement made in this behalf by the Collector should be in the mother tongue of the claimant. The Collector should append a certificate that it was truly, correctly and properly explained and obtain the signature or thumb impression in token thereof and this should be kept as part of the record of the award proceedings. He should also maintain a regular register in his office in the *serietum* duly signed by him and sealed and be kept in the personal custody of the Collector. This would not only obviate the hardship to the interested persons but also prevent corrupt practices in fabricating the applications for reference after the bar of limitation. In this behalf, it is also necessary that the Collector/L.A.O. should also maintain another register for receipt of the applications u/s 28A indicating the date of its receipt, seal of the office and personal signature of the Collector/L.A.O. concerned and the receipt thereof duly communicated to the government or the authorised officer in proviso to Section 11 of the Act.

33. The view in *Babua Ram* was reiterated in *U.P. State Industrial Development Corpn. Ltd. v. State of U.P. & Ors.*, (1995) 2 SCC 766. There, the Court stated;

The entire controversy has been considered by this Court in Babua Ram and Ors. v. State of U.P. dated 4.10.1994 rendered in C.A. Nos. 563/94 & batch and held that since an appeal has been preferred by the State against the award of the Dist. Judge made u/s 26 of the Act, the proper course open to the L.A.O., on an application made u/s 28A(1) of the Act, would be to keep the applications u/s 28A(1) pending till the appeal filed against the award of the Dist. Judge is disposed of by the High Court and then to take action as per Section 28A(2) of the Act. Following the law laid down therein and subject to directions contained therein, we hold that the High Court was not right in dismissing the writ petitions. Therefore, the order of the High Court is set aside. The award of the Collector made u/s 28A(2) is quashed. The Collector/L.A.O. is directed to keep the application filed u/s 28A(1) of the Act pending till the disposal of the appeal. On receipt of the judgment from the High Court or in an appeal by this Court the L.A.O. is directed to determine the compensation based on the final judgment according to law.

34. In our opinion, therefore, the Collector was right in not deciding the application in view of the fact that the order passed by the Reference Court was challenged by the New Okhla Industrial Development Authority (NOIDA) by filing first appeals before the High Court. The High Court had entertained the appeals and also passed interim order. The contention of the appellants before the High Court that Government Orders dated January 14, 1994 and June 13, 2001 were illegal, arbitrary and ultra vires has no force. In fact, those Government Orders are in consonance with law laid down by this Court in Babua Ram and other cases. We, therefore, see no infirmity in the action of the Collector in not deciding the applications.

35. For the foregoing reasons, in our opinion, the appeals deserve to be partly allowed. The order passed by the High Court in all these matters are set aside but validity of Government Orders dated January 14, 1994 and June 13, 2001 is upheld.

36. We may, however, hasten to add that as observed hereinabove, we are not deciding about the locus standi of the appellant. As and when the question will come up before the Collector/Land Acquisition Officer, after the disposal of first appeals before the High Court or before this Court or after the decision attains finality, such question as to maintainability may be decided on its own merits after hearing the parties. All contentions of all parties are kept open.

37. The appeals are accordingly allowed to the extent indicated above. In view of the facts and in the circumstances of the cases, however, there shall be no order as to costs.