

(2001) 11 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 506 Of 2000

Krishan Dass and Ors.

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Land Acquisition Act, 1990 — Section 28A

Citation : (2002) KashLJ 219 : (2002) KashLJ 220 : (2002) SriLJ 142

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : R.Kapoor, H.L.Bhagotra, B.S.Manhas, Advocates appearing for the Parties

Judgement

1. Proceedings for acquisition of land were initiated under Jammu and Kashmir Requisitioning and Acquisition of Immovable Property. Total area

which was subject matter of acquisition was 1007 Kanals 06 marlas. Competent Authority i.e. Deputy Commissioner Udhampur assessed

compensation. Different rates were fixed for different classes of land. Classification of land and compensation allowed was as under:

(i) Hall Rs. 15.000/ per kanals.

(ii) Warhal Changi Rs. 12,000/ do

(iii) Warhal Mandi Rs. 10,000/ do

(iv) Banger Kadim Rs. 9,000/ do

(v). Garmumkin Rs. 7,000/ do

(vi) State land Rs. 4500/ do

2. Further fact is that some of the land owners were not satisfied with the compensation allowed. They sought enhancement through arbitration

proceedings. Arbitrator allowed compensation at the rate of 70,000/ per kanal. This was challenged in this Court. What was allowed by the

Arbitrator was upheld by this Court. Judgement dated 21.05.1996 be perused. Letters Patent Appeal was preferred. That was dismissed on

08.08.1996. The decision given by this Court was challenged in the Supreme Court of India. Amount of compensation which was fixed by the

Supreme Court of India is Rs. 30,000 per kanal. This decision was given by the Supreme Court of India on 08.05.1997. Decision which was

given by the supreme Court of India is reported as Union of India and others versus Chain Singh and others AIR 1997 SC 3000. Present

petitioners whose land was acquired and who had not sought enhancement of the compensation now seek enhancement of the compensation. It is

submitted that they should also be allowed compensation at the rate of Rs. 30000/ per kanal. In para 8 of the petition it is submitted that petitioners

received payment of compensation under protest. It is submitted that they are entitled to compensation at the rate of Rs. 30,000/ per kanal. Fact

pleaded that acquisition was under same notification. It is therefore, urged that there is no justification to deny the compensation at the rate of Rs.

30,000/ per kanal.

3. Respondents have controverted the allegations. Basic stand taken by them is that the petitioners had received compensation without protest.

They never made any request for enhancement of the compensation. It is accordingly submitted that they cannot seek direction to the effect that

arbitrator should be appointed and compensation should be paid at the enhanced rate.

4. Question which is required to be gone into is as to whether land owners who had not sought enhancement of the compensation are entitled to

benefit of enhanced compensation where such enhancement is made on the basis of prayer made by other land owners and when enhancement is

visaviz land covered by the same acquisition proceedings. In this regard, It would be apt to mention that under Land Acquisition Act, 1894 Central

Act, a provision has been made whereby claim ants can seek redetermination of compensation even if they have not sought enhancement before

the reference court. Section 28A of the Central Act i.e. Land Acquisition Act 1894 is reproduced below

28A.Redetermination 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 be applicant any amount of compensation in excess of the amount awarded by the

Collector under Section 11 the persons interested in all the other land covered by the same notification under Section 4, subsection (1) and who

are also aggrieved by the award of the collector may notwithstanding that they had not made an application to the collector under section 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 redetermined on the basis of the amount of compensation awarded by the court.

5. Provided that in computing the period of three months within which an application to the collector shall be made under this subsection, 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 subsection (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 subsection (2) may be written application to the Collector require that the matter be referred

by the Collector for the determination of the Court and the provisions of Section 18 to 28 shall so far as may be apply to such reference as they

apply to a reference under Section 18.

6. This provision was interpreted by the Supreme Court of India in case reported as Smt. Bhagti versus State of Haryana. AIR SC 1793. It was

observed that right and remedy for redeterminations in terms of Section 28A would be available only when the reference court under Section 18

has enhanced the compensation. In such cases, in terms of Section 28 A. Application for enhancement can be made within a period of three

months. It was observed that this provision would not be applicable when judgement is given by the High Court and claimants seek

redeterminations. The view expressed in Bharti versus State of Haryana AIR 1997 SC 1793 was also expressed in other case also i.e. Tota Ram

versus State of U.P. (1997) 6 SCC 280. In the above case it was also observed that limitation would be taken from the date of award. Decision

given by reference court and not from the date of knowledge of award. In this regard it be seen that there is no similar provisions so far as J&K

Requisitioning and Acquisition of Immovable Property Act is concerned. If this be the State of affairs then principles as indicated under Section

28A of the Central Land Acquisition Act would not be attracted. Such a view has been expressed by the Supreme Court of India in case reported

as 1996 (1) SCC 477 (Union of India and anr versus Babu Singh and others). What is said in para 6 is the judgement is being reproduced below :

Shri Goswami, learned Senior Counsel appearing for the Union of India contended that Section 28A has no application to the acquisition of the

land under the Requisitioning and Acquisition of Immovable Property Act, 1952 We find force in the contention, Shri Ujjagar Singh, learned Senior

Counsel for the respondents, contended that since the counsel appearing for the Union of India has conceded before the High Court, the State is

bound by the concession and that, therefore, there is nothing wrong in the order passed by the High Court. It is difficult to accept the contention. It

is a case of total lack of jurisdiction since Section 28A of the Land Acquisition Act has no application when the land is acquired under the

Requisitioning and Acquisition of the Immovable Property Act. Therefore, wrong concession made by the counsel does not bind the Union of India

in that behalf.

7. From the decisions quoted above it becomes apparent that there is no specific provision of the nature as contained in Section 28A of the Land

Acquisition Act enacted by the Parliament. Therefore, it is not possible to enhance the compensation in this case in the exercise of writ jurisdiction.

8. Question as to whether the petitioners have submitted an application for appointment of an arbitrator and whether they accepted the

compensation under protest is a disputed question of fact. This cannot be gone into in this petition. However, a limited direction is given to the

respondent State to refer the application if preferred by the petitioners seeking enhancement of the compensation to the arbitrator and these

applications if preferred would be adjudicated upon in accordance with law.

Disposed of as such.