

(2005) 08 OHC CK 0045
In the Orissa High Court
Case No : First Appeal No. 165 of 1993

Land Acquisition Officer

APPELLANT

Vs

Sri. Uttareswar Mahaprabhu

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 26(1), 28

Citation : (2005) 08 OHC CK 0045

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Dayananda Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Parichha, J.—These three appeals have been preferred by the State challenging the correctness of the award passed by the Learned Subordinate Judge, Berhampur in L.A.M.J.C. Nos. 259, 260 and 263 of 1977.

2. Lands belonging to the claimant-Respondents were acquired for the purpose of Berhampur-Khajuria By-pass Road, N.H. 5 vide notification u/s 4(1) of the Land Acquisition Act (hereinafter to be called, as "the Act) issued on 17.12.1970 and subsequent notification dated 22.4.1975 published in Orissa Gazette No. 696 dated 16.5.1974. The Land Acquisition Officer (acquiring authority) awarded compensation of Rs. 8,820.50 including solatium of Rs. 1150.50 to Somanath Padhi in MJC No. 260 of 1977 Rs. 12,851.25 including solatium of Rs. 1675.25 to Sri. Uttareswar Mahaprabhu in MJC No. 259 of 1977 and Rs. 5,778.75 including solatium of Rs. 753.75 to Smt. Amulya Padhi in MJC No. 263 of 1977. Not being satisfied with the said awards, the claimants prayed for reference of the matter to the civil Court for adjudication of the proper market value of the lands and accordingly the matters came up before the Learned Civil Judge in the above noted M.J.Cs.

3. The claimants produced evidence in support of their higher claim of

compensation. The Land Acquisition Officer also produced rebuttal evidence. On consideration of these evidences, Learned Civil Judge passed award by a composite Order Dated 7.12.1979 enhancing the compensation. The State preferred First Appeal Nos. 68, 69 and 70 of 1980 challenging the enhancement of compensation. The claimants also preferred F.A. Nos. 105, 111 and 112 of 1980 claiming further enhancement of compensation. This Court after hearing those appeals by Order Dated 28.8.1989 directed the referral, Court for fresh adjudication of the reference proceedings after giving opportunity to the parties to lead further evidence in support of their respective claims. Accordingly, the referral Court, gave opportunity to the parties for "further evidence, heard them and passed a fresh award by Order Dated 31.3.1990 fixing the market value of the acquired land at the rate of Rs. 75,000/- per acre. The Land Acquisition Officer (State) again preferred First Appeal Nos. 219, 220 and 221 of 1990 challenging the said award passed by the referral Court. After hearing those appeals, this Court by Order Dated 11.11.1992 revised the award determining the market value of the acquired land " Rs. 65,000/- per acre and directed the referral Court to compute the quantum of compensation at the said rate and to consider the entitlement of statutory benefits as per the amended Act. Accordingly, the matters again went back to the Learned Civil Judge (Senior" Division), Berhampur. The said referral Court on consideration of the matter awarded compensation for the land " Rs. 65,000/- along with the statutory benefits u/s 23(2) of the Act, i.e., 30% solatium and benefit u/s 28 of the Act, i.e., interest " 9% for the 1st year and 15% for the subsequent period. The referral Court however refused additional compensation u/s 23(1-A) of the Act. The Land Acquisition Officer (State) has preferred the present appeals basically challenging the enhanced rate of solatium and interest awarded u/s 23(2) and 28 of the Act.

4. Mr. Sangrani Das, Learned Addl. Standing Counsel appearing for the Appellants submits that the initial award was passed by the referral Court on 7.12.1979 which was prior to 30.4.1982 when the amended Act came into force and therefore, even if fresh award was passed by the referral Court after 30.4.1982, the claimants would not be entitled to the benefit of enhanced rate of solatium and interest as the initial award would be taken as the award u/s 26(1) of the Act. In support of this contention, he relies the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., and in the case of The Collector, Cuttack v. Saraswati jena and Ors. 1991 (II) OLR (F.B.), it.

5. Mr. Dayanand Mohapatra, Learned Counsel appearing for the claimant-Respondents, on the other hand, contends that the award, which was finally passed by the referral Court following the direction and observation of this Court, will be the real award and because such award was passed after 30.4.1982, the enhanced rate of solatium and interest as contemplated u/s 23(2) and 28 of the amended Act would be available to the claimants. He submits that the "ratio laid down in the case of Union of India v. Raghubir Singh (supra) would also not be applicable to the present case because in that case it was never considered

whether the award passed by the referral Court after remand would be accepted as award for grant of benefits provided under the amended Act. He further contends that the ratio laid down by the full Bench, of this Court in the case of Collector, Cuttack v. Saraswati Jena (supra) would not apply to the present case as in that case, the provisions of Section 28-A of the Act were not taken into consideration. According to him, when Section, 28-A provides for enhanced compensation for persons, who failed to raise their claim u/s 18 of the Act for reference equivalent to the higher award" received by other persons standing on the similar footing there is no question of violation of the guarantee of equality of law. In this regard, Mr. Mohapatra relies On the case of Union of India and another Vs. Pradeep Kumari and others, and Collector Vs. Nisamani Bewa and Others etc. etc., and Union of India (UOI) and Another Vs. Hansoli Devi and Others, .

6. In view of the rival submissions of the Learned Counsel for the parties, the only point which emerges for consideration is whether the, fresh award passed by the referral Court after the remand will ensure the benefit of enhanced rate of solatium and interest provided under the amended L.A. Act.

7. The question whether the subsequent award of the referral Court after remand was an award was considered by the Learned Single Judge of this Court in the cases of Hadi Das Vs. Collector, , and Ramchandra Pati and Another Vs. Collector, and the question was answered in the affirmative. It was held that the award, passed after the order of remand, if passed after 30.4.1982, would ensure "the benefit of enhanced solatium and interest to the claimants. A Division Bench of this Court In the "case of Collector, Cuttack v. Nishamani (supra) clarified the matter by saying that in the 2nd round if the High Court determines the market value, solatium and interest that are payable and directs the referral Court to quantify the amount deducting the amount already received by the claimant, then the award passed by the referral Court would not be considered as an award but if the High Court makes an open remand leaving the matter to the referral Court for fresh adjudication of the quantum of compensation, then the subsequent award would be considered as an award under the Act. Since views were divergent on the subject, the matter was referred by a Division Bench of this Court to the Full Bench to clarify whether on the basis of the subsequent award passed after 30.4.1982 by the referral Court on remand, enhanced rate of solatium and interest as contemplated under the amended L.A. Act would be payable to" the claimants. The Full Bench after analyzing the situation noted the following observation in paragraph 7.

....As a matter of fact the original award passed by the Subordinate Judge was no longer in existence after it had been subjected to appeal in the High Court, But even though the determination of the Subordinate Judge is an award, yet it would hardly help the Opposite Parties to get the higher solatium. The legislature expressly identified the awards to which the benefit of higher solatium would apply by stating that the awards must, have been passed during the period

30.4.1982 to 24.9.1984." If it had meant that the, words would apply not only to the awards as were originally passed during that period but also to awards which were passed on remand from the higher Courts" nothing prevented, it to specifically say so. On the contrary such an interpretation would frustrate the very intention of the: limited retrospectively and would otherwise lead to unworkability as also violation of the Constitutional guarantee of equality before the law.

Hence it would be paradoxical to hold that while the benefits would not be available to orders passed by the superior Courts an appeal during the period in question, yet it would become, available if the direction of the superior Courts is carried out by "the Subordinate" Judge accidentally during that period and would not be available if, the Subordinate Judge happens to decide beyond that period.

8. While passing the aforesaid order the Full Bench took note of the previous judicial pronouncements including that of the Apex Court in *Union of India v, Raghubir Singh* (supra). Mr. Mohapatra submits that the Full Bench gave the above ruling, mainly on the reason that grant of benefit of higher solatium and interest on awards passed after remand would create discrimination and similarly, placed claimants may not get equal compensation. He states that this apprehension was misplaced as provision has been made u/s 28-A of the Act to compensate claimants, who are deprived of higher rate of compensation granted to other similarly placed claimants. Section 28-A provides / for re-determination of amount of compensation on the basis of the award of the Court. It says that, where, in an award the Court allows the claimant any amount of compensation in "excess of the amount awarded by the Collector u/s 11 the persons interested in all 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. The Section thus, essentially says that where some lands are acquired under the same notification u/s 4(1) and some of the land owners are awarded higher rate of compensation by the referral Court, then the other persons whose similar lands were acquired, may approach the Collector within three months for redetermination of the award for their lands.

9. In the case of *Union of India v. Pradeep Kumar* (supra) while analyzing the scope and object of Section 28-A of the Act the Apex Court observed that the limitation of three months does not necessarily start from the date of 1st award made after enforcement of Section 28-A and the word first cannot be read into that Section as that would amount to restricting the scope of a benevolent legislation. In that case, it was also observed that Section 28-A is in the nature of a benevolent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to" take advantage of right of

reference to the Civil Court u/s 18 of the Act and therefore, while construing the provisions of such a legislation, the Court should adopt a construction which advances the policy of the legislation to extend the benefit, rather than a construction, which has the effect of curtailing the benefit conferred by it.

Similar view was also taken in the case of *Union of India v. Hansoli Devi* (supra). The provision of Section 28-A and the above noted judicial observation positively indicate that Section 28-A is a benevolent provision created for removal of inequality and disparity amongst the similarly placed claimants, but this provision has no bearing with the question at hand and so was not taken into consideration by the Full Bench in the case of *Collector, Cuttack v. Saraswati Devi* (supra). The said aspect was also not of any real consequence, for the simple reason that the scope of Section 28-A is "for reassessment of awards, by the Collector and has no bearing with the issue as to whether the subsequent award passed by the referral Court after remand is a real award or not. Moreover, the Full Bench not only relied on the point of discrimination and violative of Constitutional guarantee of equality before law, but also took other aspects into consideration in arriving at the conclusion. In fact the issue was also clarified in the Full Bench decision by giving example, which is quoted below:

....Viewing the case from another angle an example would also explain the inherent weakness of the submission of the Opposite Parties. Supposing two awards were made by the Subordinate Judge on the same day prior to 30.04.1982. In two land acquisition proceedings relating to similar type of land. The appeal carried to the High Court against the awards are dismissed. Thereafter appeal is preferred to the Supreme Court in one case whereas, the other claimant "is not able to prefer an appeal. The Supreme Court remands the matter to the Subordinate Judge with directions and the latter determines the case on the basis of the directions during the relevant period. If the submission of the Opposite Parties is accepted, the claimant in such a case would become entitled to the higher compensation whereas the other claimant who had not been able to appeal to the Supreme Court would be deprived of the same. This itself would make higher compensation payable depending upon a fortuitous circumstance which could never be the intention of the legislature. I have hence no hesitation to hold that the claimants in each of the revisions were not entitled to higher solatium merely because the Subordinate Judge drew up awards in accordance with the direction of this Court on 25.2.1982.

10. When the issue has been threshed and decided by the Full Bench of this Court under the rule of precedence, this Bench is duty bound to follow the ratio laid down by the Full Bench. Therefore, following the ratio laid down by the Full Bench in the case of *Collector, Cuttack v. Saraswati Jena* (supra) I am of the considered opinion that in the present case the initial award in favour of the claimants having been passed on 7.12.1979 which was before the date of incorporation of the amended Act, the claimants would not be entitled to higher solatium and interest as provided under Sections 23(2) and 28 of the Act. The

claimants would, however, be entitled to solatium and interest as contemplated under the pre-amended Act. The compensation to the claimants be paid accordingly after deducting the amount already received by them.

11. In the result the appeals are allowed. No cost.