
(1999) 04 DEL CK 0025
In the Delhi High Court
Case No : C.W.P.No.1432/86

Parbhati APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Citation : (1999) 3 AD 278 : (1999) 79 DLT 446 : (1999) 49 DRJ 554 : (1999) 1 ILR Delhi 334

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. Sunil Sabharwal and Mr. Rajiv Aneja, for the Appellant; Mr. Sanjay Poddar and Mr. Rakesh, for the Respondent

Judgement

C.M. Nayar, J.—This petition has been filed to impugn the Order dated March 17, 1986 of the Land Acquisition Collector, Delhi rejecting the application of the petitioner u/s 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the Act'). It was held that the provisions of Section 28-A of the Act were attracted only if the interested person had not filed a reference u/s 18 of the Act. Since the petitioner filed a reference under that provision he was not entitled to the benefit of the judgment delivered by the Additional District Judge enhancing the compensation of other land-owners covered by the same notification.

2. The facts as enumerated in the petition are that the petitioner is a resident of village Karkardooma, Shadhra-Delhi and is a cultivator by profession. Some lands including the lands of the petitioner were acquired by two different awards Nos.54-A/70-71 and 1804 under the relevant provisions of the Act. In respect of the lands falling under Award No.1804 compensation was passed to the extent of 60% share in favor of the petitioner by the Court of Shri G. R. Luthra, Additional District Judge, Delhi in LAC case No.31/67 decided on 16th March, 1970 in a reference petition under Sections 30 and 31 of the Act the land falling in the above Award were as follows:

S. No. Khasra No. Area Bigha - Bis 1. 2723/1212 2 -05 2. 2750/1805/1273/2

0 -12 3. 1067 10-16 4. 2746/1268 1 -15 5. 2748/1269 2 -05

The Collector had assessed the compensation in respect of various categories of land at Rs.1,000/-, Rs.800/-, Rs.600 and Rs.400/- per Bigha. On a reference made u/s 18 of the Act the compensation was enhanced to Rs.2,000/- per Bigha for all kinds of lands for which the petitioner was entitled to 60%. The petitioner did not take recourse to the remedy of appeal before this Court. In respect of award No.54-A lands covered by the same were as follows:

S. No. Khasra No Area Bigha - Bis 1. 1687/1287 3 -09 2. 5870/1419/2 1 -07 3. 5873/1420 15 -15 4. 1688/1278 0 -18 5. 3078/1303 Min. 2 -07 6. 3078/1303 4 -13 7. 3078/1303 2 -00

3. For the lands covered under this Award the Collector vide his order dated January 7, 1971 granted compensation at Rs.1100/-, Rs.750/- and Rs.600/- per Bigha in respect of Block-A, Block-B and Block-C respectively which is the categorisation of the quality of lands. The other relevant facts as stated in the petition are referred to in paragraphs 12 and 13 which read as follows:

12. That most of the appeals relating to village Karkardooma for enhancement of compensation, were decided by this Hon"ble Court. In 1979-80, compensation of Rs.6000/- per bigha has been unilaterally given in respect of every piece of land in village Karkardooma. This rate of Rs.6000/- per bigha towards compensation for the village Karkardooma has not been disturbed either by this Hon"ble Court or by the Hon"ble Supreme Court.

13. That in respect of some land in village Karkardooma, an appeal was filed in this Hon"ble Court, the appeal being R.F.A.No.26/82 and titled as "Tulsi Vs. Union of India". The said appeal was dismissed by this Hon"ble Court as having been barred by time. The matter was carried in appeal to the Supreme Court by way of SLP (Civil) No.540/84, which was granted. The Supreme Court thereafter allowed the appeal, set aside the order of the High Court, condoned the delay and also, instead of remitting the matter back to this Hon"ble Court to decide the R.F.A. on merits, the Hon"ble Supreme Court, vide its order dated 7.10.1985, allowed the appeal qua the rate of compensation also and directed for the payment of compensation @ Rs.6000/- per bigha by observing that this is the rate which has been granted benefits under the Amendment Act, 1984, were also granted. True copy of the order dated 7.10.1985 of the Supreme Court is Annexed hereto as Annexure A.

Similarly, in respect of another award No.2210 pertaining to village Karkardooma itself, four cases were decided by a common judgment by Shri Mahinder Pal, Additional District Judge, Delhi, vide his judgment dated 28.8.1985 in LAC Cases No.156/84 (Mangat Ram Vs. Union of India), No.307/84 (Om Prakash Vs. Union of India), No.308/84 (Har Prakash Vs. Union of India) and No.447/84 (Vidya Rattan Vs. Union of India). True copy of the said judgment is annexed hereto as Annexure B."

In view of the above decision, the petitioner moved two separate applications to the Collector u/s 28-A of the Act for being paid the compensation at the rate of Rs.6,000/- per Bigha. The first application may be reproduced as follows:

"Application u/s 28A of L .A. Act, 1894 as inserted by the Act No.68/1984.

Award No.1804

Village : Karkardooma

Applicant: Parbhati son of Sh. Pirthi resident of Village Karkardooma, Shahdara, Delhi.

Respected Sir,

The Humble applicant submits as under:-

1. That the land of the applicant was acquired vide award No.1804 which was notified u/s 4 vide Notification No.F.15(111)/59 LSG dt.13.11.1959 and u/s 6 of the L .A. Act, vide notification No.F.1(54)/62 L&H (11) 30.3.63, F.1(54)/62 L&H dt.7.1.64 and F.15(207)/64 L&B dt.13.3.64 for the purposes of planned development of Delhi.

2. That the applicant is the owner/tenant of the land bearing khasra No.2723/1212(2-5), 2750/1805/1273/2 (0-12), 1067 (10-16), 2746/1268 (1-15), 2748/1269 (2-5) situated in revenue estate of village Karkardooma, Delhi.

3. That the L.A.C. Delhi assessed the market value of land acquired through award No.1804 @ Rs.1000/-, Rs.800/-, Rs.600/-, Rs.400/- per bigha as on 13.11.59.

4. That the applicant preferred to file reference u/s 18 of the L .A. Act against the award made by the L.A.C.(DS).

5. That the reference was forwarded to the Court of A.D.J. Delhi.

6. That the A.D.J. Delhi awarded Rs.2000/- per bigha as market value of the land of the applicant in L.A.Case No.31/1967 dt.16.3.1970.

7. That after judgment of the Hon"ble A.D.J. Delhi in L.A. Case No.31/1967, the petitioner could not file appeal against the judgment of A.D.J. although claim of the petitioner was Rs.10000/- per bigha.

It is well known fact that a few years ago general public of India being illiterate and honouring decision of Sessions Judge and due to fear of a huge money, expenditure, was not able to file appeal before the Hon"ble High Court or the Hon"ble Supreme Court. So, the petitioner being poor harijan could not go to High Court against the judgment of A.D.J. Delhi.

8. That now L .A. Act 1894 has been amended by Land Acquisition Amendment Act, 1984 which provides chances to apply before the Land Acquisition Collector

for re-determination of market value u/s 28A of L. A. Act,

9. Now the Additional Distt. and Sessions Judge, Delhi has fixed market value of the land of village Karkardooma @ Rs.6000/- per bigha in his judgment dt.28.8.85, in L. A. Case No.156/84, etc. Mangat Ram Vs. Union of India etc. The land involved in L.A.C.No.156/84 etc., was acquired vide award No.2210.

10. Judgment of A.D.J. in L. A. Case No. is based on judgment of the Hon"ble High Court in RFA No.397/68, 308/68 and 191/69 in which the Hon"ble High Court, has assessed Rs.6000/- per bigha as a flat rate as market value of land of village Karkardooma as on 13.11.59.

11. That date of notification u/s 4 of L. A. Act for the land involved in L. A. Case No.156/84, RFA No.397/68, 308/68 etc. and for the land in question i.e. the land of the applicant is 13.11.1959 i.e. the same date and purpose of acquisition was also the same.

12. Now the Hon"ble Supreme Court has also granted Rs.6000/- per bigha as flat rate of land of village Karkardooma allowing delay condoned also in SLP No.540 of 1984 Sh. Tulsi-Vs- U. O. I. on 7.10.1985.

13. The present application of the applicant u/s 28A of L. A. Act 1894 for re-determination or payment to the applicant as compensation for the land in question @ Rs.6000/- per bigha Along with all benefits allowed by the Land Acquisition Amendment Act, 1984 is within time for the date of decision of A.D.J. Delhi in L. A. Case No.156/84 dt.2.8.85 and judgment of the Hon"ble Supreme Court in SLP (C) No.540 of 1984 dt.7.10.85.

Hence it is prayed that honouring view of Lok Sabha in L. A. Amendment Act, 1984, judgment of the Hon"ble Supreme Court in S.L.P.No.540/84 dt.7.10.85 and RFA No.308/69 and 397/68 of Hon"ble High Court and judgment of the A.D.J. Delhi in L. A. Case No.156/84 dt.28.8.85, the Land Acquisition Collector (DS) Delhi is requested to determine the market value of my land and pay to myself as under:-

A. Compensation for land @ Rs.6,000/- per bigha.

B. 12% p.a. addition amount u/s 23-1A of L. A. Act w.e.f. 13.11.59 to 29.3.65.

C. 30% solatium.

D. Interest u/s 28 @ 9% p.a. and 15% p.a.

Copy of judgment in L. A. Case No.156/84-Mangat Ram-vs-U.O.I. dt. 28.8.85 and judgment in Civil Appeal No.4509/85 in SLP No.540/84 Tulsi-Vs-U.O.I. are attached herewith.

Applicant (Parbhati) Son of Sh. Pirthi r/o Vill. Karkardooma Shahdara, Delhi
Delhi. Through: Advocate. Dated 21.11.1985"

It may not be necessary to reproduce the second application as it is more or less

on the same terms as the first application.

4. The main grievance of the petitioner is that he has been wrongly deprived of the benefit of provisions of Section 28-A as he is similarly situated with other land owners who have been granted compensation at the rate of Rs.6,000/- per Bigha by the Additional District Judge in subsequent Award covered by the same Notification. The short question which arises for consideration in this petition is as to whether the petitioner is entitled to the benefit of the provisions of Section 28-A of the Act in the facts and circumstances of the case.

5. The learned counsel for the respondents has vehemently contended that the petitioner having availed of a remedy u/s 18 cannot be granted relief u/s 28A of the Act. Reliance is placed on the judgment of the Supreme as reported in The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, The interpretation of Section was examined in this judgment and paragraph 4 reads as under:

"We may first deal with the contention based on the newly added Section 28-A inserted by Amending Act 68 of 1984 with retrospective operation from April 13, 1982. Under this provision where compensation awarded by the Collector u/s 11 is enhanced by the court in reference u/s 18, the persons interested in the acquired land who were not parties to the reference may, by a written application to the Collector made within three months from the date of the award of the court, request the Collector to redetermine the amount of compensation payable to them on the basis of the amount awarded by the court. On receipt of such an application the collector is expected to conduct an inquiry and make an award redetermining the amount of compensation payable to the applicants. 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 Sections 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 Vs. State of Haryana."

Reference is next made to the judgment reported as Babua Ram and Others Vs.

State of U.P. and Another, reads as follows:

"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 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. In Scheduled Castes Coop. Land Owning Society Ltd. Vs. Union of India this Court held that : (SCC p.178, para 4)

"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....."

This is also clear from a reading of the scheme of the Act in Parts II and III and in particular the self-contained code in Section 28-A. It is already held that an interested person who received compensation without protest becomes an aggrieved person when another person interested in the land covered by the same notification u/s 4(1) gets higher compensation for his land from the civil court. By operation of the non-obstante clause within Section 28-A(1), the embargo created by Section 18(1) and the second proviso to sub-section (2) of section 31 is lifted and he has been given the right and remedy u/s 28-A. But a person who received compensation under protest and sought and secured a reference but was unsuccessful or partially successful, does come within the embargo created by Section 18(1) and the second proviso to sub-section (2) of Section 31 and the non-obstante clause in Section 28-A(1) does not relieve him from it. Legislature made a discriminatory policy between the poor and inarticulate as one class of person to whom the benefit of Section 28-A was to be extended and comparatively affluent who had taken advantage of the reference u/s 18 and the latter as a class to which the benefit of Section 28-A was not extended. otherwise, the phraseology of the language of the non-obstante clause would have been differently worded, i.e. "notwithstanding that they had not made an application to the Collector u/s 18 or an appeal u/s 54 or under Articles 132, 133, 136 or unsuccessful etc." Such is not the language. Transitional

provisions of Section 30 of the Amendment Act itself discriminate among claimants, in payment of solarium in whose favor award was made by the Collector or court etc. as has already been made clear while dealing with the effect of subsections (1) to (3) of Section 30 in the earlier part of the judgment obviating the need for reiteration. Parliament thereby made discrimination in payment of compensation to persons though similarly situated to varied benefits of Amendment Act. Even payment of compensation u/s 23(1) is varied, based on same quality of the land capable to fetch same price or the value of the land situated in close proximity and payment of market value is not uniform. The doctrine of res judicata u/s 11 of the CPC operates against such persons. Having pursued the remedy in a competent civil court and allowed the decree u/s 26 or u/s 54 to become final, it binds the parties and the State and operates as res judicata and he or they cannot fall back upon the right and remedy under sub-section (1) of Section 28-A as the public policy envisaged is that such a party cannot agitate its right twice over. Sub-section (1) of Section 28-A, Therefore, by the non-obstante clause made available the right and remedy to the poor and inarticulate persons interested in other lands covered by the same notification u/s 4(1) and made no application u/s 18 to avail the right and remedy u/s 28-A(1). But those who sought and secured reference u/s 18, be the poor or others, and failed before the civil court or in appeal u/s 54 or under Article 136 etc. the right and remedy provided by Section 28-A(1) is not available to him/them. In other words, the operation of Section 28-A is confined to the award made in part III only and not to the judgment or decree of the High Court or the appellate court u/s 54 or of this Court under Articles 132, 133 or 136 of the Constitution. Therefore, the unsuccessful interested persons who sought and failed in the reference u/s 18 or in appeal u/s 54 or under Article 136 etc. are not persons aggrieved under sub-section (1) of Section 28-A, when other similar person had higher compensation by pursuing that remedy. Therefore, he or they, though interested in the land covered by the same notification u/s 4(1), are not entitled to make an application/applications for re-determination under sub-section (1) of Section 28-A."

6. In Jose Antonio Cruz Dos R. Rodriguese and another Vs. Land Acquisition Collector and another, the Supreme Court referred to the question of limitation and held that the period of limitation has to be computed from the date of Court's Award u/s 18 on the basis whereof determination is sought. This point is not in issue in the present case as the application u/s 28-A was made by the petitioner within the prescribed period of limitation and it will not be necessary to dwell on this question. However, since it will have some bearing it may be relevant to reproduce paragraph 4 of this judgment which reads as under:

"We may now refer to the case-law. A two-Judge Bench of this Court in Babua Ram Vs. State of U.P. dealt with this precise question and held that the period of limitation begins to run from the date of the first award made on a reference u/s 18 of the Act, and successive awards cannot save the period of limitation; vide paragraphs 19 and 20 of the reporter. This view was reiterated by the same

Bench in Union of India Vs. Karnail Singh wherein this Court held that the limitation of three months for an application for redetermination of compensation must be computed from the date of the earliest award made by a civil court, and not the judgment rendered by an appellate court. This was followed by the decision of a three-Judge Bench in Union of India v. Pradeep Kumari wherein it was held that the benefit u/s 28-A can be had within three months from the date of the award of the Reference Court on the basis whereof redetermination is sought. The earlier two decisions in the case of Babua Ram and Karnail Singh were overruled on the limited question that they sought to confine the right to seek redetermination to the earliest award made by the Court u/s 18 of the Act after the introduction of Section 28-A into the Act. There is, however, no doubt that the period of limitation has to be computed from the date of the Court's Award u/s 18 on the basis whereof redetermination is sought. Admittedly, in both the cases at hand, the applications for redetermination of compensation u/s 28-A were made long after the expiry of three months from the date of the award of the Court which constituted the basis for seeking redetermination. We are, Therefore, of the opinion that the High Court was right in taking the view that both the applications were time-barred."

7. The same view was expressed by a Bench presided over by Hon"ble Mr. Justice K. Ramaswamy in the judgment reported as Hukam Chand and Others Vs. State of Haryana and Others, . The operative portion of paragraph 4 of the judgment may be referred to as below:

".....The remedy u/s 28-A(1) is available only when the compensation was enhanced u/s 26 award and judgment in Part III of the Act and the same is not available when it was enhanced u/s 54 of the Act. This Court in Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India had held that the claimants who availed of the remedy u/s 18 are not entitled to additional amount u/s 28-A when the High Court enhanced the compensation. Similar view was also expressed in Babua Ram v. State of U.P. The appellants are, Therefore, not entitled to make the applications u/s 28-A for further enhancement. The Land Acquisition Officer and the High Court have rightly refused to grant the relief of enhanced compensation on a par with the other claimants. The further contention that the appellants are invidiously discriminated to (sic by) the payment of same compensation on a par with others violating the equality guaranteed under Article 14 of the Constitution is no longer rest integra. This was concluded against the aggrieved persons by majority judgment of this Court in K. S. Paripooran (II) v. State of Kerala and Babua Ram case."

Similar view was expressed in Bhagti (Smt) (deceased) through Her LRS. Bhagti (Smt) (Deceased) through her Lrs. Jagdish Ram Sharma Vs. State of Haryana, as was stated in Hukam Chand and others (supra).

8. The petitioner has been awarded a compensation of Rs.2,000/- per Bigha when he preferred a reference petition u/s 18 of the Act. He did not take up the matter in appeal to this Court. The other compensation cases relating to the

same village and same notification were decided by this Court and in 1979-80 the compensation of Rs.6,000/- per Bigha was awarded in respect of every piece of land in the village covered by the Notification. In respect of some land in village Karkardooma an appeal was filed in this Court titled Tulsi vs. Union of India which was dismissed as barred by time. The matter was taken up in appeal to the Supreme Court which was allowed and an order was passed in Civil Appeal No.45001 of 1985 which reads as follows:

"Special leave granted.

Having regard to the very peculiar facts of this case, we are of opinion that the delay which occurred in filing the appeal before the High Court should have been condoned. Accordingly, we condone the delay.

We have heard learned counsel for the parties on the question of the rate of compensation to which the appellant is entitled in respect of the land acquired from him and we direct the respondent to pay to the appellant compensation at the rate of Rs.6,000/- per bigha, which is the rate of compensation granted in the case of other owners whose land was acquired similarly. The appellant will also be entitled to further benefits conferred by the Amendment Act, 1984.

The appeal is disposed of accordingly with no order as to costs.

Sd/- R. S. Pathak Sd/- V. Khalid New Delhi October 7, 1985"

Similarly in respect of another related award the Additional District Judge awarded the compensation at the rate of Rs. 6,000/- per Bigha by judgment dated August 28, 1985. In view of the above decision in Civil Appeal as well as by the Additional District Judge, the petitioner moved an application u/s 28-A of the Act as stated earlier which was rejected as not maintainable.

9. The question now arises as to whether the petitioner can be deprived of the benefit of Section 28-A of the Act solely on the ground that he had filed a reference petition u/s 18. The provisions of Section 28-A of the Act may be reproduced as under:

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 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 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."

It is no doubt correct that the Supreme Court in some of the judgments referred to above has stated that a land owner who avails of the remedy of Section 18 cannot be permitted to avail of the benefit of Section 28-A. However, this point is not finally settled nor a categorical finding has been recorded. Therefore, reference has been made to the Constitution Bench to clarify certain points in the judgment reported as *State of Tripura and another Vs. Roop Chand Das and others*, (1997) 5 SCC 757 . The short order as rendered in this case may be reproduced as follows:

"1. In *Babua Ram Vs. State of U.P. and Union of India Vs. Karnail Singh Benches* of two Judges have taken the view that the limitation of three months for seeking a reference u/s 28-A would begin to run from the earliest of the awards given by the Reference Court. However a contra view was taken by a Bench of three Judges in *Union of India v. Pradeep Kumari*. When the matter was referred to a Constitution Bench, the Bench of three Judges in *Jose Antonio Cruz Dos R. Rodriguese Vs. Land Acquisition Collector* had the two questions referred to a five-Judge Bench before them namely: SCC 750

"1. Whether the award of the Court i.e., civil court made u/s 26 on reference u/s 18 would also include judgment and decree of the appellate court u/s 54?

2. Whether each successive award or judgment and decree (if answer on Question 1 is positive) would give cause of action to file application u/s 28-A; if so construed, does not such a construction violate the language used in Section 28-A when Parliament advisedly did not use such expressions?"

2. The three-Judge Bench answered that so far as the first question of the reference is concerned there is no difference of opinion between the Benches. On the second question, on the facts in that case it did not arise for the reason that even the second reference asked for was beyond a period of three months and that, Therefore, in that case it was held that there is no need for awaiting a decision by a Constitution Bench. In para 6 it was pointed out that if and when such a question arises in an appropriate case perhaps reference to a five-Judge Bench may become necessary. In this case that question in fact has arisen and

that, therefore, the matter requires consideration by a Bench of five Judges.

3. Leave granted. Printing dispensed with. Appeal can be disposed of on the basis of the material on record. The matter may be placed before Hon'ble the Chief Justice for constitution of five Judge Bench and for disposal at an early date since several matters constantly keep coming up. Interim stay in the meanwhile."

10. The Supreme Court in the judgment reported as Union of India and another Vs. Pradeep Kumari and others, which has also been reproduced in the earlier part of this judgment has clearly laid down the following conditions to be satisfied for enforcement of the provisions of Section 28-A of the Act:

"(i) An award has been made by the court under part III after the coming into force of Section 28-A;

(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 28-A 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 redetermination of amount of compensation is sought; and

(vi) Only one application can be moved u/s 28-A for redetermination of compensation by an applicant."

11. The reading of the above will indicate that though clause (iv) of the above said conditions states that to avail of benefit of Section 28-A for redetermination of amount of compensation a person had not made an application to the Collector u/s 18. But this judgment nowhere categorically affirms that in no case a person who has availed of the benefit of provisions of Section 18 has to be totally excluded from the purview of Section 28-A. This condition merely specifies as one of the prerequisites and does not have the effect of exclusionary clause for redetermination in a case of the present nature when facts and circumstances warrant otherwise. There is, Therefore, no specific bar that a person who had approached the Collector u/s 18 has to be excluded to claim the benefit of Section 28-A in all circumstances. The reading of the provision as contained in subsection (1) that "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, 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 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" will establish that it creates no obstacle in approaching the Court for re-determination of the amount of compensation in facts of the present case. The Dictionary meaning of the word `notwithstanding' is in spite of the fact, although, nevertheless, however, yet and this will prove that the word `notwithstanding' does not create an absolute bar for a person to claim benefit of Section 28-A who had also taken recourse to the provisions of Section 18. The Constitution Bench of the Supreme Court has defined the word `notwithstanding' in *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, which may be referred to as below:

"That apart, even if Article 372 continues the pre-Constitution laws of taxation, that provision is expressly made subject to the other provisions of the Constitution. The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. Further Article 278 opens out with a non-obstante clause. The phrase "notwithstanding anything in the Constitution" is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article 278. While Article 372 is subject to Article 278, Article 278 operates in its own sphere in spite of Article 372. The result is that Article 278 overrides Article 372; that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under Article 372, the Union and the State Governments can enter into an agreement in terms of Article 278 in respect of part B States depriving the State law of its efficacy. In one view Article 277 excludes the operation of Article 372, and in the other view, an agreement in terms of Article 278 overrides Article 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement the States ceased to have any power to impose the tax in respect of "works contracts".

12. To adopt a harmonious construction of the provisions of Section 28A it will be safe to infer that even in a case where a land owner has approached the Collector u/s 18 he cannot be deprived of making a written application to the Collector when facts and circumstances of the case warrant so within a period of three months from the date of the award to the Court for enhancement and revision of compensation. The application, however, as has been settled by the Supreme court must be moved within the prescribed period of limitation. Support can also be derived from the judgment reported as *Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh*, reads as follows:

3. We are of the view that when the learned single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an opportunity of paying up the deficit court-fee so that, like other claimants, they could also get enhanced

compensation at the same rate as the others. The learned single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court-fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and the Division Bench the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, Therefore, of the view that, in the present case, the Division Bench as well as the learned single Judge should have allowed the appellants to pay up the deficit court-fee and awarded to them compensation at the higher rate or rates determined by them."

13. The interpretation of the provisions of Section 28-A was also examined by Division Bench of this Court in Ram Mehar Vs. Union of India AIR 1987 Delhi 130 may be reproduced as follows:

"8. No Court has any inherent power to invest itself with jurisdiction not conferred on it by law. It is not disputed that this Court has jurisdiction over these proceedings. The inherent power of a Court cannot be exercised where there is an express provision of law applicable to the case. The Legislature in its wisdom by inserting Section 28-A in the Act ordained the re-determination of the

amount of compensation on the basis of the award of the Court. The petitioner cannot approach the Collector, as according to respondents, that provision is not attracted. We proceed on this basis without expressing our opinion. The petitioner cannot be deprived of his land without payment of true market value of the land which has been differently determined in R.F.A.522/71. The quantification of the market value of the land as true compensation is Rs.10,000/- per bigha in R.F.A.522/71 whereas in this case it is assessed at Rs.3,500/-. It may be that this Court determined compensation differently because of the evidence placed on the record in each case and did not commit any error itself. But the mandate is to pay true value of the acquired land particularly when the other owners of the adjoining and contiguous land have been paid the true value of the land quantified in R.F.A.522/71. Such a situation falls outside the ambit of the cases contemplated by O.47 R.1 of the CPC cases and circumstances always arise which are not in the contemplation of the legislature and not covered by the express provisions of the statute. The court may find its conscience is aroused and without the exercise of inherent power the ends of justice would be frustrated. We feel the justice has to be done in this case.

10. The right to receive compensation arises when the land of a person is acquired. The determination of the compensation for the acquired land is the duty of the court under the Act. The Court is required to compute and quantify the true market value of the acquired land on the principles enacted in the Act. This Court has determined the market value differently in two cases. Section 28-A of the Act gives a mandate to give and pay equal compensation to all persons whose land has been compulsorily acquired by the Government under the same Award and same notification u/s 4 of the Act. The intention is to remove inequality in the payment of compensation for similar quality of land to different interested persons. The ends of necessity persuade us to invoke our inherent jurisdiction to reopen the assessment which we hereby do for redetermination of the market value of the acquired land."

14. In the present case the petitioner is merely claiming enhancement of compensation on the ground that the Additional District Judge in a subsequent reference while following the judgment of the High Court enhanced the compensation to Rs.6,000/- per Bigha whereas the petitioner has only been awarded at the rate of Rs.2,000/- per Bigha. The operative portion of the judgment filed as Annexure "B" to the present petition as contained in paragraph 7 reads as follows:

"The petitioners have placed on record the judgment Ex.A1 in references 307/84, 308/84, 447/84 and 156/84. The judgment is dated 29.3.79. The compensation was awarded @ 6000/- per Bigha by the Hon'ble High Court. There is no judgment to the contrary. No evidence is adduced on behalf of the Union of India in rebuttal of judgment Ex.A1. There is further no evidence to warrant any enhancement over the above the compensation awarded in respect of the land

situated in village Karkardooma vide judgment Ex.A1. passed by the Hon''ble High Court in RFA 307/68 and RFA 308/68, RFA 3780/68 and RFA 181/69. I, Therefore, hold that the petition- ers would be entitled to compensation @ Rs.6000/- per bigha. Issue is answered accordingly in all the references."

15. The land is covered by the same notification and is situated in the same vicinity. The Supreme Court also accepted the compensation at the market rate and awarded compensation at the rate of Rs.6,000/- per Bigha and granted the land owner in that case the necessary relief in Civil Appeal No.45001 of 1985 Tulsi Vs. Union of India decided on October 7, 1985. Moreover, it cannot be ignored that the petitioner is an illiterate and a poor land owner and cannot be deprived of the benefit of the provisions of Section 28-A of the Act which was the spirit underlying the enactment of the provision otherwise the very purpose would be defeated. In the facts and circumstances of the present case, the present petition is liable to succeed. The writ petition is allowed and rule is made absolute. The matter is remanded back to the Collector who will dispose of the application of the petitioner on merits in view of the above findings within three months of the date of receipt of this judgment. The parties shall appear before the Land Acquisition Collector on 30th April, 1999 for further proceedings in accordance with law. There will be no order as to costs.