
(1996) 07 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15043 of 1992

Smt. Chanchlesh and Others

APPELLANT

Vs

Land Acquisition Collector, H.S.E.B. Try Board and Another

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28A

Citation : (1997) 1 ILR (P&H) 105 : (1997) 115 PLR 1 : (1997) 1 RCR(Civil) 76

Hon'ble Judges : V.K. Bali, J;Swatanter Kumar, J;N.C. Jain, J

Bench : Full Bench

Advocate : Jaswant Jain, Mani Ram and R.K. Battas, for the Appellant; M.L. Sarin, General and Charu Tuli, DAG, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Jain, J.—This judgment of ours would dispose of Civil Writ Petition Nos. 15043 of 1992, 16853 and 15196 of 1991 as identical question of law has arisen in all these petitions.

2. Learned counsel for the parties are agreed that the facts of the case be picked up from Civil Writ Petition No. 15043 of 1992 (Smt. Chanchlesh and Ors. v. Land Acquisition Collector and Anr.), although the reference order has been passed in Civil Writ Petition No. 16853 of 1991 (Hari Ram and Ors. v. State of Haryana and Anr.). We would accordingly pick up the facts of the case from Smt. Chanchlesh case.

3. By virtue of a common notification, land of the petitioners alongwith that of other land-owners was acquired. The land Acquisition Collector gave an award on 28.5.1983 assessing the market value of the acquired land at the rate of Rs. 9600/- per acre. The petitioners as well as the other land owners sought reference u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act"). The Additional District Judge upheld the award of the Collector, but granted certain statutory benefits in the shape of enhanced solatium, interest

etc. etc. in accordance with the amendment made in the principal Act by Act. No. 68 of 1984. The petitioners did not file any appeal against the award of the Additional District Judge before the High Court. However, at the instance of certain landowners enhancement was made by this Court. The exact enhanced amount of compensation has not been mentioned in the writ petition. The petitioners, admittedly, having not filed any appeal, filed aft "application u/s 28-A, of the Act for redetermination of the, compensation in accordance with the award given by the High Court. The Land Acquisition Collector has dismissed the application on the ground that the provisions of Section 28-A of the Act are meant to give relief only to those landowners who could not file their applications u/s 18 of the Act due to any reason.

4. In the light of the aforementioned factual position which was not disputed during the course of arguments and in view of the order of the Land Acquisition Collector, the precise question which has arisen in all these cases is whether such land owners who filed references u/s 18 of the Act after the award of the Collector, are also entitled to claim enhanced compensation on the basis of the enhancement made by the High Court or only such land owners are entitled to the grant of enhanced compensation who did not approach the Court of District Judge u/s 18 of the Act. 5. At this stage, it is necessary to have a look at the reference made to the Full Bench in Civil Writ Petition No. 16853 of 1991 which has been extracted by us from the record of the aforementioned case. The reference order reads as under:-

"Admitted.

Mr. Mani Ram, Advocate, who appears on behalf of the petitioners contends that ratio of the decision of the Supreme Court in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, cannot be applied to the case in hand where the petitioners landowners had moved references u/s 18 of the Land Acquisition Act (for short "the Act") and after decision of the District Judge did not file any appeal to claim enhanced compensation u/s 28-A of the Act. While referring to certain observations of the Supreme Court in the aforesaid decision it is contended that a passing reference was made while dismissing appeal filed against the order of the High Court that they could not even get compensation u/s 28-A of the Act. The argument is that since persons who had not filed reference u/s 18 of the Act have been given a right to claim enhanced compensation u/s 28-A of the Act by moving the Collector. There is no rationale to deny such a relief who filed reference u/s 18 of the Act and did not further file appeal against the order of the District Judge. Such a question being of great importance is likely to arise in several cases and we direct that papers of the case be placed before Hon"ble the Chief Justice of contributing a larger Bench."

Section 28-A.of the Act which requires interpretation reads as under:-

"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 on 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."

6. The learned counsel for the petitioners with reference to wording of Section 28-A of the Act has argued that it has not been stated in the section that the persons who have filed an application u/s 18 of the Act are dis-entitled to apply u/s 28-A of the Act. In other words, it has been argued that Section 28-A of the Act does not debar such landowners who have sought references u/s 18 of the Act from availing the provisions of Section 28-A of the Act. Learned counsel further argued that the petitioners cannot be denied the desired relief in accordance with the award of the High Court simply because they happened to seek reference u/s 18 of the Act. According to him, whether the landowners sought reference u/s 18 of the Act or not, all are to be treated on equal footing and that there is absolutely no rationale to treat them differently. The petitioners according to the counsel, could not be put in a different classification on the ground that they sought reference u/s 18 of the Act. No judicial pronouncements in support of the argument has been cited by the learned counsel during the-course of hearing.

7. Learned counsel for the respondents, on the other hand, have argued that in view of the explicit wording of Section 28-A of the Act all such persons who have sought references u/s 18 of the Act and who have not gone to the higher Courts are not entitled to re-determination of amount of compensation on the basis of the award given by the High Court; It has been further argued that only those persons are entitled to avail of the provisions of Section 28-A of the Act who had not filed an application to the Collector u/s 18 of the Act.

8. Learned counsel for the respondents have relied upon Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, , The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, Babua Ram and Others Vs. State of U.P. and Another, and Union of India and another Vs. Pradeep Kumari and others, .

9. Before noticing the case law, which has been cited by the learned counsel for the respondents it is necessary to bear in mind that in accordance with the plain meaning of the words used in Section 28A of the Act that only such persons are entitled to have re-determination who did not file an application to the Collector u/s 18 of the Act earlier. In other words, such aggrieved persons who had not filed an application before the Collector u/s 18 of the Act become entitled to invoke Section 28-A of the Act. Section 28-A of the Act, in our considered view, clearly envisages that only those persons have got locus-standi to invoke the provisions of Section 28-A of the Act who did not seek reference u/s 28-A of the Act. Such landowners who did not apply for reference cannot be treated on the same footing with other landowners who sought references u/s 18 of the Act. In view of the clear and explicit working of the Section, this Court would be disinclined to go into the rationale of the matter.

10. Coming to the case law, Mewa Ram's case (supra) deserves to be referred in the first instance. The Hon'ble Court in that case held that there is no provision in the Land Acquisition Act apart Section 28-A of the Act for reopening an award which has become final and conclusive and that Section 28-A of the Act provides for re-determination of the amount of compensation provided the conditions laid down therein are fulfilled. It was held that for such re-determination the forum is the Collector and the right to file application for re-determination is restricted to persons who had not applied for reference u/s 18 of the Act. Any other view, in the wording of the Apex Court, would lead to disastrous consequences not intended by the legislature.

11. In The Scheduled Caste Co-operative Land Owning Society's case (supra) which has arisen from a judgment of this Court, the Hon'ble Supreme Court has held that newly added section 28-A of the Act would not apply to a case where the claimant has sought and secured a reference u/s 18 of the Act and has even preferred an appeal to the High Court. While referring to the observations made in Mewa Ram's case (supra) the Apex Court observed as under:-

"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 reference u/s 18 of the Act. The re-determination 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 28A, 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 28A, finds support from Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition

Collector, Gurgaon, ."

12. The Hon"ble Supreme Court in Babua Ram's case (supra) after exhaustively referring Mewa Ram's case (supra) and The Scheduled Caste Co-operative Land Owning Society's case (supra) categorically held that sub-section (1) of Section 28-A of the Act would apply only to a person who failed to seek and secure reference u/s 18 of the Act when one or other persons similarly interested in the land covered under the same notification published u/s 4(1) of the Act received on reference u/s 18 of the Act higher compensation in an award u/s 26 of the Act. The argument of the learned counsel for the land owners that all landowners whether they sought reference u/s 18 of the Act or not, should be treated on equal footing and that there is no rational in treating them differently has also been answered by the Apex Court in Babua Ram's case (supra). It has further been held that Section 28-A of the Act is just and fair and does not violate Article 14 and 21 of the Constitution of India. The observations made by the Apex Court in paragraphs 36 to 38, which are reproduced below, are applicable on all force upon the facts of the present case:-

(Text of Paras 36 to 38 omitted Editor)

13. In Pradeep Kumari's case (supra) the Hon"ble Supreme Court again observed that the person would be able to seek re- determination of the amount of compensation payable to him provided he fulfilled certain conditions. -One of the conditions which has been specified by the Apex Court is that the persons moving application did not file an application to the Collector u/s 18 of the Act.

14. In view of the law laid down by the Apex Court and in view of the clear and explicit wordings of Section 18 of the Act, it can safely be reiterated that Section 28-A would apply only to those claimants who fail to seek a reference u/s 18 of the Act. Provisions of Section 28-A cannot be availed of by such land-owners, who sought references u/s 18 of the Act, whether such land-owners, ultimately, went in appeal to the higher Courts or not. In other words, the right of redetermination u/s 28-A of the Act stands restricted only to those land owners who did not seek references u/s 18 of the Act. The argument of counsel for the petitioners on the point of discrimination between one set of land owners, who secured reference and the other set, who did not secure reference and the rational behind it has got absolutely no force in view of the observations of the Apex Court in Scheduled Castes Co-operative Land Owning Society Limited's case (supra) (reproduced by us in the earlier part of the judgment).

15. It would not be out of place to observe at this stage that the counsel for the land-owners requested us to adjourn the case on the ground that the Apex Court is again seized of the matter on account of a reference having been made in the case of Jose Antonio Cruz Dos R. Rodrigueses and another Vs. Land Acquisition Collector and another,

16. We have gone through the entire judgment. In our considered view, the precise question of law, which has arisen in these cases before us, and which we

have dealt with, is not subject matter of reference before the larger Bench. The only two questions have been referred by the Apex Court in Jose Antonio's case (supra) are as follows:-

(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 awards or judgment and decree (if answer on question No. 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 the parliament advisedly did not use such expression?"

17. Before parting with the judgment, it is necessary to deal with the argument of Mr. R.K. Battas in Civil Writ Petition No. 15196 of 1991 (Sham Kaur and Ors. v. State of Punjab). It has been argued that the case of the petitioners has to be dealt with separately as they filed cross-objections before the High Court and did not file an appeal against the award of the District Judge. It has further been argued that the Hon"ble Supreme Court intended to grant benefits to such like persons as petitioners while dismissing the SLP of Balwant Singh and Ors. v. State of Punjab. The order of the Apex Court deserves special mention at this stage, which reads as under :-

"Special leave petitions are dismissed. Two aspects have to be clarified. Some of the claimants said to be petitioners Nos. 9-15 in the special leave petitions (In LPA No. 1135/82) had not preferred appeals against the award of the Court of Reference. When the State preferred appeals against the Single Judge's decision, they filed cross objections and those have been rejected on the ground that they had not challenged the decision of the Court of Reference. We would like to make it clear that the benefits available under the Amending Act, 1984 may not be affected on account of dismissal of the Cross-objections and it would be open to the petitioners to go before the appropriate authority for claiming the benefits of the enhanced compensation and the authorities are free to deal with the matter in accordance with law. Again, in the event of the Constitution Bench holding that the benefits of the Amending Act are available in the set of facts as appearing here the petitioners are entitled to ask for review of the High Court's judgment and claim the benefits of 1984 Amending Act."

18. After going through the observations of the Apex Court, we express our inability to agree with Mr. Battas. The petitioners having approached the Court of the District Judge u/s 18 of the Act would stand debarred from obtaining the benefit u/s 28-A in view of the law laid down by the Apex Court. Even if the petitioners Sham Kaur etc. had not filed cross objections, they were not entitled to redetermination u/s 28-A of the Act. Whether the relief was claimed by Sham Kaur etc. by way of filing the appeal before the High Court or by way of filing the cross-objections, it is one and the same thing. Above all, ultimately, the verdict of the Supreme Court has gone against the claimants and, therefore, Sham Kaur etc. do not stand on different footing on account of observations of the Apex 1

Court in. SLP of Balwant Singh and others, which have been reproduced by us in extenso.

19. For the reasons recorded above, the writ petitions are found to be devoid of any merit and the same are dismissed with no order as to costs.