
(1998) 07 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 234 of 1998

Smt. Sita Devi

APPELLANT

Vs

L.A.C.

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 11, 18, 18(1), 26, 28(1)

Citation : (1999) 1 ShimLC 122

Hon'ble Judges : Surinder Sarup, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Naresh Thakur, for the Appellant; Sanjay Karol, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—These two Writ petitions (cwp No. 234/98 and CWP No. 341/98) are being disposed of by a commission judgment as these involve almost similar facts and questions of law.

2. The facts in CWP No. 234 of 1998 in brief are that the land of the father of the Petitioner situated in Tika Sath, Mauza Badia, District Kangra, along with the lands of other proprietors, was acquired for the public purpose of the construction of reservoir of Beas Dam Project in the year 1962 vide notification issued u/s 4 of the Land Acquisition Act (hereinafter called "the Act") and the Land Acquisition Collector gave his award on 19.5.1971. The reference petition under Section, 18 of the Act, preferred by the Petitioner, was dismissed by the Land Acquisition Collector on 9.1.1975 with one word "rejected" on the report made by his office that the Petitioner had received amount of compensation without protest and was not entitled to file the application u/s 18 of the Act. Thereafter, in a reference petition No. 363 of 1973 titled Kalawati v. Collector, by the award dated 6.10.1991 passed by District Judge the amount of compensation was enhanced for a piece of land which was acquired by the same notification whereby land of the Petitioner was acquired, which gave cause of action to the

Petitioner to file an application u/s 28A of the Act for re-determination of the compensation awarded to her. The application of the Petitioner was dismissed on 18.5.1993.

3. In reply filed on the affidavit of the Land Acquisition Collector Beas Dam Project, the writ petition is resisted on the ground that the application of the Petitioner u/s 28A of the Act was not maintainable as she had already filed reference petition u/s 18 of the Act though the same was dismissed by the Land Acquisition Collector on the ground that she had accepted the compensation awarded to her without protest. It is also alleged in the reply that the order dated 9.1.1975 passed by the Land Acquisition Collector dismissing the reference petition of the Petitioner was not challenged by her before the higher courts, as such, the Petitioner is not entitled to file application u/s 28A of the Act. Supporting the impugned order dated 18.5.1993 passed by the Land Acquisition Collector. the Respondents have also taken the point of delay and laches.

4. Similarly, in CWP No. 341 of 1998 the land of the father of the Petitioners situated in Tika Samkar, Mauza Dhameta, the then Tehsil Dehra, District Kangra, was acquired by notification dated 1.4.1963 issued u/s 4 of the Act. Their land, along with the lands of other land owners, was also acquired for the public purpose of construction of reservoir of Beas Dam Project. The Land Acquisition Collector gave award dated 17.8.1994. The reference petition filed by the father of the Petitioners received in the office of Land Acquisition Collector on 1.11.1973 was rejected on the ground that it was unsigned and barred by time. Thereafter, on the basis of award passed by the Court enhancing the compensation of a piece of land which was acquired by the same notification whereby the land of the Petitioners was acquired they filed application u/s 28A of the Act for re-determination of the compensation of their acquired land. This application has been dismissed by the Land Acquisition Collector by impugned order dated 17.8.1994 on the ground that the application u/s 28A filed by the Petitioners was not maintainable as their father had preferred reference petition u/s 18 of the Act which was rejected on the ground that it was not signed by him and was time-barred. The Respondent has opposed this writ petition by filing reply affidavit supporting the impugned order of the Land Acquisition Collector that once the father of the Petitioners had filed reference petition they are not entitled to redetermination of the compensation awarded to them.

5. We have heard learned Counsel for the parties and gone through the record. For deciding the points in issue, we would refer to the case law on the interpretation of Section 28A of the Act. The point in issue in Civil Writ Petition No. 234 of 1998 is:

Whether by filing reference petition u/s 18 of the Act, which was dismissed by the Land Acquisition Collector at the threshold on the ground that the compensation was accepted without protest, the claimant loses his right to get the compensation re-determined u/s 28A of the Act.

Similarly, in CWP No. 341 of 1998 the point in issue is:

Whether by filing reference petition u/s 18 of the Act, which was dismissed by the Land Acquisition Collector at the threshold on the ground that it was not signed by the claimant and was not within limitation, the claimant loses his right to get the compensation re-determined u/s 28A of the Act.

In *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, the learned Judges of Supreme Court have held in Paragraph-4 of their judgment:

It is obvious on a plain reading of Sub-section (1) of Section 28A 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 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 29A, finds support from the judgment of this Court in *Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon*,

6. In another judgment of Supreme Court in *Babua Ram and Others Vs. State of U.P. and Another*, while interpreting the words "the person interested" used in Sub-section (1) of Section 28 of the Act the learned Judges of Supreme Court have observed in Paragraph-35:

As regards claim for higher compensation, Sub-section (1) of Section 28A envisages the awarding of higher compensation by the Court on reference u/s 18 in excess of the amount awarded u/s 11 by the Collector. The aggrieved person must be the person interested in all other lands covered by the same notification of Section 4(1) and the amount of the compensation determined by the Court is relatable to the land similarly situated, possessed of the same value or potentialities, etc. Despite their failure to seek and secure reference u/s 18, they became entitled to make an application in writing to the Collector within the prescribed three months' limitation. Therefore, any other non-applicant is not entitled to the benefit of the award of the Collector made on redetermination under Sub-section (1) of Section 28A. The contention of B.D. Aggarwal, learned Counsel for the claimants, that all persons despite their failure to make an application for redetermination of the compensation, are entitled to compensation under the redetermined award under Sub-section (1) of Section 28A, is without substance. It is accordingly rejected. Sub-section (1) of Section

28A would apply only to a person who had failed to seek and secure reference u/s 18 when one or other persons similarly interested in the land covered under the same notification published u/s 4(1) received on reference u/s 18 higher compensation in an award u/s 26 and should make a written application u/s 28A. The Collector then is enjoined to redetermine the compensation in the manner laid in Section 28A(1) and to make an award u/s 28A(2).

7. In another judgment of Supreme Court in Union of India and another Vs. Pradeep Kumari and others, the learned Judges of Supreme Court have laid down the following conditions in Paragraph-10 of their judgment for re-determination of the amount of compensation under Sub-section (1) of Section 28A:

(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 redetermination of amount of compensation is sought; and

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

In a later judgment of Supreme Court in Hukam Chand and Others Vs. State of Haryana and Others, interpretation of Sub-section (1) of Section 28A, as given in Scheduled Caste Co-operative Land Owning Society Ltd. v. Union of India and others and Babua Ram and Ors. v. State of U.P. and Anr. (supra), is reiterated that remedy under Sub-section (1) of Section 28A is available only to the claimants who received compensation without protest and did not avail of the remedy of reference u/s 18 and also that denial of additional remedy to those who have already availed of the remedy u/s 18 does not amount to invidious discrimination violating Article 14 of the Constitution.

8. In the judgments of Jose Antonio Cruz Dos R. Rodriguese and another Vs. Land Acquisition Collector and another, ; Bhagti (Smt) (Deceased) through her Lrs. Jagdish Ram Sharma Vs. State of Haryana, and Tola Ram v. State of U.P., (1997) 6 SCC 280 it has been held that limitation of three months for filing application u/s 28A starts from the date of the award of the Court of original civil jurisdiction to whom reference u/s 18 would lie and not from the date of knowledge of said award. However in Bhagti v. State of Haryana, in Paragraph-6 it is further explained:

Thus only those claimants who had failed to apply for a reference u/s 18 of the Act are conferred with the right to apply for redetermination u/s 28A(1). But all those 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 are not entitled to avail of the remedy u/s 28A. Equally, the right and remedy of redetermination would be available only when the Reference Court u/s 18 has enhanced the compensation in an award and decree u/s 26. Within three months from the date of the Reference Court excluding the time taken under the proviso, the applicant whose land was acquired under the same notification but who failed to avail of the remedy u/s 18, would be entitled to avail of the right and remedy u/s 28A. The order and judgment of the High Court does not give such right.

9. In the above-referred judgments of Supreme Court, the learned Judges have used the words "failed to seek reference", "failure to seek and secure reference" "did not make an application to avail remedy", u/s 18 of the Act to entitle a person to file an application u/s 28A of the Act. In Section 28A, the Legislature has also used the words "notwithstanding that they have not made an application to the Collector u/s 18". If we take the expression used by learned Judges of the Supreme Court in the above judgments and also the expression used by the Legislature in Section 28A of the Act on their face value our answer to the issues involved in these writ petitions will be that since the Petitioners had filed their petitions u/s 18 of the Act before the Land Acquisition Collector they are not entitled to file applications u/s 28A of the Act irrespective of the fact that their applications were dismissed at the threshold on the grounds that they had either accepted the compensation awarded u/s 11 of the Act without protest or their applications were time-barred or were found deficient in the absence of their signatures or some other reason, as happened in the present cases but we cannot forget that learned Judges of the Supreme Court were dealing with the cases in which the applicants u/s 28A were those who had not only filed petitions u/s 18 of the act but also got re-determination of the compensation awarded to them by the District Judge u/s 18 of the Act and in some cases they had also filed appeals in the High Court and Supreme Court. Therefore, it is necessary to examine what was the intention of the Legislature in using the words "notwithstanding that they have not made an application to the Collector u/s 18. By using non-obstante clause rigour of bar created by Section 18(1) and second proviso to Section 31 has been lifted to make a person entitled to seek re-determination of the compensation awarded to him u/s 11 of the Act. In other words, those who could not file reference petition u/s 18 for the reason that they had accepted the award and received the amount thereof without protest were also given an opportunity to seek redetermination of the compensation awarded to them by Land Acquisition Collector u/s 11 of the Act. This intention of the Legislature becomes clear if we refer to the Statement of Objects and Reasons for enacting Section 28A of the Act, Para-2 (ix) of the Statement of Objects and Reasons as reproduced in the judgments of Supreme Court in Babua Ram and Ors. v. State of U.P. and Anr. and Union of India and Anr. v. Pradeep Kumari and

Ors. (supra) is as under:

(ix) 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 by the comparatively affluent landowners 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 redetermination of compensation, once anyone of them has obtained orders for payment of higher compensation from the reference court u/s 18 of the Act.

Having regard to the Statement of Objects and Reasons, the learned Judges in paragraph-8 of Union of India and Anr. v. Pradeep Kumari and Ors. (supra) have observed that:

The object underlying the enactment of Section 28A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the Civil Court u/s 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the Reference Court u/s 18 of the Act. Section 28A is, therefore, in the nature of a beneficent 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. In relation to beneficent legislation, the law is well settled that 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. The provisions of Section 28A should, therefore, be construed keeping in view the object underlying the said provision.

10. Therefore, keeping in view the object of Section 28A, it cannot be said that by merely filing the petition u/s 18 of the Act a person becomes disentitled to file application u/s 28A of the Act. If the petition u/s 18 of the Act is dismissed at the threshold on the ground that it is not maintainable because the Petitioner had accepted the award and received the payment without protest he is equal to those who did not file the petition u/s 18 of the Act and cannot be dis-entitled to file application u/s 28A as his petition u/s 18 was not forwarded to District Judge and tried on merit. In other words, he did not avail the opportunity of re-determination of the compensation awarded to him u/s 11 of the Act. Similarly, if the petition file J u/s 18 of the Act was dismissed by the Land Acquisition Collector on the ground that it is deficient in the absence of signatures of the claimant or it is time-barred it amounts to not filing petition u/s 18 of the Act seeking redetermination of the compensation awarded u/s 11 of the Act. In such cases also, the persons cannot be held disentitled to seek re-determination of the

compensation u/s 28A of the Act. All those who were debarred to file petition u/s 18(1) and second proviso to Section 31 of the Act or whose petitions u/s 18 of the Act were dismissed at threshold without trying them and redetermining the compensation by the District Judge fall in one category who have suffered legal grievance because of decision pronounced by Civil Court giving higher compensation for the acquired land similar to their own while they are denied of such higher compensation for their lands and become entitled to avail of the right and remedy conferred upon them u/s 28A as this Section grants an extra right and remedy for redetermination of the compensation payable to them. In this view of the matter, we hold that the Petitioners are entitled to seek redetermination of the compensation awarded to them u/s 28A of the Act and their applications were wrongly dismissed by the Land Acquisition Collector.

11. The submission made by learned Advocate-General that since the Petitioners have not challenged the orders of the Land Acquisition Collector dismissing the petitions u/s 18 of the Act within a period of limitation of three years they are not entitled to file applications u/s 28A of the Act is also without any force. Even if the orders of the Land Acquisition Collector have become final between the parties u/s 28A it does not make any difference as by enactment of Section 28A of the Act extra remedy to seek redetermination of the compensation has been made available to them. As we have discussed above, by dismissing their petitions u/s 18 of the Act on the grounds that they had accepted the award and received the payment of compensation without protest or their petition was deficient in the absence of their signatures or time-barred did not change their position and they continued in the category of those who had not availed the opportunity of redetermination of their compensation by the Court at least once.

12. In the result, we find merit in these writ petitions and these are allowed. The impugned order dated 18.5.1993 (Annexure P-3) in CWP No. 234 of 1998 and impugned order dated 17.8.1994 (Annexure P-3) in CWP No. 341 of 1998 are set aside. The Land Acquisition Collector is directed to consider and decide the applications of the Petitioners u/s 28A of the Act in accordance with law.