
(1997) 01 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 10 of 1997

Sudhir Debnath and Others

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 19, 20, 21

Citation : (1997) 2 GLR 58

Hon'ble Judges : S. Barman Roy, J

Bench : Single Bench

Advocate : B.B. Deb, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

S. Barman Roy, J.—By this writ petition, Petitioners seek to challenge the order dated 18.9.96 passed by the L.A. Collector, South Tripura, Udaipur, in Case No. 1 (LA)/28(A)/96 rejecting the prayer of the Petitioners u/s 28-A of the Land Acquisition Act, 1894, for short, the Act, for enhancement of compensation.

2. The case, in short, is that notification dated 9.1.89 u/s 4 of the Act was issued 9 by the Government of Tripura in respect of various plots of land measuring about 12.66 acres. Ultimately said land was acquired. Some portions of the said acquired land belonged to the Petitioners. Land Acquisition Collector by his award dated 11.12.89 granted compensation at the rate of Rs. 17,000/- per kani of nal land and Rs. 14,000/- per kani for bastu land. Against the compensation awarded by the Collector, Petitioners did not seek any reference u/s 18 of the Act for enhancement of compensation granted in respect of the portions of the acquired land belonging to the Petitioners. However, some other persons who were owners of some other portions of the same acquired land sought reference u/s 18 of the Act for enhancement of compensation and accordingly only their cases were referred to the L.A. Judge. It may be mentioned here that the cases of the Petitioners and the cases of those persons in which references were made u/s 18 of the Act on their prayer were all covered by the aforesaid notification dated 9.1.89 u/s 4 of the Act. Learned L.A. Judge ultimately enhanced the

compensation at the rate of Rs. 24,000/- per kani for nal land and Rs. 21,000/- per kani for bastu land with usual rate of interest and solatium.

3. Petitioners could learn that the learned L.A. Judge passed the award on 18.6.94 in Misc. (LA) 40/92, 41/92, 45/92 and 46/92 enhancing their compensation at the aforesaid rate. Soon after that Petitioners filed application u/s 28-A of the Act on 1.8.94 seeking enhancement of their compensation at the rate at which learned L.A. Judge awarded compensation to some other persons in the aforesaid L.A. Cases on a reference u/s 18 of the Act. Further case of the Petitioners is that their cases as well as other cases in which learned L.A. Judge enhanced the compensation on a reference u/s 18 of the Act were all covered by the notification dated 9.1.89 issued by the Government of Tripura u/s 4 of the Act.

4. However, learned L.A. Collector by the impugned order dated 18.9.96 passed in Case No. 1/LA/28(A)/96 held that the prayer of the Petitioners u/s 28-A was filed beyond the limitation of 3 months and as such he rejected the same. According to the learned L.A. Judge the earliest award passed in connection with some other cases but covered by the said notification dated 9.1.89 issued by the Government of Tripura u/s 4 of the Act was passed on 21.12.93 in Misc. L.A. 37/92, 38/92, 39/92, 42/92 and 43/92. Therefore the earliest award was passed by the learned L.A. Judge on 21.12.93 in some other cases covered by the same notification u/s 4 of the Act. Petitioners filed their application u/s 18 of the Act only on 1.8.94 and therefore learned Collector was of the view that the application u/s 28-A was clearly barred by limitation and accordingly he dismissed the same.

5. I have heard Mr. B.B. Deb, learned Counsel for the Petitioners as well as Mr. U.B. Saha, learned Government Advocate.

6. Petitioners alongwith their application u/s 28-A of the Act produced the award dated 9.6.94 passed by the learned L.A. Judge, South Tripura, Udaipur in Misc. L.A. Case Nos. 40/92, 41/92, 45/92 and 46/92 before the learned L.A. Collector. According to Mr. Deb they did not rely upon the other awards passed by the learned L.A. Judge on 21.12.89. They relied upon the award passed on 8.6.94, Petitioners filed the said application on 1.8.94, Therefore, the said application u/s 28-A was filed by them within a period of 2 months from the date of the award dated 8.6.94 relied upon by them before the learned Collector. It is submitted by Mr. Deb that they were earlier totally ignorant about any such award passed by the a learned L. A. Judge dated 21.12.93.

Section 28-A of the Act provides as follows:

28-A. Redetermination of the amount of compensation on the basis of the award of the Court-(1) Where in an award under this Part, the Court allows to b 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 redetermined 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 Sub-section, 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 Sub-section (1), conduct an enquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and made 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 Section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

7. It is true that the cases under the aforesaid award dated 21.12.93 and 8.6.94 are covered by the same notification u/s 4 of the Act. This aspect of the matter is not in dispute. Equally it is not in dispute that the case of the Petitioners is also covered by the same notification u/s 4 of the Act issued by the Government of Tripura. Now the question is whether the earliest of the successive awards would furnish the starting period of limitation of 3 months as provided in the proviso to Section 28-A(1). Collector held that the earliest award having been passed by the learned L.A. Judge on 21.12.93 and the application seeking enhancement u/s 28-A of the Act having been filed on 1.8.94, such application was barred by limitation. Therefore, this Court is called upon to decide as to whether such decision of the Collector is correct or not.

8. It is true that the Supreme Court in *Babua Ram and Others Vs. State of U.P. and Another*, held that in the teeth of the express language in Sub-section (1) of Section 28-A, if limitation of three months once expires in respect of earliest award by efflux of time, none of the later awards could provide any assistance to revive the lapsed time u/s 28-A(1) nor provide fresh cause of action or successive causes of action when multiple awards are made at different times or dates. Same view was reiterated again by the Supreme Court in *Union of India (UOI) and Others Vs. Karnail Singh and Others*, In that case the Apex Court held that cause of action for making an application u/s 28-A would arise when an award has been made by the civil court, on a reference u/s 18, enhancing the compensation over and above the amount awarded by the Collector in his award u/s 11 and the earliest of the successive awards would furnish the starting period of the limitation of three months as provided in the proviso to Section 28-A(1).

9. However, these two decisions were passed by two Judges Benches of the Supreme Court. But subsequently a larger Bench of the Supreme Court expressed just the opposite view. That decision was by a three Judges Bench of the Apex Court. In this case Supreme Court considered the aforesaid earlier two decisions in Baburam and Karnail Singh. In the case of Union of India v. Pradeep Kumari (1995) 2 SCC 716 decision was rendered by a three Judges Bench of the Supreme Court and this decision was rendered after the decisions in Baburam and Karnail Singh were rendered, In the case of Pradeep Kumari Supreme Court considered its earlier two decisions in Baburam and Karnail Singh. In the case of Pradeep Kumari Supreme Court held that the application for redetermination of the compensation is required to be made within three months from the date of the award of the Court. Right to make the application u/s 28-A arises from the award of the Court on the basis of which the person making the application is seeking redetermination of the compensation. There is nothing in Sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the Court after coming into force of Section 28-A. By restricting the benefit of Section 28-A to the first award that is made by the Court after the coming into force of Section 28-A, the benefit of higher amount of compensation on the basis of the subsequent award made by the Court, would be denied to the persons invoking Section 28-A and the benefit of the said provision would be confined to redetermination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of Section 28-A. There is nothing in the wordings of Section 28-A to indicate that the legislature intended to confer such a limited benefit u/s 28-A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28-A. The object underlying Section 28-A would be better achieved by giving the expression "an award" in Section 28-A its natural meaning as meaning the award that is made by the Court in Part III of the Act after the coming into force of Section 28-A. In that case Supreme Court further observed in Paragraph 11 that since the cause of action for moving the application for redetermination of compensation u/s 28-A arises from the award on the basis of which redetermination of compensation is sought, the principle that "once the limitation begins to run, it runs its full course until its running is interdicted by an order of the court" can have no application because the limitation for moving the application u/s 28-A will begin to run only from the date of the award on the basis of which redetermination of compensation is sought. In this case Supreme Court ultimately overruled its decisions in Baburam and Karnail Singh and held the aforesaid view. Therefore, the view expressed by the Supreme Court in Pradeep Kumari is (sic) binding upon us. Petitioners alongwith their application u/s 28-A before the Collector produced the award passed by the learned L.A. Judge on 8.6.94 in Misc. L.A. Cases 40/92, 41/92, 45/92 and 46/92. They relied upon the aforesaid judgment and award dated 8.6.94 passed by the learned L.A. Judge and filed their application u/s 28-A on 1.8.94 and accordingly sought redetermination of their compensation. This being so, it is clear that the

application filed by the Petitioners before the Collector u/s 28-A for redetermination of compensation is well within time. This is clearly covered by the decision of the Apex Court in Pradeep Kumari.

10. It is of course true that the decision of the Apex Court in the case of Pradeep Kumari was not brought to the notice of the learned Collector. Only two decisions of the Supreme Court in Baburam and Karnail Singh were brought to his notice and, as such, the Collector was naturally misled. Had the decision of the Supreme Court in the case of Pradeep Kumari been brought to the notice of the Collector, I am sure, he would have passed correct order holding that the application of the Petitioners u/s 28-A was within limitation and accordingly would have decided the same on merit according to law.

11. In view of the aforesaid, I am left with no option but to allow this petition and accordingly I allow the same and set aside the impugned order passed by the learned Collector on 18.9.96 in Case No. 1/LA/20(A)/96 and further direct him to treat the petition filed by the Petitioners u/s 28-A for redetermination of compensation to be within time and not barred by limitation and the Collector shall proceed to decide their application on merit.

12. Petition is accordingly disposed of Parties to bear their costs.