

(1996) 12 MAD CK 0070
In the Madras High Court

The Special Tahsildar (L.A.), MEPZ

APPELLANT

Vs

K. Jayaraman and Others

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (1997) 1 MLJ 408

Hon'ble Judges : K.A. Swami, C.J.;S.S. Subramani, J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—The writ appeals are preferred against the orders dated 21.4.1994 passed by the learned single Judge in Writ Petitions 3698,6175,6180 and 6181 of 1993,3967,3969,6173 and 6174 of 1993, 6601,6600,6590,8160 and 6587 of 1993,6602,9152, 7032 of 1993 and 1791 of 1994,9153,6588,6589 and 6182 of 1993, issuing writs in the nature of mandamus to the Collector to determine the compensation payable to the respective writ petitioners, in accordance with Section 28-A of the Land Acquisition Act, within a period of three months from the date of production of a copy of the order either by the Government Pleader or the petitioners. Hence, the State Government has come up in appeals.

2. The writ petitioners have filed applications u/s 28-A of the Land Acquisition Act for re-determining the compensation by the Collector of the District on the ground that in respect of the lands acquired under the very same Notification, there is enhancement compensation made in the reference made to the Civil Court. The Collector has not yet taken up the applications for consideration on the ground that the appeals have been preferred against the awards passed by the Civil Court before the High Court and until the appeals are disposed of and the decree awarding of compensation becomes final, the applications filed u/s 28-A of the Land Acquisition Act cannot be considered.

3. It is not in dispute that in respect of each of the applications filed u/s 28 A of the Land Acquisition Act, the appeals are pending against the respective awards

relied upon in the applications filed u/s 28-A of the Land Acquisition Act. Those appeals are pending on the file of this Court.

4. The question for consideration is when the decree awarding of compensation has not become final, and it is pending in appeal, the application filed u/s 28-A of the Land Acquisition Act can be decided.

5. The question is no more *res Integra*. It has been considered by the Supreme Court in the decision in *Babua Ram and Others Vs. State of U.P. and Another*, At paragraph 39 of the judgment, it has been stated thus:

The next question is whether the Collector L.A.O. on receipt of an application under Sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree u/s 26 are pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award u/s 28-A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it the High Court or this Court. Taken for instance that A,B and C are interested persons in the land notified u/s 4(1) and the compensation determined in the award u/s 11. A received the compensation with out protest. B and C received the compensation u/s 31 under protest and sought and secured reference u/s 18. The court enhanced the compensation from the Collector's award of Rs. 10,000 to Rs. 20,000 B did not file appeal u/s 54 while C filed the appeal. The High Court, suppose, further enhanced the compensation to Rs. 25,000 or reduces the compensation to Rs. 15,000 per acre. A is a person aggrieved only to the Extent of the excess amount awarded either by the award and decree of the court u/s 26 but he will not get the enhancement of further sum of Rs. 5,000 granted by the High Court in favour of C. The decree of the High Court is the executable decree made in favour of C. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of civil court u/s 26 and of the High Court u/s 54. There is nothing left for redetermination. With a view to save A or B or the State from the consequences of such incongruous situations, the Collector/L.A.O. should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally the L.A.O. would file the appeal

against the enhanced compensation in a decree of either the Civil Court or the High Court and will now their pendency. In the case of appeal filed by the interested persons, the latter should inform the Collector/L.A.O. of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under Sub-section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate court. Before proceeding with the determination, he should obtain an affidavit from the party making the application u/s 28-A that no appeal against the award made u/s 26 relied upon by him was filed or if had been filed was disposed of by the appellate court and to produce the certified copy of decree and judgment, if already disposed of.

Therefore, there is no scope whatsoever left for contending that the determination can be made and the effect can be given after the appeal is disposed of, as has been now done by the learned single Judge. The petitions filed u/s 28-A of the Land Acquisition Act have to be kept pending till relevant award/decreed awarding compensation becomes final. The expression "Court" occurring in Sections 18 and 28-A of the Land Acquisition Act is not confined to the original court which determines the compensation on reference but the Court of Appeal also. Therefore, even if the matter is taken up from the High Court to the Supreme Court, the application filed u/s 28-A of the Land Acquisition Act has to be kept pending until the Supreme Court disposes of the matter because ultimately the original decree merges in the decree that may be passed by the appellate Court.

6. For the reasons stated above, the writ appeals are allowed, The orders dated 21.4.1994 passed by the learned single Judge in W.P.Nos.3968,6175,6180 and 6181 of 1993,3967,3969,6173 and 6174 of 1993,6601, 6600,6590,8160 and 6587 of 1993,6602,9152,7032 of 1993 and 1791 of 1994,9153,6588,6589 and 6182 of 1993 are set aside and the writ petitions are dismissed. The Collector of the District is directed to keep the applications pending until the disposal of the appeals, in case the matter is carried to the Supreme Court until the Supreme Court decides the appeal. It is open to the petitioners to produce a copy of the final judgment in appeal and request the Collector to take up the petitions for consideration and re-determine the compensation. The C.M.Ps. are also disposed of. However there will be no order as to costs.