
(1996) 04 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No. 7757 of 1996.

Union of India

APPELLANT

Vs

Bant Ram (dead) by L.Rs.

RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 26, 28A, 3

Citation : (1996) 5 AD 60 : AIR 1996 SC 3327 : (1996) 2 CTC 191 : (1996) 5 JT 637 : (1997) 1 MLJ 26 : (1996) 4 SCALE 445 : (1996) 4 SCC 537 : (1996) 1 SCR 618 Supp

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : A.S. Nambiar, W.A. Kadri and Anil Katiyar, for the Appellant; Rajiv Dhawan, Rajiv Garg and N.D. Garg, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. Heard learned counsel on both sides.

3. The notification u/s 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on July 10, 1979. The award u/s 11 was made on March 13, 1981. The respondents received the compensation without protest. The dissatisfied claimants moved an application u/s 18. On reference, the compensation was enhanced u/s 26 on November 6, 1985. Dissatisfied therewith, the claimants went in appeal to the High Court. On May 21, 1987, the High Court further enhanced the compensation. The respondents filed an application u/s 28-A of the Act on December 4, 1987. The Collector determined the compensation based on the judgment of the High Court by an award dated February 28, 1989. When the award was called in question in writ petition, the High Court by impugned order dated July 13, 1994 in W.P. No. 10987/93 dismissed the petition. Thus, the appeal against the said order.

4. Dr. Rajiv Dhawan, learned senior counsel for the respondent has contended that Section 28A would apply not only when an award is made by the Court u/s 26 but also when judgment is made by the High Court u/s 54 of the Act. We find no force in this contention. Section 28A itself specifically refers to applicability of Chapter III; in other words, Chapter III would be applicable to a reference made u/s 18 to the court. The marginal note indicates redetermination of the compensation on the basis of the award of the court. Section 3(d) defines "court" to mean a principal civil court of original jurisdiction or a court of special Judicial officer. Sub-section (1) of Section 28A envisages "allowing applications", i.e., reference application filed u/s 18 in Part III, Moreover Section 54 falls in Chapter VIII of the Act. Therefore, Judgment and decree of the appellate court/High Court does not encompass the award of the Court referred to in Section 28A. The controversy is no longer *res Integra*. In *Babua Ram and Others Vs. State of U.P. and Another*, and hosts of other decisions following that, cover the field. Therefore, the conclusion is inevitable that the application for redetermination of the compensation u/s 28A would not lie after the judgment of the High Court u/s 54 of the Act.

5. The respondents filed the writ petition for the enforcement of the award in question. The writ petition was allowed on November 12, 1992 and in contempt proceedings the counsel appearing for the Union of India undertook, at the pain of contempt, to deposit the amounts. On that basis, it is contended that the order of the High Court having been allowed to become final, it is not open to the Union of India to resist the award. We find no force in the contention. The above writ petition was only by way of an execution. Since the order passed by the Collector u/s 28A is found to be non est, being devoid of jurisdiction, the payment of the amount, at pain of contempt, or even otherwise, does not disentitled the Union of India to assail the validity of the award.

6. It is then contended that there are laches on the part of the appellants from 1992 to 1996 and that, therefore, this Court should decline to interfere with the matter. We find it difficult to give acceptance to the contention. Since the respondents have already filed SLP against the original order, laches do not stand in the way.

7. The appeals are accordingly allowed. The order of the High Court and award u/s 28A are set aside. The appellants are entitled to the restitution of the amount, if it is already withdrawn by the respondents. No costs.