

(1994) 06 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 1647 of 1988

Union of India

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 16-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Land Acquisition Act, 1894 — Section 18, 18, 23(2), 23(2), 28A

Citation : (1995) 2 GLJ 421

Hon'ble Judges : M.Sharma, J

Bench : Single Bench

Advocate : K.N.Choudhary, B.Dutta, A.Sharma, M.Sharma, P.K.Goswami,
Advocates appearing for Parties

Judgement

1. The writ petitioner Union of India has preferred this writ petition against the judgment and decree dated 19.6.87 and the amending order dated 4.6.88 passed by the Additional District Judge, Sonitpur in Misc LA Case No.61 of 1986.

2. The petitioner's case is that the Collector of Sonitpur by order dated 29.3.86 in the above mentioned LA case granted enhanced compensation @ Rs.3,750/ per bigha with a solatium @ Rs. 15% from the original compensation granted to the respondent Nos. 3 and 4 on 10.4.71 at Rs.2,200/ per bigha for which application was made by the respondent Nos.3 and 4 after a long time, ie on 22.8.85 after acceptance of the compensation in 1971 in connection with Land Acquisition Case No. 19 of 1969/70 relating to acquisition of land of Bhitporwa Village.

3. Against the award made by the Collector some other claimants (Bharati Koch and 8 others) preferred reference before the District Judge, Sonitpur, Tezpur who enhanced the compensation of Rs.3,000/ per bigha with 15% solatium, 6% interest per month. On appeal against the reference this Court finally disposed of the appeals (F.No.326to334of 1973)by order dated 23.5.85 and enhanced the compensation to Rs.3,750/ per bigha (Annexure I to the writ petition).

4. The respondent Nos.3 and 4 did not file any reference and after having accepted the final compensation of Rs.3,23,620/ with 15% solatium on 10.4.71, without any protest, filed an application under section 28A of the Act of 1894 before the Collector for redetermination of the compensation. On the strength of the order dated 23.5.85 (Annexure I to the writ petition) on 20.9.85 the application of respondent Nos.3 and 4 was rejected by the Collector as time barred. This order of the Collector was set aside by this Court on a revision petition being No.349 of 1985 preferred by respondent Nos.3 and 4 and remanded the matter to the Collector. The Collector by order dated 29.3.86 passed the impugned order by which compensation was raised to Rs.3,750/ per bigha with 15% enhancement of solatium (Annexure II). Against this respondent Nos.3 and 4 filed reference under section 18 and the Additional District Judge enhanced the solatium and interest in the light of the amendment in section 23 (2) and section 28. The Additional District Judge by order dated 9.6.87 (Annexure III) in LA Case No.61 of 1986 granted solatium of 3 0% on enhanced compensation together with interest @ 9% and 15% respectively. Subsequently the learned Additional District Judge amended the said order, passing a fresh order dated 12.4.88.

5. The Union of India has preferred this writ petition impugning those orders for the interest of public as public fund is involved in this case.

6. The main ground of this writ petition is that the learned Collector and the learned Court below committed material irregularity and error of law in redetermining the compensation and extending the benefit of amended section 23 (2) and 28 of the Act of 1894 to the respondent Nos.3 and 4, as such increase in solatium applies to awards made by Collector or by Court between 30.4.82 and 29.4.84 only.

7. Respondent No.3 has filed affidavit through Mr. Jitendra Kumar Barua, Director of Noorbari Tea Company. It is averred, inter alia, that the writ petition is not maintainable having abandoned the right of appeal given by the special provisions of section 54 of the Act, well beyond the prescribed period of limitation; that Land Acquisition Act provides for a complete machinery for relief and therefore petition is barred to invoke the writ jurisdiction of the High Court; that the question of jurisdiction was never raised at any stage either in the proceeding or in the writ petition. It is further submitted that the Collector is an agent of the Union Govt. under Land Acquisition Act and his award is the award of the Union Govt. and therefore Union Govt. is estopped, in absence of fraud or collusion, question its own award after more than one and half year. That the High Court in Civil Revision No.349 of 1985 directed the Collector to dispose of the petition under section 28A on merit. As no appeal has been preferred by the petitioner against that order of the High Court dated 20.11.85 in that abovementioned civil revision, petitioner cannot ask for relief by this writ petition, and if the writ petition is allowed it would amount to setting aside the order dated 20.11.85. Mr. Sarma, learned counsel for the respondent also

strenuously submitted that the writ petition is barred by res judicata as the issue raised in the writ petition has already been decided in the Civil Revision No.349 of 1985. In his submission Mr. Sarma, learned counsel for the respondent Nos.3 and 4 urged that the writ petitioner having abandoned recourse to the machinery provided by the Act, has filed the instant writ petition challenging basically the order of the Collector dated 29.3.86 beyond limitation, the writ petition is liable to be dismissed; that if an appeal has been filed on the day when the writ petition was filed, it would have been dismissed as barred by limitation, in limine. That there is no cause shown in the writ petition for its delay and nothing has been said for not availing the alternative reliefs by appeal under the Act. The moot point agitated by Mr. Sarma is that section 28A gives right to the respondents to file the said application within the time specified to him from the date of award of the Court which question in this case was finally disposed of by this Court on 23.5.85 in FA Nos. 326 of 1973 to 334 of 1973 (Annexure I). That the award was modified by this Court since an appeal was in continuation of the original proceedings.

8. Apparently the Court below entertained the petition of the respondent Nos.3 and 4 and granted relief on the basis of the judgment of this Court passed on 23.5.85 in the said first appeals. Petitioner raised a question of law with regard to interpretation of the expression "Court" appearing in section 28A of the Act of 1894 and whether the Collector was justified in redetermining the compensation in terms of section 28A of the Act on the basis of the said application dated 22.8.85 purporting to construe the expression "Court" appearing in section 28A as the High Court. Now the question is whether the Collector can redetermine the compensation in exercise of his power conferred under section 28A of the Act.

9. In section 3 (d) of the Land Acquisition Act, 1894 the expression "Court" is defined as follows :

3. (d) The expression "Court" means a principal civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act.

From reading of the above section apparently Court means a principal civil Court of original jurisdiction.

10. Under section 3 (17) of the General Clauses Act, 1897, District Judge is defined as follows :

3. (17) "District Judge" shall mean the Judge of a principal civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

The definition as stated District Judge is a Judge of a particular civil Court of original jurisdiction, but shall not include the High Court in exercise of its ordinary or extraordinary original civil jurisdiction. The submission of Mr. Sarma

that in view of the judgment in First Appeal Nos.326 to 334 of 1973 of the High Court the Collector can redetermine the compensation in exercise of power conferred under section 28A is not sustainable as the meaning of continuing process of appeal in said first appeals are not applicable to the scheme of section 28A of the amended Act. This perception of Mr. Sarma is not correct in view of the definition of the Court provided in section 3 (d) of the Act and also section 3(17) of the General Clauses Act, as stated above.

10A. In the case of Union of India vs. Raghubir Singh, (1989) 2 SCC 754, the Apex Court held relying on four purposes that Court includes only Court of original jurisdiction, ie, reference Court and not the High Court or Supreme Court, that scheme of the provisions under the amended Act regarding increase in solatium applies only to awards made by the Collector or "Court" between April, 1982 and September 24, 1984 and not before that benefits extend to appeals decided by them in respect of "such" award only, decided by them anytime after April 30, 1982, that benefit of amended provision cannot be granted by High Court or Supreme Court in respect of awards made by the Collector or the Court prior to April 30, 1982. In the instant case, evidently, Collector's awards was passed on 10.4.71 and the reference Court award was passed on 20.1.73. Mr. Sarma made reliance in support of his submission on AIR 1964 SC 1336 (Manindra Land and Building Corporation Ltd vs. Bhutnath Banerjee & others), and AIR 1966 SC 153 (Pandurang Dhondi Chougula & others vs. Maruti Hari Jadav & others. Those references are distinguishable as they are rendered in contest of section 115 CPC.

11. In view of above reason, in my view, the question raised in the writ petition are questions of law and can be adjudicated upon by the High Court invoking its writ jurisdiction. Therefore, it is no more integra that an alternative remedy is not an absolute bar to the objection regarding maintainability of the writ petition. Mr. Choudhury, learned counsel for the writ petitioner has submitted that due to the impugned order the State fund had suffered a lot, prejudicing the public interest, and that when pure question of law is involved High Court can in its discretion can entertain writ petition. I find sufficient force in his submission as bar relating to alternative remedy is a rule of self imposed limitation. It is a rule of policy, convenience and discretion rather than a rule law. The Fortysecond Amendment of the Constitution however, placed a bar on the jurisdiction of the High Courts to entertain certain petitions, if any other remedy for redress was provided for by law. As the 42nd Amendment of the Constitution has since been repealed by 44th Amendment Act, no embargo on High Court's jurisdiction on the ground of alternative remedy be entertained. In arriving this view this Court finds its reliance in the case of the State of UP vs. M/s India Home Pipe Co, (AIR 1977 SC 1132); Dr. (Smti) Kamlesh Gupta vs. Management of Hindi Kanya Mahabidyalaya, (AIR 1987 SC 2186).

12. The point raised by Mr. Sarma regarding maintainability of the writ petition on point of delay, I am of the view that the claim is not a rule of law, but a rule

of practice based on sound and proper exercise of discretion. Each case depends on its own merits. Obviously Court has to take into consideration whether delay or laches in filing a petition/case, the rights which have accrued to others by reason of the delay disturbed and prejudiced the interest of the other party. As in this case public money is involved entertainment of the writ petition demands interference of this Court to examine the applicability of the legal provisions of the Act. In a series of decisions the Apex Court held that the provisions of Limitation Act are not applicable to writ petitions. However, if the delay is inordinate reasonable cause required to be explained to the satisfaction of the Court. Explanation to section 141 CPC is also applicable in this case which lays down that:

?Explanation In this section, the explanation" proceeding" includes proceeding under O.IX, but does not include any proceeding under Article 226 of the Constitution.?

13. With the above backdrops of the case the point remains for consideration is whether respondent Nos.3 and 4 are entitled to invoke the benefit under section 28A of the Act in view of the order dated 23.5.85 passed by this Court in the above mentioned first appeals.

14. As stated above contention of respondent No. 3 is that appeal is a continuous process and therefore High Court's order dated 23.5.85 is the basis for redetermination of compensation. As discussed above, the principle that appeal is a continuous process is not relevant in the context of the Act (amended) as has been held by the Apex Court in (1989) 2 SCC 754 (supra). The view of the Apex Court needs to be reproduced to justify its applicability in the facts and merits of the case in hand more so when Mr. Sarma has insisted his submission on this point. It has been held that:

?The learned Judge proceeded to apply the principle that the appeal is a continuation of the proceeding initiated, before the Court by way of reference under section 18, but, in our opinion the applicant on of a general principle must yeiled to the limiting terms of the statutory provisions itself. Learned counsel for the respondent has strenuously relied on the general principle that the appeal is a rehearing of the original matter, but we are not satisfied that he is on good ground in invoking that principle.?

15. Apparently, the Collector and the reference Court acted illegally and without jurisdiction, purporting to redetermine the compensation under section 28 A of the Act and thereafter extending the benefit of amended section 23 (2) and 28 of the Act to the respondent Nos.3 and 4. In this case the Collector passed the award on 10.4.71 and the reference Court passed the award on 21.1.73. Therefore, the benefit of section 23 (2) and 28 of the Act could not have been extended to the respondent Nos.3 and 4. In Kamalajamanuavaree's case (AIR 1985 SC 576) which was affirmed by the Constitution Bench in (1989) 2 SCC 754 (supra) the Apex Court held that retrospectivity of 1984 amendment is limited to

awards passed between 30.4.82 and 29.4.84 and the appeal pending therefrom before the High Court and Supreme Court. This decision has been affirmed subsequently in (1992) 3 SCC 239 (Mir Fazeelath Hussain & another vs. Special Deputy Collector, Land Acquisition, Hyderabad).

16. In view of the above discussion my reasoned view is that redetermination of compensation by the Court below is misconceived. The order dated 23.5.85 in FA 326 to 334 of 1973 is not the award of the "Court" as contemplated in section 28A as amended section 3 (d) defines "Court" as principal civil Court of original jurisdiction. Therefore, the "award" of the "Court" has to be construed in the context of section 28 A read with section 3 (d) of the Act.

17. Under the provisions of section 28A an application is required to be filed within 3 months from the date of award of the "Court". Admittedly, in this case, the application was filed after a long 13 years from the date of the award of the Court passed in 1973. The High Court's order dated 23.5.85, which has been made the basis for reconsideration of compensation, did not allow the benefit of amended section 23 (2) and section 28 of the Act.

18. The stand of the respondent No.3 as insistently submitted by Mr. Sarma, throughout his argument before this Court, is that right of redetermination of compensation has arisen to the respondent No.3 on the basis of the judgment in FA 326 to 334 of 1973 and therefore if the argument is advanced that the right to have the amount of compensation redetermined arises with reference to the date of the award of the Court, in that case, the question of limitation had been decided by the High Court as far back as 20.11.85 which is the order passed in Civil Revision No.349 of 1985 (Annexure V to the affidavit by respondent No.3). But this High Court, as it appears from perusal of above judgment, directed to dispose of the application on merit in accordance with law keeping in view the direction of this Court awarding compensation on 23.5.85. In that view of the matter, the fact remains that, while the entitlement of the respondent No.3 for redetermination of compensation was directed to be decided in context of the scheme under section 28 A of the Act, the period fixed under the scheme required to be taken into consideration as the intention of the Legislature has been reflected in fixing the period between 29.4.82 and 30.4.84; in such cases certainly meaning of the judgment passed in the said civil revision cannot be interpreted that the period of limitation which the amended Act provided to, can be evaded, more so, when apparently matter was sent back to the Collector on the ground that no proper opportunity of hearing was given to the petitioner (respondent No.3) before rejecting the application made under section 28A of the Act. Further the question whether the term "Court" in section 28A would be confined only to reference Court, the decision in (1989) 2 SCC 754 settled the question which has been affirmed by the subsequent decision of the Apex Court (Constitution Bench) in (1992) 3 SCC 239. As discussed above the legislature in its wisdom made out the scheme under section 28A by which restriction was imposed with regard to the word "Court". I cannot agree with the submission of

Mr. Sarma, learned counsel for the respondent No.3 that no restriction is imposed with regard to the word "Court" as evidenced in section 30 of the amended Act. The reference of (1992) 3 SCC 239 (Mir Fazeelath Hussain & another vs. Special Deputy Collector, Land Acquisition, Hyderabad), in support of his contention is not acceptable in context of the scheme under section 28A of the Act. The observation of the Apex Court (per Punchhi, J) that "the High Court and the Supreme Court are Courts of correction and in exercise of the appellate jurisdiction are empowered to correct the award of the District Judge, as if the decision made by it would have been the award of the District Judge" is, in my humble view, distinguishable in the context of the facts and merits of that case and the scheme of section 28A. It is not disputed that suit includes appeal and appeal is the continuation of the suit but the essence of applicability of the benefit of amended section 23 (2) and 28 extends only to awards passed by Collector or Court between 30.5.82 and 29.4.84. Admittedly there was no reference preferred by respondents 3 and 4 under section 18 of the Act. The awarded amount was accepted (claimed to be under protest) and for the long period of 13 years no reference or any application was filed. In that case, I am constrained to hold that respondents 3 and 4 cannot get the benefit of an award to which they were not a party reference. The said application under section 28A cannot be taken as an application under section 18 for reference, more so, when the award was passed long back in 1973 by the Court. The claim that those first appeals are continuation of the said reference is not applicable to the benefits of the respondents 3 and 4. This claim, in my view, can be relevant to the other claimants who were the appellants in those first appeals. In view of the reasons above, my considered view is that, in absence of any reference under section 18 of the Act by respondents 3 and 4, benefit cannot be claimed under section 28A at a much belated proceeding (after 13 years). The submission of Mr. Sarma that the word "Court" in section 28 would include the final appellate decision of either High Court or Supreme Court, as the case may be, is misconceived and has no force on the ground that the respondents 3 and 4 were not parties to the reference from which FA 326 to 334 of 1973 have arisen, nor separate reference was made to the District Judge so that continuation of the suit would have been finalised in appeal to include it in the scheme of section 28A of the Act. Reliance of Mr. Sarma on the case of Santosh Kumar & others vs. Central Warehousing Corporation & another, (1986) 2 SCC 343 is distinguishable on facts as the said decision was rendered in the context of section 18 of the Act. In the case in hand question of fraud or collusion is not material where question of law is involved.

19. In view of my above discussion, I hold that the respondents 3 and 4 are not entitled to receive the additional compensation whose case has been closed in 1971 being not referred to the District Judge independently or along with other complainants within time to have the like benefit of the order dated 23.5.85 passed in the above mentioned first appeals. Accordingly, the orders dated 29.3.86 passed by the Collector, Sonitpur in LA Case No.61 of 1986, the order dated 19.6.87 and 12.4.88 passed by the Additional District Judge, Sonitpur in

Misc LA Case No.61 and the order dated 4.6.88 passed by the Additional District Judge, Sonitpur are set aside and quashed.

20. In the result the writ petition is allowed. Respondent 3 and 4 are directed to pay Rs. 1,000/ to the petitioner as costs.