

(1990) 10 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : CWP 580 of 1987 and CWP 181 of 1989

Union of India (UOI) and Another and Savitri Devi	APPELLANT
Vs	
Pradeep Kumari and Others and State of H.P. and Others	RESPONDENT

Date of Decision : 24-10-1990

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 11, 18, 18(1), 18(2), 19
Land Acquisition Act, 1894 — Section 28A

Citation : (1990) 2 ILR HP 554

Hon'ble Judges : P.C. Balakrishna Menon, C.J.;Devinder Gupta, J

Bench : Division Bench

Advocate : G. Ramaswami, P.A. Sharma, N.S. Bawa, Sanjeev Ahuja, in C.W.P. No. 181 of 1989 and R.K. Sharma, in C.W.P. No. 580 of 1987, for the Appellant; M.R. Sharma O.P. Sharma, R.K. Sharma for Respondent No. 1, Chhabil Dass, General, L.S. Panta, D.A.G. for Respondents No. 2 and 3 in C.W.P. No. 181 of 1989 and L.S. Panta, D.A.G. for Respondent No. 1, G. Ramaswami P.A. Sharma, N.S. Bawa and Sanjeev Ahuja, in C.W.P. No. 580 of 1987, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—In Civil Writ Petition No. 181 of 1989, the Petitioners Union of India and Beas Construction Board have, by filing this writ petition, prayed for quashing Annexure P-13 an award made on March 14, 1988, by the Collector, Land Acquisition, Beas Dam Project, Respondent No. 3. In Civil Writ Petition No. 580 of 1987, the Petitioner has sought quashing of Annexure P-8, an order made on June 29, 1987, by Collector Land Acquisition dismissing the application u/s 28A of the Land Acquisition Act, 1894 (hereinafter to be referred as the Act) for predetermination of the compensation amount. The facts giving rise to the filing of the writ petitions are as under.

2. The construction of the Beas Dam Project was commenced in the year 1960 as a joint venture of the erstwhile State of Punjab and the State of Rajasthan by mutual agreement between the two States. All decisions on the policy and administrative matters were taken by Board known as the Beas Control Board

which was set up by the a Central Government in consultation with the two States on February 19, 1961. The Beas Project Board was presides over by the Governor of the then State of Punjab and its members included Ministers of the States of Punjab and Rajasthan and senior officers of the Central Government and of the two States. The decisions of the Beas Construction Board used to be implemented by the Punjab Government which was administering and executing the works on the project. The expenditure on the project was shared by the Rajasthan Government.

3. With the coming into force of the Punjab Reorganisation Act, 1966 (Act 31 of 1966), the new State of Haryana and the Union Territory of Chandigarh came into being, having been formed out of the territory of the erstwhile State of Punjab. A part of the Punjab territory was also transferred to what was then the Union Territory of Himachal Pradesh. What remained with Punjab become the new State of Punjab.

4. Sub-section (1) of Section 80 of the Punjab Reorganization Act, 1966, provided that the construction including the completion of any work already commenced of the Beas Project should on and from November 1, 1966, be undertaken by the Central Government on behalf of the successor states (as defined under the Act) and the State of Rajasthan should provide the necessary funds to the Central Government for the expenditure on the Project including the expenses of the Beas Construction Board. For the discharge of its functions, Sub-section (1) and Sub-section (2) of Section 80 of the Punjab Reorganisation Act empowered the Central Government in consultation with the Governments of the successor States and the State of Rajasthan to constitute Board to be called the Beas Construction Board. Thus by the Punjab Reorganization Act, 1966, the intire expenditure for the construction and completion of the Beas Project was entrusted to the Central Government.

5. 69,260 acres of land located in 137 different revenue estates within District Kangra of the erstwhile State of Punjab, which stood transferred to the then Union Territory of Himachal Pradesh under the Punjab Reorganisation Act, 1966 and now the State of Himachal Pradesh, was acquired on the basis of following three notifications issued u/s 4(1) of the Act:

Date of noti	No. of noti	Area acqui	Revenue No. of fication	fication red	estates
awards affected	made 11-1-1962	930/BP	12,590	46	46 acres.
1-4-1963	6969/				
BP/	41,460	49	126	3561/62.	acres.
10-11-1964	24275	BP/	15,210	42	133
					3561/62. acres.

6. The first award which was announced after the reorganization of the States in the year 1966 was made by the Land Acquisition Collector on April 2, 1969, for Tika Behari. The land Acquisition Collector had adopted for the purpose of valuation of lands the principle of capitalization and he was of the view that the rule of 20 years" purchase be adopted and accordingly after determining the net annual profit per kanal of the land of the best category at Rs. 50/- and

multiplying it by 20 arrived at Rs. 1000/- per kanal as the value of the best variety of land. In order to determine the net annual profit from the land, the Collector had carried out of the crop cutting experiment on some plots of land.

7. On behalf of the department, a statement was filed showing that lands of similar quality were being sold at or about the time of publication of the notification issued u/s 4(1) of the Act at Rs. 300/- per kanal. The Collector found that a mean between the valuation arrived at by him by adopting the principle of capitalisation and Rs. 300/- per kanal, which according to the Department was the value of the best category of land in the area, would be the reasonable compensation. Accordingly, by adding the above figures and dividing the total by two he arrived at Rs. 650/- per kanal as the value of the best category of the land and reduced the value proportionately in respect of other categories of land which were lower in quality. Making this award as the basis, awards in respect of other revenue estates were also made allowing the same rates.

8. Aggrieved by the award, the land owners demanded reference to the court for determination of the amount of compensation. Cases were referred to the District Court of Kangra at Dharamshala. The District Judge determined the amount of compensation by allowing Rs. 1000/- per kanal for the best category of land and compensation was fixed at comparatively lower rates in respect of other inferior classes of land. Aggrieved by this decision in two of the land references RF As No. 16 and 17 of 1970 were instituted in this Court by the State which ultimately were allowed on January 14, 1976. The award of the District Judge was set aside and the cases were remanded for fresh decision in accordance with law. Before the District judge could decide these two land references, received after remand; several other land references were decided on the basis of the awards in the earlier land references in which the District Judge had awarded compensation at the rate of Rs. 1000/- per kanal for the best category of land. A set of 17 appeals preferred against the award of the District Judge by the State was dismissed on July 12, 1979 and another set of 21 appeals of the State was also dismissed on September 22, 1980, thereby upholding the award allowing market value at the rate of Rs. 1000/- per kanal for the best category of land. In the meanwhile, District Judge on October 31, 1980, decided the two land references., which had been remanded, after taking into consideration the decision given by this Court on September 22, 1980, in 21 appeals upholding the award at the rate of Rs. 1000/- per kanal. District Judge maintained his earlier award.

9. Aggrieved by this, the Union of India took up the matter in appeal to the Supreme Court by filing a batch of 22 appeals, which were decided by a common judgment on October 5, 1983 and reported as Union of India and Another Vs. Shanti Devi and Others, . The amount of compensation was reduced by observing as under:

Having regard to all the facts and circumstances of the case we feel that the High Court and the District Court erred in applying the twenty years" purchase rule in

the case of these lands which were acquired in the years 1962 and 1963. The proper principle was fifteen years' purchase rule. The District Judge awarded compensation in all these cases at Rs. 1000/- per kanal for the land of the first category by applying the twenty years' purchase rule and has fixed the compensation for other lands on the above basis. The High Court has affirmed it. Since we have held that the proper basis of fixing compensation in these cases was fifteen years' purchase rule, the compensation awarded for lands in these cases should be reduced by one-fourth i.e. for lands of the first category compensation payable should be Rs. 750/- per kanal instead of Rs. 1000/- per kanal. Similarly, in the case of other lands also there should be a reduction of the compensation awarded by one-fourth....

On the basis of this judgment, 110 appeals were disposed of by the Supreme Court on December 5, 1983 by a single order, Annexure P-4. 5 appeals were disposed of separately on October 1, 1986 vide Annexure P-14 and 17 appeals were disposed of on February 23, 1987 vide judgment, Annexure P-15. In various cases, appeals on behalf of the claimants are still pending in this Court against the award made by the District Court allowing to the landowners compensation at the rate of Rs. 1000/- per kanal for the best quality of land. Some of the cases are still stated to be pending before the District Court (reference court). Various landowners had not sought reference u/s 18 of the Act.

10. Number of land references were still pending in the court of District Judge on September 24, 1984, when the Land Acquisition Amendment Act, 1984 (Act 68 of 1984) (briefly the amendment Act) came into force. Awards in some of the land references were made subsequent to the coming into force of the amendment Act. After the commencement of the amendment Act, some of the land-owners preferred petitions before the Collector Land Acquisition u/s 28A of the Act as inserted by the amendment Act seeking re-determination of the amount of compensation on the ground that on September 5, 1986, this Court had rendered judgment in RFA. No. 166 of 1977, which being an award of the court, as referred to in Section 28-A of the Act, allowing compensation in excess of the amount awarded by the Collector and as they were persons interested in the other lands covered by the same notification issued u/s 4(1) of the Act and were also aggrieved by the Award of the Collector not having sought reference earlier, the award in their case also deserved to be re-determined. The Collector by an order, Annexure P-8, made on June 29, 1987, dismissed the said applications on the ground that the award of the court referred to in Section 28A of the Act was the award of the District Court only and as the applicants in the said petitions had sought re-determination of the amount of compensation on the basis of judgment of the High Court, the same could not be said to be an award of the court. This order is under challenge in Civil Writ Petition No. 580 of 1987, in which the Petitioner in the said writ petition has sought the quashing of the order on the ground that even if the judgment rendered in R.F.A. No. 166 of 1977 delivered on September 5, 1986 be not considered to be an award of the Court referred to in Section 28A of the Act, even then as the Petitioner had

moved the application on December 3, 1986, for predetermination of the amount of compensation, the District Judge had in land reference No. 15 of 1984 made an award (Annexure P-4 in the said writ petition) on November 10, 1986, with respect to the land covered by the same notification u/s 4(1) of the Act, therefore, it being an award of the court and the other requirements of Section 28A of the Act being fulfilled, by taking into consideration the subsequent event, the amount of compensation payable to the Petitioner may be directed to be predetermined on the basis of the amount of compensation awarded by the District Court on November 10, 1986.

11. On May 27, 1987 Pardeep Kumari, Respondent in Civil Writ Petition No. 181 of 1989, filed an application Annexure P-10 u/s 28-A of the Act seeking redetermination of the amount of compensation on the ground that the lands owned by her located in Tika Nandpur Bhatoli in Tehsil Dehra, District Kangra were acquired on the basis of notification u/s 4(1) of the Act issued on November 10, 1964, for which award No. 74 was made in June 12, 1973 and as now in land reference No. 120 of 1979 decided on February 21, 1987, the District Court Kangra at Dharamshala had allowed to one Shri Lal Chand, amount of compensation in excess of the amount awarded on the Collector and as her lands were also covered by the same notification issued u/s 4 of the Act and further that she not having made any application to the court u/s 18 of the Act, the compensation payable to her was liable to be determined on the basis of the amount of compensation awarded by the District Court to Lal Chand on February 21, 1987, whose lands were located at Gholi (Lohara) in Mauza Fatehpur. On receipt of this application, Collector served notice, Annexure P-II, on the Petitioner, who submitted its reply and written arguments, Annexure P-12, resisting the application on various grounds. The Collector, however, on March 13, 1988, allowed the application of Respondent No. 1 Through his award, Annexure P-13, by predetermining the amount of compensation. Union of India and Beas Construction, for whose benefit the lands have been acquired, filed Civil Writ Petition No. 181 of 1989, seeking the quashing of order Annexure P-13.

12. The order, Annexure P-13, has been challenged on various grounds. The first contention of the Union of India was that Section 28-A is not retrospective in its operation and does not apply to an award which had been made by the Collector u/s 11 of the Act prior to coming into force of the amendment Act and as the award in case of Respondent, Pradeep Kumar, had also been made by the Collector on June 12, 1973 (before coming into force of the amendment Act), the impugned order, Annexure P-13, is liable to be quashed. It was further contended that the main object of introducing Section 28-A in the principle Act was to invest the Collector with jurisdiction to redetermine the amount of compensation on the basis of awards of the court and the intention behind the introduction of this amendment was to make it applicable only to such of the cases where the awards had been made by the court as well as by the Collector after coming into force of the amendment Act. It was urged that the Collector by having predetermined the amount of compensation payable to Respondent

Pardeep Kumari has given retrospective effect to Section 28A by giving to it a literal interpretation without reference to its nature and purpose. In support of this contention, reliance was placed by the learned Counsel to the observations made in para 16 of the decision of the Supreme Court in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* (AIR 1990 SC 981) which read as under:

The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revaluation. "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes has wisely and properly warned (*Towne v. Eisner*) (1918) 245 US 218. Learned Hand, J., was equally emphatic when he said: "statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them". (*Lenigh Valley Coal Co. v. Yensavage*: 218 FR 547 at 553).

The learned Counsel appearing on behalf of the Petitioner (Union of India) also urged that it will not be safe to give literal interpretation to the provisions of Section 28A of the Act. While interpreting the provisions of this Section, it will be necessary to look into the intention of the legislature while introducing the amendment. In support of this argument he placed reliance upon the following passage of the decision of the Supreme Court in *R.L. Arora Vs. State of Uttar Pradesh and Others*, :

.....Further a literal interpretation is not always the only interpretation of a provision in a statute and the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law making body which may be apparent from the circumstances in which the particular provision came to be made. Therefore, a literal and mechanical interpretation is not the only interpretation which courts are bound to give to the words of a statute; and it may be possible to control the wide language in which a provision is made by taking into account what is implicit in it in view of the setting in which the provision appears and the circumstances in which it might have been enacted.....

13. The next contention of the counsel for the Petitioner, Union of India, was that the legislature wanted to give retrospective effect to some of the provisions of the amendment Act for which Section 30 was introduced in the said Act and as no reference was made to Section 28-A, the same will have no retrospective operation. Retrospectively cannot be given by implication and it should be clearly spelt out from the enactment itself and in support of this reliance was placed on another decision of the Supreme Court in *Union of India (UOI) and Another Vs.*

Raghubir Singh (Dead) by Lrs. Etc.,

14. The learned Counsel for the Respondent refuted the arguments advanced by the learned Counsel for the Petitioner, Union of India and urged that there is no question of Section 28A being retrospective in nature. In its applicability it might affect the awards made by the Collector prior to coming into force of the amendment Act but it is only in cases where award is made by the court, after coming into force of the amendment Act, the section would come into operation. It being a beneficial legislation court ought not to be unduly technical and deprive the citizens of their legitimate claims. It was further contended that a statute is retrospective which takes away or impairs any vested right acquired under the existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to the past transactions or considerations. But as Section 28A of the Act might affect such of the awards made by the Collector prior to coming into force of the amendment Act as and when award is made by the Court after the coming into force of the amendment Act, it cannot be said to be retrospective in operation. Reliance, by the learned Counsel for the Respondent, Pradeep Kumari, was placed on the following observations of the Supreme Court made in part 21 of the report in Mithilesh Kumar and Another Vs. Prem Behari Khare, :

We read in Maxwell that it is a fundamental rule of English Law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly at the time of the Act, or arises by necessary and distinct implication. A retrospective operation is, therefore, not to be given to a statute so as to impair existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively the Court has to be satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of the past transactions, or impair contracts, or impose new duty or attach disability in respect of past transactions or consideration already passed. However, a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. We must look at the general scope and purview of the statute and at the remedy sought to be applied, and consider what was the former State of Law and what the legislation contemplated. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and the community as a whole, as in this case, may relate to a time antecedent to their commencement. The presumption against retrospectively may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to

have so expressed its intention. Craies on Statute Law, 7th Ed. writes that the general rule of law that statutes are not operated retrospectively may be departed from (a) by express enactment and (b) by necessary implication from the language employed, and the author goes on to say:

If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. "Baron Parke", said Lord Hatherley in *Pardo V. Bingham* ILR(1869) 4 Ch App. 735 did not consider it an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed, and said that the question in each case was whether the legislature had sufficiently expressed that intention. In fact, we must look to the general scope and preview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, what it was that the legislature contemplated. "But a statute is not to be read retrospectively except of necessity In *Main v. Stark* XV(1890) ACC 384 Lord Selborne said:" Their Lordships of course, do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give towards prima facie prospective a larger operation, but they ought not to receive a larger operation unless you find some reason for giving it... In all cases it is desirable to ascertain the intention of the legislature.

He went on: "Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed". But in *Reynolds v. Att. General for Nova Scotia* (1896 ACC 240) it was held that this rule did not extend to protect from the effect of a repeal a privilege which did not amount to an accrued right.

15. On April 30, 1982, a Bill was introduced in the Parliament for carrying out various amendments in the Land Acquisition Act, 1894. After it had been passed, it received the assent of the President on September 24, 1984, on which date it was also published in the Gazette. Section 28A was inserted in the Act by this amendment Act. Statement of objects and reasons for bringing out the amendments in the Act by the Amendment Act, inter alia, were as under:

With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are in avoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic

the scale of compensation offered to them.

2. xx xx xx xxxx xx xxxx xx xx xx The main proposals for amendment were as follows:

(ix) Considering that the right of reference to the civil court u/s 18 of Act is not usually taken advantage of by inarticulate and poor people and usually exercised only 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 predetermination of compensation, once any one of them obtained orders for payment of higher compensation from the reference court u/s 18 of the Act."

Section 19 of the amendment Act provided for insertion of new Section 28A of the Act. as under:

28-A. Re-determination 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 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 predetermined 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 inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make 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, requires that the matter be referred by the Collector for the determination of the Court and the provisions of Section 18 - 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

16. The arguments of the learned Consul for the parties on the question as to whether the provision of Section 28A is retrospective in its operation or not loses much of its importance in view of the clear language of the provision, which provides for predetermination of the amount of compensation on moving of the application in this behalf, after the coming into force of the amendment

Act provided the conditions laid therein are fulfilled. There is no question of Section 28A being retrospective in its application. The application is required to be made by a person interested within a period of three months from the date of the award of the court and the right is available to such of the persons, who had not applied for reference u/s 18 of the Act and the predetermination of the amount of compensation will be only in those cases where application is made after coming into force of the amendment Act. In all those cases in which application is made after coming into force of the amendment Act within a period of three months from the award of the court, a right accrued to persons interested whose lands were also covered by the same notification u/s 4 of the Act, provided they had not sought reference and they had been awarded less compensation. Such a right to move the application for getting the benefit of predetermination of the amount of compensation accrued only after the commencement of the Act. The fact that a prospective benefit u/s 28A of the Act is in certain cases dependent upon antecedent facts does not make the provisions retrospective. May be in certain cases award of the Court is prior to the date of commencement of amendment Act or predetermination is with regard to the award of the Collector which had been made prior to the coming into force of the amendment Act, but in its operation benefit is available only to such of the cases where application u/s 28A is made after coming into force of the amendment Act within a period of three months from the date of the award of the court.

17. The next contention of the learned Counsel for the Union of India was that the award contemplated u/s 28A of the Act was the first award made by the court after the amendment Act and the right conferred upon persons interested u/s 28A cannot be said to be a continuing right giving rise to a new or fresh cause of action, whenever a new award is made by the court at any date subsequent to the making of the first award, after coming into force of the amendment Act. It was contended that notification u/s 4 of the Act were issued on January 11, 1962, April 1, 1963 and November 10, 1964 and after coming into force of the amendment Act, on October 1, 1986, five appeals were disposed of by the Supreme Court vide Annexure P-14 and 17 appeals were disposed of on February 23, 1987, vide Annexure P-15 and another appeal was disposed of by the High Court on September 5, 1986. All these appeals pertained to the lands covered by the aforementioned three notifications. The two orders passed by the Supreme Court (Annexure P-14 and P-15) were on the basis of the first judgment disposing of twenty-two appeals on October 5, 1983. It was urged that application, if the interested persons had any right for getting the compensation re-determined, ought to have been made within a period of three months from coming into force of the amendment Act, on the basis of the decision of the Supreme Court in twenty-two appeals or immediately thereafter when after the commencement of the amendment Act on October 1, 1986, the Supreme Court decided several appeals. Merely because for one reason or the other certain land references could not be decided by the reference court and it happened to take

its own time in making its awards in a few references will not give right to the persons interested, when in similar cases compensation had been determined by the highest court earlier. Moreover, the district court in its awards did nothing except following the principles laid down by the Supreme Court in its judgment dated October 5, 1983, for the purpose of determination of the amount of compensation.

18. The argument, that the award of the court contemplated u/s 28A is the first award passed after coming into force of the amendment Act, has no force. There is no such restriction provided in Section 28A of the Act. It refers to an award in Part-III of the Act made by the Court. The requirement for the applicability of Section 28-A of the Act giving rise to a right to the person interested to have the amount of compensation re-determined is that there should be an award made in Part-III by the court in which excess amount is allowed. A period of three months is allowed for moving an application from the date of the making of award by the court, such application has to be made before the Collector. Once the pre-requisites are found to be present in a case, it will be for the Collector thereafter to proceed to re-determine the amount of compensation on the basis of the amount of compensation awarded by the court. The Collector may re-determine the amount or refuse to do so. In case of refusal to redetermine the remedy for the person interested will be to have the matter referred to the court under Sub-section (3) of Section 28A introduced by the amendment Act and in such a case, the procedure to be followed is the same which is required to be followed in making reference u/s 18 of the Act. Section 28A nowhere provide that it should be the first award or the second award or any other award made by the court, after coming into force of the amendment Act. The other requirement for the applicability of Section 28A is that the land of the person interested should be covered by the same notification which is the subject matter of the award of the Court. In case the court happens to make successive awards with respect to different parcels of land covered by the same notification u/s 4 of the Act, each of such award would give rise to a separate cause of action to a person interested with respect to his lands covered by the same notification. But the right has to be exercised once. Once a right is exercised by a person by applying to the Collector for predetermination, thereafter no application can be made. But a person interested cannot be said to have waived or abandoned his right in moving an application for predetermination of the amount of compensation in case he had not exercised the right of making an application on an earlier occasion when under the same notification award is made by the court with respect to a piece or parcel of land in which excess amount of compensation is awarded. The generally accepted connotation of waiver is that to constitute "Waiver" there must be intentional relinquishment or abandonment of a known existing legal right or there should be conduct of such a nature so as to warrant an inference of the relinquishment of a known right or privilege. [See . Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, and Shrikrishnadas Tikara Vs. State Government of Madhya Pradesh and

Others, When each award of court give rise to a fresh cause of action to a person, who had not exercised such a right earlier to move an application and predetermination, there is no question of waiver of such a right.

19. The next point urged on behalf of the Union of India was that on a proper construction, Section 28A of the Act will apply only to the same land forming part of the notification u/s 4(1) of the Act and does not apply to a different land located in different locality even though such land and localities are mentioned and included in the same notification, in that case in law and in reality they are different notifications for different localities. It has been urged that the intention behind in making reference in Section 28A of the Act to all the other lands covered by the same notification u/s 4(1) of the Act was to refer to the same land in the same locality and not to different lands in different localities and in case of various lands included in the same notification, this notification has to be considered to have been made separately for each of the locality. It was further urged that the award of the court referred to in Annexure P-13 pertains to land located in Mauza Fatehpur, whereas, the lands of Respondent No. 1 in Civil Writ Petition No. 181 of 1989, were located in Tika Nandpur Bhatoli at a distance of more than 15 Kms.

20. On a bare reading of Section 28A such a distinction cannot be found with respect to all the land covered by the same notification issued u/s 4(1) of the Act. The words which are used are that "all the other land covered by the same notification u/s 4(1)". Section 4 of the Act provides for publication of preliminary notification and there is no bar for including different parcels of land situate in several revenue estates in one notification. The requirement of law is to notify the land in any locality. The Act has not defined the word "locality". Notification u/s 4(1) of the Act dated January 11, 1962, Annexure P-5 in Civil Writ Petition No. 181 of 1989, includes therein the lands located in forty-six different revenue estates and pertains to a single locality, namely, an area bounded by river Beas on the South, railway line on the north, Gaj Khad on the West and Minu Khad on the East. The other two notifications, Annexure P-6 and P-7 included therein, the lands located in forty-nine and forty-two revenue estates respectively. The State considered the lands located in different revenue estates in each of the three notifications to be a separate locality. The word "locality" is a relative term and refers to a place or a site. It may be a place or a site having different parcels of land located in a revenue estate or part of a revenue estate, or in a group of revenue estates. Merely because different parcels of land are located in different revenue estates and are grouped together and notified under the same notification u/s 4(1) of the Act, the same cannot be termed to be different localities for the purpose of the Act. Revenue estates are carved out from a locality for the purposes of revenue administration under the provisions of the Land Revenue Act. It has nothing to do with the word "locality" used in Section 4 of the Act. It is not uncommon that when there is one notification u/s 4(1) of the Act, there may be different declarations made with respect to the different parcels of land though they are by the same notification issued or published u/s

4 of the Act, and, there may be different awards with respect to such parcels of land. Section 6 of the Act contemplates such a situation and provide that different declarations may be made from time to time in respect of different pieces or parcels of land covered by the same notification u/s 4(1) of the Act. By merely making different declarations, the concept of locality referred to in Section 4 of the Act is not changed but it remains the same. Even if different declarations are made with respect to different parcels of land, nevertheless, notification made u/s 4(1) of the Act remains the same and different parcels of land are deemed to be covered by the same notification u/s 4(1) of the Act. At the stage of determination of the amount of compensation the Collector or the Court will have to take into consideration the provisions of Section 23 of the Act. Collector may allow different market value for different parcels of land covered by the same notification u/s 4. Different rates may also be allowed to different parcels of land held by a person interested, keeping in view the location, potentiality and nature of the land. By making reference u/s 28A of the Act to the words "all the other lands covered by same notification", the intention is very clear, namely, in case lands, even though located in different revenue estates, are covered by the same notification issued u/s 4(1) of the Act, are also required to be dealt with in the same manner in so far as the payment of amount of compensation is concerned, as the other land covered by the same notification for which excess amount has been allowed by an award made by the court.

21. The next submission of the Petitioner (Union of India) was with respect to the question of limitation. It was urged that right, if any, to the Petitioner in Civil Writ Petition No. 181 of 1989 arose on coming to force of the amendment Act for seeking predetermination of the amount of compensation as the Supreme Court on October 5, 1983, had finally determined the amount of compensation payable in all such cases. The matter stood concluded by the decision of the Supreme Court. Subsequent awards made by the High Court or the District Court, cannot give rise to a cause of action. On the basis of this submission it was urged that application ought to have been made within a period of three months from the date of the commencement of the amendment Act and there is no reason forthcoming for not having applied for predetermination within this period.

22. The Respondent moved the application for having the amount of compensation predetermined by alleging that cause of action arose on February 21, 1987 when the court made the award. The Respondent, who was the person interested and person aggrieved, was under no obligation to have filed an application within the period of three months from the date of coming into force of the amendment Act. The law requires for making such an application within the period of three months of the making of the award by the court. In case the District Court happens to have made different awards on different dates, each of such award will give rise to a separate cause of action.

23. After having dealt with the aforementioned points, it need only be said that the right to receive compensation arises when the land of a person is acquired.

Determination of the amount of compensation for the acquired land is the duty of the court when a reference is made to it under the Act. Court is required to determine the amount of compensation on the principles referred to in the Act. There was no provision under the Act, before coming into force of the amendment Act, for re-determination of the amount of compensation in such of the cases where for the lands similarly situate, covered by the same notification different rates had been allowed to different sets of persons under the award of the Collector and higher rate was allowed by an award made by the court to another set of persons with respect to their lands covered under the same notification who had sought reference. Section 28A of the Act, was introduced by the amendment Act giving mandate to remove inequality in the payment of compensation to different interested persons whose lands are included in the same notification u/s 4 of the Act. Putting a different connotation as was suggested by the learned Counsel for the Union of India that Section 28A would apply only in such of the cases where the award is made by the Collector after coming into force of the amendment Act or that it applies to the same land and not to different lands covered by the same notification would be to defeat the purpose of the Act. As has already been noticed above, award of the Land Acquisition Collector with respect to one revenue estates, namely. Tika Behari was made the basis for determining the amount of compensation with respect to different revenue estates covered by the three notifications u/s 4, Annexures P-5. P-6 and P-7, which compensation has now finally been determined by the highest court by its judgment dated October 5, 1983 (reported in Union of India and Another Vs. Shanti Devi and Others, there is no reason why the persons interested, whose lands are also covered by the same notification and who had not sought reference earlier and are persons aggrieved by the award of the Collector be not allowed similar treatment in case they have now applied within three months of the making of the award by the court, to enable them to have the amount of compensation payable to them determined on the basis of the ward of the court.

24. The contention of the learned Counsel for the Petitioner in Civil Writ Petition 580 of 1987, was that on December 3, 1986 an application was moved for predetermination of the amount of compensation on the basis of the judgment of this Court in appeal and the application was rejected by the Collector vide his order dated June 29, 1987, Annexure P-3, on the ground that the award which could have been the basis for re-determination of the amount was the award of the court (District Court) and not the judgment of the Supreme Court or the High Court in appeal and as before moving the application, the District Judge in another land reference No. 15 of 1984 had on November 10, 1986, made an award, Annexure P-4, this Court may take this additional aspect into consideration. And in order to give effect to the intention of the legislature, the impugned order be quashed and the Collector may be directed to redetermine the amount of compensation. The application had been made within three months of the making of the award by the court. There is force in the contention

of the learned Counsel for the Petitioner in Civil Writ Petition No. 580 of 1987. The Petitioners cannot be deprived of a similar treatment merely because they, while making the application for predetermination of compensation placed reliance upon a judgment of this Court in appeal. We need not have to consider the question whether the appellate judgment can be the basis of an application u/s 28-A, in view of the fact that within three months, before making of the application, the reference court had in one of the awards allowed excess amount of compensation.

25. In the result, Civil Writ Petition Nos. 181 of 1989 is dismissed, Civil Writ Petition No. 580 of 1987 is allowed and the order Annexure P-3 in the said writ petition is quashed and set aside. The Land Acquisition Collector is directed to predetermine the amount of compensation in accordance with law with regard to the land of the Petitioner-claimant.

26. The parties are left to bear their own costs in each petition.