
(2002) 10 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5848 of 1988

Union of India (UOI)

APPELLANT

Vs

Jasmel Kaur and Others

RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (2003) 133 PLR 259 : (2003) 2 RCR(Civil) 172

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Kamal Sehgal, for the Appellant; A.S. Chahal, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner-Union of India has filed the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the award dated 28.10.1997 (Annexure P-3), passed by Special Land Acquisition Collector, Jalandhar, respondent No. 5 herein, vide which he had re-determined the compensation payable to respondent No. 1 to 4 u/s 28A of the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as "the Act of 1984") in the light of the award dated 19.1.1985, passed by the Arbitrator cum Additional District Judge, Bathinda.

2. The brief facts of the case are that the petitioner acquired a big chunk of land belonging to various land owners for establishment of the Cantonment area at Bathinda, vide notification dated 20.1.1975 issued u/s 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter referred to as "the Act of 1952"). In the said acquisition, 77 bighas 17 biswas of land belonging to Natha Singh, predecessor of respondents No. 1 to 4 was also acquired and award to the said acquisition was made on 6.3.1975 by the competent authority. Feeling dis-satisfied with the amount of compensation awarded, the various land owners sought reference to the Arbitrator. Their matter was referred to the Arbitrator. The learned Additional District Judge Bathinda, while exercising the

power of Arbitrator, enhanced the market value of the acquired land substantially vide award dated 19.1.1985. Since the predecessor of respondents No. 1 to 4 did not seek any reference against the award passed by the competent authority " initially, they filed an application u/s 28-A of the Act of 1984 on 12.4.1985 for re-determination of the compensation in terms of the award dated 19.1.1985 passed by the Arbitrator-cum-Additional District Judge, Bathinda. This application was, however, dismissed by the Special Land Acquisition Collector, respondent No. 5, vide his order dated 23.12.1985 on the ground that the provisions of Section 28-A of the Act of 1984 are not applicable on the acquisition of the land under the Act of 1952.

3. The said order was challenged by respondents No. 1 to 4 in this Court by filing Civil Revision No. 1188 of 1986. After hearing the parties, the said revision petition was allowed by this Court vide order dated July 15, 1987 (Annexure P-2). While relying upon the Full Bench decision of this Court in Hari Krishan Khosla (decd.) and Others Vs. The Union of India (UOI) and Another, , it was held that the provisions of Section 28-A of the Act of 1984 are applicable on the acquisition made under the Act of 1952 and the land owners are entitled to claim compensation by resorting to re-determination u/s 28-A of the Act of 1984. Consequently, the order of rejection of application of respondents No. 1 to 4 u/s 28-A of the Act of 1984 was set aside and respondent No. 5 was directed to redetermine compensation, to which respondents No. 1 to 4 were found entitled on the basis of the award dated 19.1.1985 passed by the learned Arbitrator on the reference made by other land owners. This order passed by this Court was not challenged by the petitioner and the same became final between the parties. In view of the aforesaid order, respondent No. 5 re-determined the compensation payable to respondent No. 1 to 4 vide his award dated 28.10.1987 (Annexure P-3), which has been challenged by the petitioner Union of India in this writ petition.

4. The aforesaid order dated 28.10.1987 has been challenged by the petitioner on the ground that the predecessor of respondents No. 1 to 4, Shri Natha Singh (who expired on 12.6.1984) had accepted the compensation, initially determined by respondent No. 5, by executing agreement on form "K" (Annexure P-1) on 23.8.1975 and received the compensation amount. Therefore, respondents No. 1 to 4, who are legal representatives of said Natha Singh, were not entitled to file application u/s 28-A of the Act of 1984 for re-determination of the compensation in view of the award made by the Arbitrator on reference of other land owners.

5. Shri Kamal Sehgal, learned counsel for the petitioner, has made two submissions. Firstly, he contended that the provisions of Section 28-A of the Act of 1984 are not applicable on the acquisitions made under the Act of 1952. There is no provision, like Section 28-A of the Act of 1984, in the Act of 1952, empowering the Collector to re-open an award which has become final and conclusive. The power of re-determination of compensation u/s 28-A of the Act of 1984 is the creation of statute and it has to be exercised in accordance with the

statutory provisions. In support of his contention he relied upon the decision of the Hon''ble Supreme Court of India in Union of India (UOI) Vs. Gurbachan Singh and Others, and Union of India (UOI) and Another Vs. Babu Singh and Others, , wherein it was held that the provision of Section 28-A of the Act of 1984 has no application when the land is acquired under the Act of 1952. He also put reliance upon a decision of this Court in CWP No. 172 of 1994. Union of India v. The Special Land Acquisition Collector, Jalandhar and Ors. decided on 1.4.1999. Secondly, he contended that since the predecessor of respondents No. 1 to 4, namely Natha Singh had accepted the award by executing an agreement with the petitioner on form "K" on 23.8.1975 and received the compensation amount, therefore, the reference should not have been made for re-determination of the compensation and the respondents are not entitled for enhanced compensation on the basis of the award made by the Arbitrator in case of other land owners.

6. On the other hand, learned counsel for respondents No. 1 to 4 has contended that the petitioner-Union of India cannot challenged the award dated 28.10.1987 (Annexure P-3) made by respondent No. 5 on the ground that the provisions of Section 28-A of the Act of 1984 were not applicable to the acquisition made under the Act of 1952 and the re-determination made by respondent No. 5 on the application made by respondents No. 1 to 4 u/s 28-A of the Act of 1984 is without jurisdiction. He submitted that the earlier decision dated 15.7.1987, passed by this Court between the parties has become final as the same was not challenged by the petitioner. The said judgment of this Court will operate as res-judicate and the same cannot be re-opened or changed on the ground that subsequently a different view has been taken by the Court on the point of applicability of the provisions of Section 28-A of the Act of 1984 on the acquisitions made under the Act of 1952. In support of his contention, he relied upon a decision of the Hon''ble Supreme Court in State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, and a Division Bench decision of this Court in Surian Singh Vs. State of Punjab and Others, .

7. I have considered the arguments of the learned counsel for the parties. In my view both the contentions, raised by learned counsel for the petitioner have no substance and are liable to be rejected. As stated above, the judgment dated 15.7.1987 passed by this Court, vide which the order rejecting the application Section 28-A of the Act of 1984 filed by respondents No. 1 to 4 was set aside and respondent No. 5 was directed to re-determine the compensation in view of the award dated 19.1.1985 made in case of other land owners and to pay compensation accordingly to respondents No. 1 to 4 has become final between the parties and the same will operate as res-judicate between them. Now the petitioner cannot be allowed to challenge the award made on the ground that the provision of Section 28-A of the Act of 1984 is not applicable on the requisitions made under the Act of 1952 alleging that a different view has been taken in this regard by the Hon''ble Supreme Court of India. Once a judgment becomes final between the parties, the same cannot be set aside or its effect cannot be taken away on the ground that an erroneous view was taken by the said judgment, in

view of the subsequent judgment of the Apex Court. A decision may be incorrect but such a decision cannot be equated with a decision rendered without jurisdiction. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and maybe superseded only by appeals to higher Courts or other proceedings like review which the law provides. The principle of law has been laid down by the Apex Court in State of West Bengal's case (supra), wherein the following observations have been made:

"A wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. The learned Judges of the High Court who rendered the decision on April 4, 1952, had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous, as seen from the later judgment of this Court, does not render it any the less final and binding between the parties before the Court. There is thus, no substance in this contention. The decision of the High Court dated April 4, 1952 bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not."

8. The similar view was taken by a Division Bench of this Court in Surjan Singh's case (supra), wherein it was held as under:

"The order passed by the Division Bench on April 11, 1972, cannot be said to have been passed without jurisdiction and that order even if erroneous, could be set aside by having resort to appeal or review proceedings. That order, as stated above, became final and operated as res judicata at the time when the Additional Director decided the matter on January 30, 1973. It was not open to the Additional Director to suo motu take cognisance of the law later declared by this Court and to hold that the petition u/s 42 of the Act, filed by the petitioner which he as directed to decide on merits was barred by time. The Tribunals situate within the jurisdiction of this Court must understand that they have to carry out the directions and the mandates issued by the High Court and they cannot arrogate to themselves the function of deciding that such directions or mandates are erroneous or contrary to law and to ignore the same. That matter rests with the High Court and it is open to the parties to apply for the review of any order in accordance with the procedure prescribed by law."

In view of the aforesaid legal position, the petitioner now cannot challenge the award dated 28.10.1987 passed by respondent No. 5 on the ground that the provisions of Section 28-A of the Act of 1984 are not applicable and the award made by respondent No. 5 is without jurisdiction.

9. The second contention of learned counsel for the petitioner is also having no force because this plea should have been taken by the petitioner when respondents No. 1 to 4 came to this Court challenging rejection of their application u/s 28-A of the Act of 1984. At that time, the petitioner should have raised the objection that their application for re-determination of compensation is

not maintainable as their predecessor had accepted the award by executing agreement on form "K" and received the compensation. Now this plea cannot be allowed to be taken once the application of respondents No. 1 to 4 was allowed by this Court and the compensation has been re-determined accordingly.

10. In view of the above discussion, the petition is without merit and the same is hereby dismissed with no order as to costs.