

Babua Ram and Others Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Oct-24-1991

Reported in : AIR1992All170; (1992)1UPLBEC390

Judge : S.K. Dhaon and ;D.S. Sinha, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 4, 11, 18(1 and 2), 28-A and 31(1 and 2); Land Acquisition (Amendment) Act, 1984 - Sections 19

Appeal No. : C.M.W.P. No. 7276 of 1987

Appellant : Babua Ram and Others

Respondent : State of U.P. and Another

Advocate for Def. : S.C. and ;B. Dayal, Adv.

Advocate for Pet/Ap. : M/s. Smt. S.V. Misra and ;Sanjay Kumar, Adv.

Judgement :

ORDER

S. K. Dhaon, J.

1. The point that arises for consideration is whether a person who has received compensation under an award of the Collector without registering a protest is entitled to get the compensation redetermined on the basis of the award given by

the court by initiating proceedings under S. 28A of the [Land Acquisition Act, 1894](#) (hereinafter referred to as the Act) as inserted by S. 19 of the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) (hereinafter referred to as the Amending Act.)

2. In the instant case, indisputably, the petitioners received the compensation offered to them by the Collector without registering or lodging any protest. On the contrary, as pointed out by the Special Land Acquisition Officers, the petitioners accepted the offer of the Collector by executing written documents the contents of which have been extracted in the impugned order the Special Land Acquisition Officer has rejected the application made by the petitioners under S. 28A of the Act on the ground that they cannot maintain it.

3. Prior to the enforcement of the Amending Act, the position was that under S. 11 the Collector, in his capacity as an agent of the State Government, made an offer of a compensation to the owner of the land which was proposed to be acquired. He acted in an administrative capacity. In spite of the use of the expression 'award' in S. 11 there was a mere tender of compensation by the Collector to the owner of the land. If such an owner or any person interested, as defined in S. 3(b) of the Act, felt dissatisfied by the amount of compensation offered he could claim a judicial determination of the adequacy of the compensation by seeking a reference to the court by the Collector on the fulfilment of the condition as enumerated in S. 18. No change has been introduced by the Amending Act.

4. Before advertng to S. 18 it will be convenient to have a look at the provisions as contained in S. 31. Sub-section (1) thereof enjoins, inter alia, that on making an award under S. 11 the Collector shall tender payment of the compensation awarded by him to the persons entitled thereto according to the award, and shall pay it to them unless prevented by the contingencies mentioned in sub-section (2). Sub-section (2) posits, amongst others, the deposit of compensation in Court, if the person interested refused to accept it. The provisos thereafter are important and may be extracted.

5. Provided that any person admitted to be interested may receive such amount under protest as to the sufficiency of the amount.'

6. Provided also that no person who has received the amount other than under protest shall be entitled to make any application under S. 18.'

7. The first proviso aforequoted enables a person to receive payment tendered to him by the Collector even though he feels aggrieved on account of the insufficiency of the amount offered. He is permitted to preserve his right to claim higher compensation provided he accepts the payment under protest. The second proviso aforequoted discloses the method which a person, who was received compensation under protest, can question the sufficiency of the compensation offered by the Collector. It also makes it clear that such a method or statutory process will not be available to a person who has received the amount without registering or lodging any protest. The language employed in the proviso under reference is mandatory in so far as it exhibits a clear legislative mandate that the payment must have been received by the person concerned in no other manner except under protest so as to enable him to set into motion the machinery as contemplated under S. 18. The Legislature has imposed a complete ban upon a person, who has received compensation offered to him by the Collector in any other manner except under protest, from seeking a judicial determination of the adequacy of the compensation.

8. It is implicit in sub-sections (1) and (2) and the two provisos aforequoted to subsection (2) that a person, who has not cared to receive the compensation offered to him by the Collector, shall also be entitled to question the sufficiency of the amount of compensation determined by the Collector by making an application under S. 18.

9. Sub-section (1) of Section 18 provides, inter alia, that any person interested, who has not accepted the award, may by written application to the Collector, require that the matter may be referred by the Collector for the determination of the court the amount of compensation. Sub-section (2) requires that the grounds of objection to the award shall be stated in the application. The proviso to subsection (2) prescribes the period of limitation within which an application under S. 18 should be made. It is apparent that so far as the adequacy of the compensation is concerned a person interested who has not acquiesced into the

award alone is entitled to seek a reference to the court under S. 18. A person who has accepted the amount tendered to him by the Collector under protest is not a person who has accepted the award. It goes without saying that a person who has not accepted the compensation at all is a person who has not accepted the award. The proviso to subsection (2) which prescribes the period of limitation, also plays a significant role in creating a class of persons interested who has accepted the award. There may be a situation where a person interested may have received the compensation under protest yet, he has allowed the period of limitation as provided in the proviso to run out. For the purposes of S. 18, such a person will be deemed to be a person who has accepted the award on the expiry of the period of limitation as prescribed. A person who has accepted compensation without protest is debarred from making an application under S. 18. Thus, the Legislature has put a person who has accepted the compensation under protest but has not filed an application under S. 18 within time and the person who has accepted the compensation without any protest on the same footing. It follows that for the purposes of S. 18 'a person interested' will be considered as a person aggrieved if that person has either not accepted the compensation at all as offered to him by the Collector or has accepted the same under protest.

10. The legal position as discussed above was prior to the enforcement of the Amending Act. That situation obtains even now. Subsection (1) of S. 11 provides inter alia, that the Collector shall enquire into the value of the land sought to be acquired before giving an award. Sub-section (2) which has been inserted by S. 8 of the Amending Act, provides, inter alia, that in spite of the provisions of sub-section (1) it is permissible to the Collector to make an award in accordance with the terms of the agreement put into writing by all the persons interested in the land. Naturally the persons interested, who have agreed to receive a certain amount of compensation under sub-section (2), cannot take advantage of sub-section (d) of S. 18 as they have accepted the award.

11. Section 28A has been the light of the day by virtue of S. 19 of the Amending Act. Sub-section (1) thereof may be extracted :--

'(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 under S. 11, the persons interested in all other land covered by the same notification under 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, within three months from the date of the award of the court require that the amount of compensation payable to them may be redetermined on the basis of the compensation awarded by the Court.'

(Underlining by us.)

12. The crucial words in S. 28A are 'also aggrieved by the award of the Collector.' The Amending Act has introduced no change whatsoever either in S. 18 or in S. 31 and has also not made any substantial change in S. 11 in so far as the present controversy is concerned. Therefore, the petitioners could be aggrieved by the award of the Collector, in so far as it related to the quantum of compensation offered to them if they had not accepted the compensation at all or if they had accepted the same under protest. Any Other interpretation will put those persons interested who had either not accepted the compensation at all or had accepted it under protest at par with the persons interested who had accepted the compensation but not under protest. This is clearly not the legislative intendment.

13. The words 'notwithstanding that they had not made in application to the Collector' mean that a person interested who was aggrieved by the award of the Collector can take advantage of S. 28A, in spite of his failure to make an application under S. 18. Such a failure will not be an impediment to the operation of S. 28A. However, it is implicit that the person interested must be the one who had not accepted the award of the Collector and, therefore, could have taken recourse to S. 18. If the Legislature intended otherwise, it would have used the words 'could not make' instead of 'had not made.'

14. The words 'also aggrieved.' As underlined by us, are significant. These words show that apart from the person interested who is invoking S. 28A some one also felt aggrieved by the award of the Collector. That person has been identified in the opening part of sub-section (1) namely, the applicant who has either not received

the compensation at all or has done so under protest and at whose instance, in proceedings under S. 18 the Court has varied the quantum of the compensation offered by the Collector.

15. In S. 28A a legal grievance is contemplated. A person who has consented to a thing can not be aggrieved. A person who is entitled under S. 18 to get a reference made to the court for the redetermination of the compensation offered by the Collector will be a person aggrieved. To be entitled to invoke S. 18 the condition precedent is that such a person should either have not accepted the compensation offered at all or should have accepted the same under protest.

16. Under S. 28A a person interested is entitled to get the amount of compensation payable to him redetermined on the basis of compensation awarded by the Court. Acceptance of payment of compensation tendered by the Collector, without any protest. Amounts to the acceptance of the offer of the Collector. Therefore, the transaction of payment is complete. A closed transaction cannot be reopened at the instance of a person who has received payment. A fortiori nothing is payable to such a person. If nothing remains to be paid, the question of compensation being redetermined does not arise. The expression 'payable' is used in its primary sense, i.e., deliverable in performance of an obligation. In other words, actual payment was demandable by the person entitled. The petitioners could neither demand actual payment nor were they entitled to do so on account of the fact that they had accepted the payment unconditionally,

In *Smt. Parbati v. State of U.P.*, Civil Misc. Writ No. 26646 of 1991 decided on September 13, 1991, a Bench of this Court of which one of us S.K.D., is a member it has been held that the character of the provision as contained in S. 28A is remedial in so far as the legislature has conferred upon a person interested a right to get the award of the Collector passed under S. 11 reopened upon the fulfilment of the conditions enumerated in S. 28A and within the time prescribed thereunder. This Court has also taken the view that as far as possible, the provisions of S. 28A should be construed in a manner which may be beneficial to the person for whose advantage it has been enacted. Keeping the said principle in view, we have read and re-read the provisions of S. 28A. We are constrained to take the view that the

benefit of S. 28A can be availed only by that person interested who has either not received any compensation at all or has accepted the same under protest. We will not only be straining the language used in Section 28A but also doing violence to it if we hold that a person interested, who has accepted the compensation without any protest, is also entitled to get the compensation redetermined. We cannot gloss over the condition imposed by the legislature that the persons invoking S. 28A should be those who felt aggrieved by the award in the same manner as a person who invoked S. 18 at the time when the award was given by the Collector.

17. We find no infirmity in the impugned order. The petition is dismissed, but without any order as to costs.

18. Petition dismissed.