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Court : Allahabad

Decided On : Dec-01-2003

Reported in : 2004(1)AWC1; (2004)1UPLBEC797

Judge : B.S. Chauhan and ;M.A. Khan, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 11 and 28A

Appeal No. : C.M.W.P. No. 24436 of 1999

Appellant : Ramapati

Respondent : Collector and ors.

Advocate for Def. : K.S. Kushwaha, S.C.

Advocate for Pet/Ap. : N.D. Shukla and ;P. K. Tripathi, Advs.

Disposition : Petition allowed

Judgement :

B.S. Chauhan, J.

1. This writ petition has been filed for quashing the order dated 27.8.1998 (Annexure-3), by which the application of the petitioner under Section 28A of the [Land Acquisition Act, 1894](#) (hereinafter called the Act) has been rejected on the ground that petitioner had accepted the award and withdrawn the compensation

without making any protest.

2. Facts and circumstances giving rise to this case are that a large area of land was acquired, vide Award dated 7.12.1979 after completing the mandatory requirements under the Act. Petitioner claims that his land measuring 13 biswas and 2 dhoors stood acquired by the said acquisition proceedings, and award in respect of the same had been accepted without protest. Nor he applied for reference under Section 18 of the Act. In respect of some other land, reference under Section 18 was decided vide order dated 16.9.1989 by the Additional District Judge, Varanasi. Petitioner filed an application under Section 28A of the Act on 4.12.1989. The application remained pending for long time.

3. Being aggrieved by the non-action of the respondent No. 2 petitioner filed Writ Petition No. 16481 of 1998 before this Court which was disposed of vide order dated 12.5.1998 directing the respondent No. 2 to decide the said application within a stipulated period. In pursuance thereof, the application of the petitioner was considered and rejected vide impugned order. Hence, this petition.

4. Learned counsel for the petitioner has submitted that as the petitioner had made an application within limitation prescribed under the statute, the application could not have been rejected only on the ground that petitioner had accepted the award without protest. Hence the petition deserved to be allowed and the order impugned is liable to be quashed.

5. On the contrary, learned standing counsel has submitted that application under Section 28A is not maintainable unless the applicant pleads and proves that he was in such a state of poverty, illiteracy and ignorance that he could not afford to approach the authority for making a reference under Section 18 of the Act. In case the person interested has accepted the compensation without protest, as he could not make the application under Section 18 of the Act, question of entertainment of the application under Section 28A did not arise. Thus, petition is liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. Section 28A of the Act was inserted in the Act by amendment Act No. 68 of 1984 and it provides for re-determination of the amount of compensation on the basis of the award of the Court in respect of a land which has also been acquired in the same land acquisition proceedings, if the applications are filed within a period of three months from the date of the award of the Court.

8. The scope of provisions of Section 28A was considered by the Supreme Court in *Mewa Ram v. State of Haryana* : [1986]3SCR660 and the Court placed particular emphasis of Para 2 (ix) of the object and reasons which provided for a special provision for inarticulate and poor people to apply for re-determination of the compensation amount on the basis of the Court award in a land acquisition reference filed by comparatively affluent land owner. The Apex Court observed as under :

'Section 28A in terms does not apply to the case of the petitioners They do not belong to that class of society for whose benefit the provision is intended and meant, i.e., Inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court under Section 18 of the [Land Acquisition Act, 1894](#). On the contrary, the petitioners belong to an affluent class.....'

9. The Apex Court approved the law laid down in *Mewa Ram (supra)* again in *Scheduled Caste Co-operative Owning Society Ltd. Batinda v. Union of India and Ors.* : AIR 1991 SC730 .

10. In *Babua Ram v. State of U. P.* : (1995)2SCC689 , the Apex Court again approved and reiterated the law laid down in *Mewa Ram (supra)* and observed as under :

'Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded.... It is true that the Legislature intended to relive

hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference under Section 18 which is an existing bar and to remedy it, Section 28A was enacted giving a right and remedy for redetermination.... The Legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under Sub-section (1) of Section 18 due to poverty or ignorance or avoidance of expropriation.'

11. A similar view has been taken by a Division Bench of this Court in *Nanak and Ors. v. State of U. P. and Ors.*, 1991 (2) AWC 1237, placing reliance of large number of judgments of the Hon'ble Supreme Court.

12. Thus, it is apparent that the Legislature has carved out an exception in the form of Section 28A and made a special provision to grant some relief to a particular class of society, namely poor, illiterate, ignorant and inarticulate people. It is made only for little Indians. The provisions of Section 28A refers to the 'person interested' which means the original owner and that original owner interested must further be a person aggrieved by the award of the Collector.

13. In *G. Krishna Murthy and Ors. v. State of Orissa* : AIR 1995 SC1436 ; *D. Krishna Vani and Anr. v. State of Orissa*. (1995) 2 SCC 735 ; *Union of India and Anr. v. Pradeep Kumari and Ors.* : [1995]2SCR703 and *U. P. State Industrial Development Corporation Ltd. v. State of U. P. and Ors.* : (1995)2SCC766 , it has been held by Hon'ble Supreme Court that a person who prefers a Section 18 reference cannot maintain an application under Section 28A of the Act as the benefit of such an exceptional rule cannot be extended to such persons for the reason that it would be against the public policy. In a similar situation, the Hon'ble Supreme Court in *Union of India v. Shiv Kumar Bhargava and Ors.*, 1995 (3) AWC 1878 (SC) : AIR 1995 SC 812, observed that the benefit of State policy which confers certain beneficial rights on a particular class of person is meant only for the person whose land was acquired and by necessary implication 'the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the State policy,

14. In *Land Acquisition Officer v. Shivabal and Ors.* : [1997]3SCR647 . the Hon'ble Apex Court held that Section 18 reference can be entertained at the behest of a person interested if he has received the award under Section 11 without protest. However, the Hon'ble Apex Court while deciding the said case, did not take note of its earlier judgment in *Ajit Singh and Ors. v. State of Punjab and Ors.* : (1994)4SCC67 , wherein it had categorically been held that application under Section 18 for reference can be maintained even by the person who received the award and accepted the compensation without protest.

15. In *Babua Ram and Ors. (supra)*, it has been held that a person who had not made an application under Section 18 for reference earlier becomes entitled to Invoke Section 28A for the reason that he becomes aggrieved only when the other persons' land covered by the same notification is assessed at a higher value.

16. In *Hukum Chand and Ors. v. State of Haryana and Ors.* : [1996]3SCR1087 , it was held by Hon'ble Apex Court that the remedy under Section 28A is available only to the claimants who received compensation without protest and did not avail a remedy of reference under Section 18.

17. A Constitution Bench of the Hon'ble Supreme Court in *Union of India and Anr. v. Hansoli Devi and Ors.* : [2002]SUPP2SCR324 , considered the case and held as under :

'Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Section 28A and would be entitled to make an application when some other land owner's application for reference is answered by the reference court. It is apparent on the plain language of the provisions of Section 28A of the Act. Otherwise. It would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner.'

18. In view of the above, it is abundantly clear that even a person who accepts the award under Section 11 of the Act without protest, can maintain an application under Section 28A of the Act.

19. Thus, in view of the above, the petition deserves to be allowed and the order Impugned is liable to be set aside.

20. Petition succeeds and is allowed. The order impugned dated 27.8.1998 is hereby set aside. The case is remanded to the respondent No. 2 to decide afresh the application moved by the petitioner under Section 28A of the Act, expeditiously preferably within a period of four months from the date of filing a certified copy of this order before him, in accordance with law, as explained above.

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