

**Harkrishna Pathak and ors. Vs. State of Madhya Pradesh**

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**SooperKanoon Citation :** [sooperkanoon.com/513145](http://sooperkanoon.com/513145)

**Court :** Madhya Pradesh

**Decided On :** May-17-2006

**Reported in :** 2006(4)MPLJ268

**Judge :** Dipak Misra and; R.S. Jha, JJ.

**Appellant :** Harkrishna Pathak and ors.

**Respondent :** State of Madhya Pradesh

**Disposition :** Application dismissed

**Judgement :**

ORDER

**R.S. Jha, J.**

1. This is an application for modification of the judgment and decree dated 21-11-88 in F.A. No. 237/81 and seeking re-determination of the compensation awarded to the applicants.

2. The Claim of the applicants is based on Section 28(A) of the Land Acquisition Act, 1894. The facts which are relevant for adjudication of the application are that 478.97 acres of land was sought to be acquired by the respondent/State by issuance of a notification by Section 4(1) of the Land Acquisition Act, dated 8-3-65. After due notice and inquiry the land was acquired and the compensation for the

same was determined by the Collector.

3. Being aggrieved by the determination of compensation by the Land Acquisition Officer as many as 41 persons including the father of the applicants filed an application for referring the matter under Section 18 of the Act. On reference award dated 30-7-81 came to be passed by the Additional District Judge, Jabalpur in MJC No. 27/71. Being aggrieved by the award some of the applicants filed a First Appeal before this Court which was ultimately partly allowed vide judgment dated 12-11-88 passed in F.A. No. 237/81. On 27-4-98, the applicants filed an application allegedly under Section 28(A) of the Land Acquisition Act, which was dismissed by the Land Acquisition Officer by order dated 7-8-98 on the ground that the application had not been filed within the time stipulated under Section 28(A) and was therefore, not tenable. On the rejection of this application, the applicants have filed the present application seeking modification and Claiming parity in respect of compensation with the appellants in F.A. No. 237/81, decided on 21-11-88.

4. The contention of the learned Counsel for the applicants is that their father had died in the year 1966 after filling the application seeking reference under Section 18 of the Land Acquisition Act and no reference application was filed by them; that as the father of the applicants had died after filing the application for reference and he was dead on the date the award was passed by the Reference Court there was in fact no reference application in the eyes of law; that they being rustic villagers and having no means of obtaining knowledge, they came to know about passing of the award dated 30-7-81 in the reference and the judgment dated 21-11-88 of this Court in F.A. No. 237/81 only when the Collector rejected their application under Section 28(A) on 7-8-88 (sic: 7-8-98) and therefore, they were entitled to the benefit of Section 28(A) of the Act and consequently, parity in respect of the compensation alongwith other applicants.

5. The learned Counsel appearing for the respondents has vehemently opposed the application filed by the applicants on the ground that the applicants have made a false averment that they had not filed an application under Section 18 of the Act seeking reference as is apparent from the award dated 30-7-81 wherein the name

of the applicants father is mentioned at serial No. 34 in the cause-title; that the award on reference was passed on 30-7- 81 and the compensation was enhanced by this Court in F.A. No. 237/81 on 21-11-88 and therefore, the proceedings had attained finality; that the application under Section 28(A) was filed by the applicants for the first time before the Land Acquisition Officer on 27-4-98, Le., after nearly 10 years of the date of the judgment of this Court dated 21-11-88; that Section 28(A) prescribes three months limitation for filing an application and therefore, the application filed by the applicants was hopelessly barred by time and deserves to be rejected.

6. For the purpose of appreciating the issues raised in the case, it is apposite to refer to the provisions of Section 28(A) of the Act, which reads 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 under Section 11, the persons interested in all the other land covered by the same notification under Section 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 under Section 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 re-determined 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 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, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.

Furthermore, Section 2(d) [sic: Section 3(d)] of the Act defines 'Court' to mean the Principal Civil Court of original jurisdiction or the Special Judicial Officer appointed by the Appropriate Government to perform the functions of the Court.

7. As is apparent from a perusal of Sections 28(A) and 2(d) [sic : 3(d)], a person who is aggrieved by the award but who has not filed an application under Section 18 of the Act may file an application before the Collector Claiming compensation in excess of the amount awarded by the Collector in cases where the Court has allowed the application of an other person covered by the same notification enhancing the amount of compensation within three months from the date of the award of the Court.

8. Of the several issues raised by the parties, we think it appropriate to deal with the issue of maintainability of the present application, as the answer to this issue would determine whether it would be necessary to delve into the other issues raised by the applicants. The admitted facts of the case are that the award on reference by the 'Court' was passed on 30-7-81; the appeal against the award of the Court was decided by this Court on 21-11-88; that the application under Section 28(A) was filed by the applicants before the Collector Land Acquisition Officer, Jabalpur on 27-4-88 (sic : 27-4-98); and that this application for modification has been filed by the applicants in August, 1988 before this Court.

9. From a perusal of the provisions of Section 28(A), it is absolutely clear that an application for re-determination has to be filed within three months from the award of the Court excluding the days consumed for obtaining a certified copy of the award. In the instant case, the award was passed by the 'Court' on 30-7-81 whereas the application was filed by the applicants under Section 28(A) on 27-4-98. Under the circumstances, in our opinion, the application filed by the applicants was extremely delayed and beyond the period of limitation prescribed under

Section 28(A) and was therefore, rightly rejected by the Collector/Land Acquisition Officer by his order dated 7-8-98.

10. The Supreme Court in the case of Vishav Bandhu Gupta and another v. State of Haryana and Anr. : (2002)10SCC114 , has held that a person who initially does not assail the award passed by the Collector cannot be permitted to file an application under Section 28(A) of the Act, if the compensation is ultimately enhanced by the High Court in appeal at the instance of the another Claimant. Similar view has been taken by the Supreme Court in the case of State of A.P. and Anr. v. Marri Venkaiah : AIR 2003 SC2949 , wherein while dealing with a case where the application under Section 28(A) of the Act was filed after 5 years from the date of the award it was held that the limitation of three months begins to run from the date of the award and not from the date of knowledge of the award and even though Section 28(A) of the Act is a beneficial legislation it must be availed within the stipulated time to avoid uncertainty and to give finality to the award. In the case of Desh Raj (Deceased) through L.Rs. and Ors. v. Union of India and Anr. : AIR 2004 SC5003 , the same view has been reiterated by the Apex Court. The law as Laid down in the aforementioned judgments, fortifies the view taken by this Court that the application filed by the applicant after a lapse of nearly 17 years from the date of the award is clearly barred by limitation prescribed under Section 28(A) of the Act and has therefore, rightly been rejected by the authorities.

11. At this stage, we think it proper to clarify the issue that the limitation under Section 28(A) has to be computed from the date of passing of the award by the 'Court' on a reference under Section 18 and cannot be permitted to be computed from the date of the judgment passed by the Appellate Court in appeal, i.e., High Court in the present case as per the law as Laid down by several judgments of the Supreme Court and ultimately summarised in the case of State of Tripura and Anr. v. Rupchand Das and Ors. : (2003)1SCC421 , in Paragraphs 5 and 6 which read as under:

5. The principles Laid down by a Bench of three learned Judges of this Court in Pradeep Kumari : [1995]2SCR703 , were also followed in yet another decision of a Bench of three learned Judges in Jse Antonio Cruz Dos R. Rodriguese v. Land

Acquisition Collector : AIR 1997 SC1915 , observing as hereunder: (SCC pp. 749-50, para 4)

4. We may now refer to the case-law. A two-Judge Bench of this Court in Babua Ram v. State of U.P. : (1995)2SCC689 , dealt with this precise question and held that the period of limitation begins to run from the date of the first award made on a reference under Section 18 of the Act, and successive awards cannot save the period of limitation; vide Paragraphs 19 and 20 of the reporter. This view was reiterated by the same Bench in Union of India v. Karnail Singh : (1995)2SCC728 , wherein this Court held that the limitation of three months for an application for redetermination of compensation must be computed from the date of the earliest award made by a Civil Court, and not the judgment rendered by an Appellate Court. This was followed by the decision of a three Judge Bench in Union of India v. Pradeep Kumari : [1995]2SCR703 , wherein it was held that the benefit under Section 28A can be had within three months from the date of the award of the Reference Court on the basis whereof re-determination is sought. The earlier two decisions in the case of Babua Ram v. State of U.P. : (1995)2SCC689 , and Union of India v. Karnail Singh (supra), were overruled on the limited question that they sought to confine the right to seek re-determination to the earliest award made by the Court under Section 18 of the Act after the introduction of Section 28A into the Act. There is, however, no doubt that the period of limitation has to be computed from the date of the Court's award under Section 18 on the basis whereof re-determination is sought. Admittedly, in both the cases at hand, the applications for re-determination of compensation under Section 28A were made long after the expiry of three months from the date of the award of the Court which constituted the basis for seeking re-determination. We are, therefore, of the opinion that the High Court was right in taking the view that both the applications were time-barred.

(Emphasis supplied)

6. The correctness of Pradeep Kumari case (supra) on this aspect when sought to be raised before the Constitution Bench in the batch of cases, including the appeals before us in Union of India v. Hansoli Devi : [2002]SUPP2SCR324 , it was observed: (SCC P. 283, Para 12) 'But since that question has neither been

referred to us under the order of reference made in the present case nor does it arise in the case in hand, we refrain from answering the same'. A review petition filed by the appellants herein before the Constitution Bench in these appeals, viz., Rps (C) Nos. 1437-38 of 2002, has also been dismissed. In the light of the above, we see no merit in the challenge made to the orders of the High Court. The appeals, consequently, fail and shall be dismissed. No costs.

12. In view of the law as laid down by the Apex Court, we are of the considered opinion that the application filed by the applicants on 27-4-98 under Section 28(A) seeking re-determination of compensation after judgment of the High Court in the First Appeal and after a lapse of 17 years from the date of the passing of the award on 30-7-81 is not entertainable and was rightly rejected by the authorities.

13. We are also compelled to observe that the applicants were not parties in First Appeal No. 237/81, decided on 21-11-88 and therefore, the present application for modification of the judgment and decree passed in said F. A No. 237/81 is not maintainable and in our considered opinion deserves to be and is hereby dismissed.

14. As we have held that the present application is not maintainable and have also held that the rejection of the application filed by the applicants under Section 28(A) as barred by time is in accordance with law, we do not propose to delve into the other issues raised by the parties as they are rendered academic in view of our conclusions in respect of the above mentioned issues. The application filed by the applicants being sans merit, it is accordingly dismissed. There shall be no order as to costs.