

Natha Singh Vs. Punjab State

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Court : Punjab and Haryana

Decided On : Nov-11-1997

Reported in : (1998)120PLR347

Judge : Jawahar Lal Gupta and; R.L. Anand, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 23(1A)

Appeal No. : Letter Patent Appeal No. 64 of 1987

Appellant : Natha Singh

Respondent : Punjab State

Advocate for Pet/Ap. : Sanjay Majithia, Adv.

Disposition : Appeal dismissed

Judgement :

R.L. Anand, J.

1. By this judgment we dispose of two LPA Nos. 64 and 65 of 1987 (Natha Singh v. State of Punjab) as both the appeals have arisen from the order dated 18th September, 1986 passed by the learned Single Judge, who dismissed the applications under Sections 151, 152 and 153A of the Code of Civil Procedure, read with Section 30 of the Land Acquisition Act, filed by Shri Natha Singh and

others, in which they had prayed for the amendment of the judgment dated 2nd April, 1981 passed in RFA Nos. 1358 and 1359 of 1980. It was prayed by the appellants that they were entitled to solatium at the rate of 30 percent besides interest at the rate of 9 per cent per annum in view of the provisions of Section 23(1-A) of the Land Acquisition Act, 1894. It was averred in the applications that various provisions of the Land Acquisition Act were amended vide Act No. 68 of 1984, according to which the applicants were entitled to the various benefits as prescribed under Section 23(1-A) and Section 28 of the [Land Acquisition Act, 1894](#) (for short 'the Act'). The amending Act has been made operative with effect from 30th April, 1982. It was further averred by the applicants that on 30th April, 1982 their appeals were pending in the High Court, therefore, they are entitled to the benefits of the provisions of Section 23(1-A) of the Act.

2. The aforesaid applications did not find favour with the learned Single Judge, who vide order dated 18th September, 1986 dismissed both the Civil Misc. Nos. 1358 and 1359 of 1980. The operative portion of the order can be reproduced as follows:-

'Their claim now under Sections 151, 152 and 153A of the Code of Civil Procedure read with Act No. 68 of 1984 amending the provisions of the Land Acquisition Act, is that they may be allowed the benefit admissible to them under Sections 23(2)(1-A) and 28 of the Act. The amending Act has been made operative with effect from April 30, 1982. It is accepted that any proceedings by way of appeal on their account was pending on that date, i.e., April 30, 1982, in any Court, i.e., the High Court or the Supreme Court, then they are entitled to the said benefit. But as indicated above, no appeal of theirs was pending on that date either in this Court or the Supreme Court. Their learned counsel Mr. G.R. Majithia, however, seeks to contend in the light of certain observations of their Lordships of the Supreme Court in *Bhag Singh and Ors. v. Union Territory of Chandigarh*, A.I.R. 1985 S.C. 1576, that even the pendency of the applicants' special leave petition has to be taken as pendency of their appeals or at least pending of some proceedings at their instance in the Supreme Court and on that account they are entitled to the benefit of the above noted sections in the light of Section 30 of the Amending Act. To my mind the learned counsel is completely misreading that judgment. Their Lordships

have been categorical by observing therein that these amended provisions are applicable to all cases where an award may have been made by the Collector or Court prior to April 30, 1982. Their intention is further manifest from the following observations in paragraph 7 of the Judgment: -

'The intendment is brought out in no uncertain terms by the express language of Section 30, sub-section (2) and Section 28 shall apply and shall be deemed to have applied to and in relation to any award made by the Collector or Court or to any order passed by the High Court or the Supreme Court in appeal against any such award after 30th April, 1982 and before the commencement of the Amending Act. It is significant that the adverbial phrase 'after the 30th day of April, 1982 and before the commencement of this Act' governs not only the words 'any award made by the Collector or Court' but also the words 'Any order passed by the High Court or Supreme Court in appeal against any such award.' The amended provisions of Section 23, sub-section (2) and Section 28 are applicable not only in relation to an award made by the Collector or Court after 30th April, 1982 and before the commencement of the Amending Act but also in relation to an order passed by the High Court or Supreme Court in appeal between 30th April, 1982 and the commencement of the Amending Act. The appeal in which the order is passed by the High Court or Supreme Court may be against an award made by the Collector or Court prior to 30th April, 1982 or subsequent to that date. The only requirement is that the order must have been passed by the High Court or Supreme Court in appeal against such award after 30th April, 1982 but before the commencement of the Amending Act.'

It is thus patent in the light of the above noted expression of opinion by the final Court that the applicants could take benefit of these Sections, i.e., 23(2)(1-A) and 28 of the Act had their appeals been pending in this Court or the Supreme Court on the relevant date, i.e., April 30, 1982. By no stretch of imagination the special leave petitions filed by them, which of course were pending in the Supreme Court on that date, can be treated as appeal. In a nutshell, the special leave petitions, to my mind, cannot be equated with appeals pending in the Supreme Court. I am, therefore, of the opinion that the petitioners are not entitled to the benefit of the above-noted provisions of the Act and cannot seek the-amendment of the

judgment and decree of this court. In order to be fair to the learned counsel, it may, however, be pointed out that at one stage he made a reference to certain orders of this court allowing such prayers in similar matters, but in none of those cases the question as to whether the pendency of a special leave petition in the Supreme Court can be treated as the pendency of an appeal was raised, debarred or settled. I thus do not feel the necessity of making any detailed references to those orders.'

3. Aggrieved by the said order, present two LPAs which we are disposing for which the assistance rendered by Shri Sanjay Majithia, learned counsel for the appellants.

4. It is submitted by the learned counsel for the appellants that the learned Single Judge fell in error in rejecting the applications of the appellants under Sections 151, 152 and 153A of the Civil Procedure Code, and that the applicants are entitled to the benefits of Section 23(1-A) of the Act as the applicants had filed an appeal against the judgment dated 2nd April, 1981 in the Hon'ble Supreme Court and as on 30th April, 1982 the appeal was pending there, therefore, the benefits of these provisions ought to have been extended to the applicants.

5. We do not find any merit in the contention raised by the learned counsel for the appellants. Here we would like to make a reference to the provisions of Section 23(1-A) of the Act, which provisions were added in the Act vide Act No. 68 of 1984, which came into force with effect from 30th April, 1982 on account of the transitional provisions of Section 30 of the said Act. These provisions would be made applicable to those awards which have been given by the Collector either as on 30th April, 1982 or thereafter and not to those awards of the Collector which were pronounced before 30th April, 1982. The provisions of Section 23(1-A) of the Act were interpreted by the Hon'ble Supreme Court even in various judgments. In *K.S. Paripoornan v. State of Kerala and Ors.*, A.I.R. 1995 S.C. 581, it was held by the Hon'ble Supreme Court that the benefits of the Amending Act can be extended to those awards made by the Collector, which were pronounced after coming into force of these provisions. Para No. 6 of the said judgment can be quoted as follows:-

'6. The question relating to the payment of 12% additional compensation under Section 23(1-A) over the excess compensation has already been covered by the Constitution Bench judgment of this Court in K.S. Paripoornan v. State of Kerala, A.I.R. 1995 S.C. 581. Therefore, the appellant is not entitled to this benefit as the Collector made the award prior to the date of the Amending Act came into force.'

6. This principle of law was further reiterated in Special Land Acquisition Officer v. N.S. Takkalaki and Ors. 1995(5) Supreme Court Cases 686. In Priya Vart and Anr. v. Union of India, A.I.R. 1995 S.C. 2471, it was held by the Hon'ble Supreme Court that the benefit of the amending provisions would not apply when an appeal is pending in the High court as on 30th April, 1982 from the award of the Collector. The relevant para No. 4 of this judgment can be quoted in the following terms :-

'4. It is next contended that this Court in Umed Industries & Land Development Co. v. State of Rajasthan, 1995(1) Scale 309 and in SA. Jain College Trust v. State of Haryana, 1995 A.I.R. S.C.W 1713 held that the claimants will be entitled to the enhanced interest at 9 per cent under the proviso to Section 28 for one year from the date of taking possession and 15 per cent thereafter till the date of deposit and also enhanced solatium under Section 23(2) and that, therefore, the petitioners also are entitled to that ratio inasmuch as the appeals were pending in the High Court by the date of commencement of the Land Acquisition (Amending) Act 68 of 1984. We find no force in this contention also.'

7. In this view of the matter, we do not see any merit in both the appeals and the same are hereby dismissed with no order as to costs.