

Ram Karan and ors. Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Feb-17-2005

Reported in : 118(2005)DLT402; 2005(81)DRJ37

Judge : B.C. Patel, C.J. and; Sanjay Kishan Kaul, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 4(1), 6, 11, 18, 23(1), 25, 28A and 54; Code of Civil Procedure (CPC) - Sections 151 and 152 - Order 47 Rule 1

Appeal No. : LPA No. 188/1981

Appellant : Ram Karan and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Sanjay Poddar, Adv. for respondent 1, ; S.N.Gupta, Adv for respondents 14 and 16 and ;

Advocate for Pet/Ap. : Jagdev Singh, Adv. and; S.P. Agarwal, Sr. Adv. and; Meenu A

Disposition : Application rejected

Judgement :

B.C. Patel, C.J.

CM No. 2415/2005

1. This is an application filed by the LRs of respondent No. 15 to bring on record the legal heirs of deceased respondent No. 15. The application is supported by Death Certificate of the deceased. Respondent No. 15 late Shri Harchain Singh is survived by the legal heirs mentioned in para 3 of the application being six sons and three daughters. The three daughters, however, are stated not to be desirous of any share in the property and thus the application has been filed to bring on record the six sons of the deceased respondent. The daughters have filed an affidavit in support of the application.

2. In view thereof, the application is allowed. It may, however, be noted that the application is filed through Mr. Jagdev Singh, Advocate for the appellants.

3. Amended memo of parties be filed within three days.

LPA No. 188/1981

1. The present Letters Patent Appeal is filed against the order dated 14.2.1980 made by the learned single Judge in RFA Nos. 134/69, 379/76, 329/68, 379/68, 129/69, 437/71, 178/69, 380/76, 185/69 and 425/71. So far as the present appeal is concerned, it arises out of RFA No. 329/68.

2. The proceedings were initiated in view of notification issued under Section 4 of the [Land Acquisition Act, 1894](#) (hereinafter referred to as 'the Act') on 3.9.1957 followed by a declaration under Section 6 of the Act on 29.3.1961. Land Acquisition Collector after following the procedure as per the Act made an award on 15.12.1961 making six different categories of land and awarded different amounts. The appellants being aggrieved by the determination of the fair market price by the Land Acquisition Collector made an application under Section 18 of the Act. The Reference Court thereafter enhanced the amount. The appellants were still aggrieved and hence, preferred a regular first appeal before this Court and the learned single Judge of this Court enhanced the amount of compensation. It is against this order made by the learned single Judge that the present LPA is filed.

3. Suffice it to say that we are not required to go into further discussion of the matter as the lands which were acquired vide notification impugned were the subject matter of RFA No. 167/69 decided on 18.4.2001 in case of Ganga Das v. Union of India : 91(2001)DLT433 . The Division Bench after examining the relevant material arrived at the conclusion that Rs. 5720/- per Bigha, irrespective of the classification of the land, would be the fair market value and we find no reason to take a different view than the one taken by the Division Bench. When under same notification lands were acquired and the fair market price is determined, and as the appellants are before us in appeal in accordance with law, we feel that the same benefit should be extended to the appellants as they have preferred this appeal. No distinct features affecting value of land are pointed out by either counsel for the parties.

3. The matter does not rest at this since learned counsel for respondents No. 2 to 17 seek to contend that the said respondents are also entitled to the benefit of the enhanced compensation. It may be noticed that the appellants, respondents No. 2 to 17 as well as the applicants in CM No. 2356/2005 were all aggrieved by the compensation determined by the Land Acquisition Collector and had sought a reference. They were even aggrieved by the order of the Reference Court and thus filed a Regular First Appeal. However, after the judgment of the Regular First Appeal, only the appellants came up in further appeal by filing the present Letters Patent Appeal and the other parties accepted the judgment. It is only after a delay of almost 20 years that CM 804/2001 was filed by respondents No. 2 to 17 seeking their impleadment as respondents which was allowed on 15.3.2002.

4. The impleadment of the respondents, however, does not imply that they are ipso facto entitled to the enhanced claim to which the appellants are entitled. These respondents accepted the judgment of the learned Single Judge and are estopped from challenging the same after 20 years. These respondents did not file either the independent appeals or joined the appellants in the present appeal and cannot raise a claim for enhancement in the present proceedings which are collateral in nature in so far as the respondents No. 2 to 17 are concerned.

5. Learned counsel for respondents 2 to 17 relied on the decision of the Division bench of this Court in case of Ram Mehar v. Union of India AIR 1987 Del 130. In that case it appears that an application made under Section 151 and Order 47 Rule 1 CPC for enhancement of compensation in an appeal disposed of earlier was allowed as in a subsequent appeal the amount determined for the same land was higher. This decision was considered by the learned single Judge of this Court in the case of Ghisa v. Union of India 1998 (1) LACC 68. Justice R.C. Lahoti (as His Lordship then was) had an occasion to examine Section 28A of the Act and the provisions contained in Section 151 of the CPC as also the decision rendered by the Apex Court in this behalf. After quoting Section 28A of the Act in para 6 it is pointed out as under:-

'It is well settled by a catena of decisions rendered by the Supreme Court that remedy under Section 28A is available only to one who had not sought for a reference under Section 18, one who has failed in the reference under Section 18 or in appeal under Section 54 of the Act cannot invoke Section 28A for such a remedy would be barred by the principle of public policy as also of rest judicata (see Babu Ram v. State of U.P., : (1995)2SCC689 , G. Krishnamurthy v. State of Orissa, : AIR 1995 SC1436 , Krishna Seni v. State of Orissa, : [1995]1SCR488 , Hukam Chand v. State of Haryana, : [1996]3SCR1087 , UOI v. Pradip Kumari, : [1995]2SCR703 and Ramesh Singh v. State of Haryana, : [1996]1SCR484 .'

6. It is also required to be noted that with regard to submissions made as to the applicability of Sections 151 and 152 of CPC are concerned, the same were rejected by the Court in case of Ghisa v. Union of India (supra) by observing as under:-

'13. In State of Punjab v. Babu Singh, 1995 Supp (2) 406 : 1995 LACC 425, their Lordships have held:

'Court or High Court gets jurisdiction when it determines higher compensation under Section 23 and not independently of the proceedings.'

'The High Court was clearly without jurisdiction in entertaining the application under Section 151 and 152 to award the additional benefits under the Amendment

Act 68 of 1984 or to amend the decrees already disposed of.'

14. So is the view taken in *Union of India v. Rangilaram* : AIR 1996 SC206 , *State of Maharashtra v. Maharau Srawan Mathar*, : [1995]2SCR224 and *UOI v. Pratap Kaur*, : [1995]1SCR670 . Expressly overruling resort to Section 151 of CPC their Lordships have held that after the award became final, the civil court was devoid of power or jurisdiction and there was no arithmetical or clerical error in the award. The civil court was devoid of jurisdiction and power to award or order additional benefits.

15. In *Mewa Ram v. State of Haryana*, 1987 SCC 45 : 1987 LACC 183, a belated special leave petition was filed by the applicant seeking enhancement of rate of compensation in view of such enhanced compensation having been awarded by the Supreme Court in some other cases. It was held that it could hardly be a ground for condensation of delay and entertaining the Special Leave Petition. Their Lordships observed :

'There is no provisions in the Act apart from Section 28A for reopening of an award which has become final and conclusive. No doubt Section 28A now provides for the redetermination of the amount of compensation provided the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made before him within thirty days from the date of the award and the right is restricted to person who had not applied for reference under Section 18 of the Act. If these conditions were satisfied, the petitioners could have availed of the remedy provided under Section 28A of the Act. In that event, Section 25 would ensure to their benefit. Any other view would lead to disastrous consequences not intended by the Legislature.'

16. I am unhesitatingly of the opinion that resort to section 151 CPC by the petitioners was totally misconceived and ill advised. It has rightly been not permitted by the learned ADJ. Once an award has achieved a finality the court does not have jurisdiction or power to alter the quantum of compensation by resorting to section 151 CPC.

17. The learned counsel for the petitioners placed implicit reliance on a DB decision of this Court in *Ram Mehar v. Union of India* (RA 7/76) AIR 1987 Del 130 : 1987 LACC 106, which I have carefully perused. The facts are similar and the

view taken by the Division Bench does support the petitioners' contention. However, I am bound by the law laid down by their Lordships of the Supreme Court which is the law of the land.'

7. We are in full agreement with the view expressed as aforesaid and in view of the judgments referred to of the Hon'ble Supreme Court in the said judgment, there can be no manner of doubt that enhancement of compensation through this intricate method cannot be permitted. The respondents No. 2 to 17 not having preferred an appeal or paid court fee, the principles of delay and laches would squarely come in their way for grant of any relief.

8. The result of the aforesaid is that respondents No. 2 to 17 are not entitled to any benefit of the enhancement of the compensation as granted in the present appeal and it is only the appellants who are entitled to the benefit of the decision in Ganga Dass case (supra). The appellants would thus be entitled to the enhanced value of Rs.5720/- per bigha along with all consequential benefits.

9. The appeal stands allowed accordingly.

CM No. 2356/2005

1. This application is preferred by persons who were parties to the original proceedings as also the Regular First Appeal. However, they did not pursue the remedy further and they accepted the decision and after a long delay of more than 25 years an application is made for permitting them to be joined as party respondents relying on the decision of this Court in Smt. Kalawati and Ors. v. Union of India and Ors. : AIR2004 Delhi351 which was a case of a co-owner where the Court considered that when the fair price of the land is determined, then the co-owner will be entitled to get the same benefits as the appeal was already preferred by the other co-owners. The Division Bench was conscious about the decision of the Apex Court in Babua Ram and Ors. v. State of U.P. and Anr. : (1995)2SCC689 , as also the decision of the Apex Court in the case of Jalandhar Improvement Trust v. State of Punjab and Ors. : AIR 2003 SC620 . In the later case the Apex Court in para 5 pointed out as under:-

'Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner along with her children who were added as Petitioners 2 to 5 to the award dated 5-2-1986, in which case, even on the first principles of law one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference under Section 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent for differential treatment. We are fortified to some extent in the view expressed above, by the principles laid down by this Court in the decision reported in A. Viswanatha Pillai v. Special Tahsildar for Land Acquisition.'

2. So far as the applicability of Section 28A of the Act is concerned, the law is already settled by the Apex Court in the case of Babua Ram and Ors. v. State of U.P. and Anr. : (1995)2SCC689 . This judgment has been followed by a Division Bench of this Court in the case of Union of India v. Parbhati : 93(2001)DLT335 .

3. The conditions in which the provisions of Section 28A of the Act can be invoked have been enumerated in the case of Union of India and Anr. v. Pradeep Kumari and Ors. : [1995]2SCR703 :-

'(i) An award has been made by the court under Part III after the coming into force of Section 28A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28A is interested in other land covered by the same notification under Section 4(1) to which the said award

relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28A for redetermination of the compensation by an applicant.'

4. In the present case, the applicants had sought a reference under Section 18 of the said Act and even agitated the matter further by filing an appeal before the learned Single Judge of this court. It is only thereafter they accepted the judgment of the learned Single Judge and failed to file any further appeal till filing of the present application. It appears that the applicants had a misconception that in view of respondents No. 2 to 17 being imp leaded as respondents, the said respondents would be entitled to the enhanced compensation and thus the applicants also wanted to be summarily imp leaded as respondents.

5. In view of what is discussed hereinabove, this application is required to be rejected. Ordered accordingly.