

Ghisa Vs. Union of India

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Court : Delhi

Decided On : Apr-24-1997

Reported in : 1997IIIAD(Delhi)613; 70(1997)DLT250; 1997(42)DRJ308

Judge : R.C. Lahoti, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 28A; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 54

Appeal No. : Civil Revision Appeal No. 754 of 1990

Appellant : Ghisa

Respondent : Union of India

Advocate for Pet/Ap. : Om Prakash,; Vinod Gupta and; S.S. Sabharwal, Advs

Judgement :

R.C. Lahoti, J.

(1) This order shall govern the disposal of CRs No. 754 to 765 of 1990 the facts wherein are common and the question of law arising for decision is the same.

(2) It would suffice to notice the facts in Cr 754/90 The petitioner's land was acquired. Under the same notification several pieces of land belonging to several persons were acquired. The Land Acquisition Collector made an award. Several

petitioners sought for reference under Section 18 of the [Land Acquisition Act, 1894](#) (hereinafter referred to as 'the act' for short). The references were decided on 1.2.1975 enhancing the market value up to Rs. 2200-2500 per Bigha. The petitioners herein felt satisfied and did not go in appeal against the order of the reference court seeking further enhancement. However, a supplementary award No. 50A/96-97 was pronounced by the Land Acquisition Collector on 4.11.81 in the case of some other claimants. A reference under Section 18 of the Act arising out of the supplementary award was also decided on 29.11.1986 wherein those claimants (other than the petitioners herein) were awarded compensation Rs. 23000/ per Bigha.

(3) On 23.1.87 an application under Section 151, Civil Procedure Code has been filed submitting that the land of the petitioners is similarly situated as the land of the claimants in the award dated 29.11.86 and as the petitioners could not prefer an appeal for further enhancement ?due to paucity of funds, they deserve to be awarded compensation at the same rate at which the claimants under the award dated 29.11.86 have been awarded i.e. at the rate of Rs. 23000.00 per Bigha.

(4) The application has been rejected by the learned Addl District Judge passing a detailed order in Lac No. 169/70 forming subject matter of Cr 754/90. The impugned orders in CRs 755 to 765/90 have rejected similar applications filed by similar other petitioners by brief order based on the detailed and main order dated 16.2.90 impugned in Cr 754/90. It is conceded at the bar that the facts and chronology of events in all the eleven matters bearing Cr 755 to 765/90 are similar to those forming subject matter of Cr 754/90.

(5) The question arising for decision is whether Section 28A of the [Land Acquisition Act, 1894](#) (as inserted by amending Act No. 68 of 1984) is attracted to the facts of the case, and if not, then whether relief by exercising jurisdiction under Section 151 Civil Procedure Code (as was sought for before the learned Addl District Judge) can be allowed to the petitioners.

(6) Section 28A of the Act reads as under :-

28A.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 this 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 applicant

(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.

BRIEFLY put, Section 28A is intended to protect and extend its helping hand to a person having failed to avail the remedy under Section 18 of the Act to claim the same benefit in the matter of quantum of compensation as has been allowed to any other claimant covered by the same notification by the Court deciding a reference under Section 18 read with Section 26 of the Act. The application has to be made within three months from the date of the award by the Court and to the

Land Acquisition Collector. The application shall be heard by noticing all the persons interested and disposed of by an award. Any person aggrieved by the award of the Collector may seek a reference to the court.

(6) 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 vs State of Up, : (1995)2SCC689 . G. Krishnamurthy vs . State of Orissa, : AIR 1995 SC1436 . Krishna Beni vs . State of Orisa : [1995]1SCR488 , Hukam Chand v. State of Haryana, : [1996]3SCR1087 . Uoi vs. Pradip Kumari : [1995]2SCR703 Ramesh Singh v. State of Haryana, : [1996]1SCR484 .

(7) In Hukam Chand's (supra) the appellants had availed the remedy of reference under Section 18 and had the compensation enhanced. Thereafter they did not pursue appellate remedy under Section 54 to the High Court for further enhancement of compensation. Other claimants pursued their remedy and got the compensation enhanced. Thereafter the appellants sought to invoke remedy under.

SECTION 28A. Their Lordships held that the remedy was not available to the appellants. Their Lordships have also held that the appellants could not be heard to complain of invidious discrimination by alleging being denied the payment of same compensation on a par with others violating the equality guaranteed under Article 14 of the Constitution of India. So is the law laid down in Ramesh SINGH'S case (supra).

(8) In the case at hand, the petitioners have not moved any application before the Land Acquisition Collector. They have applied to the court of the Addl District Judge. Secondly, they had not submitted to the award made by the Land Acquisition Collector. They had availed the remedy under Section 18 of the Act and suffered an award under Section 26. Thereafter, they have not filed any appeal under Section 54 of the Act. Neither the petitioners had the locus standi to

invoke Section 28A of the Act nor the court of the Addl District Judge was appropriate forum. The learned Adj has rightly refused to entertain the petitioner's prayer made by reference to Section 28A.

(9) Having held that the petitioners are not entitled to any relief by relying on Section 28A of the Act, let it be seen whether the inherent power of the court under S. 151 Civil Procedure Code can be invoked for relief in such a fact situation.

(10) Inherent power of court cannot be exercised where there is an express provision of law applicable to the case. If relief can be allowed to an applicant by invoking a specific provision covering the field, resort to Section 151 Civil Procedure Code is uncalled for. If law does not permit a relief being granted, the court cannot allow the same by circumventing the provisions of law.

(11) In *Ramesh Singh (supra)*, an attempt by the petitioners to implead themselves as parties before the court executing an award in favor of other persons so as to have their compensation enhanced to bring it at par with others by amending the decree was refuted.

(12) In *Bai Shakri Ben v. Special Land Acquisition Officer*, : AIR 1996 SC3323 , the petitioners had permitted an award made on their reference application to achieve a finality. Subsequently they filed an application under Order 47 Rule 1 and Section 151 of the Civil Procedure Code for amendment of the decree so as to claim benefit of the provisions of the amended Land Acquisition Act and have additional amount of solarium and interest awarded which was omitted to be awarded to them earlier. Their Lordships held that such an omission was not clerical or arithmetical mistake crept in the award but amounted to non-award. The remedy of the petitioners was to have gone in appeal against the award and not to seek an amendment in the decree.

(13) In *State of Punjab v. Babu Singh* : [1995]2SCR374 , their Lordships have held:

'COURT or High Court gets jurisdiction when it determines higher compensation under Section 23(1) and not independently of the proceedings.'

'The High Court was clearly without jurisdiction in entertaining the applications under Sections 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. Maharaw Srawan Matkar* : [1995]2SCR224 and *Uoi v. Pratap Kaur* : [1995]1SCR670 . Expressly overruling resort to Section 151 of Civil Procedure Code 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 Sc 45, 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 provision in the Act apart from S. 28A for reopening of an award which has become final and conclusive. No doubt S. 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 persons who had not applied for reference under S. 18 of the Act. If these conditions were satisfied, the petitioners could have availed of the remedy provided under S. 28A of the Act. In that event, S. 25 would inure 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 Civil Procedure Code 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 S. 151 CPC.

(17) The learned counsel for the petitioners placed implicit reliance on a Db decision of this Court in Ram Mehar vs. Union of India (RA 7/76) Air 1987 Del 130 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.

17.1 Nand Ram and Ors. vs State of Haryana Jt 1998(4) Sc 260 is a case of amendment in memorandum of appeal seeking enhancement in the rate of compensation. The prayer for amendment was allowed by the Supreme Court.

17.2 Ram Mohan Wahee vs. Uoi : 62(1996)DLT302 is a case of enhancement in review filed within limitation so as to bring the awarded compensation on parity with the one awarded to co-sharers in the appeal.

17.3 Both these cases are of a fact-setting bearing no similarity with the cases at hand.

(18) For the foregoing reasons no fault can be found with the impugned order. All the revisions are wholly devoid of any merit and liable to be dismissed. They are dismissed though without any order as to costs.

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