

Joseph Vs. District Collector

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Court : Kerala

Decided On : Jun-25-2004

Reported in : 2004(2)KLT1029

Judge : Pius C. Kuriakose, J.

Acts : Land Acquisition Act, 1884 - Sections 18 to 28 and 28A

Appeal No. : W.P. (C) No. 16939 of 2004

Appellant : Joseph

Respondent : District Collector

Advocate for Def. : R. Muraleedharan Pillai, Government Pleader

Advocate for Pet/Ap. : Rajiv V. Kurup, Adv.

Disposition : Writ petition allowed

Judgement :

Pius C. Kuriakose, J.

A question of considerable importance arises for decision in this Writ Petition. The question is whether to maintain an application under Section 28A of the Land Acquisition Act for redetermination of the amount of compensation payable to a party who had not made an application to the Collector under Section 18, it is

necessary that the Court award relied on by the applicant should be one passed on a reference made by the Land Acquisition Officer under Section 18 at the behest of some other owner whose land was also acquired under the same Section 4(1) notification. Incidentally the question is whether the expression 'award of the Court' employed in the heading and body of Section 28A(1) can include an award made by the Court in a reference case registered under Section 28A(3) also

2. The short facts are that the petitioner's property extending to 9.20 Acres was acquired on the basis of an award passed by the 2nd respondent, Land Acquisition Officer for the Muvattupuzha Valley Irrigation Project. The petitioner did not seek a reference under Section 18 of the Land Acquisition Act for enhancement of compensation. The petitioner filed Ext.P1 application under Section 28A producing the certified copy of Court award in L.A.R.No. 13/2002. The Land Acquisition Officer rejected Ext.P1 by passing Ext.P2 on the ground that the Court award in L.A.R.No. 13/2002 was passed not on a reference under Section 18 of the Land Acquisition Act but instead it was passed on a reference under Section 28A(3). According to Ext.P2, the law as it obtains presently will not enable the Land Acquisition Officer to consider applications under Section 28A which are filed placing reliance on judgments passed by the reference court on references made under Section 28A(3).

3. Having regard to the importance of the question involved, the Government Pleader was directed to take notice and get instructions from the Land Acquisition Officer. Mr. R. Muraleedharan Pillai, Senior Government Pleader was directed to do requisite research so that the State's view point on the question can be expressed in the light of all available judicial precedents which are relevant and accordingly the case was heard in part on 16.6.2004 and finally on 22.6.2004.

4. Sri. Rajeev V. Kurup, learned Counsel for the petitioner submitted that Section 28A speaks of redetermination of the amount of compensation on the basis of the award of the court and does not draw a distinction between awards passed by the reference court on a reference initiated under Section 18 and a reference initiated under Section A(3). Both the awards were passed by the Court under Part III of the Land Acquisition Act, he submitted. Mr. Rajeev further submitted that for all

practical purposes an award passed under Section 28A(3) is as good as an award passed under Section 18 since the provisions of Section 18 to 28 have been expressly made applicable to reference under Section 28A(3) also. The legislative objective underlying Section 28A, according to the learned counsel, was only to bring about parity in the matter of compensation given to land owners of similar lands acquired under the very same notification under Section 4(1). Both literal and purposive interpretation will justify a conclusion that even awards passed by Courts under Section 28A(3), references can be relied on for the purpose of applications under Section 28A, according to him. Counsel drew my attention in support of his submissions to various decisions of the Supreme Court such as *Union of India and Anr. v. Pradeep Kumari*, (1995) 2 SCC 736, the Constitution Bench decision in *Union of India v. Hansoli Devi*, (2002) 7 SCC 273 and also to certain passages in the decision of the Supreme Court in *Babu Ram v. State of U.P.*, (1995) 2 SCC 689 and *Union of India v. Karnail Singh*, (1995) 2 SCC 728.

5. Sri. R. Muraleedharan Pillai, learned Senior Government Pleader confessed that he was unable to come across a decision either of the Supreme Court or by any High Court which clearly takes the view that an award passed by a Reference Court in a reference under Section 28A(3) cannot be relied on for the purpose of maintaining an application under Section 28A. Meeting the argument of Sri. Rajeev V. Kurup that on the language of an award under Section 28A(3) is as good as award under Section 18 he submitted that the provisions of Sections 18 to 28 deal with the procedure to be followed by the Reference Court and they do not deal with the power to enhance compensation as such. The Government Pleader further submitted that accepting the argument of the petitioner will be to open a flood gate for cases which stands barred by limitation and it could never had been intention of the legislature to permit parties who had slept over their rights for decades to wake up one fine morning and seek enhancement on the basis that his neighbour had been given more amounts on the basis that another neighbour had been given more amounts.

6. The objects and reasons underlying Section 28A which was introduced into the Land Acquisition Act through the amending statute 68 of 1984 were considered by the Supreme Court in more cases than one. In *Pradeep Kumari's* case a Bench of

three Judges of the Supreme Court said referring to the statements of objects and reasons to Section 28A that the objects underlying the enactment of Section 28A is to remove inequality in the payment of compensation for same or similar quality of land. The provisions of Section 28A, their Lordships said is in the nature of beneficent provisions intended to remove inequality and to give relief to the inarticulate and poor people who were not able to take advantage of right of reference to the Civil Court under Section 18 of the Act. Their Lordships further said that in relation to beneficent legislation, the law is well-settled that while construing the provisions of such a legislation the Court should adopt a construction which advances the policy of the legislation and extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it and the provisions of Section 28-A should therefore be construed keeping in view the object underlying provision. The Constitution Bench in Hansoli Devi's case reiterated that the object of Section 28-A was to confer a right of making a reference upon one who might not have made a reference earlier under Section 18 and that the Parliament has enacted under Section 28-A as a beneficial provision. The observations of Ramaswamy, J. in the decision in Babu Ram v. State of U.P., (1995) 2 SCC 689, which was authored by the learned Judge on behalf of the bench made in the context of the question whether the land owner applying under Section 28-A should have received original compensation cheque with or without protest even indicate that the Parliament had kept in mind even Article 14 of the Constitution while enacting Section 28-A.

7. But then the cardinal principle of construction of a statute is that when the language used is plain and unambiguous, the Court must give effect to the words used and it will not be necessary for the Courts to search for construction more consistent with the alleged object and policy of the Act. The Construction Bench in Hansoli Devi's case quoted the rule stated by Tindal, C.J., in *Sussex Peerage* case and said that 'If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

8. On a literal interpretation of the expression 'award of the Court' employed in Section 28A, according to me all awards of the Court under which excess compensation has been awarded by the Court over and above the original compensation awarded by the Land Acquisition Collector and are passed under Part III of the Land Acquisition Act are included. Section 28-A(3) enables a party as does Section 18 to seek a reference to the Court for determination of the question of correct compensation. The award of the Court whether it be on a reference under Section 18 or it be on a reference under Section 28-A(3) is passed in terms of Section 26. The provisions of Sections 18 to 28 have been made applicable to references under Section 28-A(3) as they apply to reference under Section 18, of course 'so far as may be'. In my view the distinction can lie only in that, the Court considering a reference received under Section 28-A(3) will be concerned with enhanced compensation by way of land value and incidental statutory benefits alone, while the Court dealing with a reference under Section 18 will also be concerned with the claims of the owner for enhanced value for buildings and other improvements. Considerations under Section 23 which do not have anything to do with claim for land value may not be relevant on reference under Section 28A(3). But as far as claims under Section 28-A which are always for equal land value for similar lands covered by the very same 4(1) notification are concerned there cannot be any difference between the awards passed on a reference made under Sections 18 and 28-A(3).

9. I must now note that even though Sri. R. Muraleedharan Pillai, learned Senior Government Pleader seems to be right in his submission that there are no direct decisions of the Supreme Court or any High Court which takes the view directly that award under Section 28-A(3) cannot be relied on by an applicant in a petition under Section 28-A, there can be some strong arguments in support of such a view. Sub-section (1) of Section 28-A specifically speaks of non-making of applications to the Collector under Section 18 as well as of enhanced compensation allowed by the Court in excess of the amounts awarded by the Collector under Section 11. Paraphrasing Section 28A(1) itself it would appear that there is a fairly strong case for an interpretation that the award of enhanced compensation by the Court which the legislature had in mind is an award passed at the instance of somebody else who had made an application under Section 18.

After all 28A(3) comes as a part of the enabling Section 28-A and Sri Rajeev's answer to the Government Pleader's submission in that regard that all awards are passed under Section 26 is not quite adequate. In fact there is one sentence in paragraph 19 of the judgment of the Supreme Court in Babu Ram's case which give support to the argument that the award of the Court for 28A can only be the award of the reference Court under Section 18. In paragraph 19 their Lordships dealing with the question when the period of limitation of three months begins to run under Section 28-A whether from the passage of the first award or whether separate cause of action arises with the passage of successive awards -- incidentally observed as follows:..... 'Hence the award of the Court referred to in Sub-section (1) of Section 28-A is only the award of the Civil Court of original jurisdiction or of judicial officer performing the functions of such court under the Act on reference received by it under Section 18 and an award and decree pronounced under Section 26 of the Act'.

Later another three Judge Bench of the Supreme Court in Jose Antonio Cruz Dos R. Rodriguense v. Land Acquisition Collector, (1996) 6 SCC 746 has also indicated that reference of the term award in Section 28-A is the award of the Court disposing of a reference under Section 18. Their Lordships while dealing with the question whether expression 'award of the Court' employed in Section 28A refers to award of the reference Court or to that of the appellate Court, inter alia, observed that

'The first part of the section begins with the words 'where in an award under this Part, Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11 which clearly indicates that the legislature was talking of an award made under the provisions of Part III, i.e., an award under Section 11 and therefore, in that context, reference to 'Court' can only mean the Court to which a reference is made by the Collector under Section 18'.

10. These possible arguments however do not persuade me to repel the submissions of Mr. Rajeev and to prefer those of the Senior Government Pleader. Neither in Babu Ram's case nor in Jose Antonio Cruz Dos R. Rodriguense's case, the question specifically arose for decision as to whether an award passed by the

reference Court under Section 28-A(3) can also be relied on by a person who applies under Section 28-A. The observations quoted by me from those judgments were made incidentally only and the question as to whether an award under Section 28-A(3) can be relied on for maintaining an application under Section 28A was never a matter for decision in either of those two cases. Adopting literal or plain language interpretation of the word 'award of Court' employed in the heading of Section 28A and in Sub-section (1) will only show that the award contemplated is an award made under Part-III of the Act and a Court award under this the applicant has been given compensation in excess of the amount awarded by the Collector under Section 11. If the legislature wanted to include only the award passed in a reference under Section 18, the legislature would certainly have specifically referred to awards passed on a reference under Section 18(1). Instead the legislature clearly referred to 'awards passed under Part III of the statute' which takes in awards passed in references under Section 18 as well as under Section 28-A(3). Both of them are expected to be given in terms of Section 26 and as far as the land value payable is concerned are expected to have the same characteristics.

11. Pradeep Kumari 's case decided by three Judges apart from dealing extensively with the legislative object underlying Section 28A and the construction to be placed on beneficial legislation laid down six conditions to be satisfied so as to enable a person to seek redetermination of the amount of compensation payable to him. The six conditions are as follows:

- i) An award has been made by the Court under Part III after the coming into force of Section 28-A;
- 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 28-A 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 28-A for redetermination of compensation by an applicant.

12. Condition Nos. 1 and 2 only provide that the award relied on by the applicant under Section 28A should have been passed by the Court under Part III after the coming into force of Section 28A. Awards passed under Section 28A(3) necessarily are passed under Part-III after coming into force of Section 28A. Condition No. 2 is that under the award relied on by the applicant on amount of compensation has been given to the awardee in that reference (which can also be a reference under Section 28-A(3)) what was awarded to the applicant by the Collector under Section 11. Condition No. 3 is that the person who moved the application under Section 28A is interested in other lands covered by the same notification under Section 4(1) to which the awards relied on relates. Condition No. (iv) says that the applicant should not have made an application to the Collector under Section 18. Condition No. (v) if the application is moved within three months from the date of the award relied on for determination and condition No. (vi) is only one application can be moved under Section 28A for redetermination of the compensation by an applicant. In Babu Ram's case the Hon'ble two Judges Bench took the view that the three months period of limitation begins to run from the date of the first award passed under Part III and that view was disapproved by the Hon'ble three Judges in Pradeep Kumari's case. But in Babu Ram's case also the correctness of the six essential conditions laid down by the three Judges in Pradeep Kumari's case noted as above have not been doubted. In Jose Antonio Cruz Dos R. Rodriguess's case the three Judge Bench of the Supreme Court expressed its difference of opinion on the views expressed by Pradeep Kumari's case on the question of limitation; nevertheless leaves the matter to a decision on a reference to five Judges Bench which may be made. But here also the correctness of the six conditions laid down in Pradeep Kumari's case has not been

grouted. Ultimately the Constitution Bench in Hansoli Devi's case also does not endeavour to resolve the conflict between Pradeep Kumari's case and Jose Antonio Cruz Dos R. Rodriguess's case on the question of limitation stating that it is not one of the question referred to them. But I notice that the Constitution Bench has not expressed any disagreement about the correctness of the six conditions laid down by the three Judges Bench in Pradeep Kumari's case and has in fact quoted those conditions in paragraph 10 with obvious approval as correct conditions. All these decisions in Hansoli Devi's case, Pradeep Kumari's case and even in Babu Ram's case are one when it comes to the question as to what is the underlying legislative object behind Section 28-A and also as to who can be described as a person aggrieved for the purpose of Section 28-A. Any person who finds that the reference Court under Part-III of the Land Acquisition Act grants more land value to another person whose land was also acquired under the very same 4(1) notification and was treated similarly by the Collector in the matter of the original land value will be the person aggrieved. Guaged by the six conditions set out in Pradeep Kumari's case it will have to be found that the petitioner's application under Section 28-A is maintainable. The legislative objective underlying Section 28-A is to ensure that person whose properties had the same value according to the Land Acquisition Officer ultimately get the same price irrespective of whether or not they had sought for reference under Section 18. Literal as well as purposive construction of the expression award used in Section 28-A will justify the acceptance of Mr. Rajiv's arguments. This will certainly enable a given land owner who has not applied for reference under Section 28-A even within three months from the last award passed by a reference Court under Section 18 to gain enhanced compensation on the basis of an award passed on a reference under Section 28A(3). But the result will only be that the legislative objective of ensuring payment of same value for similar lands acquired under the same notification will be achieved. After all, it is not anybody who can file applications under Section 28-A. He has to satisfy all the six conditions laid down in Pradeep Kumari's case as the present petitioner has.

13. It is also noticed that another two Judges Bench of the Supreme Court in a recent decision in *State of Tripura v. Roopchand Das*, (2003) 1 SCC 421, referred to both Pradeep Kumari's case, (1995) 2 SCC 736, and Hansoli Devi's case,

(2002) 7 SCC 273 and also Babu Ram's case, (1995) 2 SCC 689 and affirmed and followed the view taken Pradeep Kumari's case. Their Lordships have observed that the Constitution Bench in Hansoli Devi's case was not prepared to permit the correctness of the views expressed in Pradeep Kumari's case regarding the question of limitation for applications under Section 28A, i.e., whether it should be from the date of the first award or from the date of any subsequent award on the reason that the question has not been referred. The Bench also noticed that the Constitution Bench even dismissed a review petition filed by the appellants in State of Tripura's case before the Constitution Bench interpreting the expression award appearing in Section 28A their Lordships after referring to Pradeep Kumari's case observed that the word 'an award in Section 28A should be given its natural meaning 'as meaning any one of the award(s) made by the Court under Part III, after the coming into force of Section 28-A. That apart, in our view, even the later part of Section 28A which stipulates, 'require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court', leaves the choice to the person making such an application for redetermination, without confining or restricting the area of choice of such person to any one or the other, though it could be availed of only once and not as many number of times as there are so many awards'.

14. It must now be noticed that even though almost all decisions of the Supreme Court rendered in the context of Section 28A highlight the section as a beneficial provision intended to confer equal justice in the matter of land value for the acquired property to knowledgable land owners who sought reference under Section 18 and illiterate and inarticulate owners who failed to seek such reference a two Judge Bench of the Supreme Court has in a relatively recent decision observed that whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within the prescribed time. The above observation is made by the Supreme Court in State of A.P. v. Marri Venkaiah, (2003) 7 SCC 280, wherein the Supreme Court reiterated that the period of limitation for applications under Section 28-A is three months from the date of the award of the Court and not three months from the date of knowledge of the award. This decision however does not at all deal with the question whether or not awards passed on references under Section 28A(3) can be relied on by

applicants in Section 28A applications. Their Lordships were only reiterating the view already taken by the Supreme Court in *Tota Ram v. State of U.P.*, (1997) 6 SCC 280.

The result of the above discussion is that the petitioner will succeed. He is entitled to rely on award passed by the reference Court under Section 28-A(3) for maintaining his application under Section 28-A. Accordingly Ext.P2 is quashed and there will be a direction to the 2nd respondent, Land Acquisition Officer to reconsider Ext.P1 application filed by the petitioner under Section 28-A on its merits within a period of six weeks from the date of receipt of a copy of this judgment. The Writ Petition is allowed. No costs.

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