

JOSE ANTONIO CRUZ DOS R. RODRIGUESES AND ANR. ETC. A
v.
LAND ACQUISITION COLLECTOR AND ANR.

NOVEMBER 13, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Land Acquisition Act, 1894 : Section 28-A

Land acquisition—Compensation—Grant of higher compensation under subsequent awards—Application for redetermination of compensation—Period of limitation—Reckoning from date of subsequent awards—Permissibility of—Matter referred to a Larger Bench. C

By an award dated August 2, 1972 compensation @ Rs. 1.25 per sq. mt. was determined for acquisition of appellant's land. However, by subsequent awards made on June 4, 1985 and October 14, 1985 for other lands acquired under the same notification higher compensation was awarded. The High Court in an appeal decided on August 31, 1987 and a Reference Court by its decision dated July 27, 1989 also awarded compensation at the higher rates. An application made by the appellant on 13.5.1987 under Section 28-A of the Land Acquisition Act, 1894 for determination of the compensation was dismissed on the ground of delay. D E

In this Court it was contended for the appellant that there was no bar of limitation because any one of the successive awards including the judgment and decree of the High Court would give right and cause of action to the Petitioner to make an application under Section 28-A. F

On the questions whether :

- (i) the award of the Court i.e. Civil Court made under Section 26 on reference under Section 18 would also include judgment and decree of the Appellate Court under section 54? G
- (ii) Whether each successive awards or judgment and decree would give cause of action to file application under Section 28-A; if so construed, does not such a construction violate the language used in Section 28-A when the Parliament advisedly did not use such expression? H

A Disposing the petition, this Court

HELD : These questions require examination by a larger Bench of five Judges as the interpretation of Section 28-A on the limitation of three months often arises in many a case throughout the country. [176-B]

B *Union of India & Anr. v. Pradeep Kumari & Ors.*, [1995] 2 SCC 736, cited.

C *Babua Ram v. State of U.P.*, [1995] 2 SCC 689; *Union of India v. Karnail Singh*, [1995] 2 SCC 728; *Union of India v. Raghbir Singh*, [1989] 2 SCC 754; *V. Krishnamurti & Ors. v. State of Orissa*, [1995] 1 SCR 488 and *State of Punjab v. Raghbir Singh and Ors.*, [1995] 2 SCR 377, referred to.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 24435 of 1995 Etc.

D From the Judgment and Order dated 5.7.95 of the Bombay High Court in W.P. No. 471 of 1988.

S.K. Mehta, Dhruv Mehta, Fazlin Anam, Aman Vachher for the Petitioners.

E The following Order of the Court was delivered :

F Sri Mehta, learned counsel appearing for the petitioners contends that Notification under Section 4(1) of Land Acquisition Act, 1894 (for short, 'the Act') was published on 3.10.1969 and the award under Section 11 was made in the case of his clients on August 2, 1972 determining compensation under Section 23(1) at Rs. 1.25 per sq. mt. for plot No. 23 admeasuring 24721 sq. mts. Subsequently, successive awards for other lands acquired under the same notification were made, on June 4, 1985 at Rs. 5 per sq. mt., on October 14, 1985 at Rs. 9 per sq. mt. and another judgment and decree on August 31, 1987 by the High Court in Appeal No.11/86 uniformly fixing the compensation at Rs. 5 per sq. mt. Yet another reference under Section 18 was decided on July 27, 1989 by the Reference Court at Rs. 5 per sq. mt. Though he filed the application on 13.5.1987, in view of the decision of this Court in *Union of India & Anr. v. Pradeep Kumari & Ors.*, [1995] 2 SCC 736, any one of the awards or each successive

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H award including the judgment and decree of the High Court would give

right and cause of action to the petitioner-claimant to make application under Section 28-A. So, it cannot be dismissed on the ground of delay. The views of the Land Acquisition Officer and the High Court wrong in law.

Section 28-A says that where in an award under this part, the Court allowed the application under Section 18 and awarded higher compensation, notwithstanding that the claimant had not made an application under Section 18, he can make an application "*within three months from the date of the award of the court*" (emphasis supplied) requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court. The proviso prescribes the mode of computation of period of three months which says that :

"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."

The contention of the learned counsel is that any one of the successive awards including the Judgment and decree of the High Court would give right and cause of action to the Petitioner to make an application under Section 28-A. Therefore, there is no bar of limitation. A Bench of two Judges of this Court in *Babua Ram v. State of U.P.*, [1995] 2 SCC 689, has held that the period of limitation beings to run when the award on a reference under Section 18 was first made by the Reference Court and the limitation of three months requires to be computed from the date of the first award and successive awards do not save the limitation if it has already expired by efflux of time. The same view was reiterated in another judgment in *Union of India v. Karnail Singh*, [1995] 2 SCC 728. This view was subsequently overruled by a Bench of three judges.

In view of the contention raised by Shri Mehta, the following questions are required to be considered :

1. Whether the award of the Court, i.e., Civil Court made under Section 26 on reference under Section 18 would also include judgment and decree of the Appellate Court under Section 54?*

* *Union of India v. Raghubir Singh*, [1989] 2 SCC 754; *V. Krishnamurti & Ors. v. State of Orissa*, [1995] 1 SCR 488 and C.A. No. 3521/95 *State of Punjab v. Raghubir Singh & Ors.*, [1995] 2 SCR 377, are relevant for the point.

A 2. Whether each successive awards or judgment and decree (if answer on question No. 1 is positive) would give cause of action to file application under Section 28-A; if so construed, does not such a construction violate the language used in Section 28-A when the Parliament advisedly did not use such expressions?

B These questions require examination by a larger Bench of five Judges as the interpretation of Section 28-A on the limitation of three months often arises in many a case throughout the country.

C Issue notice to the respondent returnable in four weeks. Petitioner is permitted to take out notice by *dasti* service in addition.

We direct the Registry to place the cases before Hon'ble the Chief Justice of India to constitute a Larger Bench of five Judges. Since these questions are arising in number of matters frequently, instead of keeping them pending, it is desirable that they may be disposed of at an early date.

T.N.A.

Petition disposed of.