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D. VENKAMMA AND ORS.

v.

SPECIAL TEHSILDAR (LA) UNIT-IV JANAGAREDDIGUDEM,
W.G. DISTRICT, ELUGU, A.P.

B

NOVEMBER 16, 1995

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

Land Acquisition Act, 1894 :

C

S.28A—Reference—When could be made—Not when compensation awarded is accepted without protest.

D

The Land Acquisition Officer awarded compensation at the rate of Rs. 4,500 per acre and the appellant accepted the amount without protest. Other claimants had protested and sought reference under section 18 of the Act. The Civil Court, enhanced the compensation to Rs. 12,000 per acre. On further appeal by the State, and cross-objections of the claimants, the High Court, allowed the cross-objections and determined the compensation at Rs. 20,000 per acre. Based thereon, an application under section 28-A of the Act was filed seeking redetermination of the compensation and payment of the additional benefits. The application was rejected by the

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Land Acquisition Officer. When writ petition was filed in the High Court, a Single Judge directed redetermination of the compensation under section 28-A. On appeal, the High Court held that the reference under section 28-A was not maintainable. Hence this appeal.

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Dismissing the appeal, this Court

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HELD : 1. Reference under section 28A of the Land Acquisition Act could be made only on the basis of the award and decree of the Reference Court under Section 26 on a reference under section 18 but within limitation prescribed under the proviso to Section 28A(1). In the instant case, the application under Section 28A, therefore, would not lie. [441-D-E]

Union of India & Anr. v. Raghbir Singh (Dead) by Lrs. Etc., [1989] 3 SCR 316 at 339 followed.

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State of Punjab v. Raghbir Singh & Ors., decided by S.C. on February 28, 1995 referred to.

2. The judgment and decree of the High Court enhancing the compensation under Section 23(1) does not provide a right or cause of action to make a written application under Section 28-A seeking re-determination of the compensation on the basis of the compensation awarded by the Court under reference under Section 18 of the Act. Therefore, the application made under Section 28-A is not maintainable. [441-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11220 of 1995.

From the Judgment and Order dated 20.8.93 of the Andhra Pradesh High Court in W.A. No. 117 of 1993.

D. Prakash Reddy and Mrs. D. Bharathi Reddy, for the appellants.

G. Prabhakar for the Respondents.

The following Order of the Court was delivered :

Leave granted.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") acquiring an extent of 18 acres 7 cents of land belonging to the appellants, was published on January 3, 1980 along with the lands of other persons. The Land Acquisition Officer in his award dated October 31, 1981 determined compensation at the rate of Rs. 4,500 per acre. The appellant accepted the amount without protest. Other claimants had protested and sought reference under Section 18 of the Act. The Civil Court, by award and decree dated November 21, 1983, enhanced the compensation to Rs. 12,000 per acre. On further appeal by the State, in A.S. No. 1483 of 1984 and cross-objections of the claimants, the High Court, by judgment and decree dated February 1, 1989, allowed the cross-objections and determined the compensation at Rs. 20,000 per acre. Based thereon, an application under Section 28-A of the Act was filed on May 16, 1989 seeking redetermination of the compensation and payment of the additional benefits. The application was rejected by the Land Acquisition Officer by his order dated June 1, 1991. When writ petition was filed in the High Court, the learned Single Judge directed redetermination of the compensation under section 28A. On appeal, the High Court in Writ Appeal No. 117 of 1993, by judgment and order dated August 20, 1993, held that the reference under section 28-A was not maintainable. Thus this

A appeal by special leave.

B Section 28-A of the Act speaks of redetermination of the amount of compensation on the basis of the "award of the Court" and provides that when the Court allows any amount in excess of the amount awarded by the Collector under Section 11, the person or persons interested in all other land covered by the notification under Section 4(1) and who are aggrieved by the award of the Collector may, notwithstanding that he/they had not made an application, by a written application to the Collector within three months from the date of award of the Court require the Collector to re-determine the compensation on the basis of the amount of compensation awarded by the Court. In other words, the foundation for making an application under Section 28-A is the award of the court. The expression "Court" has been defined under Section 3 (d) to mean "a principal Civil Court of original jurisdiction" and in an appropriate case "a special judicial officer" appointed by the Government to perform the functions of the court. In other words, the Court of original jurisdiction which receives an order of reference pursuant to an application made under section 18 is the Civil Court of original jurisdiction. By necessary implication, judgment of an appellate Court made under section 54 of the Act does not give right or cause of action to make an application under section 28-A of the Act.

E In *Union of India & Anr. v. Raghbir Singh, (Dead) by Lrs. Etc.*, [1989] 3 SCR 316 at 339 a Constitution Bench of this Court held that the words "any such award" cannot bear the broad meaning of the appellate orders of the High Court or of the Supreme Court. Having regard to the existing hierachical structure as contemplated in the parent Act, the appellate orders would only be orders arising in appeals against the award of the Collector or of that Court. The words "any such award" are intended to have deeper significance and in the context in which those words appears in section 30(2) it is clear that they are intended to refer to awards made by the Collector or the Court between April 20, 1982 and September 24, 1984. In other words, section 30(2) of the Amendment Act extends benefit of the enhanced solatium to cases where the award of the Collector or of the Court is made between April 30, 1982 and September 24, 1984. At page 340, it was further held that the Parliament "never intended to define the scope of the enhanced solatium on the mere accident of the disposal of a case in appeal on a certain date. Delays in the superior Courts extend now to limits which were never anticipated when the right to approach them for

relief was granted by statute". If it was intended that section 30(2) should refer to appeals coming before the High Court or the Supreme Court between April 30, 1982 and September 24, 1984 they could well refer to proceedings in which an award had been made by the Collector from anything between 10 to 20 years before.

In C.A. No. 3521/95 *State of Punjab v. Raghubir Singh & Ors.* decided on February 28, 1995 by this Court, a notification under section 4(1) of the Act was published on February 4, 1981. Award under section 11 was made on December 22, 1983. No reference under section 18 was sought. On reference under section 18, the High Court confirmed the award. On an appeal filed by other claimants, by judgment and decree dated September 10, 1990, the High Court enhanced the compensation. Thereupon, the respondents filed an application on January 2, 1991 under section 28A(1) seeking reference to the Court on the basis of judgment of the High Court. The Collector dismissed the application but the High Court allowed the same on revision, directing reference for re-determination of the compensation on the basis of judgment of the High Court. On appeal, this Court held that reference under section 28A could be made only on the basis of the award and decree of the Reference Court under section 26 on a reference under section 18 but within limitation prescribed under the proviso to section 28A (1). It was held that the application was filed neither within limitation nor immediately after the award of the district Court. The application under section 28A, therefore, would not lie.

Therefore, the judgment and decree of the High Court enhancing the compensation under section 23 (1) does not provide a right or cause of action to make a written application under section 28-A seeking re-determination of the compensation on the basis of the compensation awarded by the Court under reference under section 18 of the Act. Shri Prakash Reddy, therefore, is right in his fairness to contend that the application made under section 28-A is not maintainable.

The appeal is accordingly dismissed. No. costs.

G.N.

Appeal dismissed.