

Before Hon'ble N. C. Jain, V. K. Bali & Swatanter Kumar, JJ.

CHANCHLESH & OTHERS,—Petitioners.

versus

LAND ACQUISITION COLLECTOR & ANOTHER,—Respondents.

C.W.P. No. 15043 of 1992

18th July, 1996

Constitution of India, Arts. 226/227—Land Acquisition Act, 1894—Ss. 18 & 28-A.—Land owners filed reference under section 18 of the Act—Award of the Collector upheld giving benefits—No appeal filed by petitioners against judgment of District Judge—Other landowners filed appeal and compensation enhanced—Whether such landowners who filed only a reference under section 18 of the Act are also entitled to claim enhancement of compensation or whether enhancement is to be given under section 28-A to such land owners who did not file under section 18 reference—In view of the clear and explicit wordings of Section 18 this Court would be disinclined to go into the rationale of matter.

Held that, the plain meaning of the words used in Section 28-A of the Act that only such persons are entitled to have re-determination who did not file an application to the Collector under section 18 of the Act earlier. In other words, such aggrieved persons who had not filed an application before the Collector under section 18 of the Act become entitled to invoke Section 28-A of the Act. Section 28-A of the Act, clearly envisages that only those persons have got locus standi to invoke the provisions of Section 28-A of the Act who did not seek reference under section 18 of the Act. Such landowners who did not apply for reference cannot be treated on the same footing with other landowners who sought references under section 18 of the Act. In view of the clear and explicit wording of the Section, this Court would be disinclined to go into the rationale of the matter.

(Para 9)

Further held, that the Hon'ble Supreme Court in Babua Ram's case after exhaustively referring Mewa Ram's case and The Scheduled Caste Co-operative Land Owning Society's case categorically held that sub-section (1) of S. 28-A of the Act would apply only to a person who failed to seek and secure reference under S. 18 of the Act whereas none or other persons similarly interested in the land covered under the same notification published under section 4(1) of the Act

received on reference under section 18 of the Act higher compensation in an award under section 26 of the Act. The argument of the learned counsel for the landowners that all landowners whether they sought reference under section 18 of the Act or not, should be treated on equal footing and that there is no rationale in treating them differently has also been answered by the Apex Court in Babua Ram's case. It has further been held that S. 28-A of the Act is just and fair and does not violate Articles 14 and 21 of the Constitution of India.

(Para 12)

Further held, that in view of the law laid down by the Apex Court and in view of the clear and explicit wordings of Section 18 of the Act, it can safely be reiterated that Section 28-A would apply only to those claimants who fail to seek a reference under section 18 of the Act. Provisions of Section 28-A cannot be availed of by such land-owners, who sought references under section 18 of the Act, whether such land-owners, ultimately, went in appeal to the higher Courts or not. In other words, the right of redetermination under section 28-A of the Act stands restricted only to those land owners who did not seek references under section 18 of the Act. The argument of counsel for the petitioners on the point of discrimination between one set of land owners, who secured reference and the other set, who did not secure reference and the rationale behind it has got absolutely no force in view of the observations of the Apex Court in Scheduled Castes Co-operative Land Owning Society Limited's case.

(Para 14)

Mani Ram and R. K. Battas, Advocate, for the Petitioners.

Jaswant Jain, Advocate, for the State of Haryana, for the Respondents.

M. L. Sarin, Advocate General, Punjab with Ms. Charu Tuli, DAG, Punjab, for Respondent.

JUDGMENT

N. C. Jain, J.

(1) This judgment of ours would dispose of Civil Writ Petition Nos. 15043 of 1992, 16853 and 15196 of 1991 as identical question of law has arisen in all these petitions.

(2) Learned counsel for the parties are agreed that the facts of the case be picked up from Civil Writ Petition No. 15043 of 1992 (Smt. Chanchlesh and others v. Land Acquisition Collector and another), although the reference order has been passed in Civil Writ

Petition No. 16853 of 1991 (Hari Ram and others v. State of Haryana and another). We would accordingly pick up the facts of the case from Smt. Chanchlesh case.

(3) By virtue of a common notification, land of the petitioners alongwith that of other land-owners was acquired. The Land Acquisition Collector gave an award on 28th May, 1983 assessing the market value of the acquired land at the rate of Rs. 9,600 per acre. The petitioners as well as the other land owners sought reference under section 18 of the Land Acquisition Act (hereinafter referred to as 'the Act'). The Additional District Judge upheld the award of the Collector, but granted certain statutory benefits in the shape of enhanced solatium, interest etc. etc. in accordance with the amendment made in the principal Act by Act No. 68 of 1984. The petitioner did not file any appeal against the award of the Additional District Judge before the High Court. However, at the instance of certain landowners enhancement was made by this Court. The exact enhanced amount of compensation has not been mentioned in the writ petition. The petitioners, admittedly, having not filed any appeal, filed an application under Section 28-A, of the Act for re-determination of the compensation in accordance with the award given by the High Court. The Land Acquisition Collector has dismissed the application on the ground that the provisions of Section 28-A of the Act are meant to give relief only to those landowners who could not file their applications under Section 18 of the Act due to any reason.

(4) In the light of the aforementioned factual position which was not disputed during the course of arguments and in view of the order of the Land Acquisition Collector, the precise question which has arisen in all these cases is whether such land owners who filed references under Section 18 of the Act after the award of the Collector, are also entitled to claim enhanced compensation on the basis of the enhancement made by the High Court or only such land owners are entitled to the grant of enhanced compensation who did not approach the Court of District Judge under Section 18 of the Act.

(5) At this stage, it is necessary to have a look at the reference made to the Full Bench in Civil Writ Petition No. 16853 of 1991 which has been extracted by us from the record of the aforementioned case. The reference order reads as under :—

“Admitted.

Mr. Mani Ram, Advocate, who appears on behalf of the petitioners contends that ratio of the decision of the Supreme

Court in *Mewa Ram (deceased by L.Rs) and others v. State of Haryana*, A.I.R. 1987 S.C. 45 cannot be applied to the case in hand where the petitioners landowners had moved references under Section 18 of the Land Acquisition Act (for short 'the Act') and after decision of the District Judge did not file any appeal to claim enhanced compensation under Section 28-A of the Act. While referring to certain observations of the Supreme Court in the aforesaid decision it is contended that a passing reference was made while dismissing appeal filed against the order of the High Court that they could not even get compensation under Section 28-A of the Act. The argument is that since persons who had not filed reference under Section 18 of the Act have been given a right to claim enhanced compensation under Section 28-A of the Act by moving the Collector. There is no rationale to deny such a relief who filed reference under Section 18 of the Act and did not further file appeal against the order of the District Judge. Such a question being of great importance is likely to arise in several cases and we direct that papers of this case be placed before Hon'ble the Chief Justice for constituting a larger Bench."

Section 28-A of the Act which requires interpretation reads as under :—

"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 on 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.”

(6) The learned counsel for the petitioners with reference to wording of Section 28-A of the Act has argued that it has not been stated in the section that the persons who have filed an application under Section 18 of the Act are disentitled to apply under Section 28-A of the Act. In other words, it has been argued that Section 28-A of the Act does not debar such landowners who have sought references under Section 18 of the Act from availing the provisions of Section 28-A of the Act. Learned counsel further argued that the petitioners cannot be denied the desired relief in accordance with the award of the High Court simply because they happened to seek reference under Section 18 of the Act. According to him, whether the landowners sought reference under Section 18 of the Act or not, all are to be treated on equal footing and that there is absolutely no rationale to treat them differently. The petitioners according to the counsel, could not be put in a different classification on the ground that they sought reference under Section 18 of the Act. No judicial pronouncements in support of the argument has been cited by the learned counsel during the course of hearing.

(7) Learned counsel for the respondents, on the other hand, have argued that in view of the explicit wording of Section 28-A of the Act all such persons who have sought references under Section 18 of the Act and who have not gone to the higher Courts are not entitled to re-determination of amount of compensation on the basis of the award given by the High Court. It has been further argued that only those persons are entitled to avail of the provisions of Section 28-A of the Act who had not filed an application to the Collector under Section 18 of the Act.

(8) Learned counsel for the respondents have relied upon *Mewa Ram (deceased) by his LRs and others v. State of Haryana through the Land Acquisition Collector, Gurqaon* (1), *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda v. Union of India and others* (2), *Babu Ram and others v. State of U.P. and another* (3) and *Union of India and another v. Pradeep Kumari and others* (4).

(1) (1986)4 S.C. Cases 151.

(2) A.I.R. 1991 S.C. 738.

(3) 1995 (2) S.C. Cases 689.

(4) (1995)2 S.C. Cases 730.

(9) Before noticing the case law, which has been cited by the learned counsel for the respondents it is necessary to bear in mind that in accordance with the plain meaning of the words used in Section 28-A of the Act that only such persons are entitled to have re-determination who did not file an application to the Collector under Section 18 of the Act earlier. In other words, such aggrieved persons who had not filed an application before the Collector under Section 18 of the Act become entitled to invoke Section 28-A of the Act. Section 28-A of the Act, in our considered view, clearly envisages that only those persons have got *locus standi* to invoke the provisions of Section 28-A of the Act who did not seek reference under Section 18 of the Act. Such landowners who did not apply for reference cannot be treated on the same footing with other landowners who sought references under Section 18 of the Act. In view of the clear and explicit wording of the Section, this Court would be disinclined to go into the rationale of the matter.

(10) Coming to the case law, *Mewa Ram's case* (supra) deserves to be referred in the first instance. The Hon'ble Supreme Court in that case held that there is no provision in the Land Acquisition Act apart Section 28-A of the Act for reopening an award which has become final and conclusive and that Section 28-A of the Act provides for re-determination of the amount of compensation provided the conditions laid down therein are fulfilled. It was held that for such re-determination the forum is the Collector and the right to file application for re-determination is restricted to persons who had not applied for reference under Section 18 of the Act. Any other view, in the wording of the Apex Court, would lead to disastrous consequences not intended by the legislature.

(11) In the *Scheduled Castes Co-operative Land Owning Society's case* (supra) which has arisen from a judgment of this Court, the Hon'ble Supreme Court has held that newly added section 28-A of the Act would not apply to a case where the claimant has sought and secured a reference under section 18 of the Act and has even preferred an appeal to the High Court, while referring to the observations made in *Mewa Ram's case* (supra) the Apex Court observed as under :—

“It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those claimants who had failed to seek reference under Section 18 of the Act. The re-determination has to be done by the Collector on the basis of the compensation awarded by the Court in the reference.

under section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those Claimants who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the Collector for re-determination and not all those like the petitioners who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the reference Court. The newly added Section 28-A, therefore, clearly does not apply to a case where the claimant has sought and secured a reference under Section 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of Section 28-A, finds support from *Mewa Ram (Deceased) by his LRs. v. State of Haryana*, 1986) 3 S.C.R. 660.’

(12) The Hon'ble Supreme Court in *Babua Ram's case* (supra) after exhaustively referring *Mewa Ram's case* (supra) and *The Scheduled Caste Co-operative Land Owning Society's case* (supra) categorically held that sub-section (1) of Section 28-A of the Act would apply only to a person who failed to seek and secure reference under Section 18 of the Act when one or other persons similarly interested in the land covered under the same notification published under section 4(1) of the Act received on reference under Section 18 of the Act higher compensation in an award under Section 26 of the Act. The argument of the learned counsel for the landowners that all landowners whether they sought reference under section 18 of the Act or not, should be treated on equal footing and that there is no rationale in treating them differently has also been answered by the Apex Court in *Babua Ram's case* (supra). It has further been held that Section 28-A of the Act is just and fair and does not violate Article 14 and 21 of the Constitution of India. The observations made by the Apex Court in paragraphs 36 to 38, which are reproduced below, are applicable on all fours upon the facts of the present case :—

36. “The next question is whether an interested person who sought and secured reference under section 18 but was either unsuccessful and filed no appeal or had carried in appeal but unsuccessful, would be entitled to re-determination when the compensation was enhanced by the appellate Court either under Section 54 or on further

appeal under Articles 132, 133 and 136 of the Constitution. In Mewa Ram case this Court held in paragraph 5 that Section 28-A provides for the determination of amount of compensation subject to the conditions laid down therein are fulfilled. For such re-determination, the forum is the Collector and the application has to be made before him within 30 days from the date of the award under section 26 and the right is restricted to persons who had not applied for reference under section 18 of the Act. If these conditions are satisfied, the petitioner could have availed of the remedy provided under Section 28-A of the Act. In *Scheduled Castes Co-operative Land Owning Society Ltd., v. Union of India* this Court held that : (SCC P. 178, para 4) :

“It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those Claimants who had failed to seek a reference under section 18 of the Act. The re-determination has to be done by the Collector on the basis of the compensation awarded by the court in the reference under section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of award. Thus, only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the Collector for re-determination and not all those like the petitioners who had not only sought a reference under Section 18 but had also filed an appeal in the High Court.....”

This is also clear from a reading of the scheme of the Act in Parts II and III and in particular the self contained code in Section 28-A. It is already held that an interested person who received compensation without protest becomes an aggrieved person when another person interested in the land covered by the same notification under Section 4(1) gets higher compensation for his land from the civil court. By operation of the non obstante clause within Section 28A(1), the embargo created by Section 18 (1) and the second proviso to sub-section (2) of Section 31 is lifted and he has been given the right and remedy under Section 28-A. But a person who received compensation under protest and sought and secured a reference but was unsuccessful or partially successful, does come within the embargo created by Section 18(1) and the second proviso to sub-section (2) of Section 31 and the non-obstante clause in Section 28-A(1) does not

relieve him from it. Legislature made a discriminatory policy between the poor and inarticulate as one class of person to whom the benefit of Section 28A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28-A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded, i.e. "notwithstanding that they had not made an application to the Collector under Section 18 or an appeal under Section 54 or under Articles 132, 133, 136 or unsuccessful etc." Such is not the language. Transitional provisions of Section 30 of the Amendment Act itself discriminate among claimants, in payment of solatium in whose favour award was made by the Collector or court etc. as has already been made clear while dealing with the effect of sub-sections (1) to (3) of Section 30 in the earlier part of the judgment obviating the need for reiteration. Parliament thereby made discrimination in payment of compensation to persons though similarly situated to varied benefits of Amendment Act. Even payment of compensation under Section 23 (1) is varied, based on same quality of the land capable to fetch same price or the value of the land situated in close proximity and payment of market value is not uniform. The doctrine of *res judicata* under Section 11 of C.P.C. operates against such persons. Having pursued the remedy in a competent civil court and allowed the decree under Section 26 or under Section 54 to become final, it binds the parties and the State and operates a *res-judicata* and he or they cannot fall back upon the right and remedy under sub-section (1) of Section 28-A as the public policy envisaged is that such a party cannot agitate its right twice over. Sub-section (1) of Section 28-A, therefore, by the non-obstante clause made available the right and remedy to the poor and inarticulate persons interested in other lands covered by the same notification under Section 4(1) and made no application under Section 18 to avail the right and remedy under Section 28-A(1). But those who sought and secured reference under Section 18, be the poor or others, and failed before the civil court or in appeal under Section 54 or under Article 136 etc. the right and remedy provided by Section 28-A (1) is not available to him/them. In other words, the operation of Section 28A is confined to the award made in Part III only and not to the judgment or decree of the High Court or the appellate court under Section 54 or of this Court under Articles 132, 133 or 136 of the Constitution. Therefore, the unsuccessful interested persons who sought and failed in the reference under Section 18 or in appeal under Section 54 or under Article 136 etc. are not persons aggrieved under sub-section (1) of Section 28-A, when other similar

person had higher compensation by pursuing that remedy. Therefore, he or they, though interested in the land covered by the same notification under Section 4(1), are not entitled to make an application/ applications for redetermination under sub-section (1) of Section 28-A.

37. The next question is whether the denial of such right and remedy under sub-section (1) of Section 28-A violates Article 14 of the Constitution. It is true that the legislature intended to relieve hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference under Section 18 which is an existing bar and to remedy it, Section 28A was enacted giving right and remedy for redetermination, when another person had got higher compensation under Section 26 in excess of the compensation awarded under Section 11. In other words, the statute makes him to be conscious of his right even though the presumption that every one knows law goes against him and failed to avail the right and remedy under Section 18. Yet Section 28A gives the self same relief. The class of similar persons who availed the right and remedy but were unsuccessful are treated as a distinct class. It can by no means be said to be arbitrary as the classification is based on intelligible differentia and bears reasonable relation to the object of according another opportunity. The legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under sub-section (1) of Section 18 due to poverty or ignorance or avoidance of expropriation. It is already seen that parliament made conscious discrimination between the poor and inarticulate as a class and comparatively affluent as another class and conferred the rights under Section 28-A in favour of the former. Discrimination is writ large in Section 30 of Transitional Provisions of Amendment Act which provided payment of solatium and additional compensation covered by different situations, though the persons interested are same class. Section 28-A is just and fair and does not violate Article 14. The procedure therefore, is just and fair and does not violate Article 21.

38. However with a view to avoiding uncertainty and fluctuation, it would be appropriate that, the Collector, while paying compensation under Section 31, should explain in vernacular language of the claimant, informing all persons interested in the compensation that they have a right to protest against the compensation determined under Section 11 before receiving the same ; has right to seek reference in writing under Section 18 to the civil court and that the application should be made expressing the specific objections in writing within the limitation prescribed under Section 18. In case of his failure to avail of the same, he would not be entitled to further right and remedy to seek higher compensation. In

case the claimant be illiterate, it should be properly explained to him in his mother tongue. The statement made in this behalf by the Collector should be in the mother tongue of the claimant. The Collector should append a certificate that it was truly, correctly and properly explained and obtain the signature or thumb impression in taken thereof and this should be kept as part of the record of the award proceedings. He should also maintain a regular register in his office in the seriatim duly signed by him and sealed and be kept in the personal custody of the Collector. This would not only obviate the hardship to the interested persons but also prevent corrupt practices in fabricating the applications for reference after the bar of limitation. In this behalf, it is also necessary that the Collector/LAO should also maintain another register for receipt of the applications under Section 28-A indicating the date of its receipt, seal of the office and personal signature of the Collector/LAO concerned and the receipt thereof duly communicated to the Government or the authorised officer in proviso to Section 11 of the Act.

(13) In *Pradeep Kumari's case* (supra) the Hon'ble Supreme Court again observed that the person would be able to seek re-determination of the amount of compensation payable to him provided he fulfilled certain conditions. One of the conditions which has been specified by the Apex Court is that the persons moving application did not file an application to the Collector under Section 18 of the Act.

(14) In view of the law laid down by the Apex Court and in view of the clear and explicit wordings of Section 18 of the Act, it can safely be reiterated that Section 28-A would apply only to those claimants who fail to seek a reference under Section 18 of the Act. Provisions of Section 28-A cannot be availed of by such land-owners, who sought references under Section 18 of the Act, whether such land-owners, ultimately, went in appeal to the higher Courts or not. In other words, the right of redetermination under Section 28-A of the Act stands restricted only to those land-owners who did not seek references under Section 18 of the Act. The argument of counsel for the petitioners on the point of discrimination between one set of land-owners, who secured reference and the other set, who did not secure reference and the rationale behind it has got absolutely no force in view of the observations of the Apex Court in *Scheduled Castes Co-operative Land Owning Society Limited's case* (supra) (reproduced by us in the earlier part of the judgment).

(15) It would not be out of place to observe at this stage that the counsel for the land-owners requested us to adjourn the case on the ground that the Apex Court is again seized of the matter on account of a reference having been made in the case of *Jose Antonio Cruz Dos R. Rodrigueses and another v. Land Acquisition Collector and another* (5).

(16) We have gone through the entire judgment. In our considered view, the precise question of law, which has arisen in these cases before us, and which we have dealt with, is not subject matter of reference before the larger Bench. The only two questions have been referred by the Apex Court in *Jose Antonio's case* (supra) are as follows :—

- “(1) Whether the award of the Court i.e. Civil Court made under Section 28 on reference under Section 18 would also include judgment and decree of the Appellate Court under Section 54 ?
- (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 expression ?”

(17) Before parting with the judgment, it is necessary to deal with the argument of Mr. R. K. Battas in Civil Writ Petition No. 15196 of 1991 (*Sham Kaur and others v. State of Punjab*). It has been argued that the case of the petitioners has to be dealt with separately as they filed cross-objections before the High Court and did not file an appeal against the award of the District Judge. It has further been argued that the Hon'ble Supreme Court intended to grant benefits to such like persons as petitioners while dismissing the Special Leave Petition of *Balwant Singh and others v. State of Punjab*. The order of the Apex Court deserves special mention at this stage, which reads as under :—

“Special leave petitions are dismissed. Two aspects have to be clarified. Some of the claimants said to be petitioners Nos. 9—15 in the special leave petitions (In LPA No. 1135/82)

had not preferred appeals against the award of the Court of Reference. When the State preferred appeals against the Single Judge's decision, they filed cross-objections and those have been rejected on the ground that they had not challenged the decision of the Court of Reference. We would like to make it clear that the benefits available under the Amending Act, 1984 may not be affected on account of dismissal of the Cross-objections and it would be open to the petitioners to go before the appropriate authority for claiming the benefits of the enhanced compensation and the authorities are free to deal with the matter in accordance with law.

Again, in the event of the Constitution Bench holding that the benefits of the Amending Act are available in the set of facts as appearing here the petitioners are entitled to ask for review of the High Court's judgment and claim the benefits of 1984 Amending Act."

(18) After going through the observations of the Apex Court, we express our inability to agree with Mr. Battas. The petitioners having approached the Court of the District Judge under Section 18 of the Act would stand debarred from obtaining the benefit under Section 28-A in view of the law laid down by the Apex Court. Even if the petitioners Sham Kaur etc. had not filed cross-objections, they were not entitled to redetermination under Section 28-A of the Act. Whether the relief was claimed by Sham Kaur etc. by way of filing the appeal before the High Court or by way of filing the cross-objections, it is one and the same thing. Above all, ultimately, the verdict of the Supreme Court has gone against the claimants and, therefore, Sham Kaur etc. do not stand on different footing on account of observations of the Apex Court in Special Leave Petition of Balwant Singh and others, which have been reproduced by us in extenso.

(19) For the reasons recorded above, the writ petitions are found to be devoid of any merit and the same are dismissed with no order as to costs.