

CASE NO.:
Appeal (civil) 9520-9522 of 1994

PETITIONER:
STATE OF ANDHRA PRADESH AND ANR.

RESPONDENT:
MARRI VENKAIAH AND ORS.

DATE OF JUDGMENT: 28/07/2003

BENCH:
M.B. SHAH & DR. AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 841

The Judgment of the Court was delivered by

SHAH, J. Short question involved in these appeal is - whether the period of limitation for filing application under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') begins to run from the date of passing of the Award by the Court in a reference tiled by a landowner, other than the applicant, whose land was acquired by common notification under Section 4 of the Act or from the date of the knowledge by the applicant of passing of the award by the Civil Court?

Admittedly, in the present case notification under Section 1 (1) was issued on 16.5.1980 for acquiring land situated in Garedepalli village of Nalgonda District for formation of Command Area Development Avacut Road under Nagarjunasagar Project. The Land Acquisition Officer passed an award on 15.1.1982. Some of the landowners filed reference application in respect of lands covered by the Award and the Civil Court in OP 36 of 1984, by order dated 29th November, 1984 enhanced the amount of compensation I hereafter, on the basis of the said award, respondents filed application under Section 28-A of the Act on 27th November, 1989 for enhancement of the compensation. The Land Acquisition Officer by order dated 28th January 1990 dismissed the said application as barred by limitation under Section 28-A of the Act.

That order was challenged by filing writ petitions before the high Court of Andhra Pradesh. The Division Bench of the High Court by its judgment and order dated 24th September, 1993 held that three months period prescribed under Section 28-A of the Act have to be computed from the date of the knowledge of the passing of the award and not from the date of the award by Civil Court and thereby directed the appellants to entertain the applications filed by the respondents under Section 28-A of the Act and to deal with them in accordance with law. The High Court further recommended to the Government to bring suitable amendment and the Land Acquisition Act authorizing the Land Acquisition Officer or the Collector to send intimation in relation to passing of the award by the Civil Court to the persons interested, who had not sought reference under Section 18 of the Act, to make them know about the said award.

That order is challenged by filing these appeals.

Learned counsel appearing on behalf of the appellants submitted that the impugned judgment and order passed by the High Court is, on the face of it illegal, erroneous and contrary to specific provisions of Section 28-A of the Act. He also submitted that the question involved is squarely covered by various decisions rendered by this Court on the said issue. As against this, Learned counsel appearing on behalf the respondents submitted that Section 28-A is a beneficial legislation so as to give a chance to

illiterate and poor land owners whose land is acquired by a common notification and who could not approach the Court for one or other reason by filing reference application.

For appreciating the above contention, it would be necessary to refer to the relevant part of Section 28-A of the Act, which is as under: -

"28'A, 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."

Plain language of the aforesaid Section would only mean that the period of limitation is three months from the date of the Award of the Court. It is also provided that in computing the period of three months the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application under Section 28-A is to be filed within three month from the date of the award by the Court by only excluding the time requisite for obtaining copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

Further, the judgment rendered by the High Court is contrary to the decision rendered by this Court in Tola Ram v. State of U.P. and Ors [1997] 6 SCC 280 wherein this Court held that limitation begins to run from the date of the award and as per the proviso the time taken for obtaining the certified copy of the award and the decree is to be excluded in computing the period of three months. The Court held that in view of the express language the question of knowledge does not arise and, therefore, the plea of the petitioner that limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. Same view is expressed by this Court in Union of India and Ors. v. Mangatu Ram and Ors [1997] 6 SCC 59 and Jose Antonio Cruz Dos R. Rodriguese and Anr. v. Land Acquisition Collector and Anr., [1996] 6 SCC 746.

However, the learned counsel for the respondents submitted that Section 28-A is a beneficial provision and that applicants being non parties to the reference proceedings initiated by some other land owners, they would not have any knowledge of the date of the award or its contents, therefore the interpretation given by the High Court to the provisions of Section 28-A of the Act does not call for any interference, and in any case, the question involved be referred to a larger bench.

In our view, with regard to first contention that Section 28-A is a beneficial provision, there cannot be any dispute. However, the advantage of the benefit, which is conferred, is required to be taken within the stipulated time. A land owner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within prescribed time. He must at least be vigilant in making

efforts to find out whether other landowner has filed any reference application and if so what is the result. If that is not done then law cannot help him. Admittedly, in the present case, award enhancing the compensation was pronounced by the civil court by order dated 29th November 1984 and applications were filed on 27th November, 1989 i.e. after lapse of 5 years. In such case, as the applicant was having an opportunity of knowing the award and/or he was required to make efforts of knowing about such proceedings, he must be presumed to have had knowledge of the award. If the contention of the learned counsel for the respondents is accepted, it will create total vagueness and uncertainty as landowners can claim that they have come to know of the award after long lapse of time and, therefore, the application even though beyond time may be entertained. If such applications are entertained, there may not be any finality to the award and payment of compensation. Result may be that such proceedings may adversely affect where land is acquired by the Government for a project, which is to be carried out by local bodies.

The learned counsel for the respondents relied upon the decision of this Court in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and Anr.*, [1962] 1 SCR 676, which is approved by three Judge Bench in *State of Punjab v. Mst. Qaisar Jehan Begum and Anr.*, [1964] 1 SCR 971. In that case the Court interpreted the proviso to Section 18 of the Act and held that clause (a) of proviso was not applicable in the said case because person making application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under Section 12(2) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to second part of proviso which provide that such application can be made within six months from the date of the Collector's award. In the context of the scheme of Section 18 of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge actual or constructive of the party affected by the award was an essential requirement of fair-play and natural justice. Therefore, second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.

Aforesaid reasoning would not be applicable for interpretation of Section 28-A because there is no question of issuing notice to such applicant as he is not party to the reference proceeding before the Court. The award passed by the Court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the Court to issue notice to the landowners who have not initiated proceedings for enhancement of compensation by filing reference applications; may be that their lands are acquired by a common notification issued under Section 4 of the Act. As against this, under Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award.

In this view of the matter, we do not think that the judgment rendered by this Court in *Tota Ram (supra)* requires re-consideration

In the result appeals are allowed and the impugned judgment and order passed by the High Court is quashed and set aside. There shall be no order as to costs.