

CASE NO.:
Appeal (civil) 5025 of 1999

PETITIONER:
Des Raj (Deceased) through L.Rs. & Ors.

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 01/10/2004

BENCH:
SHIVARAJ V. PATIL & B.N. SRIKRISHNA

JUDGMENT:
J U D G M E N T

W I T H

CIVIL APPEAL NO. 5026 OF 1999

Shivaraj V. Patil J.

Certain agricultural lands including lands of these appellants were acquired pursuant to the Notification dated 23.1.1965 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'). Award was made in March, 1969 fixing the compensation @ Rs. 2,000/- per bigha. The appellants and other claimants, not satisfied with the amount of compensation so awarded, sought a reference under Section 18 of the Act. The Additional District Judge, i.e., the reference court enhanced the compensation @2,200/- per bigha from Rs. 2,000/-. The appellants and four other claimants filed appeals before the High Court seeking further enhancement of the compensation amount. The High Court disposed of six appeals including two appeals of these appellants by common judgment on 11.10.1984 fixing the compensation @ Rs. 4,000/- per bigha. These appellants did not pursue the matter any further, if aggrieved by the aforementioned judgment of the High Court. However, Pratap Singh and others, appellants in one of the six appeals before the High Court, approached this Court aggrieved by the aforementioned judgment of the High Court. This Court allowed their Civil Appeal No. 4099/88 by the order dated 22.11.1988 and remanded the case to the High Court with certain observations to re-determine the amount of compensation. The appellants filed review applications long thereafter before the High Court seeking review of the judgment of the High Court dated 11.10.1984 on the ground that Pratap Singh and others whose lands were also acquired under the same notification and who were similarly placed, got higher rate of compensation for the lands acquired along with the statutory benefits, hence the appellants also were entitled for higher amount of compensation; under Section 28-A of the Act, the appellants were also entitled for the amount of compensation at the same rate which was allowed to Pratap Singh and others. The Division Bench of the High Court, by impugned judgments dated 22.10.1997, dismissed the review applications. Hence, these appeals.

Learned counsel for the appellants urged that when

this Court has set aside one of the cases covered by common judgment of the High Court, i.e., the case of Pratap Singh and others and after remand of the case, the amount of compensation has been considerably enhanced, the same benefit ought to have been given to the appellants; having regard to the provisions of Section 28-A of the Act and keeping in view the legislative intention, the benefit of enhanced compensation as determined in the case of Pratap Singh and others ought to have been extended to these appellants as well and this Court, exercising power under Article 142 of the Constitution of India to equalize the compensation in respect of similarly placed people in all respects, could enhance the amount of compensation @Rs. 40,000/- as fixed in the case of Pratap Singh and others after remand of the case. In support of his submissions, he cited few decisions.

Despite service of notice, none represented the respondents.

We have considered the submissions made by the learned counsel for the appellants. The facts that are not in dispute are the following:

The first appeals filed by these two appellants and four others were disposed of by the High Court by the common judgment dated 11.10.1984. These two appellants did not challenge the said judgment of the High Court any further. Pratap Singh and others, who were also the appellants in the said judgment of the High Court, approached this Court and at their instance, their appeal was allowed by this Court and the case was remanded. It is thereafter the High Court has enhanced the amount of compensation in the case of Pratap Singh and others. The judgment dated 11.10.1984 rendered by the High Court in the case of these appellants had become final. Long thereafter, the appellants filed review applications seeking the review of the judgment of the High Court dated 11.10.1984. The High Court dismissed the review applications by the impugned judgments.

In the impugned judgments, the High Court has taken note of the fact that the appellants did not challenge the judgment of the High Court dated 11.10.1984 in appeal, as was done by Pratap Singh and others. As a result, judgment and decree dated 11.10.1984 in their cases became final. In the impugned judgment, the High Court has stated thus:-

"It is pertinent to note that the applicants herein, namely the appellants in RFA Nos. 143/75 & 130/75, did not challenge the judgment dated 11.10.1984 in appeal, as was done by Pratap Singh and others. As a result, judgment and decree dated 11.10.1984 in their case became final."

The High Court also has noticed that although in the review applications reliance was sought to be placed on Section 28-A of the Act claiming re-determination of the amount of compensation equal to that awarded to other interested persons in the same village, however, during the course of the hearing, learned counsel for the appellants abandoned that plea in the light of the judgment of this Court in Jose Antonio Cruz Dos R. Rodriguez & Anr. etc. vs. Land Acquisition Collector & Anr. [JT 1996 (10

SC 573]. In this view, the High Court, by the impugned judgments, dismissed the review applications filed by the appellants.

The decision in B.N. Natarajan & Ors. Etc. vs. State of Mysore and Ors. Etc. [AIR 1966 SC 1942] does not help the appellants. That was a case dealing with the power of executive to make rules regulating the recruitment and conditions of service of persons appointed to public services \026 whether executive was entitled to frame rules retrospectively. Further in that case, in paragraph 24, specific directions were given exercising power under Article 142 of the Constitution of India to cover the cases of those appellants who had not prosecuted their appeals. Para 24 of the judgment reads:-

"24. In the result, the appeals both of the State and the other appellants are allowed and judgment of the High Court set aside. We may mention that some of the appellants have not prosecuted their appeals but there is no reason why they should not have the benefit of this judgment, and exercising our powers under Article 142 of the Constitution, we direct that in order to do complete justice they should also have the benefit of the judgment given by us. There will be no order as to costs."

No such direction was given by this Court in Civil Appeal No. 4099/88 of Pratap Singh and others and the directions given there were confined to them only.

In M/s. Shenoy and Co., Bangalore and Ors. vs. Commercial Tax Officer, Circle II, Bangalore and Ors. [AIR 1985 SC 621], this Court was concerned with validity of Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979. That was a case where the validity of the provisions of the Act was challenged by a batch of writ petitions and the Division Bench of the High Court struck down the Act as invalid. State Government filed an appeal to the Supreme Court against only one party and the appeal was allowed. As a result, there was revival of the Act and it was binding on all the persons though they were not parties to the appeal. Hence, this decision also does not advance the case of the appellants.

The decision of this Court in Ram Chand & Ors. Vs. Union of India & Ors. [JT 1993 (5) SC 465] is also of no avail to the appellants. In that case, the court was concerned with the long delay of 15 to 21 years in making the award after declaration was made and certain directions were given to give benefit of the compensation amount having regard to the long delay.

The decision of this Court in Union Carbide Corporation etc. etc. vs. Union of India etc. etc. [AIR 1992 SC 248] dealt with the power of this Court under Article 142 in relation to the facts of that case. It cannot be denied that this Court can exercise power under Article 142 in appropriate cases. We fail to understand how this case helps the appellants having regard to the fact that in their cases, the common judgment of the High Court dated 11.10.1984 had become final and that judgment could not be reviewed as sought to be done by the appellants. This is

not a case where power under Article 142 may be exercised having regard to the statutory provisions as applied to the facts of the case.

The case of Bihar State Housing Board, State of Bihar and Ors. Vs. Ban Bihari Mahato & Ors. [AIR 1988 SC 2134] also does not support the contention of the appellants as is evident from para 2 of the judgment itself. It was on the peculiar facts and circumstances of those cases that certain directions were given and no issue of law was decided.

In our view, the appellants are not entitled to claim enhanced compensation pressing into service the provisions of Section 28-A of the Act. The learned counsel for the appellants before the High Court did not press the claim of the appellants on this ground as recorded in the impugned judgments, having not made the applications within the prescribed time. Moreover, benefit of Section 28-A is available only to the parties who had not sought reference under Section 18 of the Act for enhancement of the compensation. This provision is not available to persons who seek for reference under Section 18 of the Act for enhancement of the compensation and do not challenge judgment of the reference court or the judgment of the High Court thereafter. A bench of three learned Judges of this Court in Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda vs. Union of India & Ors. [(1991) 1 SCC 174] in this regard, in para 4, has held thus:-

"4.Any person who does not accept the award so made may, by written application to the Collector, required that the matter be referred for the determination of the court whereupon the provisions of Sections 18 and 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18. 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 redetermination 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 redetermination 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 in the High Court. This view, which we take on a plain reading of Section 28-A finds support from the judgment of this Court in Mewa Ram v. State of Haryana. ((1986) 4 SCC 151 : (1986) 3 SCR 660)."

This Court again in the case of Babua Ram & Ors. vs. State of U.P. & Anr. [(1995) 2 SCC 689] following the decision in Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda (supra), in para 36, has stated thus:-

"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 redetermination 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 redetermination, 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."

Admittedly, the appellants in these cases did seek for reference under Section 18 of the Act; filed appeals before the High Court and after the High Court delivered the judgment on 11.10.1984, did not challenge the same. The applications were not made under Section 28-A of the Act within the prescribed period of limitation also in these cases. At any rate, the grounds raised in the review applications were not the grounds which could be accepted to review or modify the judgment of the High Court dated 11.10.1984. In our view, the High Court was right in dismissing their review applications for the reasons stated in the impugned judgments.

Thus, having regard to all aspects of the matter, it is not possible to find fault with the impugned judgments. Further, in our view, these are not the fit cases to exercise power under Article 142 of the Constitution of India having regard to what is stated above and in view of the clear legal position as stated in Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda (supra). Hence, finding no merit in these appeals, they are dismissed but with no order as to costs.