

PETITIONER:
HUKUM CHAND & ORS. ETC.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS. ETC.

DATE OF JUDGMENT: 02/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCC (5) 164 JT 1996 (4) 328
1996 SCALE (3) 669

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO. 7119 OF 1996
(Arising out of SLP (C) No. 3929 of 1994)
O R D E R

Leave granted.

Notification under Section 4(1) of the Land Acquisition Act. 1894 (for short, the 'Act') was published on 24.3.1971. The Collector under Section 11 passed his award on July 10, 1971. Thereon, the appellant along with others sought and had reference to the Additional District Judge under Section 18. After further enhancement of the award under Section 26, the appellants had not carried the matter in appeal to the High Court under Section 54. Some other claimants filed RFA No.1326/78 wherein the High Court had enhanced the compensation to Rs. 135/- per sq.yd. Subsequently, after two years, the appellant had filed applications under Section 28A to the Land Acquisition Officer who in his award in L.C. case No. 51/91 by order dated May 10, 1993 dismissed the application. On revision filed by the appellants in C.R. No. 2659/93, the High Court of Punjab & Haryana by order dated September 21, 1993 dismissed the petition. Thus this appeal by special leave.

The only question is: whether the Land Acquisition Officer was right in refusing to award the compensation to the appellants @ Rs. 135/- per sq.yd. pursuant to the order passed by the High Court in RFA No. 1326/79. Section 28-A(1) of the Act reads thus:

"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 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 subsection, the day on which the award was pronounced and the time requisite for obtaining and the time requisite for obtaining a copy of the award shall be excluded."

A reading thereof clearly indicates that after making award under Section 11 by the Collector, if the claimants arising out of the same notification published under Section 4(1) of the Act, aggrieved against the award made on application and hold the reference under section 18 and when the civil Court has enhanced the compensation, persons who did not make the applications under Section 18 and received the compensation under Section 31 without protest, Section 28-A(1) gives him right to make a written application under section 28-A(1) within three months from the date of the award made by the reference Court. Under its proviso, the time taken to obtain its certified copy from the date of making the application to the date of supplying the award shall be excluded. In other words, the aggrieved persons who had received the compensation without protest but did not avail of the remedy of reference under Section 18, if one of the claimants arising from the same notification published under Section 4(1) of the Act, had the benefit of enhanced compensation from the reference Court, the non-applicant has been empowered under Section 28-A(1) to avail the remedy under Section 28-A by an application made within three months from the date of the award of the reference Court to seek enhanced compensation. In this case, admittedly the appellants have availed the remedy of reference under Section 18 and had the compensation enhanced. Thereafter, they did not pursue appellate remedy under Section 54 to the High Court for further enhanced compensation but some of the claimants pursued the appellate remedy and had further enhanced the compensation at Rs. 135/- per sq.yd. Having not availed of the remedy under Section 54, the appellants are not entitled to make an application under Section 28-A (1) to seek the same benefit of the enhanced compensation. The remedy under Section 28-A(1) is available to only when the compensation was enhanced under Section 26 award and judgment in part III of the Act and the same is not available when it was enhanced under Section 54 of the Act. This Court in *Scheduled Castes Cooperative Land Owning Society Ltd. Bhatinda vs. Union of India* [(1991) 1 SCC 174] had held that the claimants who availed the remedy under Section 18 are not entitled to additional amount under Section 28-A when the High Court enhanced the compensation. Similar view was also expressed in *Babu Ram & Ors. vs. State of U.P. & Anr.* [1995) 2 SCC 689]. The appellants are,

therefore, not entitled to make the applications under Section 28-A further enhancement. The Land Acquisition Officer and the High Court have rightly refused to grant the relief of enhanced compensation on par with other claimants. The further contention that the appellants are invidiously discriminated to the payment of same compensation on par with others violating the equality guaranteed under Article 14 of the Constitution is no longer *res integra*. This was concluded against the aggrieved persons by majority judgment of this court in *K.S. Paripoornan vs. State of Kerala* [(1995) 1 SCC 367] and *Babu Ram's case* (*supra*).

The appeals are accordingly dismissed. No costs.

JUDIS