

Mewa Ram (Deceased) By His L.Rs. And Ors vs State Of Haryana Through The ... on 26 August, 1986

Equivalent citations: 1987 AIR 45, 1986 SCR (3) 660, AIR 1987 SUPREME COURT 45, (1987) IJR 83 (SC), 1987 (1) LANDLR 362, 1986 UJ(SC) 2 570, 1986 REV LR 488, (1986) JT 246.2 (SC), 1986 JT 246 (2), (1986) 3 SCJ 479, 1986 (4) SCC 151, (1986) 3 SUPREME 495, (1986) ALL WC 1025, (1987) 1 LANDLR 1

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray

PETITIONER:

MEWA RAM (DECEASED) BY HIS L.RS. AND ORS.

Vs.

RESPONDENT:

STATE OF HARYANA THROUGH THE LANDACQUISITION COLLECTOR, GURG

DATE OF JUDGMENT 26/08/1986

BENCH:

SEN, A.P. (J)

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RAY, B.C. (J)

CITATION:

1987 AIR 45 1986 SCR (3) 660

1986 SCC (4) 151 JT 1986 246

1986 SCALE (2) 350

CITATOR INFO :

R 1991 SC 730 (4,6)

ACT:

Limitation Act, 1963, section 5-Inordinate delay in filing S.L.P.-Delay not explained-Whether enhancement of the rate of compensation by the Court in a subsequent case a sufficient ground for condoning delay in filing a S. L. P.

Land Acquisition Act, 1894. Sections 25 and 28A-Redetermination of the amount of compensation-When permissible.

HEADNOTE:

The petitioners, after a lapse of more than three years

from the date of the High Court Judgment, filed the present petitions for enhancement of the rate of compensation to 17.50 per square yard on the ground that the Supreme Court in two cases decided on April 1, 1982 had enhanced the rate of compensation to Rs.17.50 per square yard for the adjacent land acquired. Counsel for the petitioners' contended that the Court should not be unduly technical and deprive the citizens of their legitimate claims in view of the change in law by the introduction of sections 25 and 28A in the Land Acquisition Act by the Land Acquisition (Amendment) Act, 1984.

Dismissing the petitions,

HELD: There is no reason to grant special leave in these cases which are hopelessly barred by time. Merely because the Supreme Court in the two cases enhanced the rate of compensation to Rs.17.50 per square yard, could not furnish a ground for condonation of delay under section 5 of the Limitation Act. [663D-E]

2.1 Section 28A of the Act in terms does not apply to the case of the petitioners for more than one reason. In the first place, they do not belong to that class of society for whose benefit the provision is intended and meant, i.e. inarticulate and poor people who by reason of their
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poverty and ignorance have failed to take advantage of the right of A reference to the civil court under section 18 of the Land Acquisition Act, 1894. The petitioners had all applied for reference under section 18 of the Act and the civil court by adopting a different basis for computation, namely, treating the land to be potential building site, substantially enhanced the amount of compensation. On appeal, there was further enhancement by the High Court and the petitioners have withdrawn large sums of money at each stage. Evidently, the petitioners felt satisfied with the enhanced amount of compensation as awarded by the High Court @ Rs. 12.25 per square yard because they did not apply for grant of special leave under Art. 136 of the Constitution for more than three years. [662H; 663A-E]

2.2 There is also no provision in the Act apart from section 28A for reopening of an award which has become final and conclusive. If the conditions laid down in the section were satisfied, the petitioners could have availed of the remedy provided under section 28A of the Act. In that event, section 25 would ensure to their benefit. Any other view would lead to disastrous consequences not intended by the Legislature. [663E-G]

Madras Port Trust v. Hymanshu International by its Proprietor v.Venkatadri (dead) by Lrs., [1979] 4 SCC 176, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No.13379 of 1983 etc. From the judgment and order dated 8.5.1980 of the Punjab and Haryana High Court in R.F.A. No.2030 of 1978.

S.N. Kacker and S.K. Sabharwal for the Petitioners. F K.G. Bhagat, I.S. Goel and C.V. Subba Rao for the Respondents.

The order of the Court was delivered by SEN, J. In these special leave petitions which are much belated the only question was whether the Court should entertain the petitions despite the delay and grant special leave merely because this Court in *Paltu Singh & Anr. v. State of Haryana and Nand Kishore & ors. v. State of Haryana & Ors.* (Civil Appeals Nos. 1251 and 1252 of 1982, both decided on April 1, 1982) enhanced the rate of compensation for the adjacent land acquired to Rs.17.50 per square yard. The petition of Mewa Ram is barred by 1079 days, that of Pat Ram by 1146 days and of Ram Sarup by 1098 days. We heard the matter thrice on the question whether there was any sufficient cause for condonation of delay under s.5 of the Limitation Act, 1963. We were not satisfied that there was any cause much less sufficient cause within the meaning of s.5 of the Limitation Act for condonation of delay. The petitioners then took time to file further and better affidavits explaining the unexplained, inordinate delay in moving the Court.

At the resumed hearing Shri S.N. Kacker, learned counsel for the petitioners, confines his submission to the change in law by the introduction of ss. 25 and 28A by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) and places particular emphasis to Para (ix) of the objects and Reasons, to the effect:

"Considering that the right of reference to the civil court under s. 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under s. 18 of the Act. "

The learned counsel contends on the strength of the provisions contained in ss. 25 and 28A that the Court should not be unduly technical and deprive the citizens of their legitimate claims. In support of his submission he relies on certain observations made by this Court in *Madras Port Trust v. Hymanshu International by its Proprietor V. Venkatadri (dead) by Lrs.*, [1979] 4 SCC 176 to the effect that plea of limitation by the Government to defeat just claims of citizens should not be countenanced. We are afraid, the contention cannot prevail.

Shri Kacker, learned counsel for the petitioners, with his usual fairness, accepts that s. 28A in terms does not apply to the case of the petitioners for more than one reason. In the first place, they do not belong to that class of society for whose benefit the provision is in-

tended and meant i.e. inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court under s.18 of the Land Acquisition Act, 1894. On the contrary, the petitioners belong to an affluent class, and they are not persons who have been deprived of property without payment of compensation. The petitioners had all applied for reference under s.18 of the Act and the civil court by adopting a different basis for computation, namely. treating the land to be potential building site, substantially enhanced the amount of compensation. On appeal. there was further enhancement by the High Court. The petitioners have withdrawn large sums of money at each stage. For instance, the petitioner Mewa Ram withdrew on February 6, 1976 consequent upon the award of the Land Acquisition Collector Rs.1,19,000, an additional sum of Rs.28,938.20p. On March 23, 1978 after the judgment of the learned Additional District Judge, and Rs.2,75, 105.42p. after the judgment of the High Court between December 11, 1981 and February 13, 1982. The judgment of the High Court not having been appealed from has admittedly become final. Evidently, the petitioners felt satisfied with the enhanced amount of compensation as awarded by the High Court @ Rs.12.25 per square yard because they did not apply for grant of special leave under Art. 136 of the Constitution for more than three years. Merely because this Court in the two cases of Paltu Singh and Nand Kishore enhanced the rate of compensation to Rs.17.50 per square yard, could not furnish a ground for condonation of delay under s. 5 of the Limitation Act.

Furthermore, there is no provision in the Act apart from s. 28A for reopening of an award which has become final and conclusive. No doubt s. 28A now provides for the redetermination of the amount of compensation provided 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 thirty days from the date of the award, and the right is restricted to persons who had not applied for reference under s. 18 of the Act. If these conditions were satisfied, the petitioners could have availed of the remedy provided under s. 28A of the Act. In that event, s. 25 would ensure to their benefit. Any other view would lead to disastrous consequences not intended by the Legislature.

The decision in Madras Port Trust's case is clearly distinguishable. The question involved there was as to the right of refund of the amount of wharfage, demurrage and transit charges which admittedly became exigible. The Court granted special leave on the condition that the Madras Port Trust would refund the amount irrespective of the result of the appeal. At the hearing the Court declined to go into the question whether the claim of the trader for such refund was barred by s. 1 l) of the Madras Port Trust Act. 1905. and added:

"The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen."

The Court then said:

"It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. "

This is mere expression of a hope and does not lay down any universal rule of application that the Government is prevented from pleading limitation as a bar. On the other hand, the Court itself observed in the Madras Port Trust's case that 'if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded it has to be upheld by the Court'. Obviously, the petitioners cannot plead their own laches as a ground sufficient for condonation of delay.

There is no reason for us to grant special leave in these cases which are hopelessly barred by time and there is no justification for condonation of inordinate delay.

The special leave petitions are accordingly dismissed with costs.

M.L.A.

Petitions dismissed.