

# Union Of India And Ors vs Karnail Singh And Ors on 17 November, 1994

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy**

CASE NO.:

Appeal (civil) 9630 of 1994

PETITIONER:

UNION OF INDIA AND ORS.

RESPONDENT:

KARNAIL SINGH AND ORS.

DATE OF JUDGMENT: 17/11/1994

BENCH:

K. RAMASWAMY & N. VEKATACHALA

JUDGMENT:

JUDGMENT 1994 SUPPL. (5) SCR 584 The following Order of the Court was delivered:

Leave granted Notification under -section 4(1) of the Land Acquisition Act 1 of 1894, for short 'the Act', acquiring 80 bighas 18 biswas of land situated in revenue estate, Bhatinda, Tehsil and Distt. Bhatinda alongwith other lands was published on October 9, 1974. the Collector made an award under section 11 on June II, 1975 determining the market value, based on the classification of the land, between Rs, 4,500 to Rs. 16,000 per acre. The respondents had accepted the compensation without protest and did not seek any reference under section 18. Some other claimants sought and secured reference under section 18 of the Act. The Addl. Distt. Judge by his award dated July 13, 1979 determined the compensation enhancing the market value to Rs. 5,625 to Rs. 20,000 per acre. On appeal, the High Court had modified the award; Ultimately on appeal, this Court determined the market value at Rs. 15 to Rs. 17 per sq. yd. by judgment dated August 24, 1987. The respondents made a written application under section 28-A on November 24, 1987. The Land Acquisition Collector had redetermined the market value under section 28- A(2) by his award dated February 28, 1989 but did not award solatium and interest and the additional compensation under section 23(1-A) of the Act. The respondents made another application - C.M. No 4978/90 - enclosing another award dated March 15, 1990 made by the Distt. Court in yet another reference and sought the statutory benefits, Since it was denied, in the respondents' writ petition, a learned Single Judge, by his order dated December 21, 1990, allowed the W.P. and directed the award of the additional

benefits. In LPA No. "1211/92 filed by the appellants by judgment and order dated December 21, 1992, the Division Bench dismissed the appeal. Thus this appeal by special leave.

It is contended by Sri V.R. Reddy, the learned Addl. Solicitor General for the appellants that though the award made by the Collector under section 28-A dated February 28, 1989 was not separately challenged, the appellants have in fact impugned its validity in the LPA before the Division Bench and grounds also have been raised in this appeal. It is also contended that the Amendment Act had since come into force on September 24, 1984, the earliest award, on the reference court made on July 31, 1979, should be the relevant one and any subsequent award made by the reference court or the judgment of this Court dated August 24, 1987 do not furnish any cause of action to file the application under section 28-A. The award made under section 28-A, therefore, is without jurisdiction and a nullity. It is also contended that the High Court committed illegality in making the award and failed to correct the manifest error of law committed by the Collector in his award made under section 28-A. Shri R.K. Jain, learned Senior counsel for the respondents, contends that in *Babua Ram v. State of U.P.*, [1994] Supp 4 SCR 148, this Court has held that the Amendment Act 68 of 1984 is prospective in operation and that, therefore, any award made by the reference court after the Amendment Act has come into force would furnish the cause of action to the claimants to make an application within three months thereafter. The award was made in another reference on March 15, 1990 and within three months thereafter, the respondents are entitled to file an application under section 28-A. Therefore, the application filed on November 24, 1987 could be treated to be one filed pursuant to that award. Even otherwise, when all other claimants have been awarded enhanced compensation, in equity the respondents also are entitled to parity in payment of the compensation. This court had granted compensation at the rate of Rs. 15 to Rs. 16 per sq. yd. So the respondents too are entitled to the same. It is further contended that the order passed by the Single Judge as affirmed by me Division Bench is not a substitution to the Collector's award but only an additional benefit. The award made under section 28-A(2) having been allowed to become final, it is not open to the appellants to contend that the award passed by the Collector under section 28-A(2) is illegal or without jurisdiction. Even otherwise, it is not a fit case warranting interference by this Court under Articles 136 or 142 of the Constitution.

Having given our anxious and deep consideration, we think that it is a case warranting interference. In *Babua Ram's* case, considering the entire controversy, this Court held that:

"The legislature prescribed three months' limitation to quicken diligence like caveat emptor and provided to a non-protester right to redetermination provided the application in writing is made to the Collector within three months from the date of the award of the Civil Court of original jurisdiction, excluding the requisite time

taken to obtain a copy of the award. In other words, the right and remedy provided by section 28-A(1) stands extinguished with the expiry of three months from the date of the award under section 26. It is true that in a given set of facts, there could be more than one reference under section 18 at the behest of different claimants of the lands covered by section 4(1) Notification and the court may make successive awards at various times. Compensation given in the respective awards may vary and may be higher than the one given in an earliest award. In the teeth of the express language in sub-section (1) of section 28-A, limitation of three months once expires in respect of earliest award by efflux of time none of the later awards could provide any assistance to revive the lapsed time under section 28-A(1) nor provide fresh cause of action or successive causes of action when multiple awards are made at different times of dates. Application under section 28-A(1) may be made at the instance of the self-same person or different persons. Any other interpretation would amount to re-writing the proviso to sub-section (1) of section 28-A. The judgment and decree of the Court of Appeal either under section 54 or under section 96 of CPC or under Article 132, 133 or 136 of the Constitution does not furnish fresh cause of action nor provide fresh limitation to make application under section 28-A(1) of the Act, As has already been held in that they are not covered under Part III of the Act. May be that they are continuation of original decree made in section 26(2) and in law the executable decree is that of the Supreme Court of the High Courts. But the legislature has conferred right of reopening the award under section 11 only when the civil court under section 26 awarded high compensation in Part III to a person having an interest in the land covered by the same Notification under section 4(1) and an application in writing if made within limitation."

"It is, therefore, clear that section 28-A does not apply to an award under section 26 made prior to September 24, 1984."

"If an owner of the land or person interested in compensation of the land acquired by the same Notification under section 4(1) had not sought reference under section 18 in respect to an award made under Section II by the Collector/LAO, but if on a reference made under section 18 prior to September 24, 1984 in respect of land covered by the same notification any award made under section 26, prior or the Amendment Act had come into force, the award under section 11 is not liable to be reopened for redetermination of compensation even though three months' period has not expired by September 24, 1984 for to hold otherwise would amount to giving retrospective operation to section 28-A. Any other non-protester claimant will not be entitled to get an award reopened under section 11 though on reference at the instance of one or other owner or interested person had the benefit of determination of higher compensation by an award made under section 26 before September 24, 1984 on his reference under section 18 made prior to September 24, 1984."

Thus, it would be clear that cause of action for making an application under section 28-A would arise when an award has been made by the Civil Court, on a reference under section 18, enhancing

the compensation over and above the amount awarded by the Collector in his award under section 11 and the earliest of the successive awards would furnish the starting period of the limitation of three months as provided in the proviso to section 28- A(l). It is seen that the earliest award was made on July 31, 1979 by which date the Amendment Act had not come into force. The Land Acquisition (Amendment) Act 68 of 1984 has given prospective operation to section 28-A from September 24, 1984. Therefore, it does not furnish any right to the claimants to make any application after the Act has come into force. The latter award dated March IS, 1990 does not give any fresh right or cause of action to file an application under section 28A{1} The question then is whether the claimants are entitled to make an application after me appeal was allowed by this Court from appeals arising from one of the references. This question also was considered in the same Judgment and it was held that it does not furnish any cause of action. This was also the view of another three Judges Bench of this Court in Scheduled Castes Co-operative Land Owning Society, Bhatinda v. Union of India, [1991] 2 SCC 174. Therefore, we are of the firm view that the judgment and order of this Court enhancing the compensation on August 24, 1987 does not furnish any cause of action to make the application under section 28-A. It is true that in another reference, the civil court had enhanced the compensation on March 15, 1990 after the Amendment Act has come into force. Since the earliest award on reference under section 18 was made on July 31, 1979, by which date section 28-A was not in force or the period of three months had already expired, the subsequent award made on March 15, 1990 does not furnish any cause of action to the claimants to make the application under section 28-A(l). Therefore, the claimants also are not entitled to take aid from the award dated March 15, 1990. The argument of parity and denial of equality in payment of compensation as violative of Article 14 was also considered in Babua Ram's case but was rejected. For the same reasons, the plea Of parity cannot be given any countenance.

The question, therefore, is whether the award of the Collector under section 28-A(2) is valid in law. It is clear from the facts that the award made by the Collector is clearly without jurisdiction. Section 28-A(3) provides that the provisions of sections 1.8 to 28 shall apply, as far as it may, for me reference under section 28-A. Section 23(1) gives power to the Court to determine the compensation and sub-section (2) thereof provides that "in addition to the market value of the land, as above provided, the .Court shall in every case award a sum of thirty per centum on such market 'value, in consideration of the compulsory nature of the acquisition." In Other words, there is no independent right or power vested in the Collector or me Court to award statutory benefits. Its application arises when the court determined the compensation in excess of the award of the Collector made under section 11, Equally section 28 also empowers award of interest on enhanced compensation. Equally by section 23(1 A). In other words, the statutory benefits would be granted when compensation was enhanced by the Court over and above the compensation determined by the Collector. Thereby, the award of the statutory benefits is dot independent of the award or in its substitution. Therefore, when the claimants sought for additional statutory benefits in the Writ Petition, and when they were awarded it is only in modification of the award made by the Collector under section 28-A(2) of the Act. When that be the legal position, the question emerges whether the High Court was right in granting the additional statutory benefits as well. We are clearly of the opinion mat the High Court committed grievous error of law in awarding the additional statutory benefits when the Collector himself has no jurisdiction to grant the enhanced compensation under section 28-A (2) based on the judgment and order of this Court dated August 24, 1987 or of the civil court in another award dated

March 15, 1990, The High Court equally has no power to award statutory benefits and have them substituted in the award of the Collector made under section 28-A (1). Thereby, the order of the Single Judge as affirmed by the Division Bench is clearly illegal. Thus we hold that the entire order gets vitiated by manifest errors of law.

It is true that this Court when exercises its discretionary power under Article 136 or passes any order under Article 142, it does so with great care and due circumspection. But, when we are settling the law in exercise of this court's discretion, such law so settled, should be clear and become operational instead of being kept vague, so that it could become a binding precedent in all similar cases to arise in future. Considering from this perspective, we are of the considered view that it is a case warranting interference. The orders of the High Court in the W.P. and in the LPA are set aside. The W.P. stands dismissed. The award made by the Collector under section 28A (2) is declared as that made without jurisdiction and a nullity. Accordingly, the appeal is allowed but the parties are directed to bear their own costs throughout.