

Union Of India vs Munshi Ram (Dead) By Lrs. And Ors on 1 March, 2006

Author: B.P. Singh

Bench: B.P. Singh, Altamas Kabir

CASE NO.:

Appeal (civil) 4010-4032 of 1997

PETITIONER:

Union of India

RESPONDENT:

Munshi Ram (Dead) by Lrs. And Ors.

DATE OF JUDGMENT: 01/03/2006

BENCH:

B.P. Singh & Altamas Kabir

JUDGMENT:

JUDGMENT B.P. SINGH, J.

These appeals by special leave are directed against the common judgment and order dated 27th November, 1995 of the High Court for the States of Punjab and Haryana at Chandigarh dismissing the writ petitions filed by the appellant-UOI challenging various orders determining the compensation payable to the respondents herein under section 28A of the Land Acquisition Act, 1894. The relevant facts of the case are these:-

Notification under Section 4(1) read with sub-section 1 of the Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was published on June 18, 1984. Land measuring 3609 Kanals and 16 marlas were sought to be acquired for extension of the Hissar Cantonment Area. By his award of 31st January, 1986 the Land Acquisition Collector categorised the lands into 5 categories and granted compensation at different rates for each category. A reference was made under Section 18 of the Act. The Reference Court by its award dated 23rd October, 1988 enhanced the compensation payable to the claimants. However, it divided the lands into only two categories, namely, block A and block B. Not satisfied with the decree of the Reference Court, the claimants as well as Union of India preferred Regular First Appeals before the High Court. A learned Single Judge of the High Court by his judgment and order dated 24th August, 1993 further enhanced the compensation payable in respect of block A and B lands. Letters Patent Appeals filed by the Union of India were dismissed by order dated 17th June, 1994. Union of India filed special

leave petitions against the dismissal of the Letters Patent Appeals and notice was issued in the aforesaid special leave petitions on 27th January, 1995. Ultimately by judgment and order of 29th April, 1997 (judgment reported in [1997] 6 SCC 159 Union of India and Ors. v. Mangatu Ram and Ors.,) this Court allowed the appeals filed by the Union of India and reduced the compensation payable to the claimants. This Court further categorised Group A lands into two categories, those which fell within 500 yards of the bye-pass, and the other comprising the rest of the lands in category A. While the special leave petitions were pending before this Court, some of the other owners/respondents herein filed applications under Section 28A of the Act claiming compensation at the same rates as were awarded to the other claimants pursuant to the decree of the Reference Court. Having regard to the provisions of Section 28A of the Act, the Collector redetermined the compensation payable to the respondents herein, who had not preferred reference under Section 18 of the Act and who had moved the Collector within the period of limitation prescribed by law. The order redetermining the compensation under Section 28A of the Act was passed on 12th November, 1990.

Union of India challenged the various redetermination orders passed by the Collector by filing Writ Petitions before the High Court which were dismissed on the ground of delay, since the Writ Petitions were filed sometime in the year 1995. Against the order dismissing the Writ Petitions, special leave petitions were filed before this Court and the appeals before us today are those arising from the aforesaid special leave petitions.

Learned Additional Solicitor General appearing for the Union of India submitted that having regard to the fact that the compensation awarded by the Reference Court, was modified by the High Court, and further modified by this Court in Appeal, the final decree passed by this Court was substituted in place of the original decree passed by the Reference Court as modified by the High Court. Therefore, the redetermination of the compensation payable must be on the basis of the decree as modified, and not on the basis of the decree as originally passed by the Reference Court. He further submitted that having regard to the scheme of the Act, Section 28A must be read as a provision which is made in the interest of justice and equality. It extends the benefit of any enhancement of compensation by the Reference Court even to those land owners who did not claim a reference under Section 18 of the Land Acquisition Act, even though not satisfied with the amount awarded by the Collector. In such cases Section 28A mandates that if an application is made by a claimant within three months from the date of the decree of the Reference Court, he may be paid the enhanced compensation as awarded by the Reference Court. He submitted that if the compensation awarded to those who had claimed a reference under Section 18 of the Act is reduced by the appellate court, it must logically follow that any amount paid in excess of the reduced compensation to those who sought enhancement under Section 28A of the Act, must be proportionately reduced. He further submitted that applying the principles of merger of decrees and restitution, it is only equitable and fair that all

claimants whose lands have been acquired under the same Notification should get the same amount by way of compensation in accordance with the final decree passed, and excess, if any, paid must be refunded.

On behalf of the Respondents, it was submitted that the redetermination of compensation under Section 28A was done in November, 1990 whereas Union of India challenged that order by filing Writ Petitions in the year 1995. The High Court was therefore justified in dismissing the Writ Petitions on the ground of delay and laches. He submitted that so far as the respondents herein are concerned, the order passed under Section 28A of the Act conferred upon them the right to receive higher compensation as awarded by the Reference Court, and that order attained finality not having been challenged within reasonable time. The High Court was therefore justified in dismissing the Writ Petitions filed by the UOI challenging the orders of redetermination under Section 28A of the Act.

We are of the view that the Union of India is right in its submission that the amount payable under Section 28A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under Section 18 of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference under Section 18. It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under Section 28A of the Act, is the enhanced compensation decreed by the Reference Court, we must understand the decree to mean the decree of the Reference Court as modified in appeal by higher Courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by superior court. There can be no dispute that those claiming higher compensation and claiming reference under Section 18 of the Act are bound by the decree as modified by the superior Court in appeal.

The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others.

It was contended before us that after the order of redetermination was passed, Union of India could have challenged this order, and since it failed to do so, it lost its right to challenge that order. The submission overlooks the basic plea of the Union of India that at the stage when the order of redetermination was passed under Section 28A of the Act that order was fully justified and any

further redetermination could be claimed only if there was variation of the decree and the amount awarded by way of compensation was reduced. In the instant case that happened in the year 1997, and therefore, in one sense it was indeed premature for the Union of India to challenge the redetermination under Section 28A in the year 1995, much before the decree was actually modified.

We hold that under Section 28A of the Act, the compensation payable to the applicants is the same which is finally payable to those claimants who sought reference under Section 18 of the Act. In case of reduction of compensation by superior courts, the applicants under Section 28A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded.

We are informed that none of the claimants have yet been paid in accordance with the order of redetermination under Section 28A or thereafter.

In the facts and circumstances of the case, these appeals are allowed and a direction is made to the Collector under the Act to redetermine the compensation payable to the respondents in accordance with the compensation awarded by the judgment and decree of this Court dated 29th April, 1997 and pay the same to the claimants within a period of three months from today.

It was brought to our notice that in some cases the question of limitation was urged against some of the respondents herein. That plea has not been urged before us. Learned Additional Solicitor General states that the Union of India is not challenging the applications filed by the respondents herein under Section 28A of the Act on the ground of delay.