

Supreme Court of India

Jose Antonio Cruz Dos R. ... vs Land Acquisition Collector & Anr on 13 November, 1995

Equivalent citations: 1996 AIR 709, 1996 SCC (1) 88

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

JOSE ANTONIO CRUZ DOS R. RODRIGUESES & ANR. ETC.

Vs.

RESPONDENT:

LAND ACQUISITION COLLECTOR & ANR.

DATE OF JUDGMENT 13/11/1995

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1996 AIR 709

1996 SCC (1) 88

JT 1995 (8) 328

1995 SCALE (6) 506

ACT:

HEADNOTE:

JUDGMENT:

SPECIAL LEAVE PETITION (CIVIL) NO.24584 OF 1995. O R D E R Sri Mehta, learned counsel appearing for the petitioners contends that Notification under Section 4(1) of Land Acquisition Act, 1894 [for short, 'the Act'] was published on 3.10.1969 and the award under Section 11 was made in the case of his clients on August 2, 1972 determining compensation under Section 23(1) at Rs.1.25 per sq. mt. for plot No.23 admeasuring 24721 sq. mts. Subsequently, successive awards for other lands acquired under the same notification were made, on June 4, 1985 at Rs. 5/- per sq. mt., on October 14, 1985 at Rs.9/- per sq. mt. and another judgment and decree on August 31, 1987 by the High Court in Appeal No.11/86 uniformly fixing the compensation at Rs.5/- per sq. mt. Yet another reference under Section 18 was decided on July 27, 1989 by the Reference Court at Rs.5/- per sq. mt. Though he filed the application on 13.5.1987, in view of the decision of this Court in Union of India & Anr. Vs. Pradeep Kumari & Ors., [(1995) 2 SCC 736], any one of the awards or each successive award including the judgment and decree of the High Court would give right and cause of action to the petitioner- claimant to make application under Section 28-A. So, it cannot be dismissed on the

ground of delay. The views of the Land Acquisition Officer and the High Court wrong in law.

Section 28-A says that where in an award under this part, the Court allowed the application under Section 18 and awarded higher compensation, notwithstanding that the claimant had not made an application under Section 18, he can make an application "within three months from the date of the award of the court" [emphasis supplied] requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court. The proviso prescribes the mode of computation of period of three months which says that:-

"the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

The contention of the learned counsel is that any one of the successive awards including the Judgment and decree of the High Court would give right and cause of action to the Petitioner to make an application under Section 28-A. Therefore, there is no bar of limitation. A Bench of two Judges of this Court in *Babua Ram vs. State of UP* [(1995) 2 SCC 689], has held that the period of limitation begins to run when the award on a reference under Section 18 was first made by the Reference Court and the limitation of three months requires to be computed from the date of the first award and successive awards do not save the limitation if it has already expired by efflux of time. The same view was reiterated in another judgment in *Union of India vs. Karnail Singh* [(1995) 2 SCC 728]. This view was subsequently overruled by a Bench of three judges.

In view of the contention raised by Shri Mehta, the following questions are required to be considered :

1. Whether the award of the Court, i.e., Civil Court made under Section 26 on reference under Section 18 would also include judgment and decree of the Appellate Court under Section 54?\*
2. Whether each successive awards or judgment and decree (if answer on question No.1 is positive) would give cause of action to file application under Section 28-A; if so construed, does not such a construction violate the language used in Section 28-A when the Parliament advisedly did not use such expressions?

These questions require examination by a larger Bench of five Judges as the interpretation of Section \_\_\_\_\_ \*

*Union of India v. Raghubir Singh* [(1989) 2 SCC 754]; C.A. No.1697/95 [V.

*Krishnamurti & Ors. v. State of Orissa*] decided on January 19, 1995 and C.A.

No.3521/95 [*State of Punjab v. Raghubir Singh & Ors.*] decided on February 28, 1995, are relevant for the point.

28-A on the limitation of three months often arises in many a case throughout the country.

Issue notice to the respondents returnable in four weeks. Petitioner is permitted to take out notice by dasti service in addition.

We direct the Registry to place the cases before Hon'ble the Chief Justice of India to constitute a large Bench of five Judges. Since these questions are arising in number of matters frequently, instead of keeping them pending, it is desirable that they may be disposed of at an early date.