

**A.F.R.****Court No.39****Case :- WRIT - C No. - 5899 of 2017****Petitioner :-** Dheer Singh & 3 Others**Respondent :-** State Of U.P. & 3 Others**Counsel for Petitioner :-** Rakesh Pande, Shailesh Upadhyay**Counsel for Respondent :-** C.S.C., Shivam Yadav**Hon'ble Dilip Gupta, J.****Hon'ble Siddhartha Varma, J.**

The issue that arises for consideration in this petition is as to whether a person interested, who has not accepted the award made under Section 11 of the Land Acquisition Act, 1894¹, and has filed an application before the Collector under Section 18 of the Act, can file an application under Section 28-A of the Act for redetermination of the amount of compensation.

The Special Land Acquisition Officer made the award under Section 11 of the Act on 5 July 1978. Mokham, predecessor in interest of petitioner no.1-Dheer Singh had filed an application under Section 18 of the Act and the Reference Court by award dated 30 August 1986 in LAR No.31 of 1979 partly enhanced the amount of compensation. First Appeal (Defective) No.19 of 1987 was filed by Mokham for enhancement of the amount of compensation. It was dismissed under Order VII, Rule 11 of the Code of Civil Procedure, 1908 on 22 October 2002 for the reason that the deficiency in Court fees had not been made good. The restoration application along with delay condonation and substitution applications

¹ the Act

were also rejected on 22 May 2013. The Special Leave to Appeal to assail the said order dated 22 May 2013 was also dismissed by the Supreme Court on 9 September 2013. The application for recalling the orders dated 22 October 2002 and 22 May 2013 has also been rejected by the High Court on 22 May 2014.

However, certain tenure holders, whose lands had been acquired by the same notification issued under Section 4(1) of the Act, had also filed First Appeals against the award made by the Reference Court. These First Appeals were decided on 3 December 2014 and the amount of compensation was increased.

An application under Section 28-A of the Act was then filed by the petitioners on 30 April 2016 which is said to have been received in the office on 3 May 2016. The petitioners claimed the same amount of compensation as was awarded to the tenure holders who had filed First Appeals in which the High Court had enhanced the compensation by judgment dated 3 December 2014. This application filed by the petitioners has been rejected by the Additional District Magistrate (Land Acquisition), Greater Noida² by order dated 23 June 2016 holding that the application itself was not maintainable since the father of petitioner no.1 Mokham had earlier filed an application (LAR No.31/1979 Mokham Vs. State of U.P.) under Section 18 of the Act which had been decided on 30 August 1986 and the amount of compensation had been partly enhanced.

Sri Rakesh Pande, learned counsel for the petitioners has submitted that the view taken by the ADM that the application filed by the

² ADM

petitioners under Section 28-A of the Act was not maintainable because the remedy under Section 18 of the Act had earlier been invoked by the predecessor in interest of the petitioners by filing a reference application is not correct. It is his submission that Section 28-A of the Act does not contemplate that if a reference application is filed under Section 18 of the Act, a tenure holder cannot invoke the provisions of Section 28-A of the Act. The submission of learned counsel is that since the First Appeal filed by the predecessor in interest of the petitioners had not been decided on merits but had been dismissed under Order VII, Rule 11 of the CPC for the reason that the deficiency in Court fees had not been made good, the application filed under Section 28-A of the Act would be maintainable.

Learned Standing Counsel appearing for respondents no.1 to 3 and Sri Shivam Yadav, learned counsel appearing for New Okhla Industrial Development Authority have, however, submitted that the ADM committed no illegality in rejecting the application filed by the petitioners as the remedy available under Section 18 of the Act had earlier been invoked by the predecessor in interest of the petitioners and the reference had been decided on merits.

We have considered the submissions advanced by learned counsel for the parties.

To appreciate the contentions of learned counsel, it would be appropriate to refer to some of the provisions of the Act. The award is made by the Collector under Section 11 of the Act. Section 18 provides that any person interested who has not accepted the award may, by

written application to the Collector, require that the matter may be referred by the Collector for the determination of the amount of compensation by the Court. It is as follows:

“18 Reference to Court:

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.”

Section 28-A of the Act deals with re-determination of the amount of compensation on the basis of the award of the Reference Court and is reproduced :

“Re-determination of the amount of compensation on the basis of the award of the Court. - (1) 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 by the award of the Collector may, 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 sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.”

The issues that arise for consideration in this petition are :

- (i) whether the petitioners could have filed an application under Section 28-A of the Act, if an application under Section 18 of the Act had been filed by the predecessor in interest of the petitioners and that had been decided on merits; and
- (ii) whether the award referred to in Section 28-A of the Act is the award of the High Court in the First Appeals or the Supreme Court in further Appeal or the award of the Reference Court under Section 18 of the Act.

FIRST ISSUE:

It is not in dispute that being not satisfied with the award made by the Special Land Acquisition Officer under Section 11 of the Act, the predecessor in interest of the petitioners had filed a reference application

under Section 18 of the Act which was registered as LAR No.31 of 1979 and the amount of compensation was partly enhanced by the Reference Court on 30 August 1986. It has, therefore, to be seen whether an application under Section 28-A of the Act could still be filed by the petitioners for re-determination of the amount of compensation.

Section 18 of the Act clearly provides for a remedy to any person interested who has not accepted the award made by the Special Land Acquisition Officer under Section 11 of the Act to require the matter to be referred by the Collector for determination of the compensation by the Court. Under Section 20, the Court will proceed to determine the objections. Section 25 provides that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11 of the Act. Section 26 of the Act provides for the form of award and is as follows:

“26 Form of awards.

- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amounts awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.
- (2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908)”

Section 27 deals with costs, while Section 28 deals with interest on excess compensation determined by the Court.

Section 28-A of the Act purports to provide a remedy to any person interested who has not preferred an application to the Collector under Section 18, if at the instance of other persons covered by the same notification issued under Section 4(1) of the Act, the Reference Court enhances the compensation. It provides that any such person interested may, by written application to the Collector, within three months from the date of award of the Court, require that the amount of compensation payable to them may be redetermined.

The objects and reasons for introduction of Section 28-A by Act No.68 of 1984 are as follows:

"Considering that the right of reference to the civil court under section 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 section 18 of the Act."

Thus, it is clear from a bare perusal of Section 28-A of the Act and the objects and reasons for introduction of Section 28-A of the Act that a person who has availed the remedy provided for under Section 18 of the Act cannot file an application under Section 28-A of the Act.

It also needs to be noted that under sub-section (3) of Section 28-A of the Act, any person who has not accepted the award made by the Collector under Section 28-A(2) of the Act may, by a written application to the Collector, require that the matter may be referred by the Collector

for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such references as they apply to a reference under Section 18. The land owners cannot have two opportunities to file references. Thus also, only a person who has not availed of the remedy under Section 18 of the Act can file an application under Section 28-A of the Act.

The Supreme Court has time and again observed that a person interested who has not filed an application under Section 18 of the Act can only file an application under Section 28-A of the Act.

In Scheduled Castes Co-operative Land Owning Society Limited, Bhatinda Vs. Union of India & Ors.³ the Supreme Court held that Section 28-A of the Act applies only to those claimants who had failed to seek a reference under Section 18 of the Act and would, therefore, not apply to a case where the claimant had sought and secured a reference under Section 18 of the Act. The observations are :

“4. It is obvious on a plain reading of Sub-section (i) of Section 28A that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the Court in the reference under Section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimant who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the Collector for redetermination and not all those like the petitioners who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the reference court. The newly added Section 28A, therefore, clearly does not apply

³ (1991) 1 SCC 174

to a case where the claimant has sought and secured a reference under Section 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of Section 28A, finds support from the judgment of this Court in *Mewa Ram v. State of Haryana.*⁴

(emphasis supplied)

In Union of India & Anr. Vs. Pradeep Kumari and Ors.⁴ the Supreme Court, after making reference to the Statement of Objects and Reasons underlying the enactment of Section 28-A of the Act, observed that it intended to remove inequality and give relief to persons who were not able to take advantage of right of reference to the Civil Court under Section 18 of the Act and the observations are :

“8. We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of Section 28-A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under Section 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek re-determination once any of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act. Section 28-A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the civil court under Section 18 of the Act. In relation to beneficent legislation, the law is well-settled that while construing the provisions of such a legislation the court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it. The provisions of Section 28-A should, therefore, be

construed keeping in view the object underlying the said provision.”

(emphasis supplied)

It, however, disagreed with the earlier view taken by the Supreme Court in **Babua Ram and Ors. Vs. State of U.P. and Anr.**⁵ that the period of limitation for making an application under Section 28-A of the Act has to be computed from the date of making of the first award after coming into force of Section 28-A of the Act and the observations are as follows::

“10. The object underlying Section 28-A would be better achieved by giving the expression "an award" in Section 28-A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of Section 28-A. If the said expression in Section 28-A(l) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied :-

- (i) An award has been made by the court under Part III after the coming into force of Section 28-A;
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;
- (iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;
- (iv) The person moving the application did not make an application to the Collector under Section 18;
- (v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28-A for re-determination of compensation by an applicant.”

(emphasis supplied)

In **Bhagti (Smt.) (deceased) through her Lrs. Jagdish Ram Sharma Vs. State of Haryana**⁶, the Supreme Court also observed that an application can be filed under Section 28-A only if a reference had not been made under Section 18 of the Act:

“6. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred with the right to apply for redetermination under Section 28-A(1). But all those who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the Reference Court are not entitled to avail of the remedy under Section 28-A.”

(emphasis supplied)

The judgments of the Supreme Court in **Scheduled Castes Co-operative Land Owning Society Limited and Babua Ram** were followed by the Supreme Court in **Desh Raj (deceased) through LRs & Anr. Vs. Union of India & Anr.**⁷ and it was observed :

“12.Moreover, benefit of Section 28-A is available only to the parties who had not sought reference under Section 18 of the Act for enhancement of the compensation. This provision is not available to persons who seek for reference under Section 18 of the Act for enhancement of the compensation and do not challenge judgment of the Reference Court or the judgment of the High Court thereafter.”

(emphasis supplied)

⁶ (1997) 4 SCC 473

⁷ (2004) 7 SCC 753

In **State of Orissa and Ors. Vs. Chitrasen Bhoi**⁸, the Supreme Court again examined whether a person who had invoked the remedy available under Section 18 of the Act could file an application under Section 28-A of the Act and relying upon the earlier decisions observed that Section 28-A of the Act seeks to confer benefit on those persons who had not sought a reference under Section 18 of the Act.

It is, therefore, not possible to accept the contention of learned counsel for the petitioners that an application under Section 28-A of the Act would be maintainable even at the behest of a person who had earlier invoked the provisions of Section 18 of the Act.

SECOND ISSUE:

This issue arises for consideration because a perusal of the application filed by the petitioners under Section 28-A of the Act reveals that it had been filed claiming redetermination of the compensation on the basis of the judgment rendered by the High Court in the First Appeals on 3 December 2014 and not on the basis of the award made by the Reference Court. Section 28-A of the Act provides that where in an award under Part-III (containing Sections 18 to 28-A of the Act), 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 land covered by the same notification under Section 4(1) of the Act and who are also aggrieved by the award of the Collector may, 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 redetermined on the basis of the amount of compensation awarded by the Court. 'Court' has been defined in Section 3(d) of the Act to mean a Principal Civil Court of original jurisdiction. It is, therefore, clear that the award that is referable to under Section 28-A(1) of the Act is the award made by the Reference Court alone. This is also clear because Section 28-A of the Act begins with "where in an award in this Part, the Court allows to the applicant" and ends with "may be redetermined on the basis of the amount of compensation awarded by the Court".

An application under Section 28-A of the Act cannot, therefore, be filed for redetermination of the compensation by treating the award as that made by the High Court in the First Appeals or by the Supreme Court. This view finds support from the decision of the Supreme Court in **Babua Ram.** The observations are :

"19. The next question is as to when the period of limitation of three months begins to run under Section 28-A and whether successive awards made by Civil Court at different times in respect of the land covered by the same Notification furnish separate causes of action for making applications under Section 28A. Let us consider the meaning of the words "an award under this part" referred to in Section 28-A(1) which is Part III of the Act. The heading to that part begins by reference to court and its procedure. The "court" means a principal civil court of original jurisdiction or a special judicial officer appointed to perform the functions of the court under the Act as becomes clear as is noticed already. What are the matters to be considered in determining the compensation on a reference made to it under Section 18, is detailed in Section 23 while matters to be neglected in determining such compensation are

indicated in Section 24. By operation of Sub-section (2) of Section 26, the award made determining the amount of compensation shall be deemed to be a decree while the statement of the grounds of every such award is deemed to be the judgment, for the purpose of Code of Civil Procedure. The above perspectives from Part III make it clear that the award of the court is that of the civil court of original jurisdiction in that part. It is a decree for the purpose of an appeal under Section 54 which falls in part VIII of the Act (Miscellaneous). The decree as defined in Section 2(2) C.P.C. is the decree of the High Court, which shall be appealable to the Supreme Court under Articles 132, 133 and 136 read with Order 45 C.P.C. Hence, the award of the court referred to in Sub-section (1) of Section 28-A is only the award of the civil court of original jurisdiction or of judicial officer performing the functions of such court under the Act on reference received by it under Section 18 and an award and decree pronounced under Section 26 of the Act. Since, the judgment and decree of the High Court under Section 54 or of this Court do not come in Part III of the Act, they stand excluded from an award envisaged under sub- section (1) of Section 28-A. The aggrieved interested person, therefore, is entitled to the right and remedy of making an application under Section 28A for redetermination of compensation for his acquired land only on the basis of the award of the civil court or judicial officer which is a judgment and decree under Section 26 when such award grants compensation in excess of the amount awarded by the Collector under section 11. When such an application is made in writing by the aggrieved person, notwithstanding the fact of his having received compensation under Section 31 without protest and of not availing the right and remedy of the reference under Section 18, the redetermination of the compensation under Section 28A(1) is required to be done.”

(emphasis supplied)

It needs to be stated that in **Pradeep Kumari**, the Supreme Court disagreed only with the view taken in **Babua Ram** that the period of limitation for making an application under Section 28-A of the Act is not

restricted to the earliest award that is made by the Court after coming into force of Section 28-A of the Act.

The view that the award referred to in Section 28-A(1) of the Act is the award of the Reference Court was reiterated by the Supreme Court in **Bhagti** and the observations are :

“6. Equally, the right and remedy of redetermination would be available only when the reference Court under Section 18 has enhanced the compensation in an award and decree under section 26. Within three months from the date of the reference court excluding the time taken under proviso, the applicant whose land was acquired under the same notification but who failed to avail the remedy under Section 18, would be entitled to avail the right and remedy under Section 28A. The order and judgment of the High Court does not give such right. Thus, this Court held that Section 28-A does not apply to an order made by the High Court for redetermination of the compensation. Thus, we hold that the question of reference to the Constitution Bench does not arise. The claimants are not entitled to make an application for redetermination of compensation under Section 28-A(1) after the judgment of the High Court; nor are the claimants entitled to avail of that award which is more beneficial to the claimants, i.e., the High Court judgment.”

Thus also, the application filed under Section 28-A of the Act was not maintainable.

There is, therefore, no illegality in the order passed by the ADM in rejecting the application filed by the petitioners under Section 28-A of the Act as being not maintainable.

The writ petition is, accordingly, dismissed.

Date:20.02.2017

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(Siddhartha Varma, J.)

(Dilip Gupta, J.)