

of the witnesses of the tenants. It has further come in evidence that the same was a temporary relief as such which was granted to the residents of the area and the nuisance which was of gross and persistent character was, thus, brushed under the carpet by the authorities below by not ordering eviction on the said ground. The authorities below were not justified in holding that the nuisance was not of a consistent character. The said element is to be adjudged from the view point of the persons who are residing in the said neighbourhood and who are duly effected on a daily basis which factum has been ignored by the Courts below, in spite of the voluminous evidence both in shape of oral and documentary in nature having been brought on record.

27. Resultantly, the present revision petition is allowed to the extent that the petitioners have been successful to prove the issue and brought on sufficient material on record regarding issue No.5, which pertains to the nuisance which was created to the nearby occupants. Accordingly the respondents are directed to be evicted from the premises in question by allowing the present revision petition.

Petition allowed.

SUPREME COURT OF INDIA

Before: Kurian Joseph & R. Banumathi, JJ.

Civil Appeal No. 21792 of 2017

Decided on: 12.12.2017

(Arising out of S.L.P.(Civil) No. 16449/2016)

Bharatsing S/o Gulabsingh Jakhad & Ors.

Appellants

Versus

The State of Maharashtra & Ors.

Respondents

Land Acquisition Act, 1894 (1 of 1894), Section 28-A -- Second application for re-determination of market value -- Maintainability of -- It must be kept in mind that Section 28A is a beneficial provision -- Section 28A application dated 31.12.1992 based on the awards was decided on 25.10.2000 when the appeals therefrom were pending -- Held, Collector ought to have kept the application pending till the appeals were decided on 23.03.2009 -- No doubt, the second application dated 27.05.2009 for re-fixation in light of the appellate court judgment is not maintainable, however, since the Collector is also at fault in deciding the application when the matter was pending in appeal, the application dated 31.12.1992 should be considered afresh.

(Para 17)

Cases referred:

1. Babua Ram and others v. State of U.P. and another, (1995) 2 SCC 689.
2. U.P. State Industrial Development Corpn. Ltd v. State of U.P. and others, (1995) 2 SCC 766.
3. Union of India and another v. Pradeep Kumari and others, (1995) 2

SCC 736.

4. Jose Antonio Cruz Dos R. Rodriguese and another v. Land Acquisition Collector, (1996) 6 SCC 746.
5. Union of India v. Munshi Ram (Dead) By Lrs. and others, (2006) 4 SCC 538.
6. Kendriya Karamchari Sehkari Grah Nirman Samiti Limited, Noida v. State of Uttar Pradesh and another, (2009) 1 SCC 754.

JUDGMENT

KURIAN, J. –

Leave granted.

2. What is the course to be adopted by the Land Acquisition Collector under Section 28A of The Land Acquisition Act, 1894 (hereinafter referred to as “the Act”), when the award based on which enhancement is sought is pending in appeal, is the issue arising for consideration in this case.

3. The Section 4(1) Notification was issued on 17.01.1974. The compensation was determined by the Land Acquisition Officer on 04.06.1977. The appellants did not pursue the matter further under Section 18 of the Act in Reference. However, other claimants of the lands covered by the same Section 4(1) Notification took up the matter further and the Reference Court allowed enhancement and fixed the land value at Rs.5,000/- per acre in the place of Rs.3,000/3,500 offered by the Land Acquisition Officer, as per the award dated 01.10.1992 in LAR Nos. 123 and 129 of 1983 on the file of the Second Additional District Judge, Aurangabad. The appellants filed an application on 31.12.1992 under Section 28A of the Act seeking similar enhancement within the period of three months as required under Section 28A.

4. While the application under Section 28A of the Act was pending, the award under LAR Nos. 123 and 129 of 1983 was challenged in appeals and there were also cross objections. The High Court disposed of these appeals by judgment dated 23.03.2009 granting compensation at the rate of Rs.18,000/- per acre.

5. During the pendency of the appeal, it is seen that the Land Acquisition Collector passed an award dated 25.10.2000 on the application filed by the appellants under Section 28A of the Act, awarding compensation at the rate of Rs.5,000/- per acre, as awarded in LAR Nos. 123 and 129 of 1983 referred to above.

6. On 27.05.2009, the appellants filed fresh applications under Section 28A for enhancement of compensation based on the judgment of the High Court dated 23.03.2009. They also approached the High Court praying for the Writ of Mandamus. By the impugned order, the Writ Petition was dismissed holding that Section 28A of the Act permits only one application, and successive applications as and when further enhancement is made, are not permissible.

7. Thus aggrieved, the present appeal.

8. Section 28A of the Act which was inserted in 1984 reads as follows :-

“28A. 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.”

9. The nuances of Section 28A have been subject matter of various decisions of this Court. In **Babua Ram and others v. State of U.P. and another¹ [(1995) 2 SCC 689]**, one of the questions considered by a two-judge Bench of this Court was whether the Collector/LAO on receipt of application under Section 28A (1) is bound to re-determine the compensation when the award is pending in appeal before the High Court or appellate forum. This Court, at paragraph- 39 held as follows-

“39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree under Section 26 is pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award under Section 28-A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it the High Court or this Court. Take for instance that ‘A’, ‘B’ and ‘C’ are interested persons in the land notified under Section 4(1) and the compensation determined in the award under Section 11. ‘A’ received the compensation without protest. ‘B’ and ‘C’ received the compensation under Section 31 under protest and sought and secured reference under Section 18. The court enhanced the compensation from the Collector’s award of Rs 10,000 to Rs 20,000. ‘B’ did not file appeal under Section 54 while ‘C’ filed the appeal. The High Court, suppose, further enhances the compensation to Rs 25,000 or reduces the compensation to Rs 15,000

per acre. 'A' is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the court under Section 26 but he will not get the enhancement of further sum of Rs 5000 granted by the High Court in favour of 'C'. The decree of the High Court is the executable decree made in favour of 'C'. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of civil court under Section 26 and of the High Court under Section 54. There is nothing left for redetermination. With a view to save 'A' or 'B' or the State from the consequences of such incongruous situations, the Collector/LAO should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree...."

Babua Ram (supra), also dealt with the question as to when the period of limitation of three months begins to run under Section 28A. The Court held that the period of three months prescribed for application under Section 28A has to be computed from the date of the first award.

10. Soon after the decision in **Babua Ram** (supra), this Court in **U.P. State Industrial Development Corpn. Ltd v. State of U.P. and others**² [²(1995) 2 SCC 766], reiterated **Babua Ram** (supra) to hold that since an appeal preferred by the State against the award of the District Judge under Section 26 was pending, the proper course would have been to keep the application under Section 28A (1) pending till the appeal was disposed of.

11. In **Union of India and another v. Pradeep Kumari and others**³ [³(1995) 2 SCC 736], a three-judge Bench of this Court disagreed with **Babua Ram** (supra) on the point that an application for redetermination of compensation can be made only on the basis of the first award made after coming into force of Section 28A. It was clarified that compensation under Section 28A could be availed of on the basis of any one of the awards that has been made by the court after coming into force of Section 28A provided that the application is made within the prescribed period of three months from the making of the award on the basis of which re-determination is sought. This Court also laid down six conditions for filing an application under Section 28A and the sixth condition is- "only one application can be moved under Section 28A for redetermination of compensation by an applicant".⁴

⁴[The other five conditions are- 1. The award has been made by the court under Part III after coming into force of Section 28A; 2. 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; 3. The person moving the Section 28A application is interested in other land covered by the same Section 4 (1) notification to

which the award related; 4. The person moving the application did not make an application under Section 18; 5. The application is moved within three months from the date of the award on the basis of which redetermination of amount of compensation is sought.]

12. Subsequently, in **Jose Antonio Cruz Dos R. Rodriguese and another v. Land Acquisition Collector**⁵ [(1996) 6 SCC 746], a three-Judge Bench of this Court explained the scheme of the Act and noted that Section 28A was under Part III of the Act. Further, Section 2(d) of the Act defines 'court' to mean principal Civil Court of original jurisdiction unless a special judicial officer is appointed. Therefore, this Court was of the opinion that in Section 28A the 'award' means an award under Part III and 'court' can only mean the court to which reference is made by the Collector under Section 18. It was held that "the plain language of Section 28-A, therefore, prescribes the three months period of limitation to be reckoned from the date of award by the Court disposing of the reference under Section 18, and not the appellate court dealing with the appeal against the award of the Reference Court".

13. In **Union of India v. Munshi Ram (Dead) By Lrs. and others**⁶ [(2006) 4 SCC 538], while dealing with a situation where the compensation awarded by the Reference Court was modified by the High Court and further modified by the Supreme Court in appeal, this Court held as follows at paragraph-9:

"9. We hold that under Section 28-A 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 the superior courts, the applicants under Section 28-A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded."

(Emphasis supplied)

14. In **Kendriya Karamchari Sehkari Grah Nirman Samiti Limited, Noida v. State of Uttar Pradesh and another**⁷ [(2009) 1 SCC 754], this Court held that in the facts of the case, the Collector was justified in not deciding the Section 28A application on account of pendency of an appeal before the High Court. In that case, the appellant had also challenged the Government Orders as per which the Collector could not have decided the Section 28A application in case the order of the Reference Court enhancing the compensation is challenged and the appeal is pending before the High Court/Supreme Court. This Court, specifically held that the Government Orders were in consonance with the law laid down in **Babua Ram** (supra).

15. In the case of the appellants, when their Section 28A application was decided, based on awards in LAR Nos. 123 and 129 of 1983, the very same awards were pending in appeal before the High Court. However, the Collector proceeded to consider their application and decided the same on 25.10.2000. Thereafter, fresh application under Section 28A was filed on 27.05.2009 based on the judgment of the High Court dated 23.03.2009. It was this application that was held to be not maintainable, being a second application.

16. Though there is no quarrel with the principle that only a single application is maintainable, in the instant case, unfortunately, the High Court omitted to take note of the fact that the appeals on the awards were pending when the Section 28A application was decided. That is the special and

distinctive factual position in the instant case. It must also be kept in mind that Section 28A is a beneficial provision.

17. The Section 28A application dated 31.12.1992 based on the awards in LAR Nos. 123 and 129 of 1983 was decided on 25.10.2000 when the appeals therefrom were pending. The Collector ought to have kept the application pending till the appeals were decided on 23.03.2009. On principle, the High Court is correct and justified in the view taken in the impugned judgment that there cannot be successive applications under Section 28A in view of **Pradeep Kumari** (supra). But that is not the point arising for consideration here. No doubt, the second application dated 27.05.2009 for re-fixation in light of the appellate court judgment is not maintainable. However, since the Collector is also at fault in deciding the application when the matter was pending in appeal, we are of the view that in the peculiar facts of the instant case, the application dated 31.12.1992 should be considered afresh. Accordingly, the appeal is disposed of as follows. The Land Acquisition Collector is directed to consider afresh the Section 28A application dated 31.12.1992 and pass orders in the light of the judgment of the High Court dated 23.03.2009 in First Appeal Nos.569 and 570 of 1997 on the file of the High Court of Bombay, Bench at Aurangabad. For enabling the Collector to pass orders as above, the order dated 25.10.2000 is set aside. However, the amounts already paid are to be duly adjusted.

18. The orders as above shall be passed by the Land Acquisition Collector within three months from the date of presentation of a copy of this judgment by the appellants and the consequential benefits shall be disbursed to them within another one month.

19. There shall be no order as to costs.

Order accordingly.

SUPREME COURT OF INDIA

Before: A.K. Sikri & Ashok Bhushan, JJ.

Civil Appeal No.11094 of 2017

Decided on : 13.09.2017

(Arising out of SLP(C)No.22154 of 2012)

Atma Singh

Appellant

Versus

Gurmej Kaur (D) & ors.

Respondents

For Appellant(s):

Mr. Surabhi Aggarwal, Adv.

Mr. Ambreesh Kumar Aggarwal, AOR.

For Respondent(s):

Mr. Pallav Mongia, Adv.

Mr. Pankaj Singh, Adv.

Mr. Jasmine Damkewala, AOR.

Ms. Nidhi, AOR.

A. Hindu Widow's Remarriage Act, 1856 (15 of 1856), Section 2 –