

The Indian Law Reports

Before : J. V. Gupta, J.

CHAMPA AND OTHERS,—Petitioners.

versus

STATE OF HARYANA,—Respondent.

Civil Revision No. 371 of 1988

March 3, 1989.

Land Acquisition Act (I of 1894)—Ss. 18, 28-A—Petitioner not filing application for enhancement of compensation—Compensation enhanced on petition of his co-sharer—Petitioner claiming enhanced compensation before executing Court—Recourse not taken to remedy under Section 28 A—Power of executing Court to grant relief.

Held, that by providing S. 28 A of the Land Acquisition Act, 1894, the legislature has given a statutory recognition to the right of cosharers to claim enhanced compensation and the procedure to claim enhanced compensation was also provided. Under the said procedure the application is maintainable before the Collector and not before the Executing Court as such. Since the petitioners did not avail the remedy under S. 28 A of the Act the executing Court has rightly declined to entertain the same as it was not maintainable as such.

(Paras 4, 5).

Petition under section 115 C.P.C. for revision of the order of the Court of Shri R. C. Kathuria, Additional District Judge, Karnal, dated 4th September, 1987 dismissing the application.

CLAIM :—Application under section 151 C.P.C.

CLAIM IN REVISION:—For the reversal of the order of the lower Court.

S. P. Lallor, Advocate, for the petitioners.

Nemo. for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This order will also dispose of Civil Revision No. 372 of 1988 as well, as the question involved is common in both the cases.

(2) The Haryana Government,—*vide* Notification, dated 17th October, 1978 acquired the land situated within the municipal limit of Karnal for which the Land Acquisition Collector gave its award on 2nd June, 1982. Hari Singh, Shamsher Singh, Lal Singh, sons of Fatta filed a reference under Section 18 of the Land Acquisition Act (hereinafter referred to as the Act) which was ultimately accepted by the Additional District Judge, Karnal,—*vide* order, dated 1st May, 1987 and awarded compensation at the rate of Rs. 30 per square yard alongwith solatium and interest as provided under the law. The petitioners claimed themselves to be the owners in possession of the land but did not file any reference under Section 18 of the Act. They however, invoked the jurisdiction of the executing Court by way of filing the applications with a prayer that they be also given the benefit of the enhanced compensation being co-sharers in the same land. The said application has been dismissed by the executing Court,—*vide* impugned order, dated 4th September, 1987 on the ground that the land in question was acquired on 17th October, 1978 and the award was rendered by the Land Acquisition Collector on 2nd June, 1982 while the present application has been filed on 22nd May, 1987. The position of law, emanating from various provisions namely Section 18, 18-A, 19, 20 and 28 A of the Act, is that the application as such was not maintainable under section 151 C.P.C.

(3) Learned counsel for the petitioners submitted that the petitioners being co-sharers were entitled to the same compensation which was enhanced on reference under Section 18 of the Act at the instance of other co-sharers. Thus, argued the learned counsel, the application filed before the executing court was maintainable. In support of his contention he referred to *State of Haryana v. Bishan Singh and others* (1), *Punjab State v. M/s Globe Motors Ltd. And another* (2), and *Shri Harmant Singh and others v. Land Acquisition Collector, Gurgaon* (3). He also tried to distinguish the authorities

(1) 1981 P.L.J. 40.

(2) 1981 P.L.J. 73.

(3) 1987(2) P.L.R. 188.

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such as *Mewa Ram v. State of Haryana* (4), *Justice D. K. Mahajan and others v. The Union of India* (5), and *Collector, U.T. Chandigarh v. Smt. Dhanno (deceased)* (6), relied upon by the executing Court in support of the impugned order.

(4) Admittedly, there was no statutory provision that the co-sharers are the persons whose land was acquired under the same notification are entitled to the enhanced compensation which the other claimants are awarded. In the Land Acquisition Act, as amended, Section 28-A was added and it was provided therein as under :—

“28-A. Re-determination of the amount of compensation on the basis of the award of the Court.—(1) Wherein 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

(4) A.I.R. 1987 S.C. 45.

(5) 1987(1) P.L.R. 578.

(6) 1987(2) P.L.R. 152.

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.”

In other words, by providing Section 28-A of the Act, it was given a statutory recognition and the procedure to claim the enhanced compensation was also provided. Under the said provision the application is maintainable before the Collector and not before the executing Court as such. *Bishan Singh's case* (supra) and *M/s Globe Motors Case* (supra) were considered by this Court earlier in *The State of Punjab v. Smt. Tej Kaur* (7), and were distinguished. In *M/s Globe Motors case* (supra) the solitary point raised was that since only one of the share holders had claimed the reference under Section 18 of the Act the rest of the share holder would not take the benefit of the same. This contention was repelled by the learned Single Judge which was affirmed by the Letters Patent Bench. Similarly, in *Bishan Singh's case* (supra) the only contention raised was that the claimants could not take the benefit of the award given by the Additional District Judge as they had not asked for the reference; the reference having been made by the Collector only in respect of the claim of one Kissi under Section 18 of the Act. In the said case admittedly, the names of all the co-sharers were there in the reference but the application was signed by one of them. The only relevant case is *Shri Harmant's case* (supra) where such an application was made before the executing Court but the effect of Section 28-A as amended could not be considered therein as the reference under Section 18 was decided by the Addl : Distt. Judge on 20th April, 1982, much prior to the amendment inserting Section 28-A. In the present case reference was decided by the Additional District Judge, on 1st May, 1987, i.e. after the amended Act. The Supreme Court in *Mewa Ram v. State of Haryana* (8), discussed the scope of section 28-A as inserted by Act 68 of 1984 and observed in para 5 thereof as under :—

“Furthermore, there is no provision in the Act apart from Section 28 A for reopening of an award which has become final and conclusive. No doubt Section 28A now provides for the re-determination of the amount of compensation provided the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and

(7) 1985 P.L.J. 146.

(8) 1986 Revenue Law Reporter 488.

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the application has to be made before him within thirty days from the date of the award, and the right is restricted to persons who had not applied for reference under Section 18 of the Act. If these conditions were satisfied, the petitioners could have availed of the remedy provided under Section 28 A of the Act. In that event, section 25 would enure of their benefit. Any other view would lead to disastrous consequences not intended by the Legislature."

(5) Since the petitioners did not avail the remedy provided under Section 28-A of the Act the executing Court has rightly declined to entertain the same as it was not maintainable as such. Consequently, both the petitions fail and are dismissed with no order as to costs.

P.C.G.

Before : V. Ramaswami, C.J. and G. R. Majithia, J.

UNION OF INDIA AND OTHERS,—Appellants.

versus

LT. COLONEL (NOW MAJOR) SURJIT SINGH.—Respondent.

Letters Patent Appeal No. 550 of 1988

March 10, 1989.

Constitution of India, 1950—Arts. 162 and 226—Army Instructions 1/S/75 as amended by 2/76 and further amended by Army Instructions 31/86—Reversion—Attachment of Army Officer on disciplinary grounds—Court martial proceedings pending—Instructions making provision for reversion from acting rank on non performance of duties for 21 days for which acting rank was given—Such army instructions binding—Reversion to substantive post valid.

Held. that there can be no manner of doubt that where rules are silent, the State can exercise its executive powers under Article 162 of the Constitution of India, 1950. These Army Instructions come within the ambit of Article 162 of the Constitution of India, 1950
(Para 9)