A JOSE ANTONIO CRUZ DOS R. RODRIGUESE AND ANR.

v.

LAND ACQUISITION COLLECTOR AND ANR.

NOVEMBER 20, 1996

B [A.M. AHMADI, CJI., S.B. MAJMUDAR AND B.N. KIRPAL, JJ.]

Land Laws :

C *Land Acquisition Act, 1894: Section 28-A.*

Acquisition of Land—Compensation—Redetermination of—Limitation of 3 months for making application for—Held, must be computed from date of award of Reference Court on basis of which redetermination was sought and not from date of order of appellate Court dealing with D *appeal against award of Reference Court.*

A certain parcel of land was acquired for a public purpose by a notification under Section 4 of the Land Acquisition Act, 1894. The Land Acquisition Officer awarded compensation at different rates for different plots comprising the land under acquisition. On a E **reference made under Section 18 of the Act the reference court enhanced the rates of compensation for different plots of land. In appeal, the High Court fixed an uniform rate for all the plots of land. Thereafter, the appellant submitted an application under Section 28-A of the Act for redetermination of compensation for his plot of land. The Deputy Collector dismissed the said application as time-** F **barred, having been referred after the expiry of three months prescribed by Section 28-A of the Act. The question before this Court was whether the period of three months began to run against the appellant from the date of the Award of the reference court under Section 18 of the Act or from the date of the decision of the appeal.**

G **Dismissing the appeal, this Court**

HELD: 1.1. The plain language of Section 28-A of the Land Acquisition Act, 1894 prescribes the three months period of limitation to be reckoned from the date of the award by the Court disposing of H **the reference under Section 18 of the Act and not the appellate Court**

dealing with the appeal against the award of the reference Court. The period of limitation would start to run from the date of the reference court's order on the basis whereof the redetermination was sought on the basis of the reference court's order long after three months even from the time the last order had elapsed and hence the applications were clearly time-barred. [914 B-G]

Babua Ram **v.** *State of U.P.,* **[1995] 2 SCC 689;** *Union of India* **v.** *Karnail Singh,* **[1995] 2 SCC 728 and** *Union of India* **v.** *Pradeep Kumari,* **[1995] 2 SCC 736, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14637 of 1996 Etc.

From the Judgment and Order dated 5.7.95 of the Bombay High Court in W.P. No. 471 of 1988.

Dhruv Mehta and S.K. Mehta for the Appellants.

A.S. Nambiar and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

AHMADI, CJI. Special Leave granted.

The question which arises for determination in these two appeals is whether the period of three months prescribed for making an application for redetermination of the amount of compensation under Section 28-A of the Land Acquisition Act, 1894 (hereinafter called 'the Act') begins to run against the applicant from the date of the Award under Section 18 of the Act or even from the date of the decision of the appeal, if any, preferred against the Award. In order to appreciate the point raised, we may at once read Section 28-A insofar as it is relevant:

> "28-A. Re-determination of the amount of compensation on the basis of the award of the court (1) Where in an award under this Part, 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,

A 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
B 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
C shall be excluded."

The factual matrix in which the question has to be answered may now be briefly noticed. By a notification issued under Section 4 of the Act, dated 3rd October, 1969 and gazetted on the same day, a certain parcel of land at Cavelossim village, Salcete Taluka in the State of Goa
D was proposed to be acquired for a public purpose, namely, for construction of an air-to-ground range for the Indian Navy. The possession of the land was taken by the Government on 2nd April, 1970. The declaration under Section 6 of the Act was made and published in the gazette on 10th June, 1971. Thereafter, the Land Acquisition Officer awarded compensation for
E the acquired lands at rates ranging from Rs. 0.75 to Rs. 2.50 per sq.m. for different plots comprising the land under acquisition. This award was made on 2nd August, 1972. A reference was sought and made to the learned District Judge, LAC No. 420 of 1981, which was disposed of on 24th June, 1985 whereby the rate for determination of compensation was revised to Rs. 5 per sq.m. However, in another award made in LAC No. 406 of
F 1981 on 14th October, 1985, compensation was allowed for a different plot at Rs. 9 per. sq.m. In yet another award, in LAC No. 417 of 1981, made on the same day, compensation was awarded for another plot at the rate of Rs. 10 per sq.m. In appeal, the High Court, by its judgment dated 24th February, 1987, reduced the rate to Rs.5 per sq.m. Thereafter, the appellant in Civil Appeal arising from S.L.P. No. 24435 of 1995, applied,
G on 13th May, 1987, under Section 28-A of the Act, for redetermination of compensation for his plot of land. So also, the appellant in Civil Appeal arising from S.L.P.No. 24584 of 1995 made a similar application under Section 28-A of the Act on 28th April, 1987. Both these applications were dismissed by the Deputy Collector on 3rd September, 1988 as time-barred, having been preferred after the expiry of the period of three months
H prescribed by the statute. Feeling aggrieved, both the appellants questioned

the decision by filing separate writ petitions on 11th February, 1989. The High Court of Bombay, Goa Bench, by its judgment dated 5th July, 1995 dismissed both the writ petitions upholding the view that the applications under Section 28-A were time-barred. Hence these appeals by special leave.

Before examining the decisions of this Court on which the High Court has placed reliance, we deem it appropriate to first examine the plain language of Section 28-A extracted earlier. Section 28-A was inserted as the last Section in Part III entitled 'Reference to Court and Procedure thereon' by Act 68 of 1984. Part III begins with Section 18 which provides that if an interested person does not accept the award made by the collector under Section 11 of the Act, he may by a written application to the Collector, require that the matter be referred for determination of the court. Section 2(d) defines the expression 'Court' to mean the Principal Civil Court of original jurisdiction unless a special Judicial Officer has been appointed. Therefore, the court referred to under Section 18 can only mean the Principal Civil Court of original jurisdiction. Section 23 then sets out the matters to be taken into consideration in determining the compensation to be awarded for the acquired land, and Section 24 indicates the matters to be omitted from consideration. Section 26 provides that the award shall be in writing signed by the judge which shall be deemed to be a decree within the meaning of clauses (2) and (9) of Section 2 of the Civil Procedure Code, 1908. Section 27 provides for costs to be awarded and Section 28 provides for payment of interest on excess compensation. We then come to Section 28-A. The first part of the Section begins with the words 'where in an award under this part, Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under the provision of part III i.e. an award under Section 11' which clearly indicate that the legislature was talking of an award made under the provisions of Part III, i.e., an award under section 11 and therefore, in that context, reference to 'court' can only mean the Court to which a reference is made by the Collector under Section 18. This position is further clarified when the section refers to compensation awarded in excess of the amount awarded under Section 11 of the Act. The second part of the Section then addresses 'the persons interested in all the other land covered by the same notification... and who are also aggrieved by the award' and permits them to make a written application to the collector 'within three months from the date of the award of the court' requiring him to redetermine the amount of compensation on the basis of the amount awarded by the Court, notwithstanding the fact that they had not sought a reference under section 18 of the Act. Thus, the newly added Section seeks to give the same benefit, which a person who had sought a reference and had secured the court's award for a higher amount of compensation had received, to those

A who had, on account of ignorance or financial constraints, not sought a reference under Section 18. In the latter part of the Section also, reference is to the award under Section 11 and later, to the award of the reference court under Section 18 of the Act. Therefore, the court referred to therein is again the court referred to in Section 2(d) of the Act, i.e., the Principal Civil Court of Original jurisdiction. The plain language of Section 28-A, B therefore, prescribes the three months period of limitation to be reckoned from the date of the 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.

We may now refer to the case law. A two-judge Bench of this Court C in *Babua Ram* v. *State of U.P.*, [1995] 2 SCC 689, dealt with this precise question and held that the period of limitation begins to run from the date of the first award made on a reference under Section 18 of the Act, and successive awards cannot save the period of limitation vide paragraphs 19 and 20 of the reporter. This view was reiterated by the same Bench in *Union of India* v. *Karnail Singh,* [1995] 2 SCC 728, wherein this Court D held that the limitation of three months for an application for redetermination of compensation must be computed from the date of the earliest award made by a civil court, and not the judgment rendered by an appellate court. This was followed by the decision of a three-judge Bench in *Union of India* v. *Pradeep Kumari,* [1995] 2 SCC 736, wherein it was held that the benefit under Section 28-A can be had within three months E from the date of the award of the reference court on the basis where of redetermination is sought. The earlier two decisions in the case of *Babua Ram* and *Karnail Singh* were overruled on the limited question that they sought to confine the right to seek redetermination to the earliest award made by the court under section 18 of the Act after the introduction of Section 28-A into the Act. There is, however, no doubt that the period of F limitation has to be computed from the date of the courts award under section 18 on the basis whereof redetermination is sought. Admittedly, in both the cases at hand, the applications for redetermination of compensation under Section 28-A were made long after the expiry of three months from the date of the award of the Court which constituted the basis for seeking G redetermination. We are, therefore, of the opinion that the High Court was right in taking the view that both the applications were time-barred.

However, counsel for the appellants drew our attention to an order made in the present proceedings by a two-judge Bench on November 13, 1995, reported in [1996] 1 SCC 88, referring two questions to a five- H judge Bench, namely:

"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? A

2. Whether each successive award 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 Parliament advisedly did not use such expressions?" B

So far as the first question is concerned, there is no difference of opinion on the question that the period of limitation would start to run from the date of the reference court's order on the basis whereof the redetermination is sought. In the present case, the redetermination was sought on the basis of the reference court's order long after three months even from the time the last order had elapsed and hence the applications were clearly time-barred. We, therefore, do not see any need to keep these matters pending for decision by a five-Judge Bench. C D

On the second question, there was a difference of opinion as the three-judge Bench in *Pradeep Kumari's case* had departed from the view taken earlier in two cases by the Two-judge Bench. If and when that question arises in an appropriate case, perhaps a reference to a five-judge Bench may become necessary. E

For the above reasons, we see no merit in these appeals and dismiss the same but with no order as to costs.

V.S.S. Appeals dismissed. F