

A

D. KRISHNA VENI AND ANR. ETC.

v.

STATE OF ORISSA AND ORS.

JANUARY 19, 1995

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

Land Acquisition Act, 1894—Ss. 18, 28-A—Compensation—Award—Reference under S.18 availed of by the party—Whether could approach under S.28-A—Held : No, since the party has availed the remedy of reference—Bar of res judicata also applicable.

D

In respect of certain land acquisition, in addition to the compensation to the land, the Collector awarded Rs. 80/- per fruit bearing tree and Rs. 60/- per non-fruit bearing tree as full value. On reference the award was confirmed by the Sub-Judge. The appellant did not prefer an appeal. When the others filed appeal the High Court had enhanced the compensation to Rs. 990/- for fruit bearing tree and to Rs. 650/- for non-fruit bearing tree. The appellants filed an application under s.28-A of the Land Acquisition Act, which was dismissed and it was later confirmed by the High Court. Hence these appeals.

E

Dismissing the appeal, this Court

F

HELD : The appellants have failed to avail of the remedy of appeal and having already availed the remedy of reference under S.18 of the Land Acquisition Act, they are not entitled to seek redetermination of the compensation on the basis of award of the High Court granting enhanced compensation. Section 28-A would apply to the claimants who received the compensation without protest and faced with statutory bar of reference and would not apply to those who had already availed the remedy of reference and got no benefit or lesser benefit thereunder. Equally the bar of *res judicata* would clearly apply to the appellants. The application under s.28 is, therefore, not maintainable. [489-H, 490-A-B]

G

Scheduled Castes Co-operative Land Owning Society Ltd. Bhatinda v. Union of India and Ors., AIR (1991) SC 738 and Babua Ram and Ors. v. State of U.P. and Anr., JT (1994) 7 SC 377, relied on.

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1696 of 1995 etc. A

From the Judgment and Order dated 8.2.93 of the Orissa High Court in O.J.C. No. 965 of 1992.

Y.P. Rao for the Appellants. B

A.K. Panda for the Respondents.

The following Order of the Court was delivered :

Leave granted. C

Notification under s.4(1) of the Land Acquisition Act 1 of 1894 for short 'the Act' was published on August 11, 1971 acquiring about 700 acres of land in Golabandha Buxi Palli, Vikrampur in Ganjam Dist. of Orissa State. By award dated October 18, 1976, the Land Acquisition Officer determined the market value. On reference under s.18, the learned subordinate judge confirmed the award of the Collector at the rate of Rs.80 per fruit bearing tree and Rs. 60 per non fruit bearing tree as full value in addition to the compensation of the land by his award and decree dated August 21, 1986. The appellant did not carry the matter in appeal. When others filed the appeal under s. 54 of the Act, the High Court had enhanced the compensation to the fruit bearing tree at Rs. 990/- and Rs. 650/- for non fruit bearing tree by its judgment and decree dated December 12, 1989. Therefore, the appellants filed an application under s.28-A of the Land Acquisition Act on May 23, 1990 for redetermination. The Land Acquisition Officer dismissed the application and thereafter the High Court by its order dated February 8, 1993 confirmed the same in O.J.C. No. 965/92. Thus this appeal by Special leave. D E F

It is contended that when the High Court awarded higher compensation by operation of s.28-A of the Land Acquisition Act, the appellants also are entitled to the same benefit. The point is now squarely covered by two judgments of this Court in *Scheduled Castes Co-operative Land Owning Society Ltd., Bhatinda v. Union of India & Ors.*, reported in AIR 1991 SC 738 and *Babua Ram & Ors. v. State of U.P. & Anr.*, reported in JT 1994 (7) 377. Therefore, the appellants having failed to avail of the remedy of appeal and having already availed the remedy of reference under s.18, they are not entitled to seek redetermination of the compensation on the basis of award of the High Court granting enhanced compensation. Section 28-A G H

- A would apply to the claimants who received the compensation without protest and faced with statutory bar of reference and would not apply to those who had already availed the remedy of reference and got no benefit or lesser benefit thereunder. Equally the bar of *res judicata* clearly would apply to the appellants. The application under s.28-A is, therefore, not maintainable. The Collector and the High Court rightly refused to grant
- B the amount on par with the judgment of the High Court.

The appeal is accordingly dismissed. No costs.

Leave granted.

- C The notification under section 4(1) of the Land Acquisition Act was published on August 11, 1971 acquiring about 700 acres of land in Golabandha Buxi Palli, Vikrampur in Ganjam District of Orissa State. By his award dt. June 22, 1974, the Land Acquisition Officer determined the market value. On reference under section 18, the learned Subordinate
- D Judge confirmed the award of the Collector by his award and decree dt. January 31, 1985. The appellants did not carry the matter in appeal. When others filed the appeal under section 54 of the Land Acquisition Act before the High Court, the High Court enhanced the compensation to the fruit bearing trees at Rs. 990/- and Rs. 650/- for non fruit bearing trees by its judgment dt. April 21, 1992. Thereafter the appellants filed application
- E under section 26-A of the Land Acquisition Act on November 21, 1992 for redetermination. The Land Acquisition Officer dismissed the application and thereof, the High Court by its order dt. April 30, 1993 confirmed the same in O.J.C.No. 24/93. Thus this appeal by special leave.

- F In is contended that when the High Court awarded higher compensation by operation of section 28-A of the Land Acquisition Act, the appellants also are entitled to the same benefit. The point is now squarely covered by two judgments of this Court in *Scheduled Castes Co-Operative Land Owning Society Ltd. Bhatinda v. Union of India & Ors.*, reported in AIR 1991 SC 738 and *Babua Ram & Ors. v. State of U.P. & Anr.* reported in JT 1994(7) SC 377. Therefore, the application under sec. 28-A is not
- G maintainable. The Collector and the High Court rightly refused to grant the amount on par with the Judgment of this Court .

The appeal is accordingly dismissed. No costs.

H G.N.

Appeal dismissed.