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V. RAMAKRISHNA RAO

v.

THE SINGARENI COLLIERIES COMPANY LTD. AND ANR.
(Civil Appeal No. 7655 of 2004)

OCTOBER 05, 2010

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[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Land Acquisition Act, 1894:

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s. 28A – Land Acquisition – Determination of market value of the acquired land by Reference Court – Appeal against the order pending before High Court – One of the land-owners, who had not invoked s.18, filing application u/s.28A(1) seeking compensation at par with other land-owners

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– Application allowed – Another application of the land-owners u/s. 287A(3) seeking reference to the court for fixing fair market value – Permission for reference accorded – Maintainability of the reference made u/s. 28A(3) – Held: The reference made u/s. 28A(3) is maintainable – However, the

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market value of the applicant cannot be higher than the market value determined in respect of the land of other land-owners – Therefore, direction to decide the application u/s. 28A(3) after the decision by High Court in other pending cases.

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s. 28A – Aim and object of – Held: Is to ensure that the goal of equality enshrined in the Preamble and Articles 38, 39 and 46 of the Constitution is translated into reality – Constitution of India, 1950 – Preamble and Articles 38, 39 and 46.

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Land of the appellant, along with other land-owners was acquired under Land Acquisition Act, 1894. On reference u/s. 18 in respect of the acquired lands, the Reference Court fixed the market value of the lands. The

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same being challenged in appeal suit, the High Court remanded the matter to Reference Court to re-determine the market value. Reference court re-determined the market value at ? 30,000/- of Category I land and ? 15,000 of category II Land. Appeal suits were filed again challenging the re-determination, and the same are pending before High Court.

The appellant, who had not invoked Section 18, filed application u/s. 28A(1) for payment of enhanced compensation at par with other land-owners, which was allowed. Thereafter, the appellant filed application u/s. 28A(3) for making reference to the court for fixing fair market value of the acquired land. The reference was made.

Respondent No. 1 challenged the reference by filing a writ petition, which was dismissed by Single Judge of High Court. The writ appeal against the order was allowed by Division Bench of High Court, holding that a person who gets benefit of higher compensation u/s. 28A(1) cannot file an application u/s. 28A(3). Therefore, the instant appeal was filed.

Allowing the appeal, the Court

HELD: 1. s. 28A of the Land Acquisition Act, 1894 represents the Legislature's determination to ensure that the goal of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof is translated into reality, at least in the matter of payment of compensation to those who are deprived of their land for the benefit of the State, its instrumentalities/agencies and even private persons. Section 28A also represents statutory embodiment of the doctrine of equality in matters relating to the acquisition of land. The Act which was enacted in 1894 and was amended after 90 years has the potential of depriving a large segment of the society

- A i.e. the 'agriculturist' of their only source of livelihood. The scheme of Section 28A provides some solace to this segment of the society by ensuring that such of the land-owners, whose land was acquired under the same notification but who could not, on account of poverty,
 B ignorance and other disabilities join others in seeking reference u/s. 18, get an opportunity to claim compensation at par with others. This section is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification.
 C Therefore, Section 28A has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land-owner who may have, due to variety of reasons, not been able to move the Collector for making reference u/s. 18 of the Act to get higher
 D compensation, if market value is revised by the Reference Court at the instance of other land-owners, whose land is acquired under the same notification. [Para 9] [1152-D-H; 1153-A-C]

- Union of India v. Pradeep Kumari* (1995) 2 SCC 736;
 E *Union of India v. Munshi Ram (Dead) by Lrs.* (2006) 4 SCC 538; *Kendriya Karamchari Sehkari Grah Nirman Samiti Limited, Noida v. State of Uttar Pradesh* (2009) 1 SCC 754 – relied on.

- F 2. If sub-section (3) of Section 28A is interpreted keeping in view the object sought to be achieved by enacting the provision for removing inequality in the matter of payment of compensation, it must be held that a person who is not satisfied with an award made u/
 G s. 28A(2) can make an application to the Collector u/s. 28A(3) for making a reference to the Court as defined in Section 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made u/s. 28A(2) r/w s. 28A(1) the applicant becomes
 H entitled to receive compensation at par with other land-

owners. There is nothing in the plain language of s. 28A(3) from which it can be inferred that a person who has not accepted the award made u/s. 28A(2) is precluded from making an application to the Collector with the request to refer the matter to the court. The court to which reference is made u/s. 28A(3) will have to bear in mind that a person who has not sought reference u/s. 18 cannot get compensation higher than the one payable to those who had sought reference under that Section. [Para 11] [1154-F-H; 1155-A-B]

3. In the instant case, on the date of making an award by the Land Acquisition Officer u/s. 28A, appeal suit filed by other land-owners against the order of the Reference Court was pending before the High Court. The same was finally disposed of on 10.3.2000 and the matter was remanded to the Reference Court for fresh determination of market value of the acquired land. After reconsidering the matter, the Reference Court passed order dated 17.7.2000 and fixed market value of the acquired land, which was substantially higher than the one determined by earlier order dated 30.10.1989. Therefore, the appellant cannot be denied right to seek determination of fair market value which has to be at least at par with market value fixed by the Reference Court vide order dated 17.7.2000. The mere fact that the application filed by the appellant u/s. 28A(3) remained pending for more than 9 years and it was only on 10.5.2000 that the Collector accorded permission for making reference to the Court, cannot be made a ground to deprive the appellant of his legitimate right to seek further enhancement in the amount of compensation. If the High Court enhances the compensation payable to the other land owners, the appellant will also become entitled to higher compensation. If the High Court dismisses both the appeals, then too the appellant will be entitled to compensation at the rate of ₹30,000/- per acre for the land

- A falling in category I and ₹15,000/- per acre for the land falling in category II. If, on the other hand, the amount of compensation payable in terms of order dated 17.7.2000 passed by the Reference Court is reduced by the High Court then the amount payable to the appellant will have to be adjusted accordingly. [Para 12] [1155-B-H]

- C 4. The application filed by the appellant u/s. 28A(3) is maintainable. However, the Court before which the case is pending shall pass appropriate order only after and in terms of judgment in the pending cases filed by other land-owners. [Para 13] [1156-B]

Case Law Reference:

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| | (1995) 2 SCC 736 | Relied on | Para 9 |
| D | (2006) 4 SCC 538 | Relied on | Para 10 |
| | (2009) 1 SCC 754 | Relied on | Para 10 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7655 of 2004.

- E From the Judgment & Order dated 19.07.2001 of the Division Bench of High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 997 of 2001.

- F P.S. Narsimha, Sridhar Potaraju, D. Julius and G. Gauchai for the Appellant.

Altaf Ahmad, P. Parmeswaran, B. Sunitha Rao, C.K. Sucharita and Nirada Das for the Respondents.

- G The Judgment of the Court was delivered by

- H **G.S. SINGHVI, J.** 1. The only question which arises for consideration in this appeal filed against the judgment of the Division Bench of Andhra Pradesh High Court is whether the application filed by the appellant under Section 28A(3) of the

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Land Acquisition Act, 1894 (for short, 'the Act') for making a reference to the Court was maintainable and the High Court committed an error by quashing the proceedings of O.P. No.31 of 2000 pending in the Court of Senior Civil Judge, Peddapalli (hereinafter referred to as 'the Reference Court').

2. The land of the appellant (20 acres 11 guntas) was acquired by the State Government in 1985 as a part of acquisition of large tract of land for mining operations to be undertaken by respondent No.1 – Singareni Collieries Company Pvt. Ltd. By an award dated 3.8.1987, the Land Acquisition Officer fixed market value of the acquired land at Rs.7,000/- per acre for dry land under cultivation (category I) and Rs.6,000/- per acre for dry land which was kept fallow (category II).

3. On a reference made to it under Section 18 of the Act, the Reference Court, after considering the evidence produced by the parties fixed market value of category I land at Rs.10,000/- per acre and of category II land at Rs.9,500/- per acre. This did not satisfy the land owners, who filed Appeal Suit No.978 of 1990 in the High Court, which was allowed and the matter was remanded to the Reference Court for re-determination of the amount of compensation payable to the land owners. The Reference Court reconsidered the matter and passed order dated 17.7.2000, whereby it fixed market value of the two categories of land at Rs.30,000/- and Rs.15,000/- per acre respectively. The appeals filed by the parties against the fresh determination of market value by the Reference Court are pending before the High Court.

4. The appellant who had not invoked Section 18 of the Act filed an application under Section 28A(1) for payment of enhanced compensation at par with other land owners, at whose instance reference was made by the Collector. By an order dated 31.12.1990, the Land Acquisition Officer held that the appellant is entitled to receive compensation at par with

A other land owners. On the same day, the appellant filed an application under Section 28A(3) of the Act for making a reference to the Court for fixing the fair market value of the acquired land by asserting that he was accepting the amount of compensation under protest. The Land Acquisition Officer referred the matter to Collector, Karimnagar, who accorded permission for making a reference to the Court. Thereupon, the Land Acquisition Officer sent communication dated 2.6.2000 to the Reference Court for fixing the fair market value of the appellant's land.

C 5. Respondent No.1 challenged the aforesaid communication in Writ Petition No.23600/2000, which was dismissed by the learned Single Judge with an observation that the Civil Court is already seized with the matter in O.P. No. 31/2000 and the petitioner can agitate all the points including the one relating to maintainability of reference made under Section 28A(3). The Division Bench allowed the appeal preferred by respondent No.1, set aside the order of the learned Single Judge and held that a person who gets benefit of higher compensation under Section 28A(1) cannot file an application under Section 28A(3).

F 6. Shri P.S. Narsimha, learned senior counsel appearing for the appellant argued that the impugned judgment is liable to be set aside because the view expressed by the Division Bench on the maintainability of the application filed by the appellant under Section 28A(3) is *ex facie* erroneous and contrary to the ratio of the judgments of this Court in *Union of India v. Pradeep Kumari* (1995) 2 SCC 736, *Union of India v. Hansoli Devi* (2002) 7 SCC 273, *Union of India v. Munshi Ram (Dead) by Lrs.* (2006) 4 SCC 538 and *Kendriya Karamchari Sehkari Grah Nirman Samiti Limited, Noida v. State of Uttar Pradesh* (2009) 1 SCC 754.

H 7. Shri Altaf Ahmad, learned senior counsel appearing for the respondents supported the impugned judgment and argued that Section 28A(3) can be invoked only if the amount paid to

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the land owner under Section 28A(1) is less than the amount awarded by the Reference Court under Section 18 of the Act and not otherwise. Learned senior counsel pointed out that determination of market value made by the Reference Court vide order dated 17.7.2000 is under challenge before the High Court and, therefore, the appellant is not entitled to get higher compensation. Learned senior counsel emphasized that once the amount of compensation is re-determined under Section 28A(1), the defaulting land owner cannot apply for fixation of the fair market value of the land by filing application under Section 28A(3) and the Division Bench of the High Court did not commit any error by quashing the proceedings pending before the civil court.

8. We have considered the respective submissions. Section 28A of the Act reads as under:

"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 him 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

A the award shall be excluded.

B (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.

C (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."

D 9. The above reproduced provision represents the Legislature's determination to ensure that the goal of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof is translated into reality, at least in the matter of payment of compensation to those who are deprived of their land for the benefit of the State, its instrumentalities/agencies and even private persons. Section 28A also represents statutory embodiment of the doctrine of equality in matters relating to the acquisition of land. The Act which was enacted in 1894 and was amended after 90 years has the potential of depriving a large segment of the society i.e. the 'agriculturist' of their only source of livelihood. The scheme of Section 28A provide some solace to this segment of the society by ensuring that such of the land owners whose land was acquired under the same notification but who could not, on account of poverty, ignorance and other disabilities join others in seeking reference under Section 18 get an opportunity to claim compensation at par with others. This section is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification. To put it differently, this section gives a chance to the land owner, who may not have applied under

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Section 18 for determination of market value by the Court to seek re-determination of the amount of compensation, if any other similarly situated land owner succeeds in persuading the Reference Court to fix higher market value of the acquired land. Therefore, Section 28A has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land owner who may have, due to variety of reasons not been able to move the Collector for making reference under Section 18 of the Act to get higher compensation if market value is revised by the Reference Court at the instance of other land owners, whose land is acquired under the same notification. Of course, this opportunity can be availed by filing application within the prescribed period. In *Union of India v. Pradeep Kumari* (supra), a three-Judge Bench of this Court held that Section 28A is in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor land owners, who are not able to take advantage of the right of reference to the Civil Court under Section 18 of the Act and such a provision should be interpreted in a manner which advances the policy of legislation.

10. In *Union of India v. Munshi Ram* (supra), a two-Judge Bench considered the meaning of the word 're-determination' appearing in Section 28A and held that compensation payable to the applicant under Section 28A should be at par with what is finally payable to those who sought reference under Section 18 of the Act and if the compensation payable to the latter category is reduced by the superior court, the one who gets higher compensation under Section 28A may be directed to refund the excess amount. What was emphasized by the two-Judge Bench was that re-determination of the amount of compensation under Section 28A must be commensurate with the compensation payable to those who had sought reference under Section 18 and if the higher court reduces the amount of compensation payable in terms of the order of the Reference Court, then those making application under Section 28A must be asked to refund the excess amount. A somewhat similar

A view was expressed in *Kendriya Karamchari Sehkari Grah Nirman Samiti Limited v. State of Uttar Pradesh* (supra) in the following words:

B “It is true that once the Reference Court decides the matter and enhances the compensation, a person who is otherwise eligible to similar relief and who has not sought reference, may apply under Section 28-A of the Act. If the conditions for application of the said provision have been complied with, such person would be entitled to the same relief which has been granted to other persons seeking reference and getting enhanced compensation. But, it is equally true that if the Reference Court decides the matter and the State or acquiring body challenges such enhanced amount of compensation and the matter is pending either before the High Court or before this Court (the Supreme Court), the Collector would be within his power or authority to keep the application under Section 28-A of the Act pending till the matter is finally decided by the High Court or the Supreme Court as the case may be. The reason being that the decision rendered by the Reference Court enhancing compensation has not attained “finality” and is sub judice before a superior court.”

F 11. If sub-section (3) of Section 28A is interpreted keeping in view the object sought to be achieved by enacting the provision for removing inequality in the matter of payment of compensation, it must be held that a person who is not satisfied with an award made under Section 28A(2) can make an application to the Collector under Section 28A(3) for making a reference to the Court as defined in Section 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made under Section 28A(2) read with Section 28A(1) the applicant becomes entitled to receive compensation at par with other land owners. There is nothing in the plain language of Section 28A(3) from which it can be inferred that a person who has not accepted the award made under Section

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28A(2) is precluded from making an application to the Collector with the request to refer the matter to the Court. Of course, the Court to which reference is made under Section 28A(3) will have to bear in mind that a person who has not sought reference under Section 18 cannot get compensation higher than the one payable to those who had sought reference under that section.

12. Reverting to the facts of this case, we find that on the date of making an award by the Land Acquisition Officer under Section 28A, Appeal Suit No.978/1990 filed by other land owners against the order of the Reference Court was pending before the High Court. The same was finally disposed of on 10.3.2000 and the matter was remanded to the Reference Court for fresh determination of market value of the acquired land. After reconsidering the matter, the Reference Court passed order dated 17.7.2000 and fixed market value of the acquired land, which was substantially higher than the one determined by earlier order dated 30.10.1989. Therefore, the appellant cannot be denied right to seek determination of fair market value which has to be at least at par with market value fixed by the Reference Court vide order dated 17.7.2000. The mere fact that the application filed by the appellant under Section 28A(3) remained pending for more than 9 years and it was only on 10.5.2000 that the Collector accorded permission for making reference to the Court, cannot be made a ground to deprive the appellant of his legitimate right to seek further enhancement in the amount of compensation. If the High Court enhances the compensation payable to the other land owners, the appellant will also become entitled to higher compensation. If the High Court dismisses both the appeals, then too the appellant will be entitled to compensation at the rate of Rs.30,000/- per acre for the land falling in category I and Rs.15,000/- per acre for the land falling in category II. If, on the other hand, the amount of compensation payable in terms of order dated 17.7.2000 passed by the Reference Court is reduced by the High Court then the amount payable to the appellant will have to adjusted accordingly.

- A 13. In the result, the appeal is allowed. The impugned judgment of the Division Bench is set aside and it is held that the application filed by the appellant under Section 28A(3) is maintainable. However, the Court before which O.P. No.31 of 2000 is pending shall pass appropriate order only after and in terms of judgment of Appeal Suit Nos.688 and 1643 of 2001 by the High Court. The parties are left to bear their own costs.
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K.K.T.

Appeal allowed.