

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No. 21478 OF 2004

UNION OF INDIA &amp; ORS.

Petitioner(s)

VERSUS

KRISHAN DASS &amp; ORS.

Respondent(s)

O R D E R

Heard Mr. H.P. Raval, learned Additional Solicitor General for the petitioners, and Mr. E.C. Agrawala, learned counsel for the respective respondents.

2. On October 4, 2004, this Court issued limited notice to the respondents to show cause why the directions contained in the operative part of the judgment of the learned Single Judge dated 26.11.2001 (page 61 of the paper book) be not set aside.

3. Mr. Raval, learned Additional Solicitor General, submitted that this Court in Union of India and Another Vs. Babu Singh & Others, (1996) 1 SCC 477, and Bhagti (Smt.) (Deceased) through LRS. Jagdish Ram Sharma Vs. State of Haryana, (1997) 4 SCC 473, had stated that Section 28A of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') did not have any application to the acquisition of land under the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (for short, 'the 1968 Act').

2

He submitted that the High Court was alive to the above legal position and held that there was no specific provision in the 1968 Act as contained in Section 28A of the 1894 Act, yet gave a direction to the State to refer the application/s seeking enhancement of compensation to the arbitrator.

4. The direction limited to which notice has been issued by this Court at page 61 of the paper book reads as

follows:-

"Question as to whether the petitioners have submitted an application for appointment of an arbitrator and whether they accepted the compensation under protest is a disputed question of fact. This cannot be gone into in this petition. However, a limited direction is given to the respondent-State to refer the application if preferred by the petitioners seeking enhancement of the compensation to the arbitrator and these applications if preferred would be adjudicated upon in accordance with law."

5. The above direction was given by the High Court after it noted that there was no specific provision of the nature as contained in Section 28A of the 1894 Act in the 1968 Act and that it was not possible to enhance the compensation in this case in the exercise of writ jurisdiction.

A careful

consideration of the above direction issued by the High Court leaves no manner of doubt that the High Court has not, while giving the said direction, invoked Section 28A of the 1894 Act.

6. Section 8 of the 1968 Act reads as follows :-

3

"8. Principles and methods of determining compensation.-- (1) Where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say :--

(a) where the compensation can be fixed by agreement, it shall be given in accordance with such agreement;

(b) where no such agreement can be reached, the Government shall appoint as arbitrator a person, who is a District Judge or Additional District Judge;

(c) the Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(d) at the commencement of the proceedings before the arbitrator, the Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and

specify the person or persons to whom such compensation shall be paid, and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable; (f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons; (g) nothing in the Jammu and Kashmir Arbitration Act, 2002 shall, apply to arbitrations under this section.

2. The compensation for the requisitioning of any property shall consist of:--

(a) recurring payment, in respect of the period of requisition, of a sum equal to the rent which

4

would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum, or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:--

(i) pecuniary loss due to requisitioning;  
(ii) expenses on account of vacating the requisitioned premises;

5

(iii) expenses on account of reoccupying the premises upon release from requisition; and (iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

3. The compensation for the acquisition of any property under Section 7, in the absence of an agreement, shall be--

(a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition whichever is less.

4. Where there are several persons interested in the compensation, it shall be lawful for the Government, either on its own motion, or on an application from any person interested to appoint the same or any other arbitrator to make an award or supplementary award in respect of the dispute."

7. A perusal of the above provision clearly shows that principles and methods of determining compensation of the property requisitioned or acquired under the 1968 Act have been provided therein.

8. The direction of the High Court is referable to the

provisions contained in Section 8 of the 1968 Act and it was for this reason that the High Court in the above direction firstly observed that question as to whether the petitioners had submitted an application for appointment of an arbitrator and whether they accepted the decision was a

6

disputed question of fact as the above facts were not admitted before the High Court and then the High Court gave a limited direction to the respondent-State to refer the application if preferred by the petitioners (emphasis supplied) seeking enhancement of the compensation to the arbitrator and these applications if preferred (emphasis supplied) would be adjudicated upon in accordance with law.

The above direction of the High Court, by no stretch of imagination, can be said to be inconsistent with the provisions of Section 8 of the 1968 Act. The above direction does not deserve to be deleted.

9. Special leave petition has no merit and is dismissed with cost which we quantify at Rs. 20,000/- (Rupees Twenty Thousand Only).

.....J.  
(R.M. LODHA)

NEW DELHI;  
MARCH 16, 2012

.....J.  
(H.L. GOKHALE)

7

ITEM NO.42

COURT NO.8

SECTION XVIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).21478/2004

(From the judgement and order dated 23/07/2003 in LPA No.60/2003 of The HIGH COURT OF J & K AT JAMMU)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

KRISHAN DASS & ORS.

Respondent(s)

(With prayer for interim relief and office report )

Date: 16/03/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. H.P. Raval, ASG  
Ms. Sunita Sharma, Adv.  
Mr. B.V. Balram Das, Adv.  
Dr. Chaudhary Shamsuddin Khan, Adv.  
Mrs Anil Katiyar, Adv.

For Respondent(s) Mr. E.C. Agrawala, Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Rishi Agrawala, Adv.  
Mr. Rajesh Kumar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Special leave petition is dismissed with cost which  
is quantified at Rs. 20,000/- (Rupees Twenty Thousand Only)  
in terms of the signed order.

(Rajesh Dham)  
Court Master

(Renu Diwan)  
Court Master

(signed order is placed on the file)