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UNION OF INDIA

v.

SMT. PRATAP KAUR (DEAD) THROUGH LRS. AND ANR. ETC.

JANUARY 27, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Land Acquisition Act, 1894—Sections 26 and 13-A as amended by Act 68 of 1984—Determination of compensation under clause firstly of sub-s. (1) of s.23—High Court in exercise of appellate power identified belting—Civil Court ceased to have power to alter award except to correct clerical or arith-matical errors—Identification of land—Not a clerical or arith-matical mistake under section 13-A or section 152 CPC.*

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A notification under section 4(1) of the Land Acquisition Act, 1894 was published acquiring a large extent of land. In the determination of compensation, the Division Bench of the High Court, while exercising its appellate power, identified belting upto a depth of 500 metres and directed payment of compensation for that land at Rs. 90,000 per acre. Subsequently, the respondents filed an application before the Additional District Judge for demarcation and award of compensation to the 500 metres as ordered by the High Court. Accepting the applications, the District judge awarded compensation @ Rs. 90,000 per acre to the area coming within the belt of 500 metres as ordered by the High Court. The appellants challenged the order of the District judge by filing revision. The High Court dismissed the revision in limine. The review petitions also stood dismissed. Hence these appeals.

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The question raised in these appeals was whether the District Judge had power and jurisdiction to award compensation @ Rs. 90,000 per acre to the area coming within the belt of 500 metres as ordered by the Division Bench of the High Court.

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Allowing the appeal, this Court

HELD : 1.1. A Conjoint reading of ss. 26 and 13-A of the Land Acquisition Act clearly indicates that while making the award and determining the compensation under clause firstly of sub-s. (1) of s.23 the Collector had jurisdiction to determine the compensation including belting

for the purpose of determining market value and correct clerical and arithmetical mistakes committed in making the award. The High Court had exercised appellate power under s. 54 of the Act. Appellate power is co- extensive with that of the Civil Court. Therefore, the High Court, while exercising the appellate power, could also decide belting. [674-B-C]

1.2. The Division Bench in the LPA while determining the compensation, under clause firstly of sub-s. (1) s. 23, had identified belting upto a depth of 500 metres and directed payment of compensation for that land at 90,000 per acre. When the High Court exercised the appellate power, without any order of remand or calling for a finding, the District Judge was devoid of power or jurisdiction to correct any error either under s.13-A of the Act or under s.152 CPC, that too beyond the limitation prescribed under s.13-A itself. The identification of the land is not a clerical or arithmetical mistake within the meaning of s.13-A or s.152 CPC. It is an independent exercise of the power for the purpose of determination of the compensation under clause firstly of sub-s. (1) s. 23 of the Act. With making the award under s.26 of the Act, the Civil Court ceased to have power to alter the award except to correct clerical or arithmetical errors. The action of the Additional District Judge was an independent one without reference or an order of remand or the High Court calling a finding from it. The Civil Court, therefore, was devoid of jurisdiction and power to pass the impugned award or order. [674-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3179-81, 3182- 87 of 1995.

From the Judgment and Order dated 20.11.92 & 21.5.93 of the Punjab & Haryana in C.R. No. 23019/92, R.A. No. 20CII/93 and C.M. No. 2262/93, R.A. No. 14CII/93, C.R. No. 3170/92, R.A. No. 16CII/93, 15CII/93, 17CII, 18CII, 19CII/93, C.R. Nos. 3171-75 of 1992.

N.N. Goswamy, Mrs. Anil Katiyar, Naveen Prakash, for Ms. A. Subhashini for the Appellants.

Arun Jaitley and Ms. Madhu Moolchandani for the Respondents.

The following Order of the Court was delivered :

Leave granted.

A The appeals by special leave arise from the judgment and Order dated 14.5.95 and 20.11.92 of the High Court of Punjab & Haryana made in Review Application No. 20 CII of 1993 and C.M. 2262 of 1993 and C.R. No. 3019/92 respectively.

B The notification under s. 4(1) of the Land Acquisition Act, 1894, for short the Act, was published initially on March 31, 1981 acquiring a large extent of land in Gobindpura and other places for extension of military cantonment at Bhatinda. In the determination of compensation, the Division Bench of the High Court in L.P.A. No. 1349/89 and batch ultimately held that :

C "Consequently we venture to make the modification in the order of the learned Single Judge, to the effect that the land falling within a depth of 500 meters on either side of Bhatinda-Bibiwala Road shall also assessed at the rate of Rs. 90,000 per acre as its market value....."

D That order appears to have become final. Subsequently the respondents filed an application before the Additional Dist. Judge in Civil Misc. No. 75 of 10.8.1991 for demarcation and award of compensation to the 500 meters as ordered by the High Court. By order dated 16.12.1991 the Addl. Dist. Judge held that :

E "From the evidence discussed above, it is crystal clear that the land measuring 70 kanals 13 Marlas belonging to Naib Singh etc., land measuring 141 kanals 1 marla belonging to Gurdial Singh etc. land measuring 30 kanals 3 marlas belonging to Partap Kaur etc. land measuring 40 kanals 10 marlas belonging to Bhagwan Kaur etc. land measuring 48 kanals belonging to Gurdial Kaur etc., and land measuring 3 kanals i.e. 1/12 share of 35 kanals 9 marlas belonging to Sadhy Singh are with 500 meters from Bathinda Bibiwala road. I may add here that the evidence of the applicants remained un-changed despite opportunities given to the UOI. On the other hand, the officials of the concerned department have appeared in the witness box as AW 1, AW2 and AW5 to support the case of the claimants. Even otherwise from the interpretation of judgment Ex. A3 it clearly goes to show that the land which falls within the depth of 500 meters from either side of Bathinda-Bibiwala Road, should be assessed at rate of Rs.90,000 per acre. The land of the

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applicants adjoins the land which as per evidence on record, was assessed at the rate of Rs. 90,000 per acre. I therefore accepting the applications direct the Naib Tehsildar (MLA) Bhatinda to prepare the amended memo of costs in respect of the above said land of the applicants at the rate of Rs. 90,000 per acre. The parties are left to bear their own costs".

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Calling in question the above order the appellants filed revision in the High Court. The High Court dismissed the revision in limine. Thereafter the review petitions also stood dismissed. Thus these appeal by special leave.

The question that arises in these appeals is whether the District Judge has power and jurisdiction to award compensation @ Rs. 90,000 per acre to the area coming within the belt of 500 meters as ordered by the Division Bench of the High Court.

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Section 26 of the Act gives power to the Civil Court to give award thus :

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"(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-s. (1) of s.23, and....."

Section 13-A of the Act as amended under Act 68 of 1984 provides power for correcting clerical errors thus :

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"13-A. Correction of clerical errors, etc..... (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under s.18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority.

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Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter."

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(Sub-ss.(2) and (3) are not material for the purpose of this case, hence omitted).

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A Perforce, it has no application to the Civil Court. Even if the principle is extended to the Civil Court, the Court committed manifest error of jurisdiction in allowing the application, as it did not correct any clerical error.

B A conjoint reading of ss.26 and 13-A of the Act clearly indicates that while making the award and determining the compensation under clause firstly of sub-s. (1) of s.23 the Collector had jurisdiction to determine the compensation including belting for the purpose of determining market value and correct clerical and arithmetical mistakes committed in making the award. The High Court had exercised appellate power under s.54 of the Act. Appellate power is co-extensive with that of the Civil Court. Therefore, the High Court, while exercising the appellate power, could also decide belting. The Division Bench in the LPA while determining the compensation under clause firstly of sub-s.(1) of s.23, had identified belting upto a depth of 500 meters and directed payment of compensation for that land at 90,000 per acre. When the High Court exercised the appellate power, without any order of remand or calling for a finding, the District Judge was devoid of power or jurisdiction to correct any error either under s.13-A of the Act or under s.152 CPC, that too beyond the limitation prescribed under s.13-A itself. The identification of the land is not a clerical or arithmetical mistake within the meaning of s.13-A or s.152 CPC. It is an independent exercise of the power for the purpose of determination of the compensation under clause firstly of sub-s. (1) of s.23 of the Act. With making the award under s.26 of the Act the Civil Court ceased to have power to alter the award except to correct clerical or arithmetical errors. The action of the Additional District Judge was an independent one without reference or an order of remand or the High Court calling a finding from it. The Civil Court, therefore, was devoid of jurisdiction and power to pass the impugned award or order, as stated by the Additional District Judge; and that too after it had made the award.

G Since the Addl. Dist. Judge was not called upon to determine the compensation after identification of the land within the belting of 500 meters as determined by the Division Bench, the order of the District is clearly without jurisdiction and power and is a nullity. Therefore, the High Court was not right in dismissing the application without adverting to these material questions touching the jurisdiction and power of the Addl. Dist. Judge. Though Sri Arun Jetley, the learned Senior counsel repeatedly

requested this Court not to interfere under Art. 136, it is necessary to correct legal error to set the procedure in order. A

The appeals are accordingly allowed. It is open to the respondents, if so advised, to approach the High Court for appropriate relief and it is for the High Court to consider and dispose of it according to law. No costs. B

*In C.A. Nos. 3182-87 of 1995 (@ SLP (C) Nos. 18320- 25/94 :*

Leave granted. Substitution allowed.

In view of the above judgment, these appeals also are allowed. No costs. C

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Appeals allowed.