

PETITIONER:
D. KRISHNA VENI & ANR.

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT 19/01/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC (2) 734 JT 1995 (2) 512
1995 SCALE (1) 683

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Leave granted.
2. Notification under s.4(1) of the Land Acquisition Act 1 of 1894 for short 'the Act' was published on August II, 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 to the land by his award and decree dated August 21, 1986. The appellants 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. Thereafter, 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.
3. 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 Own in Society Ltd., Bhatinda v. Union of India & Ors. reported in AIR 1991 SC 738 and Babua Ram & Ors. v. State of U.P. & 513 Anr. reported in JT 1994 (7) SC 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 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.28A is, therefore, not maintainable. The Collector and the High Court rightly refused to grant the amount on par with the judgment of the High Court.

4. The appeal is accordingly dismissed. No costs.

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