

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 4327 of 2013 (O&M)
Date of decision: July 10, 2015

Joginder

...Petitioner

Versus

Union of India and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Rajesh Goyal, Advocate, for
Mr. Pritam Saini, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

1. The revision is against the order dismissing an application under Section 28-A of the Land Acquisition Act (for short '**the Act**'). The dismissal by the Land Acquisition Collector was occasioned on a reasoning that the provision could be attracted only in cases where a person has failed to make a reference under Section 18 of the Act and when any other landowner had sought for a reference and came by benefit of enhancement, the said benefit will be extended also to a person who has not sought for reference. The learned Land Acquisition Collector observed that in this case the applicant/petitioner has actually sought for a reference to the civil court and the case was disposed of along with the other landowners claim. Against the awards of the civil court, it would appear, that some landowners had preferred further appeals and obtained benefit of enhancement of

compensation. The petitioner who did not pursue remedy in higher forum has applied under Section 28-A of Act to give a compensation at par with the compensation determined later in the higher forum.

2. The learned counsel appearing on behalf of the petitioner, while challenging the said order, is prepared to admit that a petition under Section 28-A of the Act, when the landowner has already sought for reference under Section 18 of the Act, will not be competent. However, he tried to make an exception for himself by pointing out to the general principle that if higher compensation is determined for any other landowner in respect of the property acquired under the same acquisition, the landowner who had not preferred an appeal originally should have the same benefit. He cites before me a judgment of this court in Smt. Kanta Versus State of Haryana and another 2012 (3) PLR 181.

3. The decision cited is wholly inapplicable and the principle enunciated in the judgment has no bearing to this case. The above said decision in Kanta's case only states that a compensation that can be claimed by a person under Section 28-A of the Act shall be the compensation determined by the reference court which shall be construed as final adjudication rendered in the higher forum as well. Consequently, if the petitioner himself has not made a reference under Section 18 of the Act, but the compensation was re-determined for other landowners, who have sought for reference, enhancement that could be possible for a person who has not approached the civil court will be the compensation which is ultimately determined, if there are further enhancement in the higher forums. The reference to the amount determined by a court under reference under Section 28-A shall always be held to be any compensation determined by

the reference court or in any higher forum. It cannot apply in case where after the initial determination of the award by the Collector, there has been a reference to civil court by the landowner as a petitioner and if he obtains benefit or failed to obtain, he is bound to take proceedings in further higher forum, if he is aggrieved about inadequacy of the compensation. If he chooses not to take action, he cannot point out to other landowners who had challenged the award determined by the first reference court and seek for re-determination as was done for other landowners in higher forum. The principle involved here is an adjudication by a civil court where a person is a party can be modified only by higher forums and if not done, the order would become final and would constitute res-judicata under Section 11 of the Act. The amount determined in civil court for the petitioner cannot be modified in an application under Section 28-A of the Act for it would amount to lending premium to decision by a Collector and invest him an authority to override a civil court decree that shall be impermissible

4. The revision petition is dismissed.

July 10, 2015
prem

(K.KANNAN)
JUDGE