

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 4225 of 2014 (O&M)
Date of decision: 25.5.2015

Dalbir Singh and another

.. Petitioners

v.

State of Punjab and others

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ajaivir Singh, Advocate for the petitioners.
Mr. Kamal Sehgal, Addl. Advocate General, Punjab.
Mr. Suvir Kumar, Advocate for respondent No. 3.

...

Rajesh Bindal J.

1. Challenge in the present petition is to the award dated 11.10.2013, passed by the Land Acquisition Collector, Industries Department, Punjab (for short, 'the Collector'), vide which the application filed by the petitioners under Section 28A of the Land Acquisition Act, 1894 (for short, 'the Act'), was dismissed.

2. Briefly, the facts of the case are that vide notification dated 15.6.1988, published on 29.6.1988, issued under Section 4 of the Act, the State of Punjab sought to acquire 137.31 acres (1,098 kanals 10 marlas) of land, situated in village Khakh, Tehsil Tarn Taran for the purpose of setting up of Nucleus Industrial Complex at Goindwal. The same was followed by notification dated 3.1.1989, published on 13.1.1989, issued under Section 6 of the Act. Vide award dated 21.11.1990, the Collector assessed the compensation @ ₹ 15,000/- per acre for gair mumkin land and ₹ 40,000/- per acre for chahi/nehri land. Not satisfied with the award, the petitioners filed objections, which were referred to the learned Reference Court, who vide award dated 1.4.2004, determined the compensation of the acquired

land @ ₹ 20,000/- per acre. Thereafter, the petitioners did not file any appeal before this court against the award of the Reference Court in their case. Some of the landowners, being not satisfied, filed appeals before this court, wherein the compensation was enhanced. Thereafter, the petitioners filed application under Section 28A of the Act to the Collector on the basis of the judgment of this Court in RFA No. 1364 of 1994—Dharamsala Pukhta v. The Punjab State Industries Department and others, decided on 4.9.2012. The same having been dismissed by the Collector, the order has been impugned in the present petition.

3. Learned counsel for the petitioners did not dispute the fact that the petitioners had initially filed objections against the award of the Collector, which were referred to the court below, who vide award dated 1.4.2004, enhanced the compensation from ₹ 15,000/- to ₹ 20,000/- per acre and the petitioners did not file any appeal before this court. He submitted that as some of other landowners had approached this court and in Dharamsala Pukhta's case (supra), this court had enhanced the compensation, application under Section 28A of the Act was filed, which was wrongly dismissed by the Collector. No reasons have been assigned. In the absence thereof, the petitioners are unable to avail any remedy available against rejection of their application. In the cases of acquisition of land, parity has to be maintained. As other landowners have been paid higher compensation, the petitioners also deserve to be granted the same relief. In support, reliance was placed upon judgment of Delhi High Court in Delhi Development Authority v. Additional District Magistrate/Land Acquisition Collector and others, 2013 (202) DLT 209, as upheld by Hon'ble the Supreme Court in Special Leave to Appeal (Civil) No. 26980 of 2013—Delhi Development Authority v. Addl. District Magistrate (South) and others, decided on 9.9.2013.

4. On the other hand, learned counsel for the State submitted that the application filed by the petitioners under Section 28A of the Act was not maintainable for two reasons, namely, that the petitioners had already availed of the remedy of filing objections against the award of the Collector and did not impugn the award of the Reference Court any further. The

remedy available under Section 28A of the Act is only for the landowners who do not invoke Section 18 of the Act. Further, application under Section 28A of the Act can be filed only on the basis of the award of the Reference Court and not any other Court. It was further submitted that against the order passed by the Collector dismissing an application filed by the landowners under Section 28A (2) of the Act, the remedy is not revision before this court, rather, application under Section 28A(3) of the Act for reference of dispute to the court. In support, reliance was placed upon judgments of Hon'ble the Supreme Court in Hukam Chand v. State of Haryana, 1996(3) RCR (Civil) 381 and V. Ramakrishna Rao v. The Singareni Collieries Company Ltd. and another, 2011(1) RCR (Civil) 149.

5. Heard learned counsel for the parties and perused the paper book.

6. The undisputed facts on record are that land of the petitioners was acquired vide notification dated 15.6.1988 for the purpose of setting up of Nucleus Industrial Complex at Goindwal. Vide award dated 21.11.1990, the Collector assessed the compensation payable to the petitioners. Aggrieved against the award of the Collector, the petitioners filed objections, which were referred to the Reference Court, who vide award dated 1.4.2004, determined the compensation payable to the petitioners. The petitioners being satisfied did not prefer any further appeal. The landowners, who were not satisfied with the award of the Reference Court, filed appeals before this Court. In Dharamsala Pukhta's case (supra), vide judgment dated 4.9.2012, this Court assessed the compensation for the acquired land @ ₹ 265/- per square yard. Though it was not pointed out by any of the counsel that in Review Petition No. 18-CI of 2014 in Dharamsala Pukhta's case (supra), the amount of compensation was reduced from ₹ 265/- per square yard to ₹ 110/- per square yard, vide order dated 27.2.2015. Though it may not be a relevant fact for this case as such but still required to be noticed to put the record straight while mentioning complete information regarding valuation of the acquired land.

7. The issues, which arise for consideration in the present petition are:

- (i) Whether the landowners, who had filed objections under Section 18 of the Act and did not challenge the award of the Reference Court any further, can file application under Section 28A of the Act in case of enhancement of compensation in the case of other landowners, who approached higher Court(s) ?
- (ii) Whether application under Section 28A of the Act can be filed before the Collector relying upon a judgment of the High Court or Hon'ble the Supreme Court ?
- (iii) Whether the award of the Collector passed under Section 28A of the Act can be challenged by filing Civil Revision in this Court ?

8. The relevant provisions of the Act are extracted below:

“18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

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 them 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 the award shall be excluded.

(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.

(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.”

Issue No. (i)

9. The scope of Section 28A of the Act was considered by Hon'ble the Supreme Court in V. Ramakrishna Rao's case (supra), wherein it was held that the amendment carried out in the Act after 90 years of its

enactment, while adding Section 28A of the Act, was with an object to provide some solace to the landowners, whose land had been acquired, but on account of various reasons including poverty, ignorance and other disabilities could not file objections under Section 18 of the Act for disputing the award of the Collector and claiming higher compensation. They have been given opportunity to seek compensation at par with other landowners, whose land was acquired vide same notification. The object is to remove inequality. However, the benefit of Section 28A of the Act is available only to a landowner who had not been able to file objections to the Collector under Section 18 of the Act. Reliance was placed upon an earlier judgment of Hon'ble the Supreme Court in Union of India v. Pradeep Kumari, (1995) 2 SCC 736. Relevant paragraph 9 of the judgment in V. Ramakrishna Rao's case (supra) is extracted below:

“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 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 he 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 landowners, 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.”

[Emphasis supplied]

10. In view of the aforesaid authoritative enunciation of law by Hon'ble the Supreme Court, there cannot be any other opinion except that the landowners, who had filed objections under Section 18 of the Act, cannot invoke the provisions of Section 28A of the Act for seeking compensation at par with the landowners, who may have filed further appeal (s) against the award of the Reference Court. The provision is meant only for the landowners, who had not invoked the provisions of Section 18 of the Act by filing objections against the award of the Collector. The question is answered accordingly.

11. As in the case in hand, it is undisputed that the petitioners had filed objections under Section 18 of the Act, which were referred to the learned Reference Court and were decided vide award dated 1.4.2004, application filed by them under Section 28A of the Act was not maintainable.

Issue No. (ii)

12. The issue is no more *res integra*. It is well-settled that an application under Section 28-A of the Act only can be filed relying upon the award of the Reference Court. The expression “Court” used in Section 28-A of the Act has to be given meaning with reference to the definition contained in Section 3(d) of the Act, which means Principal Civil Court of original jurisdiction. Reference for the purpose can be made to the order passed by Hon'ble the Supreme Court in State of Punjab v. Raghbir Singh and others, 1995 Supp (2) SCC 679. The same is extracted below:

“1. The notification under Section 4(1) was published on 4.2.1981 for public purpose. The Collector made an award under Section 11 on 22.12.1983. The respondents did not seek for any reference under Section 18. The High Court in the appeal filed by one of the claimants in the same notification by the judgment and decree dated 10.9.1990 enhanced the compensation at Rs. 1,75,000/- per acre. Thereon the respondents filed the application on 2.1.1991 under Section 28-A seeking reference to the civil court on the basis of the judgment of the High Court. The Collector dismissed the application on 22.1.1992. Thereon the respondents filed revision in the High Court. The High Court in the impugned order dated 14.8.1992 allowed and directed redetermination of the compensation, on the basis of the judgment of the High Court dated 12.9.1990.

2. The entire controversy is now covered by judgment of this Court in Babua Ram v. State of U. P., (1995) 2 SCC 689. In view of the above judgment the necessary conclusion is that the application for reference does not lie. The reference could be

made only on the basis of the judgment of the Reference Court but within the limitation prescribed under the proviso of Section 28-A(1). In this case neither the application was filed within limitation nor immediately after the award of the District Court. Under these circumstances the Amendment Act 68 of 1984 cannot be applied and the High Court clearly committed error of law in allowing the revision. The appeal is allowed. The order of the High Court in CR No. 88 of 1992 dated 14.8.1992 is set aside but in the circumstances without costs.”

13. Reference can also be made to the order passed by Hon'ble the Supreme Court in Union of India v. Bant Ram (dead) by LRs, 1996(4) SCC 537.

14. Accordingly, the answer to the question is that an application under Section 28-A of the Act for determination of compensation can be filed only on the basis of an award of the Reference Court within the period of limitation prescribed therein.

Issue No. (iii)

15. The answer to the question is available even on a bare perusal of the provisions of Section 28A of the Act. Sub-section (1) thereof provides that a landowner is entitled to file an application on the basis of award of a court pertaining to same acquisition for seeking parity in the amount of compensation. However, such an application has to be filed within three months from the date of the award of the court. Sub-section (2) of Section 28A of the Act prescribes that the Collector on receipt of the application under sub-section (1) shall pass the award after conducting inquiry, giving notice to all the persons interested and affording opportunity of hearing to them. Section 28A(3) of the Act is answer to the question, which provides that if any person does not accept the award of the Collector passed under sub-section (2), he may require the Collector, by filing an application, to refer the matter to the court for determination. In the process, the provisions of Sections 18 to 28 of the Act shall apply. The language of Section 28A of the Act, being quite explicit, there cannot be two opinions that in case of non-acceptance of the award of the Collector passed under

Section 28A of the Act, the only remedy available with the applicant/landowner would be to file application for reference of the matter to the court for determination. The aforesaid issue was also considered by Hon'ble the Supreme Court in V. Ramakrishna Rao's case (supra). The only rider is that a landowner invoking the provisions of Section 28A of the Act for seeking higher compensation cannot get compensation higher than the persons, who had sought reference under Section 18 of the Act. The relevant paragraph thereof is extracted below:

“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 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.”

[Emphasis supplied]

16. Once the remedy against the award of the Collector under Section 28A(2) of the Act is clearly provided for under Section 28A(3) of the Act, a revision against the award of the Collector to this Court will not

be competent even on the ground that the same is non-speaking. Even otherwise, the impugned award of the Collector is not non-speaking one. The same provides good ground for rejection of the application of the petitioners, namely, that application under Section 28A of the Act has been filed claiming parity on the basis of a judgment of this court, which could be on the basis of the award of the Reference Court only.

17. For the reasons mentioned above, I do not find any merit in the present petition. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

25.5.2015
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(Refer to reporter)