

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12111 of 2015

Date of Decision: 29.6.2015

Satish and others

....Petitioners.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE REKHA MITTAL.**

1. Whether the Reporters of the 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. R.S. Chahar, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for setting aside the order dated 19.12.2014 (Annexure P-7) passed by respondent No.1. Further, a writ of mandamus has been sought directing the respondents to re-determine the compensation under Section 28-A of the Land Acquisition Act, 1894 (in short "the Act") qua the land of the petitioners and to award compensation @ ₹ 4 per square yard for the entire land along with all statutory benefits.

2. A few facts necessary for adjudication of the present petition as narrated therein may be noticed. The petitioners/their predecessors were the owners in possession of the land situated within the revenue estate of village Ganaur, District Sonapat. Government of Haryana vide notification dated 31.12.1962 issued under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") followed by notification dated 1.1.1963 under Section 6 of the Act acquired the said land including the land of the petitioners for Bharat Steel Tube Factory. The award was passed on 30.4.1963. Some of the landowners, filed references under Section 18 of the Act which were decided by the Additional District Judge, Sonapat vide award dated 25.4.1970 (Annexure P-2) by enhancing the amount of compensation. The claimants/landowners challenged the award dated 25.4.1970 (Annexure P-2) before this Court by way of appeals. This Court vide judgment dated 16.5.1978 (Annexure P-3) passed in RFA No. 249 of 1970, made enhancement @ ₹ 4 per square yard for all categories of land. Feeling aggrieved, the State filed LPA No. 331 of 1978 and this Court vide judgment dated 3.6.1981 set aside the judgment dated 16.5.1978 (Annexure P-3) and restored the award dated 25.4.1970 (Annexure P-2) passed by the Additional District Judge. The landowners challenged the judgment dated 3.6.1981 passed by this Court before the Supreme Court vide Civil Appeal Nos. 1663-1668 of 1982. The said appeals were allowed by the Apex Court vide judgment dated 30.7.1987 (Annexure P-4) and the judgment dated 16.5.1978 (Annexure P-3) was restored by setting aside the judgment dated 3.6.1981 passed in LPA No. 331 of 1978. In the year 1984, the Parliament amended the Land Acquisition Act, 1984 by inserting Section 28-A of the Act whereby the landowners have been

given a right to get re-determination of compensation on the basis of the subsequent award of the Court. Accordingly, the petitioners filed an application under Section 28-A of the Act on 3.11.1987 before respondent No.2 for re-determination of compensation qua their acquired land @ ₹ 4 per square yards besides other benefits as per the amended Act. Respondent No.2 vide order dated 18.7.1990 (Annexure P-5) dismissed the said application filed under Section 28-A of the Act. The petitioners challenged the said order, Annexure P-5, by way of CWP No. 16416 of 1990 which was allowed by this Court vide order dated 17.9.2013 (Annexure P-6) and the matter was remanded to respondent No.1 for a fresh decision. In pursuance thereto, respondent No.1 vide order dated 19.12.2014 (Annexure P-7) dismissed the application filed by the petitioners under Section 28-A of the Act. Hence, the present writ petition.

3. Learned counsel for the petitioner relying upon the judgment of the Supreme Court in **Union of India v. Munshi Ram (Dead) by LRs and others, AIR 2006 SC 1716** contended that under Section 28-A of the Act, the claimant can make a petition for re-determination of the compensation on the basis of the amount awarded by the reference court which stands modified by the superior courts. It was further submitted that in such a situation, it was not essential for the claimants to have filed a petition under Section 28-A of the Act after the decision by the reference court alone. Support was also drawn from the judgment of this Court dated 25.7.2013 passed in **CWP No. 13701 of 1995 [Union of India v. Manjit Singh (through LRs) & others]**.

4. After hearing learned counsel for the petitioners, we do not find any merit in the submission.

5. Section 28-A(1) of the Act reads as under:

“28-A. Redetermination 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 redetermined 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.”

6. A perusal of the above provision shows that an application for re-determination of compensation is to be filed within three months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which

the award is made and the time requisite for obtaining the copy of the award. As the Land Acquisition Collector is not a court and acts as a quasi judicial authority while making the award, the provisions of the 1963 Act would not apply and therefore, the application under Section 28-A of the Act has to be filed within the period of limitation of three months from the date of the award of the Court as prescribed under Section 28-A of the Act.

7. A three Judges Bench of the Supreme Court in **Jose Antonio Cruz Dos R. Rodriguese and another v. Land Acquisition Collector and another AND Comunidade of Cavelossim v. Land Acquisition Collector and another (1996) 6 SCC 746** interpreting the scope of Section 28-A of the Act, dealt with the issue whether the period of three months prescribed for making an application for re-determination of the amount of compensation under Section 28-A was to be taken from the date of award under Section 18 of the Act or from the date of decision of the appeal, if any, preferred against the award by the other landowners. It was held that the period of limitation of three months prescribed under Section 28-A of the Act was to be reckoned from the date of the award passed by the reference court under Section 18 of the Act on the basis whereof re-determination is sought and not the appellate court dealing with the appeal against the award of the reference court. It was recorded as under:-

“4. Before examining the decisions of this Court on which the High Court has placed reliance, we deem it appropriate to first examine the plain language of Section 28-A extracted earlier. Section 28-A was inserted as the last section in Part III entitled

"Reference to Court and Procedure thereon" by Act 68 of 1984. Part III begins with Section 18 which provides that if an interested person does not accept the award made by the Collector under Section 11 of the Act, he may, by a written application to the Collector, require that the matter be referred for determination of the court. Section 2(d) defines the expression 'Court' to mean the principal civil court of original jurisdiction unless a Special Judicial Officer has been appointed. Therefore, the court referred to under Section 18 can only mean the principal civil court of original jurisdiction. Section 23 then sets out the matters to be taken into consideration in determining the compensation to be awarded for the acquired land, and Section 24 indicates the matters to be omitted from consideration. Section 26 provides that the award shall be in writing signed by the Judge which shall be deemed to be a decree within the meaning of clauses (2) and (9) of Section 2 of the Civil Procedure Code, 1908. Section 27 provides for costs to be awarded and Section 28 provides for payment of interest on excess compensation. We then come to Section 28-A. The first part of the section begins with the words 'where in an award under this part, Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under the provisions of Part

III, i.e. an award under Section 11' which clearly indicate that the legislature was talking of an award made under the provisions of Part III, i.e., an award under Section 11 and therefore, in that context, reference to 'Court' can only mean the court to which a reference is made by the Collector under Section 18. This position is further clarified when the section refers to compensation awarded in excess of the amount awarded under Section 11 of the Act. The second part of the section then addresses 'the persons interested in all the other land covered by the same notification ... and who are also aggrieved by the award' and permits them to make a written application to the Collector' within three months from the date of the award of the Court' requiring him to redetermine the amount of compensation on the basis of the amount awarded by the Court, notwithstanding the fact that they had not sought a reference under Section 18 of the Act. Thus, the newly added section seeks to give the same benefit, which a person who had sought a reference and had secured the Court's award for a higher amount of compensation had received, to those who had, on account of ignorance or financial constraints, not sought a reference under Section 18. In the latter part of the section also, reference is to the award under Section 11 and later, to the award of the Reference Court under Section 18

of the Act. Therefore, the court referred to therein is again the court referred to in Section 2(d) of the Act, i.e., the principal civil court of original jurisdiction. The plain language of Section 28-A, therefore, prescribes the three months' period of limitation to be reckoned from the date of the award by the Court disposing of the reference under Section 18, and not the appellate court dealing with the appeal against the award of the reference court.

5. We may now refer to the case-law. A two-Judge Bench of this Court in *Babua Ram v. State of U.P.* (1995) 2 SCC 689 dealt with this precise question and held that the period of limitation begins to run from the date of the first award made on a reference under Section 18 of the Act, and successive awards cannot save the period of limitation; vide paragraphs 19 and 20 of the reporter. This view was reiterated by the same Bench in *Union of India v. Karnail Singh* (1995) 2 SCC 728 wherein this Court held that the limitation of three months for an application for redetermination of compensation must be computed from the date of the earliest award made by a civil court, and not the judgment rendered by an appellate court. This was followed by the decision of a three-Judge Bench in *Union of India v. Pradeep Kumari* (1995) 2 SCC 703 wherein it was held that the benefit under Section 28-A can be had within three months from the date of the

award of the Reference Court on the basis whereof redetermination is sought. The earlier two decisions in the case of Babua Ram and Karnail Singh were overruled on the limited question that they sought to confine the right to seek redetermination to the earliest award made by the Court under Section 18 of the Act after the introduction of Section 28-A into the Act. There is, however, no doubt that the period of limitation has to be computed from the date of the Court's award under Section 18 on the basis whereof redetermination is sought. Admittedly, in both the cases at hand, the applications for redetermination of compensation under Section 28-A were made long after the expiry of three months from the date of the award of the Court which constituted the basis for seeking redetermination. We are, therefore, of the opinion that the High Court was right in taking the view that a both the applications were time-barred."

8. Another three Judges Bench of the Supreme Court in **Union of India and another v. Pradeep Kumari and others (1995) 2 SCC 736** considering the question whether benefit of re-determination of the amount of compensation under Section 28-A of the Act can be availed of on the basis of any one of the awards that has been made by the court after coming into force of the said section, had laid down that the applicant seeking such benefit should make application under Section 28-A of the Act within prescribed period of three months from the making of award on the basis of which re-determination was sought. The

relevant observation reads thus:-

“12. Since the cause of action for moving the application for re-determination of compensation under Section 28A arises from the award on the basis of which re-determination of compensation is sought, the principle that "once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court" can have no application because the limitation for moving the application under Section 28A will begin to run only from the date of the award on the basis of which re-determination of compensation is sought.

13. We are, therefore, unable to agree with the view expressed in Babua Ram (supra) and Karnail Singh (supra) that application under Section 28A for re-determination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28A. In our opinion, the benefit of re-determination of amount of compensation under Section 28A can be availed of on the basis of any one of the awards that has been made by the court after the coming into force of Section 28A provided the applicant seeking such benefit makes the application under Section 28A within the prescribed period of three months from the making of the award on the basis of which re-determination is sought.”

9. We now proceed to examine the judgment in **Munshi Ram and others' case (supra)** on which reliance has been placed by learned counsel for the petitioners. In **Munshi Ram and others' case (supra)**, notification under Section 4(1) read with sub-section (1) of Section 17 of the Act was published on 18.6.1984. The award was announced on 31.1.1986. On a reference under Section 18 of the Act, the reference court passed the award on 23.10.1988 enhancing the compensation payable to the claimants. Both sides feeling dissatisfied assailed the award of the reference court by filing Regular First Appeal before the High Court. Single Judge of the High Court vide judgment dated 24.8.1993 further enhanced the compensation payable. The Letters Patent Appeals filed by the Union of India were dismissed on 17.6.1994. However, Special Leave Petitions filed by Union of India in the Apex Court were allowed on 29.4.1997 and the compensation payable to the claimants was reduced. During the pendency of Special Leave Petitions, other owners who had not preferred reference under Section 18 of the Act but had filed petition under Section 28-A of the Act for re-determination of the compensation within the period of limitation prescribed by law, the Collector vide order dated 12.11.1990 re-determined the compensation under Section 28-A of the Act. Union of India challenged various re-determination orders by filing Civil Writ Petitions in the High Court which were dismissed in 1995 on the ground of delay. In the Special Leave Petitions filed by the Union of India, it was observed that the landowners would be entitled to that amount of compensation only as was assessed by the Apex Court in other cases. It was nowhere laid down that petitions under Section 28-A of the Act can be filed after the decision by the Apex Court. Rather, a perusal of

the judgment would show that the petitions under Section 28-A of the Act were required to be filed within the period of limitation prescribed under the said provision. Thus, the aforesaid pronouncement does not advance the case of the petitioners any further.

10. To buttress his submission, learned counsel for the petitioners gathered support from a Division Bench judgment of this Court in **Manjit Singh (through) LRs and others' case (supra)**. Therein, the land was acquired vide notification issued in the years 1974, 1976 and 1979. The awards were announced by Special Land Acquisition Collector, Jalandhar (SLAC) on 30.3.1981 and 31.3.1981. The references under Section 18 of the Act moved by some of the landowners were decided by the Additional District Judge, Bathinda on different dates starting from 31.7.1980 to 29.4.1986. In the case under consideration before the Division Bench, the reference was decided on 31.7.1980. The landowners took the matter in further appeals which was finally set at rest by the Apex Court vide order dated 24.8.1987. After the decision by the Apex Court soon thereafter, applications under Section 28-A of the Act were filed by the landowners in that case which were allowed by the SLAC vide order dated 6.4.1990. The Union of India challenged the said order before this Court asserting that application under Section 28-A of the Act was maintainable within a period of three months from the date of decision by the reference Court i.e. 31.7.1980 and since Section 28-A of the Act was incorporated w.e.f. 24.9.1984, the landowners were not entitled to seek enhanced amount of compensation. The Division Bench relying upon the judgment in **Munshi Ram (D) by LRs and others' case (supra)** held that the application filed by the landowners under Section 28-A of the Act was maintainable as at

the time of final determination of compensation by the Supreme Court for the acquired land, Section 28-A of the Act had been brought on the statute. The last date of the decision by the reference Court was 29.4.1986 whereas the applications under Section 28-A of the Act were filed after 24.8.1987, i.e., the decision of the Apex Court which were beyond three months period prescribed under Section 28-A of the Act. Still the writ petition filed by Union of India was dismissed. The aforesaid view being contrary to the authoritative dictums of the three Judges Bench of the Apex Court and has been delivered without any reference to **Jose Antonio Cruz Dos R. Rodriguese and Pradeep Kumari's cases (supra)** would be hit by the rule of per incurium.

11. The Apex Court in **Jai Singh and others v. Municipal Corporation of Delhi and another (2010) 9 SCC 385** observed that the order of the earlier Bench can be said to be per incurium, where it is passed in ignorance of an earlier binding precedent/statutory or constitutional provision.

12. In **Siddharam Satlingappa Mhetre v. State of Maharashtra and others (2011) 1 SCC 694**, discussing the rule of per incuriam, it was noticed as under:-

“139. Now we deem it imperative to examine the issue of per incuriam raised by the learned counsel for the parties. In **Young v. Bristol Aeroplane Company Limited (1994) All ER 293** the House of Lords observed that 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The

`quotable in law' is avoided and ignored if it is rendered, `in ignoratium of a statute or other binding authority. The same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

"..... In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp. 297-98, para 578) per incuriam has been elucidated as under:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (**Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300.**

In **Huddersfield Police Authority v. Watson, 1947 KB 842 : (1947) 2 All ER 193.**); or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

140. Lord Godard, C.J. in **Huddersfield Police Authority v. Watson (1947) 2 All ER 193** observed that where a case or statute had not been brought to

the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

141. This court in Government of **A.P. and Another v. B. Satyanarayana Rao (dead) by LRs. and Others (2000) 4 SCC 262** observed as under:

"The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

142. In a Constitution Bench judgment of this Court in **Union of India v. Raghubir Singh (1989) 2 SCC 754**, Chief Justice Pathak observed as under:

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

13. Elaborating the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule, the Supreme Court in **Sandeep Kumar Bafna v. State of**

Maharashtra and another AIR 2014 SC 1745 had laid down as under:-

“It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court.”

14. Adverting to the factual matrix, in the present case, it may be noticed that the notification under Section 4 of the Act was issued on 31.12.1962 followed by notification under Section 6 of the Act. The award was announced by the Land Acquisition Collector on 30.4.1963. Reference under section 18 of the Act filed by other landowners was decided by the reference Court on 25.4.1970 (Annexure P-2). The petition under Section 28-A of the Act was filed on 3.11.1987 i.e. beyond the period of limitation. The petition having been filed beyond the period of limitation, has been rightly dismissed by the Collector.

15. In view of the above, we do not find any justification to interfere with order dated 19.12.2014 (Annexure P-7) passed by respondent No.1 dismissing the petition filed by the petitioners under

Section 28-A of the Act. Accordingly, finding no merit in the instant petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

June 29, 2015
gbs

(REKHA MITTAL)
JUDGE