

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12846 of 2014

DATE OF DECISION: February 06,2015

Jagmohinder Kaur and others

....Petitioners

versus

Union of India and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr.Karan Gupta, Advocate for the
petitioners.
Mr.J.S.Puri, Additional Advocate General,
Punjab.

S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Reply filed in the Court is taken on record.

2. The petitioners have challenged the decision of the Land Acquisition Collector, Punjab dated 17.10.2013 holding that the decision on the application under Section 28-A of the Land Acquisition Act will be taken after the final decision of the High Court or the Supreme Court. The application under Section 28-A of the Act was on the basis of an award of the Reference Court which enhanced the compensation in an application under Section 18 of the Act filed by the other

land owners. The appeal against that order is pending in this Court.

3. The Land Acquisition Collector's decision to consider the petitioners' application under Section 28-A of the Act after the decision of this Court or after the decision of the Supreme Court in the event of an appeal being filed against that order is in accordance with the judgment of Supreme Court in Babu Ram and others v. State of U.P. and another (1995) 2 Supreme Court Cases 689 and in particular paragraph 39 thereof which reads as under:

"39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree under Section 26 is pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award under Section 28-A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it the High Court or this Court.

Take for instance that 'A', 'B' and 'C' are

interested persons in the land notified under Section 4(1) and the compensation determined in the award under Section 11. 'A' received the compensation without protest. 'B' and 'C' received the compensation under Section 31 under protest and sought and secured reference under Section 18. The court enhanced the compensation from the Collector's award of Rs 10,000 to Rs 20,000. 'B' did not file appeal under Section 54 while 'C' filed the appeal. The High Court, suppose, further enhances the compensation to Rs 25,000 or reduces the compensation to Rs 15,000 per acre. 'A' is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the court under Section 26 but he will not get the enhancement of further sum of Rs 5000 granted by the High Court in favour of 'C'. The decree of the High Court is the executable decree made in favour of 'C'. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court

decree and this Court confirms the award of the Collector and sets aside the decree of civil court under Section 26 and of the High Court under Section 54. There is nothing left for redetermination. With a view to save 'A' or 'B' or the State from the consequences of such incongruous situations, the Collector/LAO should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally the LAO would file the

appeal against the enhanced compensation in a decree of either the civil court or the High Court and will know their pendency. In the case of appeal filed by the interested persons, the latter should inform the Collector/LAO of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under sub-section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate court. Before proceeding with the determination, he should obtain an affidavit from the party making the application under Section 28-A that no appeal against the award made under Section 26 relied upon by him was filed or if had been filed was disposed of by the appellate court and to produce the certified copy of decree and judgment, if already disposed of."

4. The learned counsel for the petitioner states that in the other matter, where an appeal is pending against the order of Reference Court enhancing the compensation, the learned Single Judge has granted an interim stay on condition that 50% of the enhanced amount is deposited.

The learned Single Judge further permitted the claimants therein to withdraw the amount deposited without security.

This circumstances, however, would not entitle us to take a different view from the one taken by the Supreme Court in **Babu Ram's** case (supra).

5. Accordingly, the writ petition is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

February 06, 2015
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(AUGUSTINE GEORGE MASIH)
JUDGE