

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

CWP No.19121 of 2013

Date of decision: 23.7.2015

Jabbar Singh and others

-----Petitioners

Vs.

Union of India and others

-----Respondents

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

Present:- Mr. R.S.Manhas, Advocate for the petitioners.

Mr. Rajiv Sharma, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.19121 and 20686 of 2013 as the issue involved in both the petitions is identical. However, the facts are being extracted from CWP No.19121 of 2013.

2. CWP No.19121 of 2013 has been filed seeking quashing of order dated 22.2.2011, Annexure P.4 vide which application under Section 28A of the Land Acquisition Act, 1894 (in short, the Act”) has been dismissed on the ground of delay. Further prayer has been made for directing respondent No.3 to decide the application under Section 28A of the Act on the basis of award dated 5.2.2008, Annexure P.1 as the petitioners claim that the same was within limitation.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.19121 of 2013 may be noticed. The

petitioners are residents of Village Pangoli, Tehsil and District Pathankot. They were owners in possession of land measuring 18 kanals 4 marlas situated in Village Pangoli, Hadbast No.351, Tehsil Pathankot. Notification under section 4 of the Act was issued on 22.2.1991 for acquiring the land of Villages Kiari, Siunti, Kuther, Pangoli, Nagrota I, Gagrola etc. for defence purpose. The Special Land Acquisition Collector, Pathankot announced its award under Section 11 of the Act on 15.3.1993 of all the villages and awarded compensation. The petitioners did not file any reference under Section 18 of the Act. The other land owners of all the villages filed their reference and one of the reference as LAC No.1669 of 20.4.2001 titled ***Anita Kumari vs. Union of India*** was allowed by the Additional District Judge, Gurdaspur vide award dated 5.2.2008, Annexure P.1 enhancing the compensation to ₹ 1600/- per marla alongwith all the statutory benefits under the Act. On coming to know about the enhancement of compensation vide award dated 5.2.2008, the petitioners applied for its certified copy and filed application under Section 28A of the Act for redetermination of the amount of compensation on 21.4.2008, Annexure P.2 i.e. within the limitation period of three months from the date of the award which was duly received by respondent No.3. Notice was issued to respondent Nos. 1 and 2 who filed their reply in which they took the objection that in the first award of this scheme, notification was delivered by the reference court on 22.3.1999 and thus, the application was not maintainable. The Collector dismissed the application of the petitioners on the ground that first award of the land was announced on 22.3.1999 and therefore the application filed by the petitioners under section 28A of the Act was not within limitation.

Hence the instant writ petitions.

4. We have heard learned counsel for the parties.

5. The issue that arises for consideration is whether the period of limitation for purposes of filing application under Section 28A of the 1894 Act is to be reckoned from the date of passing of the first award by the reference court under Section 18 of the Act or from the date of the award on the basis of which re-determination of compensation is sought.

6. 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.”

7. 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 Limitation Act, 1963 Act (in short, “the 1963 Act”) would not apply and therefore, the application under Section 28A of the 1894 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 28A of the 1894 Act.

8. A three Judges Bench of the Hon'ble Supreme Court in *Union of India and another vs. Pradeep Kumari and others*, AIR 1995 SC 2259, while considering the question whether benefit of re-determination of the amount of compensation under Section 28A 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 28A 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 observations read thus:-

“11. It is possible to visualise a situation where in the first award that is made by the court after the coming into force of [Section 28-A](#) the enhancement in the amount of compensation by the said award is not very significant for the reason that the person who sought the reference was not able to produce adequate evidence in support of his claim and in another reference where the award was made by the court subsequently such evidence is produced before the court and a much higher

amount is awarded as compensation in the said award. By restricting the benefit of [Section 28-A](#) to the first award that is made by the court after the coming into force of [Section 28-A](#) the benefit of higher amount of compensation on the basis of the subsequent award made by the court would be denied "to the persons invoking [Section 28-A](#) and the benefit of the said provision would be confined to re-determination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of [Section 28-A](#). There is nothing in the wordings of Section 28- A to indicate that the legislature intended to confer such a limited benefit under [Section 28-A](#). Similarly, there may be a situation, as in the present case, where the notification under [Section 4\(1\)](#) of the Act covers lands falling in different villages and a number of references at the instance of persons having lands in different villages were pending in the court on the date of coming into force of [Section 28-A](#) and awards in those references are made by the court on different dates. A person who is entitled to apply under [Section 28-A](#) belonging to a particular village may come to know of the first award that is made by the court after the coming into force of [Section 28-A](#) in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the case of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in court on the date of coming into force of [Section 28-A](#) and may not be in a position to know, in time, about the first award that is made by the court after the coming into force of [Section 28-A](#). By holding that the award referred to in [Section 28-A\(l\)](#) is the first

award made after the coming into force of [Section 28-A](#), such persons would be deprived of the benefit extended by [Section 28-A](#). Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting [Section 28-A](#). The object underlying [Section 28-A](#) would be better achieved by giving the expression "an award" in [Section 28-A](#) its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of [Section 28-A](#). If the said expression in [Section 28-A\(1\)](#) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied :-

- (i) An award has been made by the court under Part III after the coming in to force of [Section 28-A](#);
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under [Section 11](#) has been allowed to the applicant in that reference;
- (iii) The person moving the application under [Section 28-A](#) is interested in other land covered by the same notification under [Section 4\(1\)](#) to which the said award relates;
- (iv) The person moving the application did not make an application to the Collector under [Section 18](#);
- (v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and
- (vi) Only one application can be moved under [Section 28-A](#) for re- determination of compensation by an applicant.

12. Since the cause of action for moving the application for re-determination of compensation under [Section 28-A](#) 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 28-A](#) 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 28-A](#) 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 28-A](#). In our opinion, the benefit of re-determination of amount of compensation under [Section 28-A](#) 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 28-A](#) provided the applicant seeking such benefit makes the application under [Section 28-A](#) within the prescribed period of three months from the making of the award on the basis of which re-determination is sought.”

9. In the present case, notification under Section 4 of the 1894 Act was issued on 22.2.1991. The last award was announced by the Land Acquisition Collector on 5.2.2008. The application under Section 28A of the 1894 Act was filed by the petitioners on 21.4.2008 i.e. within the period of limitation of three months from the date of the award.

10. In view of the above, the Collector was not right in rejecting the application as time barred as the award was announced on 5.2.2008 whereas the application under Section 28A of the 1894 Act was filed for redetermination of the compensation on the basis of the said award on 21.4.2008.

11. As a result, both the writ petitions are allowed. The impugned order passed by respondent No.3 dated 22.2.2011, Annexure P.4 is set aside.

The matter is remanded to the Land Acquisition Collector, Pathankot,

District Pathankot to decide afresh after hearing learned counsel for the

parties in accordance with law.

(Ajay Kumar Mittal)
Judge

July 23, 2015
'gs'

(Rekha Mittal)
Judge