

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RFA No. 6990 of 2013 (O&M)
Date of decision: July 01, 2015

Ompal

.. Appellant

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Vikram Punia, Mr. Anil Dutt for Mr. S. P. Khatri,
Mr. Salil Bali, Mr. Lalit Yadav for Mr. S. R. Hooda,
Ms. Sunita Nambiar for Mr. K. S. Malik-I and
Mr. AVS Barsat, Advocates for the landowners.

Mr. B. R. Mahajan, Advocate General, Haryana with
Mr. Raj Kumar Makkad, Deputy Advocate General, Haryana.

Mr. B. R. Mahajan, Senior Advocate with
Mr. Ashish Yadav, Advocate for HUDA in RFA
No. 8975 of 2014.

...

Rajesh Bindal J.

1. This order will dispose of a bunch of appeals bearing RFA Nos. 6990 to 6998 of 2013, 1077, 1233, 1234, 1235, 2861, 2862, 3738, 4060 to 4063, 4240, 6111, 6329, 6330, 8975, 9920, 10342 and 10445 of 2014 and 915 of 2015, as common question of law is involved.
2. The facts have been extracted from RFA No. 6990 of 2013.
3. Challenge in the present appeal is to the award dated 25.4.2013, passed by the Land Acquisition Collector, Urban Estate, Rohtak (for short, 'the Collector'), vide which the application filed by the appellant under Section 28A of the Land Acquisition Act, 1894 (for short, 'the Act'),

was allowed. The prayer is for further enhancement of compensation.

4. Briefly, the facts of the case are that vide notification dated 17.11.2005, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), the State of Haryana sought to acquire the land, situated in the revenue estate of village Patla, Tehsil and District Sonapat. The same was followed by notification dated 7.2.2006, issued under Section 6 of the Act. Vide award dated 2.3.2006, the Collector assessed the compensation for the acquired land. The appellant did not file objections under Section 18 of the Act. The other landowners, whose land was also acquired vide same notification, filed objections, which were referred to the learned Addl. District Judge, who vide award dated 31.3.2012, determined the compensation of the acquired land @ ₹ 28,00,000/- per acre. Thereafter, those landowners, being not satisfied, filed appeals before this court, which are pending. The appellant filed application under Section 28A of the Act to the Collector seeking parity of compensation relying upon the award of the Reference Court. The same having been allowed by the Collector, the order has been impugned in the present appeal seeking further enhancement.

5. Learned counsel for the landowner submitted that appeal has been filed before this court considering the fact that the Collector has already awarded compensation to the landowner in terms of the award of the Reference Court and going to the Reference Court again would be an exercise in futile. The other matters pertaining to the acquisition seeking further enhancement of compensation are pending before this court. It was further submitted that in case it is held that appeal against the award of the Collector under Section 28A of the Act is not maintainable and the landowner had to file application before the Collector for reference of the dispute to the court below, opportunity may be granted for the purpose as the landowner should not be made to suffer.

6. On the other hand, learned Advocate General submitted that Section 28A was inserted in the Act to give relief to the landowners, who had not filed objections against the award. It prescribes complete procedure for seeking higher compensation, as may have been awarded to other landowners by the Reference Court. In case a landowner is not satisfied

with the amount so granted, he is at liberty to avail of further remedy, as is envisaged under sub-section (3) thereof. The landowner in the present case has failed to avail of that remedy. No appeal against the award passed by the Collector under Section 28A of the Act is maintainable before this court. The landowner cannot now be granted opportunity to avail of the remedy, as envisaged under Section 28A(3) of the Act as the period has already expired. Appeal under Section 54 of the Act is maintainable only against an award or part of the award of the court. The Collector is not a court as the term “Court” has been defined in Section 3(d) of the Act to mean Principal Civil Court of original jurisdiction.

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

8. The issue involved in the appeals is as to:

Whether an appeal lies to this court against an award passed by the Collector on an application filed by the landowner(s) under Section 28A of the Act?

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

“Section 3(d) of the Act

3. Definitions.- In this Act, unless there is something repugnant in the subject or context,-

(a) to (c) xx

xx

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(d) the expression “Court” means a principal Civil Court of original jurisdiction, unless, the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act;

Section 28A of the Act

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.]

Section 54 of the Act

54. Appeals in proceedings before Court.- Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to [the Supreme Court] subject to the provisions

contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof.]”

10. Section 28A was inserted in the Act effective from 24.9.1984. The object is to grant parity in compensation even to those landowners who, on account of various reasons such as poverty, ignorance or other disability, could not file objections and seek reference to the court for re-determination of compensation under Section 18 of the Act. The benefit of Section 28A of the Act is available only to a landowner who had not earlier sought reference under Section 18 of the Act. As per scheme of Section 28A of the Act, a person who is interested in the land covered by the same notification and had not filed application under Section 18 of the Act earlier, may by written application to the Collector within 3 months from the date of award of the Court require that the amount of compensation payable to him/them may be re-determined on the basis of the amount of compensation awarded by the court to the landowners who had filed objections under Section 18 of the Act. On receipt of the application under sub-section (1) of Section 28A of the Act, the Collector is required to conduct an enquiry after giving notice to all the persons interested and giving them reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicant(s). Sub-section (3) of Section 28A of the Act provides that any person, who is not satisfied with the award passed under sub-section (2) may by written application to the Collector require that the matter may be referred by the Collector to the Court for determination of compensation. The provisions of Section 18 to 28 of the Act are applicable.

11. The scheme of Section 28A of the Act was considered by Hon'ble the Supreme Court in Babua Ram v. State of U. P., (1995) 2 SCC 689, wherein it was opined that Section 28A of the Act is a complete code in itself providing for remedy to the persons who could not earlier file application under Section 18 of the Act. Relevant paragraph thereof is extracted below:

“15. A bare reading of sub-section (1) of Section 28-A would indicate that wherein an award under this Part, (Part III consists of Section 18 to 28), 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 other lands covered by the same Notification under Section 4(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 writing make an application to the Collector within three months from the date of the award of the Court requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court. The proviso gives a right to exclude the time taken from the day on which the award was pronounced and the time required to obtain a copy of the award in computation of three months within which the application for redetermination has been made in writing to the Collector under sub-section (1) of Section 28-A. The basis for redetermination is the award of the Court and the compensation awarded therein. Sub-section (2) thereof enjoins the Collector to issue notice to all the persons interested, i.e., the applicant, the State and the beneficiary, if any, to give them reasonable opportunity of being heard in the inquiry conducted thereon and to make the award determining the amount of compensation payable to the applicants under sub-section (1). Sub-section (3) gives a right to the applicant either to accept the award or to accept the compensation under protest. In the latter case he has been given a right under sub-section (3) to make a written application to the Collector to refer the matter for determination under Section 18 to the Court. The provisions of Sections 18 to 28, as far as may be, apply to such references. Thus, Section 28-A is a complete Code in itself providing substantive right to an interested owner who received

compensation under Section 18 without protest for higher compensation, and remedy has been provided to make a written application within the prescribed period. The *non-obstante* clause lifts the rigour of the bar created by Section 18(1) and the second proviso to Section 31 and makes him eligible to be at par with his neighbour to claim parity for compensation to the land similarly situated as the land covered by the court award.” *[Emphasis supplied]*

12. In the aforesaid judgment, it was further opined that the Collector while considering the application under Section 28A of the Act should wait for the final verdict either of the High Court concerned or Hon'ble the Supreme Court before making an award.

13. The issue was further considered by Hon'ble the Supreme Court in V. Ramakrishna Rao v. The Singareni Collieries Company Ltd. and another, 2011(1) RCR (Civil) 149, 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. 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. It was further opined that remedy against award under Section 28A(2) of the Act is to file application under Section 28A(3) of the Act seeking reference of the dispute to the Court. 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 paragraphs 9 and 11 of judgment of Ramakrishna Rao's case (supra) are 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 who 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.

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“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]

14. In the aforesaid judgment, it was also opined that the object of Section 28A of the Act is not that a person, who had not sought reference initially under Section 18 of the Act, can get compensation higher than one payable to those who had sought reference by filing application under

Section 18 of the Act.

15. Section 54 of the Act, which provides for appeal, *inter-alia*, lays down that an appeal shall lie in any proceedings under the Act to the High Court against an award or any part thereof, of the Court. This clearly means that appeal lies to this court only against the award or a part thereof passed by the Court. The term “Court” has been defined in Section 3(d) of the Act to mean Principal Civil Court of original jurisdiction, unless the Government has appointed a special judicial officer within any specified local limits to perform functions of the Court under the Act. It is not the case set up by either of the parties that the Collector has been appointed by the Government as a special Judicial Officer to perform functions of the Court under the Act. It has been opined by Hon'ble the Supreme Court in Officer on Special Duty (Land Acquisition) and another v. Sham Manilal Chandulal and others, (1996) 9 SCC 414 and State of Karnataka v. Laxuman, (2005) 8 SCC 709 that Collector being not a Court, provisions of Limitation Act do not apply to the proceedings before him. The same view was followed by this Court in Smt. Nikko and others v. State of Haryana and another, 2013(1) RCR (Civil) 90 and RFA No. 4643 of 2013—Lajwanti and others v. State of Punjab and another, decided on 18.9.2014.

16. The aforesaid provisions make it crystal clear that an appeal to this court lies only against the award or a part of the award passed by the court and not the Collector. In the present set of appeals, the landowners have filed the same impugning the award of the Collector passed under Section 28A(2) of the Act, which is not appealable under Section 54 of the Act. In fact, the remedy against the same has been clearly provided in Section 28A(3) of the Act.

17. The contention of learned counsel for the landowners that going to the Reference Court would be an exercise in futile as the Collector had already awarded the compensation on the basis of the award of the Reference Court is merely to be noticed and rejected. Once a specific procedure has been provided, the same deserved to be followed. Remedy of appeal is a creation of statute, unless it is specifically provided that the order/award cannot be impugned before the Court. Reference can be made

to the judgments of Hon'ble the Supreme Court in Indira Nehru Gandhi (Smt.) v. Raj Narain and another, (1975) 2 SCC 159 and Shiv Shakti Coop. Housing Society, Nagpur v. M/s Swaraj Developers and others, AIR 2003 SC 2434.

18. In CR No. 4225 of 2014—Dalbir Singh and another v. State of Punjab and others, decided on 25.5.2015, this court opined that a revision against the award of the Collector under Section 28A of the Act is not maintainable.

FINDINGS

19. Accordingly, the question is answered in terms that against an award of the Collector passed under Section 28A of the Act, appeal is not maintainable before this court as the remedy against the same is available under Section 28A(3) of the Act by filing an application to the Collector seeking reference of dispute to the Court.

20. As the landowners in the present case being ill-advised, instead of filing application to the Collector for referring the matter to the court for re-fixation of compensation, had approached this court taking a plea that other matters seeking enhancement of compensation are pending before this court, in my opinion, keeping in view the interest of the landowners, they need to be given an opportunity to file applications before the Collector under Section 28A(3) of the Act within four weeks from today.

21. The appeals stand disposed of in the aforesaid terms.

(Rajesh Bindal)
Judge

July 01, 2015
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(Refer to Reporter)