

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1332 of 1994 (O&M)

Date of Decision: 27.07.2016

State of Haryana

... Appellant

VS.

Land Acquisition Collector, Rohtak and others

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE DARSHAN SINGH

1. Whether speaking/reasoned?

Yes / No

2. Whether reportable?

Yes / No

3. Whether Reporters of local papers may be allowed to see the judgment?

Yes / No

4. To be referred to the Reporters or not?

Yes / No

5. Whether the judgment should be reported in the Digest?

Yes / No

Present: Ms. Palika Monga, DAG, Haryana

None for the respondents.

SURYA KANT, J. (Oral)

(1) The State of Haryana has laid challenge to the order dated 22.01.1993 whereby the Land Acquisition Collector, Rohtak accepted the claim of respondent-land owners under Section 28A of the Land Acquisition Act, 1894 (in short 'the Act') and has granted them the same compensation for their acquired land as was awarded by the learned Additional District Judge, Rohtak in LAC No.26 decided on 29.09.1989 as well as LAC No.271 decided on 21.11.1989.

(2) The State of Haryana vide notifications dated 16.03.1978 and 20.03.1978 issued under Section 4&6 of the Act acquired the land situated in six different villages of the then Tehsil, Jhajjar. The land was acquired for construction of Bhindawas Lake. The Land Acquisition Collector announced the award on 19.09.1978. While some of the land owners did not accept the compensation, the others were aggrieved with the rate of compensation and sought reference under Section 18 which were decided by the learned

Additional District Judge, Rohtak on 17.09.1984 and the amount of compensation was enhanced.

(3) It appears that some review applications were filed before the Additional District Judge, Rohtak to modify the award *qua* the rate of *solatium* and interest as the land owners were claiming these two benefits at the enhanced rate in terms of the amended provisions of the Act. Those claims were accepted vide order dated 24.07.1987 and the award dated 17.09.1984 was modified holding the land owners entitled to *solatium* @ 30% instead of 15% and interest @ 9% per annum for the first year from the date of possession and 15% thereafter.

(4) Those land owners who did not file any reference and had not accepted the compensation also, applied under Section 28A of the Act to award them the same amount of compensation but the Land Acquisition Collector vide order dated 04.06.1988 rejected their claim against which they sought a reference under Section 28A(3) of the 1894 Act. Those references were made and the learned Additional District Judge vide award dated 29.09.1989 accepted the claim of land owners and granted them compensation at par with the modified award dated 24.07.1987. A specific issue No.2 on the question of limitation was formulated and answered against the State.

(5) Still there were left-out land owners like the respondents who had not availed the benefit of enhanced amount of compensation. They also applied under Section 28A admittedly within three months from the date of the above-stated award dated 29.09.1989 and vide impugned order dated 22.01.1993, the Land Acquisition Collector has accepted their claim.

(6) The aggrieved State has approached this Court.

(7) The primary contention of the State counsel is that the applications under Section 28A ought to have been moved within a period of three months from the date of modified award dated 24.07.1987 and not within a period of three months from the date of later award dated 29.09.1989, hence the same were time-barred.

(8) We have given our thoughtful consideration to the submissions but do not find any merit therein.

(9) True it is that in view of catena of decisions including in **Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81**, the Land Acquisition Collector has no power to condone the delay and application under Section 28A has to be filed within three months of arising of cause of action. Section 28A(1) opens with the expression that “where in an award under this Part...”, the Court allows the land owner 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 of the Act and were also aggrieved of the award of Collector may, notwithstanding that they had not made any application to the Collector under Section 18, apply within three months “from the date of such award of the Court” to seek re-determination of the amount of compensation payable to them.

(10) Two expressions namely “an award under this Part” and “from the date of such award of the court”, connote significant meaning as these are not qualified by any expression such as an “award under Section 18” only. Once a reference is made to the Court under sub-Section (3) of Section 28A and it is answered in favour of the land owner, the award so passed is, for all intents and purposes, at par with the award passed under

Section 18 of the Act. Having held so, we are satisfied that the award dated 29.09.1989 is an 'award' within the meaning of Section 28A(1) as it does not make any difference whether such award was passed in a reference under Section 18 or in a reference under Section 28A(3) of the Act.

(11) Since the application moved by the respondents was admittedly within three months from the date of award dated 29.09.1989, it cannot be said that their claim was time-barred.

(12) Dismissed.

(Surya Kant)
Judge

27.07.2016
vishal shonkar

(Darshan Singh)
Judge