

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RFA-3568-2008
Date of decision: 3.2.2016

Satish Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Narinder Singh, Advocate for the appellant.
Mr.Shivendra Swaroop, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 9.2.2004 passed by the land acquisition collector, dismissing the application of the appellant under Section 28-A of the Land Acquisition Act, 1894 ('the Act' for short) and also against the impugned judgment dated 1.8.2007 passed by the learned Additional District Judge-II, Bhiwani, upholding the above-said order passed by the land acquisition collector, appellant has approached this Court by way of instant regular first appeal.

Brief facts of the case are that a very small piece of land measuring 7 marlas owned by the appellant was acquired along with the land of his co-villagers. The appellant, because of his innocence, did not seek the land reference against the award passed by the land acquisition collector. However, the moment the land references, sought by his co-villagers including LAC No.33 dated 31.3.1997 (Raghubir Singh and others v.The State of Haryana), were decided by the learned reference court vide its award dated 9.10.1998, the appellant applied for a certified copy thereof

on the same date, i.e. 9.10.1998, through the above-said Raghbir Singh. The certified copy of the award came to be prepared and delivered on 26.10.1998. The appellant moved his application under Section 28-A of the Act before the land acquisition collector on 15.1.1999, which was well within the period of limitation, as provided under the provisions of Section 28-A of the Act itself. However, the land acquisition collector proceeded on a wholly misconceived and perverse approach, while passing the impugned order dated 9.2.2004, dismissing the application of the appellant as time barred.

Having been left with no other option, appellant approached the learned court below but his petition under Section 28-A (3) of the Act also came to be dismissed by the learned Additional District Judge-II, Bhiwani, vide impugned judgment dated 1.8.2007. That is how, this regular first appeal is at the hands of the claimant-appellant.

Notice of motion was issued and thereafter the appeal was admitted vide order dated 9.2.2010. Since the case has been listed for motion hearing and vide order dated 28.7.2014, it was listed for 13.1.2015 for arguments, the case is being taken up for hearing with the consent of learned counsel for the parties, for final disposal.

Learned counsel for the parties are ad idem that on merits the case is squarely covered by the judgment dated 19.2.1999 passed by this Court in **RFA No.947 of 1994 (Shanti Devi and others v. State of Haryana and others)**, which has attained finality up to the Hon'ble Supreme Court.

A bare perusal of the order passed by the land acquisition collector as well as the impugned judgment passed by the learned

Additional District Judge-II, Bhiwani would make it crystal clear that the land acquisition collector as well as the learned Additional District Judge have proceeded on a factually incorrect and legally misconceived approach. They have altogether illegally ignored the time in getting the certified copy of the award dated 9.10.1998 passed by the learned reference court, which was bound to be excluded for deciding the application moved by the appellant under Section 28-A of the Act, as to whether it was within time or barred by limitation.

As noticed hereinabove, a simple calculation would make it clear that application moved by the appellant was well within limitation. However, the land acquisition collector as well as the learned Additional District Judge have proceeded on factually incorrect and totally perverse approach, while passing their respective orders and the same cannot be sustained. When confronted with the above-said fact situation obtaining on record of the case, learned counsel for the State had no answer and rightly so, it being a matter of record. In this view of the above-said undisputed fact situation, the impugned orders passed by the land acquisition collector as well as by the learned Additional District Judge cannot be sustained and the same are hereby set aside.

Coming to the undisputed claim of the appellant, coupled with the fact that instant appeal is squarely covered on merits by the judgment rendered by this Court on 19.2.1999 in **Shanti Devi's** case (supra), the present appeal deserves to be allowed and the same is hereby allowed, accordingly.

Consequently, appellant-land owner is held entitled to receive the compensation for his acquired land, in terms of the judgment dated

19.2.1999 passed by this Court in **Shanti Devi's** case (supra). In addition thereto, appellant shall also be entitled to all the statutory benefits available to him, under the relevant provisions of the Act.

With the observations made above, the appeal stands allowed, in the above-said terms, however, with no order as to costs.

Disposed of.

3.2.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE