

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

**Date of Decision : 21.12.2016.
IOIN-RFA No.3406 of 2014**

Gurdial Singh

.....Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Anish Garg, Advocate for the appellant.
Mr. K.K.Gupta, Addl. A.G. Punjab.
Mr.Arvind Mittal, Advocate for respondents No.2 and 3.

ARUN PALLI, J. (Oral)

Vide order dated 10.08.2016, this Court had disposed of a bunch of 30 appeals, that were listed at regular No.336 and 693, in terms of the judgment dated 2.3.2016, rendered by this Court in RFA No.991 of 2013 (Tarlochan Singh and another Vs. State of Punjab and another), vide which in the appeals arising out of the same acquisition, this Court had enhanced the compensation to ₹ 1418/- per square yard. However, while recording individual orders in each of those appeals, it transpired that RFA No.5214 of 2014 (Meher Singh Vs. State of Punjab and others) was in fact preferred against the award made by the Land acquisition Collector-cum-Sub Divisional Magistrate, Patiala, dated 22.03.2013, and not against the award rendered by the reference Court, dated 15.09.2012, which was in question in the other appeals seeking enhancement. For, the appellant in RFA No.5214 of 2014, had impugned the award rendered by the Collector under Section

28-A of the Land Acquisition Act, even, the appeal before this Court was not maintainable under Section 54 of the Act. As a result, vide my order dated 10.08.2016, the Registry was directed to re-list the said appeals. It appears that post passing of the said order, the office traced a few other matters, which were similar i.e. RFA Nos. 3406, 3842, 6281 and 4332 of 2014, and were disposed of on 10.08.2016. That is how, these appeals, have been re-listed.

Learned counsel for the appellant concedes that out of the four appeals, only one i.e. RFA No.3406 of 2014 was directed against the award dated 22.03.2013, rendered by the Land Acquisition Collector whereas, the other three appeals that is RFA Nos. 3842, 6281 and 4332 of 2014, were filed against the award dated 15.09.2012, rendered by the reference Court. Meaning thereby, three appeals were rightly disposed of being covered by the decision of this Court in the case of Tarlochan Singh and another (supra). And appeal i.e. RFA No.3406 of 2014, is not maintainable.

The factual position as set out above is not disputed by the learned counsel for the respondents.

Since all the four appeals were disposed of vide a common order, recorded in RFA No.3406 of 2014, the order dated 10.08.2016 is required to be recalled. So that RFA Nos. 3842, 6281 and 4332 of 2014 are disposed of separately and RFA No.3406 of 2014 by a separate order. Accordingly, order dated 10.08.2016 is recalled. All the four appeals are restored to their original numbers.

Concededly, the present appeal has been preferred against the award rendered by the Collector under Section 28-A of the Land

Acquisition Act, and thus, is not maintainable under Section 54 of the Act. If the appellant was/is aggrieved against an award rendered by the Collector, dated 22.03.2013, he was required to resort to the provisions under Section 28-A(3) of the Act. Faced with this situation, learned counsel for the appellant relies upon an order and judgment of this Court, dated 1.7.2015, in RFA No.6990 of 2013 (Om Pal Vs. State of Haryana and others), and submits that he be permitted to withdraw the appeal with liberty to approach the Collector under Section 28-A(3) of the Act. Paragraphs 16 to 21, of the decision of this Court in the case of Om Pal (supra) reads thus:-

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”.

In the wake of the position as sketched out above, the appeal is disposed of in terms of the decision of this Court in the case of Om Pal (supra) and the appellant is granted opportunity to file the necessary application before the Collector under Section 28-A(3) of the Act within six weeks from today.

21.12.2016

Manoj Bhutani

Whether speaking/reasoned
Whether reportable:

(ARUN PALLI)
JUDGE

Yes/No
Yes/No