

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8079 of 1996 (O&M)

Date of Decision: 20.01.2017

Prem Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Som Nath Saini, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana.

RAJESH BINDAL,J.

1. The petitioner has approached this Court seeking quashing of order dated 09.04.1993 Annexure P-3 vide which the application filed by the petitioner under Section 28A of the Land Acquisition Act, 1894 (for short 'the Act') was declined for the reasons that against the award of the Reference Court, the appeal filed by the State was pending in this Court and the award of the Reference Court which was relied upon had not attained finality. Annexure-P5 the communication dated 9.2.1995 is also under challenge vide which the application filed by the petitioner for reference of dispute to the Court was 'filed'. Further prayer is for a direction to the respondent No.2 to dispose of the application Annexure-P4 filed by the petitioner under Section 28A(3) of the Act, for referring the dispute to the Court.

2. Learned counsel for the petitioner submitted that the land owned by the petitioner was sought to be acquired by the State vide notification dated 23.5.1983 issued under Section 4 of the Act. The Land Acquisition Collector (for short 'the Collector') announced the award on

17.3.1986 awarding compensation at the rate of ₹ 48000/- per acre. The petitioner could not file objections, however, other land owners filed objections which were referred to the Court. The learned Additional District Judge, Hissar, vide award dated 30.11.1991 assessed the compensation for the acquired land at the rate of ₹ 100/- per square yard. The petitioner filed application under Section 28A of the Act for awarding same compensation as was given to the other land owners. The same was rejected by the Collector on the ground that the award of the Reference Court was under challenge before this Court and the same had not yet attained finality. Even the application filed by the petitioner thereafter for referring the dispute to the Court was 'filed'. Impugning the action of the respondents, learned counsel for the petitioner submitted that Section 28A was inserted in the Act only to give right to the land owners, who had not filed any application initially under Section 18 of the Act, to seek re-determination of compensation in terms of the amount awarded by the Court. However, the application filed by the petitioner was wrongly rejected by the Collector opining that the award of the Court was under challenge in this Court. The right course at that time was to keep the application pending till such time the matter attained finality and not to dismiss the same. Against the decision of the application filed by the land owners under Section 28A of the Act, the land owner has a right to file application to the Collector for referring the dispute to the Court. The application filed by the petitioner for that purpose was also not entertained and was merely 'filed'. The decision of the Collector is totally contrary to the provision of law, hence, the same be set aside and matter be remitted back for decision of the application of the petitioner afresh.

3. On the other hand learned counsel for the State could not dispute the fact that the petitioner had a right to file application for re-determination of compensation, however, subject to certain limitations as provided in Section 28A(1) thereof.

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

5. Relevant provisions of Section 28A of the Act are reproduced below:

“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.”

6. A perusal of Section 28A(1) shows that where the land owner had not filed application to the Collector under Section 18 of the Act and the compensation determined by the Court with reference to the same acquisition was more than the amount awarded by the Collector, the land owner can file application to the Collector for re-determination of compensation payable to him in terms of the amount of compensation awarded by the Court. Certain period has been specified during which such an application can be filed. After receipt of the application, the Collector after giving notice to the persons interested and affording opportunity of hearing make an award determining the amount of compensation payable to the applicants. In case any person does not accept the award as given by the Collector under Section 28A(2) of the Act, he has a right to file application to the Collector for referring the matter to the Court for determination of compensation. In that process the provisions of Section 18 to 28 are to apply, in so far as may be.

7. The issue was 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 redetermination 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]*

8. The scope of Section 28-A of the Act was further considered by Hon'ble the Supreme Court in (2010) 10 Supreme Court Cases 650, V. Ramakrishna Rao Versus Singareni Collieries Company Limited and another. It was further opined therein that the court to which reference is made under Section 28A(3) of the Act, will have to bear in mind that a person who had not sought reference under Section 18 of the Act, cannot get compensation higher than the one payable to those who had sought reference under that Section.

9. In the case in hand as contended by learned counsel for the petitioner, the land owned by the petitioner was acquired vide notification dated 23.5.1983 issued under Section 4 of the Act. The Collector announced the award on 17.3.1986. The petitioner did not file objections under Section 18 of the Act. Other land owners filed applications under Section 18 of the Act, which were referred to the Court. The Reference Court vide its award dated 30.11.1991, determined the compensation payable for the same acquisition at the rate of ₹ 100/- per square yard. Thereafter, the petitioner

filed application before the Collector under Section 28-A of the Act. There is no specific date available on record about its filing. The petitioner was afforded hearing by the Collector on 10.3.1993. The Collector in order dated 9.4.1993 (Annexure-P3) recorded that on examination of record it was found that Government has filed appeal against the award of the reference Court. As the award sought to be relied upon by the petitioner had not attained finality, the applicant/petitioner was not entitled to be given that benefit. The application was consigned to record. The order passed on 9.4.1993 is extracted below:

“Prem Singh s/o Maan Singh has presented this application under Section 28 A with the prayer that his compensation be reassessed in view of the award dated 30.11.91 given by Sh. R.N. Singhal, Additional District Judge, Hissar.

The applicant was served with a notice for hearing under Section 28 A(2) whereupon Sh. Rajbir Singh, General Attorney appeared on his behalf before me on 10.3.93. Rajbir Singh was heard and his statement was recorded.

The record was examined and it was found that the Government has filed an appeal in the Hon'ble High Court against the decision on the basis of which the application (sic applicant) has sought re-assessment of compensation. As such the award given by the Additional District Judge has not attained finality. In view of this, the applicant cannot be given benefit of Section 28A. I agree with the award given by the Collector. The applicant be informed and the file be consigned to record.”

10. The decision was communicated to the petitioner vide letter dated 30.4.1993 mentioning that as the petitioner was not fulfilling the

conditions laid down for grant of benefits under Section 28-A of the Act, hence, not entitled to get any benefits, the application was 'filed'. Thereafter the petitioner filed application to the Collector for referring the matter in dispute to the Court for determination of compensation. Such a right is available to the land owner under Section 28A(3) of the Act. The same was also rejected and the application was filed by the Collector. Intimation was given to the petitioner on 9.2.1995 mentioning that the petitioner was not found to be entitled to any benefit under Section 28A(2) of the Act. The application filed under Section 28A(3) also deserves to be 'filed'.

11. A perusal of the order dated 9.4.1993 passed by the Collector shows that the application filed by the petitioner under Section 28A(1) of the Act was filed only for the reasons that the award of the Reference Court which was relied upon by the petitioner for re-determination of compensation was subject matter of appeal before this Court. The course to be adopted by the Collector in such circumstance has been well explained by Hon'ble the Supreme Court in Kendriya Karamchari Sehkari Greh Nirman Samiti Ltd., Noida v. State of U.P., 2009(1) SCC 754. The opinion expressed by the Court is that in such situation the Collector would be within his power to keep the application under Section 28A of the Act pending till the matter is finally decided by the High Court or the Supreme Court as the case may be. The relevant para thereof is extracted below:

“40. It is true that once the Reference Court decides the matter and enhances the compensation, a person who is otherwise eligible to similar relief and who has not sought reference, may apply under Section 28-A of the Act. If the conditions for application of the said provision have been complied with, such person would be entitled to the same relief which has been granted to other

persons seeking reference and getting enhanced compensation. But, it is equally true that if the Reference Court decides the matter and the State or acquiring body challenges such enhanced amount of compensation and the matter is pending either before the High Court or before this Court (the Supreme Court), the Collector would be within his power or authority to keep the application under Section 28-A of the Act pending till the matter is finally decided by the High Court or the Supreme Court as the case may be. The reason being that the decision rendered by the Reference Court enhancing compensation has not attained 'finality' and is sub judice before a superior court."

12. Reference can also be made to judgment of Hon'ble the Supreme Court in Union of India Versus Munshi Ram (dead) by Lrs. and others, 2006(2) RCR (Civil) 763.

13. In view of the aforesaid enunciation of law, right course for the Collector in the circumstance was to keep the application filed by the petitioner under Section 28A of the Act, pending till such time the matter was finally decided by the High Court or the Supreme Court, as the case may be. However, he thought it appropriate to reject the same.

14. Though stand is sought to be taken in the written statement that the application filed by the petitioner under Section 28A of the Act, was time barred, however, the same is not the reason assigned in order passed by the Collector on 9.4.1993, which was communicated to the petitioner vide letter dated 30.4.1993. No facts are borne out from the record or pointed out at the time of hearing to show that the application filed by the petitioner under Section 28A of the Act was time barred.

15. For the reasons mentioned above, in our view, the impugned

communication Annexure P5 deserves to be set aside. Ordered accordingly.

The matter is remitted back to the Collector for decision of the application filed by the petitioner under Section 28A(3) of the Act, afresh, for referring the matter in dispute to the Court for determination of compensation payable to the petitioner. The needful shall be done by the Collector within a period of three months from the date of receipt of copy of the order.

16. The writ petition stands disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

20.01.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: $\sqrt{\hspace{1cm}}$
Yes/No