

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 10273 of 2017 (O&M)

Date of decision: 15.05.2017

Parveen Kumar and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. R.S. Sangwan, Advocate for the petitioners.

RAMENDRA JAIN, J.

1. The petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus directing the respondents to decide their representation dated 11.05.2016 (Annexure P-5) filed under Section 28A of the Land Acquisition Act, 1894, (for short, 'the Act') and to re-determine the compensation in view of order dated 04.02.2016 (Annexure P-4) passed by this Court in RFA No. 266 of 2012, Joginder Singh Tokash Vs. State of Haryana and others and other connected appeals arising out of the same award dated 08.05.2007 (Annexure P-3) passed by respondent No. 3.

2. Learned counsel for the petitioners contended that since the land of the petitioners was similarly situated as of those landowners, who have been granted enhanced compensation @ ₹ 29,00,400/- per acre by this Court, therefore, their case may also be considered on parity basis.

3. Undisputedly, the land of the petitioners was acquired vide notification dated 16.01.2007, for the purpose of setting up of Thermal

Power Project by Aravali Power Company Private Limited. Vide Award dated No. 37 dated 08.05.2007, the Collector assessed the compensation payable to the petitioners @ ₹ 16 lakhs per acre. Aggrieved against the award of the Collector, the petitioners and other land owners filed objections under Section 18 of the Act, which after trial were dismissed vide common award dated 24.09.2011 by the Reference Court. Being aggrieved, various land owners approached this Court by way of RFA No. 266 of 2012 and others, but not the petitioners due to their alleged personal difficulty. The said appeal along with other connected appeals were disposed of vide order dated 04.02.2016 (Annexure P-4) whereby compensation was enhanced from ₹ 16 lakhs per acre to ₹ 29,00,400/- per acre along with other statutory benefits.

4. The sole question to be determined in the present writ petition is as to (i) whether the landowners, who had filed objections/references under Section 18 of the Act, but did not challenge the award of the Reference Court any further, can file application under Section 28A of the Act in case of enhancement of compensation in the case of other landowners, who approached higher Court(s) and (ii) whether application under Section 28A of the Act can be filed before the Collector relying upon a judgment of the High Court or Hon'ble the Supreme Court?

5. For brevity, Section 28A of the Act is reproduced as under:-

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 subsection (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 subsection (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. Both the questions framed above have already been answered through various pronouncements by this Court as well as by the Hon'ble Apex Court. Reference can be had to (i) **Jagmohinder Kaur and others Vs. Union of India and others, 2015 (2) Law Herald 1230**; (ii) **Dalbir Singh and another Vs. State of Punjab and others, 2015 (8) RCR (Civil) 531** and (iii) **Babua Ram Vs. State of U.P., (1995) 2 SCC 689**, wherein it has been held that period for making an application under Section 28A of the Act starts from the date of award under Sections 18 and 26 of the Act and the right to such remedy extinguishes on expiry of prescribed period of three months. Any later judgment, decree or order of the appellate court are not covered under Part III of the Act, and, therefore, do not provide any fresh cause of action under Section 28A of the Act. In nutshell, an application under Section 28A of the Act for determination of compensation can be filed only on the basis of an award of the Reference Court within the period of limitation prescribed therein. In the case in hand, the petitioners did not file their application within the limitation prescribed under the proviso of Section 28A (1) of the Act, hence, no relief could be claimed.

7. More so, Section 28A of the Act is enabling provision for a person who fails to seek reference under Section 18 of the Act. The remedy under Section 28A of the Act is not available to the person who had already exhaust his remedy under Section 18 of the Act. Reference in this regard can be made to **Babua Ram's case (supra)**. In the instant case, the petitioners have exhausted their remedy under Section 18 of the Act, therefore, they are debarred from filing application under Section 28A of the Act. Once we find that the application filed by the petitioners was not

maintainable, we do not find any reason to direct the authorities to decide the same.

8. In view of the above, we do not find any merit in the present petition. The same is, accordingly, dismissed.

(RAJESH BINDAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 15, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No