

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18625 of 2014 (O&M)

Date of Decision: 16.05.2017

Smt. Nirmala Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. H.S. Hooda, Sr. Advocate with
Mr. C.S. Singh, Mr. Vivek Gupta, Advocates
for the petitioner.
Ms. Palika Monga, DAG Haryana.

RAJESH BINDAL,J.

1. The petitioner has filed the present petition seeking modification of the award dated August 30, 2013, passed by the Land Acquisition Collector, Urban Estate, Rohtak in an application filed by the petitioner under Section 28-A of the Land Acquisition Act, 1894 (for short 'the Act').

2. Learned counsel for the petitioner submitted that for acquisition of large chunk of land including the land owned by the petitioner, notification under Section 4 of the Act was issued on 17.11.2005. It was followed by notification dated 7.2.2006 issued under Section 6 of the Act. The acquisition was for the purpose of development and utilization of land as commercial, institutional and residential area for Sectors 65 to 68 at Sonipat. The Land Acquisition Collector vide award dated 2.3.2006 assessed the market value of the land at the rate of ₹ 12,50,000/- per acre. The petitioner did not file any objections under Section 18 of the Act, whereas other land owners filed the same. Those were decided by the reference Court vide award dated 31.3.2012. The petitioner filed application

which was allowed vide award dated 30.8.2013. As in challenge to the award of the reference Court, the amount of compensation was further enhanced by this Court, the petitioner has sought to challenge the award passed by Collector under Section 28-A of the Act, seeking same amount of compensation.

3. Learned counsel for the State submitted that in case the petitioner was not satisfied with the award passed by the Collector on an application filed under Section 28-A of the Act, the right recourse was to file application under Section 28-A(3) of the Act and not a writ petition in this Court as there was effective alternative remedy available to the petitioner and the writ petition should not be entertained.

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

5. The fact that after acquisition of land, the petitioner did not file objections under Section 18 of the Act, whereas the other land owners filed the same, is not in dispute. The reference Court enhanced the compensation vide award dated 31.3.2012. The State as well as the land owners filed appeals before this Court against the award of the reference Court. This fact has even been noticed by the Collector in the award passed under Section 28-A of the Act, as there was conditional interim stay granted by this Court in the appeals filed by the State. The appeals were finally decided by this Court vide judgment dated 3.11.2015 in *RFA No. 5360 of 2011, Kehar Singh Versus State of Haryana and others* and the compensation was further enhanced. It is at this stage that the petitioner filed the present petition. Thereafter in RA No. 304-CI of 2016 in RFA No. 5735 of 2012, titled as *Sarla and others Vs. State of Haryana and others*, the judgment of this Court

was modified and the compensation was redetermined.

6. Section 28A was inserted in the Act effective from 24.9.1984. The object is to grant parity in compensation even to those landowners who, on account of various reasons such as poverty, ignorance or other disability, could not file objections and seek reference to the court for re-determination of compensation under Section 18 of the Act. The benefit of Section 28A of the Act is available only to a landowner who had not earlier sought reference under Section 18 of the Act. As per scheme of Section 28A of the Act, a person who is interested in the land covered by the same notification and had not filed application under Section 18 of the Act earlier, may by written application to the Collector within 3 months from the date of award of the Court require that the amount of compensation payable to him/them may be re-determined on the basis of the amount of compensation awarded by the court to the landowners who had filed objections under Section 18 of the Act. On receipt of the application under sub-section (1) of Section 28A of the Act, the Collector is required to conduct an enquiry after giving notice to all the persons interested and giving them reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicant(s).

7. The scheme of Section 28A of the Act was considered by Hon'ble the Supreme Court in Babua Ram v. State of U. P., (1995) 2 SCC 689, wherein it was opined that Section 28A of the Act is a complete code in itself providing for remedy to the persons who could not earlier file application under Section 18 of the Act. Relevant paragraph thereof is extracted below:

“15. A bare reading of sub-section (1) of Section 28-A would indicate that wherein an award under this Part,

(Part III consists of Section 18 to 28), 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 other lands covered by the same Notification under Section 4(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 writing make an application to the Collector within three months from the date of the award of the Court requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court. The proviso gives a right to exclude the time taken from the day on which the award was pronounced and the time required to obtain a copy of the award in computation of three months within which the application for redetermination has been made in writing to the Collector under sub-section (1) of Section 28-A. The basis for redetermination is the award of the Court and the compensation awarded therein. Sub-section (2) thereof enjoins the Collector to issue notice to all the persons interested, i.e., the applicant, the State and the beneficiary, if any, to give them reasonable opportunity of being heard in the inquiry conducted thereon and to make the award determining the amount of compensation payable to the applicants under sub-section (1).

8. The issue was further 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. 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]*

9. In the aforesaid judgment, it was also opined that the object of Section 28A of the Act is not that a person, who had not sought reference initially under Section 18 of the Act, can get compensation higher than one payable to those who had sought reference by filing application under Section 18 of the Act.

10. In the case in hand, it is not in dispute that at the stage when the application filed by the petitioner under Section 28-A of the Act was decided by the Collector, even the appeal filed by the State against the award of the Reference Court, was pending wherein as an interim measure, it had been directed that 50% of the enhanced compensation was to be released without security whereas 50% was to be released with security. The

Collector also passed award under Section 28-A of the Act in terms thereof. It has been opined by Hon'ble the Supreme Court in Kendriya Karamchari Sehkari Greh Nirman Samiti Ltd. , Noida Versus State of U.P. And another 2009(1) SCC 754 that in situations where appeal against award of the reference Court, which is made the basis for re-determination of compensation in an application filed under Section 28-A of the Act, filed by the State is pending, the Collector would be within his authority to keep the application under section 28-A of the Act pending till the matter is decided by the High Court or the Supreme Court, as the decision rendered by the reference court enhancing compensation has not attained finality. This is to avoid multiplicity of litigation also. An applicant under section 28-A of the Act, cannot be paid compensation higher than the one which has been paid to the land owners who had filed objections under Section 18 of the Act. Hence, it can be opined that the award passed by the Collector was erroneous as he passed award in an application filed under Section 28-A of the Act in terms of interim order passed by this Court in appeal filed by the State, which was still to be finally decided.

11. For the reasons mentioned above, the writ petition is allowed. The award of the Collector is set aside and the matter is remitted back to him for decision in accordance with law.

(RAJESH BINDAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

16.05.2017
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Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No