

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

CWP No.21592 of 2017
Date of decision: 25.09.2017

Ram Parshad (deceased) through LRs

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. SP Chahar, Advocate for the petitioners.

ARUN PALLI, J. (Oral)

This is a petition under Articles 226/227 of the Constitution of India, praying for a writ in the nature of certiorari to quash the order Annexure P7, vide which the application moved by the petitioners under Section 28A of the Land Acquisition Act, 1894 (for short, 'the Act'), had since been dismissed being time barred. And for a direction to the respondents to award compensation to the petitioners in lieu of the acquisition of their land, measuring 48 kanals, in terms of the decision of this Court dated 01.09.2014 (Annexure P5).

Facts that are required to be noticed are limited.

Late Ram Parshad son of Chunni Lal, father of the petitioners, purport to be the owner of a land measuring 56 kanals. Vide notification dated 01.01.2002, issued under Section 4, a land measuring 632.28 acres, including the land holding of late Ram Parshad, was sought to be acquired for development and utilization of the residential, transport, communications Sector 6, Rohtak. Final declaration under Section 6, qua a land measuring

434.68 acres, was published on 30.12.2002. Vide award No.5, dated 29.12.2004, the Land Acquisition Collector assessed the value of the acquired land in terms of its nature and quality as also its proximity to the main road. Being aggrieved by the assessment as also the compensation awarded by the Collector, late Ram Parshad filed objections, dated 23.01.2005, on 08.02.2005, under Section 18, to the award rendered by the Collector. The Reference Court, vide award dated 30.11.2010 (Annexure P4), enhanced the compensation to ₹ 8,65,435/- per acre. And in the appeal preferred by late Ram Parshad, against the said award (Annexure P4) i.e. RFA No.3601 of 2011, this Court vide order and judgment dated 01.09.2014, further enhanced the compensation. The case now sought to be set out by the petitioners is; that inadvertently, in his claim under Section 18, their late father mentioned his land holding to be 8 kanals, though the entire 56 kanals was under acquisition. Resultantly, no enhancement was claimed for the balance 48 kanals. But, during the pendency of his appeal before this Court, vide application dated 12.02.2013 (Annexure P6), he had moved the Collector under Section 28A of the Act for re-determination of compensation, qua the land that was accidentally left out, in terms of the award dated 30.11.2010 (Annexure P4). And, for vide impugned order (Annexure P7), the Collector dismissed the said application, being time bared, the petitioners are before this Court.

For the limited issue that arises for consideration, it would be apposite to set out the conclusion arrived at by the Collector in support of its order:

“Under the provisions of section 28-A of Land Acquisition Act, the admissibility of the present application

requires the fulfillment of the conditions as per the law lay down in the case of Namdeo Ragho Gowari V/s State of Maharashtra, 1993(2) Mah LR 893 (Bom).:-

i) to iii) xxx xxx xxx

iv) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought.

Keeping in view the above said facts and condition no.4 the application dated 12.02.13 u/s 28-A is not maintainable and hereby rejected being time barred.”

Ex facie, the Collector rejected the application moved by late Ram Parshad, for the award on the basis whereof re-determination of compensation was being sought, was rendered by the Reference Court on 30.11.2010 (Annexure P4), whereas the application under Section 28-A was filed on 12.02.2013. And was thus, apparently time barred. Further, the provisions of Section 5 of the Limitation Act do not apply to the proceedings under Section 28-A of the Act. Not just that, the provisions of Section 28A entitles a claimant-land owners, who failed to file objections under Section 18 to the award rendered by the Collector, to claim re-determination of compensation, for the co-landowners were awarded enhancement by the Reference Court. Whereas, in the present proceedings late Ram Parshad had filed a claim under Section 18, which indeed was accepted by the Reference Court and the compensation was enhanced. So, even from that standpoint the application under Section 28-A, was wholly misconceived. Further, though the case set out by late Ram Parshad was that he accidentally mentioned his

land holding as 8 kanals, but, even if, that was so, he could always amend his claim under Section 18, while the proceedings were still pending before the Reference Court. Not just that, he could rectify the error at the time of institution or even during the pendency of the Regular First Appeal before this Court. Rather, one wonders as to why he did not do so, and instead moved the Collector under Section 28-A of the Act. Learned counsel for the petitioners could not point out as to how the conclusion arrived at by the Collector was either contrary to the record or suffered from any material illegality. Even, the decision of the Supreme Court in **Samiyathal and other v. Spl. Tehsildar and others**, 2015(2) RCR (Civil) 441, appended as Annexure P9, would not advance the case of the petitioners, for the directions contained in para 12 of the judgment, were issued in exercise of its power under Article 142 of the Constitution. Further, the impugned order (Annexure P7) does not bear any date. Nothing is stated in the petition either in this regard. Concededly, the application under Section 28-A was moved on 12.02.2013, and in every likely hood it must have been decided within a reasonable time thereafter. Thus, this petition, that was filed in August 2017, appears to be speculative in nature.

In conspectus of the above, the only and the inevitable conclusion one could reach; the petition is devoid of merit and is accordingly dismissed.

September 25, 2017
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
NO