

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA-4395-2015

Date of Decision: January 31, 2017

Shiv Narayan and others

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Saurabh Arora, Advocate,
for the appellants.

Mr. Shivendra Swaroop, Assistant Advocate General, Haryana.

ARUN PALLI, J. (ORAL)

The claimant/landowners are in appeal against the award dated 07.07.2014, rendered by the Reference Court, vide which their claim petition under Section 18 of the Land Acquisition Act, 1894 (for short, 'the Act'), was dismissed being barred by time.

Learned counsel for the appellants could not point out as to how the conclusion arrived at by the Reference Court was either contrary to the record or suffered from any material illegality. Faced with this situation, he submits that he be permitted to withdraw the appeal, with liberty to the appellants to resort to the remedy envisaged under Section 28-A of the Act, for re-determination of compensation in terms of the award in question, dated 07.07.2014. In support of his prayer he relies upon an order and judgment of this Court rendered in the case of **Ompal v. State of Haryana and others** [RFA No. 6990 of 2013 (O&M), decided on 01.07.2015] and **other connected matters.**

The prayer made by learned counsel for the appellants is not

opposed by learned State counsel.

I have heard learned counsel for the parties and perused the record.

Indisputably, after the award in question, i.e. dated 07.07.2014, was rendered by the Reference Court, the appellants could always invoke the provisions of Section 28-A of the Act and seek re-determination of compensation in terms of the impugned award itself. However, they filed the present appeal in good faith, which they pursued, thus for, bonafidely. Needless to assert that even if the objections of the appellants, under Section 18 of the Act, were dismissed on the ground of delay that would not bar their right to seek re-determination of compensation provided the provisions of Section 28-A of the Act are satisfied. [see **Union of India v. Smt. Hansoli Devi**, 2002 (7) SCC 273]

In **Ompal's case (supra)**, the claimant/landowner had sought re-determination of compensation under Section 28-A of the Act. And, the Collector vide an award under Section 28-A(2) re-determined the compensation. However, rather than taking recourse to the provisions of Section 28-A(3) of the Act, thereafter, the claimant preferred an appeal before this Court, under Section 54 of the Act. Although, this Court arrived at a conclusion that the appeal before this Court, under Section 54 of the Act, was not maintainable, and as the only remedy available to the appellant lay under Section 28-A(3), but granted opportunity to the claimant therein to move the Collector, under Section 28-A(3) of the Act within a specified time. Para Nos. 16, 17, 19 and 20 of the judgment in **Ompal's case (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.

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XXX	XXX	XXX	XXX	

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.”

Needless to assert that the appellants are not litigants by choice but owing to compulsory acquisition of their holding. And, they would hardly gain anything by delaying their own cause. Apparently, they are victims of circumstances for multiple reasons, i.e. poverty, rural background, lack of timely and appropriate legal advise. The very purport and intent of the Land Acquisition Act is to award just and fair compensation to the landowners. Concededly, the co-landowners have been awarded enhanced compensation.

In conspectus of the above, and in the wake of pertinent facts and circumstances of the present case, the appellants are permitted to withdraw this appeal, with liberty to move the Collector, under Section 28-A of the Act, within six weeks from today. And, in the event any such application is moved within the specified time, the same shall be decided on merits.

(ARUN PALLI)
JUDGE

January 31, 2017
Pkapoor

Whether Speaking/Reasoned:	YES / NO
Whether Reportable:	YES / NO