

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

**Date of Decision : 31.01.2017.
RFA No.973 of 2016 (O&M)**

**Punjab State through Collector-cum-Deputy Commissioner, Ferozepur
and another**

.....Appellants

Versus

Dara Singh

..... Respondent

2.

RFA No.974 of 2016 (O&M)

**Punjab State through Collector-cum-Deputy Commissioner, Ferozepur
and another**

.....Appellants

Versus

Sukhwinder Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. K.K.Gupta, Addl. A.G. Punjab.

None for the respondents.

ARUN PALLI, J. (Oral)

State is in appeal against the award dated 5.11.2015, rendered by the reference Court, vide which the claimants were awarded compensation at ₹1,20,000/- per acre. As also the statutory benefits admissible in law.

The facts that are required to be noticed are limited.

Land measuring 6 kanals 06 marlas owned by the claimants-landowners, which formed part of the revenue estate of village Maste Ke, Tehsil and District Ferozepur was acquired for the construction of advance

bandh. The Collector, vide award dated 31.12.2005, assessed the market value of the acquired land at ₹92,000/- per acre. Being dissatisfied with the assessment as also the compensation awarded by the Collector, the claimants-landowners filed objections under Section 18 of the Land Acquisition Act, 1894 (for short the 'Act'). However, their claims were dismissed by the Reference Court being barred by time. While in the other land references, arising out of the same acquisition, the Reference Court, vide awards dated 28.03.2014 (Ex.P1) rendered under Section 18, and 18.12.2014 (Ex.P2), rendered under Section 28-A, awarded enhancement to the landowners. Resultantly, the respondents also filed a petition under Section 28-A of the Land Acquisition Act, and sought re-determination of compensation in terms of the awards (Ex.P1). And, vide impugned award, the Reference Court, awarded the same compensation to the respondents as was awarded to the landowners vide award (Ex.P1).

Notice was issued to the respondents but despite service they have not chosen to appear.

All what has been urged by learned State counsel is that the claim petition preferred by the respondents under Section 18 of the Act was dismissed by the reference Court, being barred by limitation. And, since the respondents never questioned the said order, it attained finality. Thus, he submits that the subsequent petition preferred by the respondents under Section 28-A of the Act was barred and not maintainable. Particularly, when it was filed before the Additional District Judge, and not before the Collector. Further, he submits that besides the compensation awarded by the Reference Court in lieu of the acquired land, the respondents have also

been awarded solatium @ 30% **per annum**, which is contrary to the provisions of Section 23(2).

I have heard learned counsel for the appellant and perused the records.

Undoubtedly, the claim petition, under Section 18, filed by the respondents-claimants was earlier dismissed by the Reference Court being barred by time. It is also true that the said order was not assailed any further. But, the question that would thus, arise is; whether rejection of the reference of the respondents under Section 18, on the ground of delay would also bar the remedy or the right of the landowners to invoke the provisions of Section 28-A of the Act? The answer is no. Needless to assert, the objections filed by the respondents were dismissed being barred by limitation. Thus, the Court never examined and determined the claim under Section 18 on merits. Therefore, in the wake of the decision of the Hon'ble Supreme Court in **Union of India Vs. Hansoli Devi, 2002 AIR (SC) 3240**, the respondents could always seek re-determination of the compensation under Section 28-A of the Act, for, vide another award dated 28.03.2014 (Ex.P1), learned Additional District Judge (III), Ferozepur had enhanced the compensation awarded to the co-landowners to ₹1,20,000/- per acre.

Even the argument that the petition under Section 28-A of the Act, filed before the Reference Court was not maintainable can also not be countenanced in the peculiar facts of the present case. Indisputably, the respondents in the first instance had moved the Collector under Section 28-A. But, their application was forwarded/referred to the Reference Court for the compensation was to be re-determined in terms of the award dated

28.03.2014 (Ex.P1). Which is why neither did the State raise any objection in its written statement as regards maintainability of application under Section 28-A before the reference Court, nor any argument was ever advanced in this respect. No such ground is set out in the present appeal either. Once the appellant never objected or urged that claim under Section 28-A could only be re-determined by the Collector, at this stage, the State cannot be permitted to say so. But I must hasten to clarify that it does not mean that a petition under Section 28-A of the Act for re-determination would lie or is maintainable before the Reference Court. Particularly, when there is no dispute that respondents were entitled to the same compensation as awarded, vide award Ex.P1, to the co-landowners.

In so far as the issue; whether the respondents could be awarded solatium @ 30% **per annum**, suffice it to say that the provisions of Section 23(2) postulates:-

23(2) “In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition”.

Apparently, all what the provisions, referred to above, envisaged is that the claimants, in addition to the market value of the acquired land shall also be awarded solatium @ 30%. However, paragraph 1 of the award of the Reference Court shows that even the Collector had awarded solatium @ 30% **per annum** besides the other statutory benefits. That being so, it would be appropriate if an application seeking

clarification/rectification in this regard is moved by the State before the Reference Court/executing Court itself. And, in the event any such application is moved the same shall be decided by the Court after notice to the respondents.

In conspectus of the position as set out above, both the appeals are dismissed, subject however, to the liberty granted herein before to the appellants.

31.01.2017

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No