

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

**Civil Writ Petition No.27712 of 2018
Decided on : 05.12.2018**

Aravali Power Company (P) Ltd.

... Petitioner

Versus

District Revenue Officer-cum-Land Acquisition Collector, Jhajjar and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Vikas P. Singh, Advocate
for the petitioner (s).

Mr. Shivendra Swaroop, AAG, Haryana.

Mr. Sanjeev Kodan, Advocate for the landowners
in CWP Nos.27712, 27733, 27735, 27737, 27738, 27741,
27744, 27753, 27756, 27761, 27763 and 27764 of 2018.

Mr. B.K. Bagri, Advocate for the landowners
in CWP Nos.27751, 27759 & 27862 of 2018.

Mr. Balram Prashar, Advocate for
Mr. Jagmohan Ghuman, Advocate for the landowners
in CWP No.27740 of 2018.

G.S. Sandhawalia, J. (Oral)

Short reply/written statement filed on behalf of respondents

No.2 to 19 in CWP No.27712 of 2018 filed in the Court, is taken on record.

Written statement on behalf of respondents No.2 to 5 in CWP No.27751 of 2018 and on behalf of respondents No.2 to 9 in CWP No.27862 of 2018 are also taken on record by allowing CM-17961-CWP-2018 and CM-18335-CWP-2018 in respective petitions. Office to append the same at the appropriate place.

The present order shall dispose of 16 writ petitions i.e.

CWP Nos.27712, 27733, 27735, 27737, 27738, 27740, 27741, 27744, 27751, 27753, 27756, 27759, 27761, 27763, 27764 and 27862 of 2018.

The facts are being taken from **CWP No.27712 of 2018 'Aravali Power Company (P) Ltd. Vs. District Revenue Officer-cum-Land Acquisition Collector, Jhajjar and others'**.

The present writ petition filed by the petitioner-company challenges the order dated 16.08.2018 (Annexure P-7), whereby an application under Section 28A of the Land Acquisition Act, 1894 (for short 'the Act') has been allowed in favour of the landowners. The impugned order in effect grants the landowners the same amount of compensation as has been granted by the Apex Court in **Civil Appeal No.8757 of 2016 'Arawali Power Company Pvt. Ltd. Vs. Joginder Singh Tokash and others'** decided on 05.09.2017 (Annexure P-2). The Apex Court while modifying the judgment passed by the Coordinate Bench in **RFA No.266 of 2012 'Joginder Singh Tokash Vs. State of Haryana and others'** and other connected matters decided on 04.02.2016 (Annexure P-1) has reduced the compensation to ₹25 lakhs per acre from ₹29,00,400/- per acre alongwith all statutory benefits.

The notification in question is dated 16.01.2007 issued under Section 4 of the Act, whereby 2140 kanals 04 marlas of land falling in various villages including village Jharli, for the purpose of setting up of Thermal Power Project by the Aravali Power Company Pvt. Ltd., was acquired.

Thus, it is apparent that what the respondent No.1 has done

to grant the benefit of equal amount of compensation to all the landowners, which is the view which has also been taken by the Apex Court in '**Narendra & others Vs. State of Uttar Pradesh & others**' (2017) 9 SCC 426.

The sole contention which has now been raised by the counsel for the petitioner-company is that in the petition filed under Section 28A of the Act, the landowners had mentioned that they had filed a petition under Section 18 of the Act before the Land Acquisition Collector, but it was not sent to Civil Court for enhancement, for reasons best known by Reference Court. It is, accordingly, submitted that once it was the pleaded case of the landowners that a petition had been filed under Section 18 of the Act, there would be a bar under Section 28A and the respondent No.1 was not justified in allowing the application and reliance has been placed on the judgment of the '**Union of India and another Vs. Pradeep Kumari and others**' 1995 (2) SCC 736.

It is not disputed that the last award as such was passed by the Reference Court at Jhajjar on dated 28.11.2013, which led to the filing of the application under Section 28A of the Act. Thereafter, the petition under Section 28A was filed within the prescribed period. The Apex Court in Pradeep Kumari's case (supra) itself has held that the right cannot be confined in respect of the earliest award which is made by the Court after coming into force of Section 28A and that amplitude of the said provision cannot be read into Section 28A to restrict the benefit.

In '**Union of India Vs. Hansoli Devi**' 2002 (7) SCC 273, the

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I attest to the accuracy and
authenticity of this document

literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of the Section 28-A of the Act, to answer the questions referred to us by the Bench of the two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari's case the three learned Judges, while enumerating the conditions to

be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated -"the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer question No. 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894."

In the reply filed by the landowners, it has been clarified that the fact of petition under Section 18 was wrongly mentioned by the counsel for the landowners in part of the application under Section 28A and that it had not been sent to the Reference Court.

It is, thus, apparent that it is the case of the landowners themselves that their case under Section 18 of the Act, even if so filed was not decided on merits. Counsel for the petitioner-company even could not point out any order of the Reference Court in favour of the landowners, which has been decided on merits, whereby any amount was awarded over ₹16 lakhs as awarded by the Land Acquisition Collector or which was dismissed as per earlier orders of another Reference Court

dated 21.12.2011.

Once that is so, counsel for the landowners are justified and to fall back on the observations of the Constitutional Bench in the case of Hansoli Devi (*supra*) that there is no decision under Section 18 of the Act on merits.

In **Narender's case (*supra*)** while considering the provisions of Section 28A, the purpose of legislation was noted that it was for granting benefit to similarly situated persons and was salutary in nature, once the land has been taken away by the same notification. The relevant portion of the said judgment reads as under:-

“8. The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those land owners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the Legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired

are not willing parties. It was not their voluntary act to sell of their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court etc. In order to ensure that the land owners are given proper compensation, the Act provides for 'fair compensation'. Once such a fair compensation is determined judicially, all land owners whose land was taken away by the same Notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them.

9. No doubt the judicial system that prevails is based on adversarial form of adjudication. At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision making process, particularly, when it comes to administering justice to the marginalised section of the society”

Keeping in view the above, this Court is of the opinion that in the absence of any determination of merits, even if Section 18 petition was filed, as contended by the counsel for the petitioner, the order of the respondent No.1 is well justified, whereby the landowners have been granted the benefit at a grass-root level, rather than they approaching the

various forums to get the same amount of compensation.

The writ petitions are, accordingly, dismissed.

DECEMBER 05, 2018

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No