

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

**CWP No.3464 of 2018  
Date of Decision:15.02.2018**

The Union of India through the Secretary, Ministry of Defence and another

....Petitioners

Versus

The Special Land Acquisition Collector-cum-Sub Divisional Magistrate and

others

...Respondents

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

Present: Mr. Vivek Singla, Advocate  
for the petitioners.

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**G.S. SANDHAWALIA, J. (ORAL)**

The Union of India has challenged the order dated 27.10.2017 (Annexure P-3) under Article 226/227 of Constitution of India whereby respondent No.1 has allowed the application under Section 28-A of the Land Acquisition Act, 1894 (in short 'the Act') and granted enhanced compensation at the rate of Rs.2300/- per marla.

The same was done on the basis of the application dated 12.05.2016 (Annexure P-1) by the landowners-private respondents which was filed on the strength of the decision in RFA No.2902 of 1999 titled as Union of India Vs. Major Pritam Singh and others whereby this Court, vide order dated 17.02.2016 had enhanced the compensation to Rs.2300/- per marla from Rs.1400/- per marla as granted by the Reference Court as per the award dated 22.03.1999.

The argument which is raised by the Union of India is that in

view of the fact that SLP as such has been filed and leave has been granted on 15.12.2017 against the order passed in Major Pritam Singh's case (supra), the landowners should not get the said benefits and the matter should be kept pending till the decision of SLP by the Apex Court. Reliance has also been placed upon the judgment dated 12.12.2017 of Apex Court in Civil Appeal No.21792 of 2017 “Bharatsing S/o Gulabsingh Jakhad and others Vs. The State of Maharashtra and others”, in support of this contention.

After hearing the counsel for the Union of India, this Court is of the opinion that Union of India cannot be granted benefits for delay caused by it and deny payment of enhanced compensation to the landowners.

Admittedly, private respondents had chosen not to file the reference petition under Section 18 of the Act against the award dated 15.03.1993 of the Special Land Acquisition Collector. Only on account of fact that the amount was further enhanced in appeal by this Court in Major Pritam Singh's case (supra), they filed the applications immediately thereafter within 3 months. In reply filed by the Union of India, no such plea was taken that the respondents had chosen to contest the order in Major Pritam Singh's case (supra). The matter remained pending before the Collector also for a period of one year thereafter and no additional affidavit and supplementary stand was taken by the Union of India.

Eventually, the order dated 27.10.2017 came to be passed in favour of the landowners and relief has been granted in view of Major Pritam Singh's case (supra). In such circumstances, the order as such which is now being impugned of the Land Acquisition Collector, does not suffer

from any infirmity. Merely because the Union of India has chosen to file SLP at the subsequent stage, the benefit of enhanced compensation as such cannot be denied to the landowners.

The Union of India is well protected in as much as Apex Court in **Union of India Vs. Munshi Ram (deceased) through LRs, 2006(2) RCR (Civil) 763** has held that in case of reduction of compensation by the superior Courts, the applicants under Section 28-A may be directed to refund the excess amount if received by them. The relevant portion reads as under:

*“9. We hold that under Section 28-A of the Act, the compensation payable to the applicants is the same which is finally payable to those claimants who sought reference under Section 18 of the Act. In case of reduction of compensation by the superior Courts, the applicants under Section 28-A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded.”*

In such circumstances, this Court is of the opinion that the principle laid down in **V. Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and another, 2010(10) SCC 650** that Section 28A is only incorporated for the purpose of goal of equality and to remove the inequality in payment of compensation in lieu of acquisition of land under the principle of eminent domain. The relevant portion reads as under:

*“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 land owners, 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.”*

The judgment in Bharatsing's case (supra) relied upon would be of no assistance to the State. The Apex Court in the said case was dealing with the issue of second application filed under Section 28-A of the Act for enhancement of the compensation on the basis of the judgment of the High Court. It was accordingly, held that once the appeals are pending, the Collector can keep the application pending till the appeal is decided and the matter was remanded to the Collector to pass fresh orders keeping in view the decision of the Appellate Courts.

As noticed in the present case, this Court already had decided on 17.02.2016 the benefit of the same was sought by the landowners. At the time of passing of the impugned order dated 27.10.2017 nothing had been brought to the notice of respondent No.1 that any appeal has been further filed. Once the said fact not brought to the notice of the said respondent, no fault can be found in the order. Merely because thereafter Union of India has chosen to approach the Apex Court, the landowners cannot be denied the benefits of the enhanced compensation keeping in view the principle

which is now been laid down by the Apex Court recently in case **Narender and others Vs. State of Uttar Pradesh and others, 2017(9) SCC 426**, that all landowners are entitled for the same amount of the compensation on the principle of equality. Relevant portion reads as under:

*7. 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."*

Accordingly, there is no merit in the present writ petition.

Dismissed in limine.

15.02.2018  
pvd

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

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |