

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.5315 of 2017
Decided on: 22.03.2018

Nihal Singh (deceased) th. Lrs & othersAppellants

Versus

State of Haryana & others ...Respondents

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

Present: Ms.Indu Bala, Advocate, for
Mr.Aditya Jain, Advocate, for the appellants.

G.S. SANDHAWALIA, J. (Oral)

The present appeal is directed against the award of the Addl.District Judge, Gurgaon dated 25.09.2017, whereby enhancement has only been granted to the extent of Rs.361/- per sq.yards, keeping in view the fact that a Co-ordinate Reference Court, under Section 28-A(3) of the Land Acquisition Act, 1894, had fixed the market value of the land of Village Wazirabad, for notification dated 15.05.1997, at the said level.

It is the case of the appellants that for the same notification, the market value has been pegged down to Rs.1216/- per sq.yards, in RFA-1824-2006 titled *Sudama & others Vs. The State of Haryana & another*, on 01.10.2010 and therefore, claim parity at the same level.

It is not disputed that against the award of the Collector dated 03.05.2000, whereby the market value was fixed between Rs.7,20,000/- per acre to Rs.12,00,000/- per acre, depending upon the type of land, other landowners had filed reference petitions under Section 18. The appellants not having filed the reference petition, sought the benefit of the same on account of the enhancement granted to the other landowners by virtue of the award passed on 04.04.2005 in LA case No.902 titled *Tara Chand Vs. State of Haryana*, by filing a petition under Section 28-A, within limitation, which was dismissed on 21.09.2012 by the Land

RFA-5315-2017

Acquisition Collector and accordingly, reference petition had been preferred before the Reference Court under Section 28-A(3).

Reference Court, though noticing various judgments on the principle that an award is relevant piece of evidence, chose to fall back on the proposition of law that under Section 28-A, the applicability was only upto the Reference Court and did not apply to the orders made by the High Court.

The Reference Court has, apparently, failed to exercise its jurisdiction under Section 28-A(3), which was vested with it, since the appellants had not accepted the award passed by the Land Acquisition Collector who had also declined to grant the benefit of enhancement as granted by the Reference Court. Section 28-A (3) reads as under:-

“28-A(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.”

The principle that the landowners are entitled for the same rate of compensation which has been judicially determined and which can be fair compensation, was not kept in mind. The Apex Court in '**V Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and another** '2010 (10) SCC 650 discussed the principles enshrined for the purpose of incorporating the said section and held 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.”

Reliance can be placed upon judgment passed by the Apex Court in **Narendra & others Vs. State of Uttar pradesh & others 2017 (9) SCC 426** wherein it was held 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 to 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."

It was further noticed that the proceedings under the Act were not an adversarial form of adjudication. The appellants were only seeking parity, as

RFA-5315-2017

such and compensation along with other similarly situated landowners. Thus, this Court is of the opinion that relief has wrongly been denied by the Reference Court.

Accordingly, the present appeal is allowed and the landowners are held entitled for the benefits @ Rs.1216/- per sq.yards along with all statutory benefits.

22.03.2018
Sailesh/Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*