

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

**CWP No.322 of 2019
Date of Decision:10.01.2019**

Gurdial Singh and anotherPetitioners

Versus

State of Punjab and others ...Respondents

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

Present: Mr. R. S. Manhas, Advocate
for the petitioners.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India challenging the order dated 08.10.2018 (Annexure P-3) passed by respondent No.2-the Land Acquisition Collector vide which application filed under Section 28-A of the Land Acquisition Act, 1894 (for short 'the Act') has been dismissed on the ground of delay.

As per the impugned order, the award was passed on 16.10.1996 by the Land Acquisition Collector for the notification under Section 4 of the 1894 Act issued on 19.11.1993. Dissatisfied with the award passed by the Land Acquisition Collector, the other landowners filed reference petitions and the Reference Court vide award dated 29.07.2000 enhanced the rate of compensation to Rs.1000/- per marla. In the appeals filed against the said award, this Court in RFA No.2522 of 2001 further enhanced the compensation from Rs.1000/- to Rs.1754/- per marla vide order dated 23.07.2010 (Annexure P1). On the basis of the said decision of this Court, the application under Section 28-A of the Act

was filed which has been dismissed on the ground that it was beyond the prescribed period of three months and it was barred two months and thirteen days. The Land Acquisition Collector also noticed that amount was claimed on the ground that co-sharer Sardar Singh has been granted the benefits of enhancement. Section 28-A of the 1894 Act reads as under:

“28A. Re-determination of the amount of compensation on the basis of the award of the Court. - (1) where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(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.”

A perusal of the above would go on to show that an application can be filed wherein award under Section 28-A (3) of the Act can be filed wherein the Court may allow enhanced compensation to the applicant under Part-III of the Act. The petitioners apparently did not file any application after award of the Reference Court and therefore, counsel is at loss as to how the petition under Section 28-A of the Act was maintainable after the decision of the appeal by this Court under Section 54 as they could come under Part-VIII of the Act apart from the issue of limitation.

Face to this legal hurdle, counsel does not press the present writ petition and prays for liberty to avail the alternative remedy available before the Executing Court where the co-sharers as such are seeking benefits of enhanced compensation in view of the judgment dated 23.07.2010 (Annexure P-1) and which would give petitioners the right as such to also claim the benefits of enhanced compensation in the executing proceedings also.

The present writ petition is disposed of with the above said liberty.

10.01.2019
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No