

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.598 of 2019

Date of Decision: 17.09.2019

Kaushailya Devi & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. Rahul Jaswal, Advocate for the petitioners

Ms. Vibha Tewari, AAG Haryana

Mr. Pritam Singh Saini, Advocate for respondents No.2&3

G.S. SANDHAWALIA, J. (Oral)

The challenge in the present writ petition filed under Articles 226/227 of the Constitution is to the order dated 08.06.2018 (P3) passed by Land Acquisition Collector, Panipat – respondent No.4 whereby while allowing the application under Section 28-A, he has granted the market value to the tune of Rs.28,65,500/- per acre along with statutory benefits which is in consonance with the award of the Reference Court dated 25.09.2014.

The land was acquired vide notification dated 30.06.2005 falling in village Dadlana and Bohali, Tehsil and District Panipat.

The solitary grouse as such of the petitioners is that for the same set of acquisition, other landowners have been granted the market value @ Rs.43,75,360/- in **RFA-4694-2014 Tara Chand & Ors. vs. State of Haryana & Ors.** (P2) on 03.03.2016 which fact could not be brought to the notice of the Land Acquisition Collector and neither the Collector as such granted the said benefit. It is further pointed out that the said judgment of this Court has been upheld by the Apex Court in SLP (C)No.20172/2016

and connected bunch which were dismissed on 03.03.2017. It is thus apparent that at the time of passing of the impugned award by the Land Acquisition Collector, the amount stood finalised as such and the market value had been awarded at a higher rate but the petitioners have only been awarded the amount as per order of the Reference Court. The relevant portion of the order passed in **Tara Chand & Ors.** case (supra) reads as under:-

“Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the appeals filed by the beneficiary department i.e. HSIIDC have been found wholly misconceived, bereft of merit and without any substance, thus, these must fail and the same are hereby dismissed. The appeals as well as crossobjections filed by the land owners deserve to be partly accepted and the same are allowed to the extent indicated above. The land owners are held entitled to receive the compensation for their acquired land at the uniform rate of Rs.904/- per square yard, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled to all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all the abovesaid appeals as well as cross-objection stand disposed of, in the abovesaid terms, however, with no order as to costs.”

Mr. Pritam Singh Saini, Advocate for respondents No.2&3 has filed the written statement vehemently opposing the grant of higher compensation on the ground that firstly the order of the Land Acquisition Collector was without jurisdiction in as much as he has condoned the delay as the petition was filed on 20.12.2017 though the same had to be filed within a period of three month.

Secondly, it is argued that the petitioners have got the remedy as such to challenge the order under Section 28A(3) by seeking a reference to the Reference Court. Keeping in view the fact that the market value as such has been finalised upto the Apex Court to the tune of Rs.43,75,360/-, this Court is of the view that keeping in view the judgment in **Narender & Ors. vs. State of UP & Ors. (2017) 9 SCC 426** the salutary benefits which are to flow from the amendment by incorporating Section 28A were taken into consideration. The Apex Court held that the all the landowners whose land was acquired vide the same award are entitled for the same amount of compensation. The relevant portion 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.

The objection as such raised to the order of the Land Acquisition Collector being illegal as such having condoned the delay also would not detain this Court for long in as much as the Land Acquisition Collector has relied upon the order dated 26.02.2002 passed in **CM Nos.1585-CII & 1586-CII of 2000 in Civil Revision No.848/2000 Lal Singh & Ors. vs. State of Haryana & Ors.** In such circumstances the order having not been challenged by respondents No.2&3, in spite of a

period of more than a year having elapsed, it would not lie in the mouth of the respondents to oppose the grant of higher compensation on this ground.

The objection as such *re.* alternative remedy on the ground that under Section 28-A(3) the landowners can approach the Reference Court would also not be justifiable keeping in view the fact that once the market value as such stands settled till the Apex Court in view of the judgment in **Tara Chand** (supra), the extraordinary writ jurisdiction can be exercised by this Court on the same principle of equality. As such by referring the matter to the Reference Court would only delay the proceedings which are to end in an inevitable conclusion of grant of higher amount. Resultantly, the objection raised by the respondents are overruled.

The writ petition is accordingly allowed and the landowners are held entitled for the same amount of compensation as has been granted by this Court in **Tara Chand & Ors.** (supra), reproduced above. The payment be made within 3 months from the date of receipt of certified copy of this order.

Ordered accordingly.

17.09.2019

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(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No