IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1479-2018
Date of decision: 24.05.2019

Gurpal Singh ....Petitioner

Versus

State of Punjab & another ...Respondents

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

Present: Mr.Rakesh Gupta, Advocate, for the petitioners.

Ms.S.G.Randhawa, AAG, Punjab.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 4 writ petitions, bearing CWP-1479, 1494, 6191 & 6226-2018, since identical question of law are involved and the facts are also similar.

Challenge in the present writ petitions is to the order dated 26.12.2017 (Annexure P-1), passed under Section 28-A of the Land Acquisition Act, 1894, by respondent No.2-the Land Acquisition Collector whereby he has declined to grant higher amount of compensation as awarded by this Court in RFA-2741-2012 titled *Gurpreet Singh Vs. State of Punjab & others*, decided on 10.02.2016 (Annexure P-3). The market value had thus, been fixed @ Rs.1400/- per sq.yard (Rs.67,76,000/- per acre), for the land which was acquired vide notification dated 09.04.2001. The reason for declining the said benefit was that the second application which was filed claiming the higher amount of compensation during the pendency of the first application, filed under Section 28-A, which was held not to be maintainable.

It is not disputed that the amount, as awarded by this Court, has been upheld by the Apex Court on 23.01.2017 (Annexure P-7), whereby the

SLPs had been dismissed.

State has taken an objection that there is an alternative remedy under Section 28-A(3) apart from objecting on merits that the second application was not maintainable.

The basis of reasoning given by respondent No.2 is totally misplaced and the said respondent seems to have lost sight of the fact that the landowners are entitled for the same amount of compensation for the notification in question under the principle of Eminent Domain. The second application purportedly was filed on 23.01.2017 whereas the first application had been filed on 12.06.2012. The application dated 23.01.2017 cannot be treated as second application in stricto-senso. Admittedly, the first application was still pending before the said respondent, which had been filed on the strength of the award dated 30.03.2012 (Annexure P-3) whereby the Reference Court, Patiala had enhanced the compensation from Rs.5,00,000/- per acre, as awarded by the Land Acquisition Collector, to Rs.24,20,000/- per acre. The District Judge had subsequently reviewed the award on 12.06.2012 (Annexure P-4) whereby the statutory benefits of interest were also awarded under Section 28 of the Act.

The position has been settled beyond an anvil of doubt as to the fact that petition under Section 28-A is to be kept pending till the decision by the superior Courts since only one petition is maintainable. Admittedly, the impugned order was passed on 26.12.2017 (Annexure P-1) after the decision by this Court on 10.02.2016 and also after the decision of the Apex Court on 23.01.2017.

In **Bharatsing & others Vs. State of Maharashtra & others (2018) 11 SCC 92**, the said principles was crystallized and reference was made to the judgment of **Babua Ram & others Vs. State of UP & another 1995 (2) SCC 698** and **U.P. State Industrial Development Corporation Ltd. Vs. State of U.P. & others (1995) 2 SCC 766**, that the proper course would have been to keep the application filed under Section 28-A(3) pending till the appeal was disposed of.

The principle underlying this procedure to be followed by the Collector is on account of the fact that only one application can be filed under Section 28-A and the Land Acquisition Collector should await the orders of the superior Courts. The purpose behind the statutory provisions incorporated by way of amendment under Section 28-A was noticed by the Apex Court in **Narendra & others Vs. State of UP & others (2017) 9 SCC 426**, wherein it was held that the landowners are entitled for equal amount of compensation. Relevant portion of the 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."

The argument that there is an alternative remedy, as such, available under Section 28-A(3) would also not detain this Court for long period, as it is settled principle that the Writ Court can exercise its jurisdiction wherein it feels appropriate and just to grant the benefit. The market value of the land in question qua the notification has already been finalized till the Apex Court and no useful purpose, as such, would be served by referring the matter to the District Judge, at this stage, who would also be bound by the decision of this Court dated 10.02.2016 and would only result in unnecessary delay and increasing litigation, as such. Accordingly, the objection, as such, stands declined.

The additional facts of CWP-1494-2018 is that the first application under Section 28-A was filed on 30.08.2012, which is within 3 months period from 12.06.2012, when the Reference Court had reviewed its earlier order dated 30.03.2012. Keeping in view the fact that the Reference Court had enhanced the market value on 30.03.2012, the application has been held to be time-barred and also the additional ground has been taken that the second application is not maintainable. The issue of second application has already been discussed in detail and therefore, the matter stands duly covered. Regarding the fact that whether it was time-barred or not, if we consider the order dated 30.08.2012, the matter can be looked from the view taken by the Apex Court in **Union of India & another Vs. Pradeep Kumari & others (1995) 2 SCC 736**. In the said case, the Apex Court disagreed with the reasoning given in **Babua Ram** (supra) that the limitation ought to be considered from the date of the first award that is after coming into force of Section 28-A, which would amount to rephrasing the legislation. It was, accordingly, held that Section 28-A was in the nature of beneficial legislation, intended to remove inequality and the Court should adopt a constructive view to advance the policy of the legislation and therefore, limitation was only to run from the date of the award on the basis of the redetermination of compensation, as has been sought. Relevant portion read as under:

> "12. Since the cause of action for moving the application for re- determination of compensation under Section 28-A arises from the award on the basis of which re-determination of compensation is sought, the principle that "once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court" can have no application because the limitation for moving the application under Section 28-A will begin to run only from the date of the award on the basis of which re-determination of compensation is sought.
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> 13. We are, therefore, unable to agree with the view expressed in Babua Ram (supra) and Karnail Singh (supra) that application under Section 28-A for re-determination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28-A. In our opinion, the benefit of re-determination of amount of compensation under Section 28-A can be availed of on the basis of any one of the awards that has been made by the court after the coming into force of Section 28-A provided the applicant seeking such benefit makes the application under Section 28-A within the prescribed period of three months from the making of the award on the basis of which re-determination is sought, The first contention urged by Shri

Goswamy in support of the Review Petitions is, therefore, rejected."

Once the order has been reviewed, as such and the statutory benefits, under Section 28-A had been granted by virtue of the order dated 12.06.2012, limitation would necessarily be counted from the subsequent order. Therefore, the application filed on 30.08.2012 has to be read within the prescribed period of limitation.

Keeping in view the above discussion, the present writ petitions are allowed, the order dated 26.12.2017 (Annexure P-1) cannot be held to be justified and the same is, accordingly, quashed and the petitioners are held entitled for the same amount of compensation as granted to the other similarly situated landowners, i.e., Rs.67,76,000/- per acre along with all statutory benefits. The said amount be paid to the petitioners within a period of 3 months from the receipt of the certified copy of this order.

24.05.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*