

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21006 of 2018
Date of Decision: 04.04.2019

Raj Singh (now deceased) through his LRs & Ors. ... Petitioners

VS.

State of Haryana & Ors. ... Respondents

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

Present: Mr. Ashish Gupta, Advocate for the petitioners

Ms. Vibha Tewari, AAG Haryana

G.S. SANDHAWALIA, J. (Oral)

(1) The challenge in the writ petition filed under Articles 226/227 of the Constitution is to the order dated 19.02.2015 (P4) whereby amount of compensation was fixed @ ₹ 88,25,208/- per acre while deciding the application under Section 28A of the Land Acquisition Act, 1894 by the Land Acquisition Collector, Gurgaon. The same was on the basis of award of the Additional District Judge in **LA Case No.550 of 2012 titled as Chandan Singh etc. vs. State of Haryana** decided on 28.04.2014 along with all statutory benefits.

(2) The notification in question under Section 4 was issued on 11.02.2010 for the land falling in village Bhangrola. The amount of compensation as awarded by the Land Acquisition Collector @ ₹ 50 lakhs per acre was enhanced to ₹ 1,81,44,000/- per acre in **RFA No.5316 of 2014 Pushpender Kumar & Ors. vs. State of Haryana & Anr.** decided on 27.05.2016 while deciding a bunch of cases (P2). The Apex Court had reduced the amount by 15% in Civil Appeal No.11913-11945 of 2017. Resultantly, the amount of market value for the land would come to

₹ 27,21,600/- and thus the market value has been fixed @ ₹ 1,54,22,400/- per acre.

(3) It is thus the contention of the counsel for the petitioner that once the matter is pending before the Apex Court, application under Section 28A should not have been decided. The same has been opposed by counsel for the State and as per the defence taken the present writ petition is not the appropriate remedy since there is alternative remedy to approach the Civil Court for the said benefits.

(4) Counsel for the petitioners has further pointed out that it has been wrongly recorded that the matter has become final upto the Apex Court and that opinion had been taken that their cases are not fit for filing RFA on behalf of the Department. The landowners were already in appeal before this Court on the said date and their appeals were decided subsequently on 27.05.2016.

(5) The matter is thus squarely covered by the decision of this Court in **CWP No.3805 of 2018 Sunder Lal & Ors. vs. State of Haryana & Ors.** decided on 14.03.2019. The same issue had arisen for consideration and the following legal question was framed:-

“The legal question, as such, which would arise for consideration is whether the land owners are entitled for same amount of compensation fixed for Notification dated 25.01.2008 issued under Section 4 of the Act to the land owners of the same revenue estate and whether respondent No.2 was justified in deciding the application under Section 28A of the Act when the matter was still pending consideration for enhancement for the market value before this Court.”

(6) Resultantly, the writ petitions were allowed in that case by holding as under:-

The principle has already been settled by the Apex Court time and again that 'once the matter is pending before the superior Court, respondent No.2/Land Acquisition Collector should stay its hands'. Reliance can be placed upon the judgment in ' Babua Ram and others v. State of UP and another, 1995 (2) SCC 698' and the recent decision of the Apex Court in 'Bharatsing v. The State of Maharashtra and others, (2018) 11 SCC 92'. Relevant portion of the same reads as under :

*“17. The Section 28A application dated 31.12.1992 based on the awards in LAR Nos.123 and 129 of 1983 was decided on 25.10.2000 when the appeals therefrom were pending. The Collector ought to have kept the application pending till the appeals were decided on 23.3.2009. On principle, the High Court is correct and justified in the view taken in the impugned judgment that there cannot be successive applications under Section 28A in view of **Pradeep Kumari** (supra). But that is not the point arising for consideration here. No doubt, the second application dated 27.5.2009 for refixation in light of the appellate Court judgment is not maintainable. However, since the Collector is also at fault in deciding the application when the matter was pending in appeal, we are of the view that in the peculiar facts of the instant case, the application dated 31.12.1992 should be considered afresh. Accordingly, the appeal is disposed of as follows. The Land Acquisition Collector is directed to consider afresh the Section 28A application dated 31.12.1992 and pass orders in the light of the judgment of the High Court dated 23.3.2009 in First Appeal Nos. 569 and 570 of 1997 on the file of the High Court of Bombay, Bench at Aurangabad. For enabling the Collector to pass orders as above, the order dated 25.10.2000 is set aside. However, the amounts already paid are to be duly adjusted.”*

The Apex Court in ' Narendra and others v. State of UP and others, (2017) 9 SCC 426' has held that the land owners are entitled for the equal 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 landowners 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 off 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. The 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 landowners are given proper compensation, the Act provides for “fair compensation”. Once such a fair compensation is determined judicially,

all landowners 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.”

Merely because there is an alternative remedy as such would not stand in the way of the petitioners, as it is settled principle that the writ Court can exercise its jurisdiction where it feels appropriate to reach out and grant the benefit of relief. It would be a futile exercise to refer the matter to the reference Court, which would be bound by the order of the Apex Court and to curtail unnecessary litigation and delay, the petitioner can be granted the same amount as the litigation qua the fixation of market value has been fixed. Accordingly, no ground is made out to send the matter to the reference Court, the prayer of the State to that extent stands declined.

In such circumstances, the order, as such, of respondent No.2 cannot be held to be justified. Accordingly, the same is quashed. The petitioners are, accordingly, entitled for the same amount of compensation as has been awarded by the Apex Court.

Petitions stand allowed.”

(7) Accordingly, the writ petition is also allowed in same terms as in **Sunder Lal’s** case (supra) and the petitioners shall be entitled for the

amount of compensation @ ₹ 1,54,22,400/- per acre along with all statutory benefits.

(8) Ordered accordingly.

04.04.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No