

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-27382-2018

Date of decision: 19.09.2019

Gurmail Singh (deceased) th LRs

....Petitioners

Versus

Union Territory, Chandigarh & another

...Respondents

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

Present: Mr.R.L.Sharma, Advocate, for the petitioners.

Mr.Jaivir Chandail, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 11.03.2016 (Annexure P-8) passed under Section 28-A of the Land Acquisition Act, 1894 (for short, the 'Act') wherein the Land Acquisition has granted the benefit of higher compensation, only to the extent what had been prayed for and at par of what had been awarded by the Reference Court, on the basis of the judgment dated 01.06.2013. Resultantly, a sum of Rs.58,56,000/- per acre had been awarded for the land falling in Village Maloya, for the notification under Section 4 dated 01.09.2006.

The grouse of the petitioners is that at the time the LAC had decided the matter, prior to that, this Court in **RFA-6554-2013** titled *Gurpreet Singh & another Vs. Union Territory, Chandigarh*, on 06.10.2015 (Annexure P-6) had enhanced the market value of the land to Rs.91,80,000/- per acre.

In the written statement filed, objection has been taken that since the application for redetermination of compensation, filed under Section 28-A has already been decided, the present writ petition would not

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be maintainable. Counsel for the respondents, accordingly, submits that what has been prayed for in the application, was allowed by the LAC.

The law is settled beyond an anvil of doubt in the judgment passed by the Apex Court in '**Babua Ram and others Vs. State of U.P. and another, 1995 (2) SCC 698, 'Union of India Vs. Pardeep Kumari, 1995 (2) SCC 736, Union of India Vs. Smt.Hansoli Devi 2002 (7) SCC 273 and 'Bharatsingh Vs. The State of Maharashtra and others', (2018) 11 SCC 92**, that the last award, as such, is the award which is to be kept in mind and if appeals which are pending before the superior Courts, the LAC should keep his hand away from such matters. The basic principle is that the landowners are entitled for the same amount of compensation when the notification is common as a second application is not maintainable.

The observations of the Apex Court on the provisions of Section 28-A in '**A. Viswanatha Pillai Vs. Special Tahsildar For Land Acquisition', 1991 (4) SCC 17 and 'Narendra and others Vs. State of U.P and others' 2017 (9) SCC 426** are also in the same line, while noting the salutary principles for the purpose for which Section 28-A was introduced in the 1894 Act. Relevant portion of the judgment in **Narendra** (supra) 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,

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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.”

It has further been brought to the notice of this Court that the judgment in **Gurpreet Singh** (supra) has been upheld by the Apex Court by dismissing the SLP filed by other landowners and U.T.Chandigarh, on 23.11.2017.

Once the market value has been finalized, this Court is of the opinion that it was the onerous duty of the LAC also to grant the same amount of compensation, even if the said fact had not been brought to its notice. It is settled principle also that a petition under Section 28-A can only be filed for the amount of compensation, as awarded by the Court, which is the Reference Court, and not for the benefits given by the High Court or the Supreme Court, which is the law laid down in **CA-4885-2018** titled *Ramsingbhai (Ramsangbhai) Jerambhai V. The State of Gujarat*, decided on 24.04.2018.

Resultantly, the present writ petition is allowed, by issuing directions that the petitioners are also entitled for the market value @ Rs.91,80,000/- per acre along with all statutory benefits. Said amount be paid to the petitioners within a period of 3 months from the date of receipt of certified copy of this order.

19.09.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No