

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29191-2017
Decided on: 23.04.2019

Hari Singh @ Hariya & othersPetitioners

Versus

State of Haryana & others ...Respondents

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

Present: Mr.Amit Jain, Advocate, for the petitioners.

Mr.Shivendra Swaroop, AAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India, is to the order dated 19.12.2016 (Annexure P-4), passed by respondent No.3, whereby the petition, filed under Section 28-A of the Land Acquisition Act, 1894 (for short, the 'Act') has been decided and the landowners have been granted compensation @ Rs.1,77,71,110/- per acre along with all statutory benefits. The same has been done on the basis of the award passed by the Additional District Judge, Gurugram in Land Acquisition Case No.704/2012 titled *Sama Chauhan Vs. State of Haryana*, decided on 26.03.2014.

The grouse of the petitioners is only to the extent that the matter has been finalized upto the Apex Court for the notification dated 11.02.2010 in **CA-11913-11945-2017** titled *State of Haryana & another Vs. Pushpendra Kumar & others*, decided on 05.09.2017, whereby the market value has been finalized, by reducing the amount by 15%, from Rs.3,52,00,000/- per acre to Rs.2,99,20,000/- per acre, as granted by this Court, for Village Hayatpur, which is the dispute in the present case.

Thus, the landowners are only praying that they should be awarded the same amount of compensation, as has been granted to the similarly situated landowners. It is their case that respondent No.3 had been apprised of the said fact by filing an application (Annexure P-2) that this Court in RFA-5316-2014, decided on 27.05.2016, had enhanced the compensation to Rs.3,52,00,000/- per acre.

The defence taken by the respondents is that an application can be filed under Section 28(A)(3) of the Act, to refer the case to the Additional District Judge, Gurugram, on account of the fact that they have not been granted the adequate compensation.

The said issue would not detain this Court for long, as a similar issue came up for consideration before this Court in CWP-3805-2018 titled *Sunder Lal & others Vs. State of Haryana & others*, decided on 14.03.2019, whereby higher amount of compensation had been granted of the same revenue estate than the amount awarded by the Reference Court.

The legal question which was before this Court in CWP-3805-2018 was as under:

“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 25.1.2008 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.”

Resultantly, keeping in view the law on the issue, it was held that the landowners are entitled for the same amount of compensation and the alternate remedy, in such circumstances, would not stand in the way of a Writ Court. The conclusion reads 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.

Photocopy of this order be placed on the files of the connected appeals.”

Mr.Swaroop has further submitted that the order of the Apex Court was passed after the order passed by respondent No.3 and it would have not been possible to recover the higher amount awarded by this Court. The answer has been given by the Apex Court in **Union of India Vs. Munshi Ram (Dead) by LRs & others 2006 (4) SCC 538** as under:

“8. We are of the view that the Union of India is right in its submission that the amount payable under [Section 28A](#) of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under [Section 18](#) of the Act. The said provision seeks to confer the benefit of enhanced compensation even on those owners who did not seek a reference under [Section 18](#). It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under [Section 28A](#) of the Act, is the enhanced compensation decreed by the Reference Court, we must

understand the decree to mean the decree of the Reference Court as modified in appeal by higher Courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under [Section 18](#) of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by superior court. There can be no dispute that those claiming higher compensation and claiming reference under [Section 18](#) of the Act are bound by the decree as modified by the superior Court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others.

It was contended before us that after the order of redetermination was passed, Union of India could have challenged this order, and since it failed to do so, it lost its right to challenge that order. The submission overlooks the basic plea of the Union of India that at the stage when the order of redetermination was passed under [Section 28A](#) of the Act that order was fully justified and any further redetermination could be claimed only if there was variation of the decree and the amount awarded by way of compensation was reduced. In the instant case that happened in the year 1997, and therefore, in one sense it was indeed premature for the Union of India to challenge the redetermination under [Section 28A](#) in the year 1995, much before the decree was actually modified.

9. We hold that under [Section 28A](#) of the Act, the compensation payable to the applicants is the same which is finally payable to those claimants who sought reference under [Section 18](#) of the Act. In case of reduction of compensation by superior courts, the applicants under [Section](#)

28A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded.

We are informed that none of the claimants have yet been paid in accordance with the order of redetermination under Section 28A or thereafter.

10. In the facts and circumstances of the case, these appeals are allowed and a direction is made to the Collector under the Act to redetermine the compensation payable to the respondents in accordance with the compensation awarded by the judgment and decree of this Court dated 29th April, 1997 and pay the same to the claimants within a period of three months from today.”

Accordingly, for the reasons stated above, the present writ petition is allowed. The impugned order dated 19.12.2016 (Annexure P-4) is quashed and the landowners shall be entitled for the same amount of compensation as granted by the Apex Court @ Rs.2,99,20,000/- per acre, for Village Hayatpur along with all statutory benefits.

23.04.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No