

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP No. 3805 of 2018
Date of Decision: 14.3.2019

Sunder Lal and others	v.	Petitioners
State of Haryana and others		Respondents

2. CWP No. 25621 of 2018

Nathu and others	v.	Petitioners
State of Haryana and others		Respondents

3. CWP No. 27854 of 2018

Budh Ram and others	v.	Petitioners
State of Haryana and others		Respondents

4. CWP No. 13784 of 2018

Chandgi Ram and others	v.	Petitioners
State of Haryana and others		Respondents

5. CWP No. 18215 of 2018

Shiv Lal	v.	Petitioner
State of Haryana and others		Respondents

6. CWP No. 18255 of 2018

Jeet Ram	v.	Petitioner
State of Haryana and others		Respondents

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

Present:- Mr. Balram Prashar, Advocate, for
Mr. J.S. Ghumman, Advocate, for the petitioners

Ms. Vibha Tewari, AAG, Haryana

Mr. Pankaj Kundra, Advocate, for
Mr. Deepak Sabharwal, Advocate, for respondent No. 3

G.S. SANDHAWALIA, J. (Oral) :

This order shall dispose of six writ petitions numbered above.

The facts have been taken from CWP No. 3805 of 2018 titled **Sunder Lal and others v. State of Haryana and others.**

The challenge primarily in these petitions is to the amount of compensation awarded by the Land Acquisition Collector (LAC) while deciding the application under Section 28A of the Land Acquisition Act, 1894 (for short 'the Act'), by order dated 4.3.2015 (Annexure P-2).

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.

The net result, as such, as argued by learned counsel for the petitioners is that had the matter been kept pending the present petitioners would have not been granted only Rs.1,51,71,800/- for village Sihi since the Apex Court has granted Rs.4,32,86,672/- in comparison to the other land owners. Similarly, for village Kherki Daula Rs.1,02,00,000/-has been

awarded whereas the Apex Court has granted Rs.1,63,45,840/- vide judgment dated 5.9.2017 in Civil Appeal No. 11814-11864 of 2017 titled

State of Haryana and others v. Ram Chander and another.

In pursuance of Notification dated 25.1.2008, award was passed by the Collector on 26.9.2008, whereby Rs.50 lakhs to 90 lakhs were awarded for 11 villages in question as land had been acquired for the public purpose namely, for the development and utilization of land for 150 meters wide periphery road for linking Dawarka Township Delhi from Gurgaon. The reference Court in the present set of cases vide award dated 8.5.2013 had awarded Rs.1,51,71,800/- for village Sihi and for village Kherki Daula Rs.1,02,00,000/-. The State appeals pertaining to village Kherki Daula were dismissed on 30.8.2013 in **RFA No. 5506 of 2013** titled **State of Haryana and another v. Lilu Ram and others**. Since the petitioners had filed application under Section 28 A of the Act within the prescribed period, the Land Acquisition Collector-respondent No.2 while keeping in mind the decision of the reference Court and the fact that finding has been recorded by the Court that the matter has not been challenged before the Apex Court of upholding the amount as awarded at the instance of the State, also granted the same amount of compensation.

What was lost sight of respondent No.2 at that stage was that the land owners' appeal was pending and the lead case bearing **RFA No. 4475 of 2012** titled as **Ram Chander and another v. State of Haryana** was eventually decided on 20.5.2016, whereby the amount to Rs.5,09,26,672/-for Sihi and Rs.1,92,30,400/-for Kherki Daula were enhanced as has been noticed above, which was subject matter before the Apex Court, and has eventually been scaled by 15%. The relevant portion

of the same reads as under :

“10. In our opinion, the deduction of 15% towards development would have been sufficient, which ought to have been made in the instant cases, in the peculiar facts of the case, considering the potentiality of the area in question and the development which has taken place all around. This order not to be treated as a precedent in any other case. Thus, we modify the determination made by the High Court to the above extent only. Let deduction be made accordingly.”

On account of the higher amount awarded, the present petitions have, thus, been filed against the order dated 4.3.2015, for awarding same amount of compensation as awarded by the reference Court.

The State in its reply filed today, has justified the order on the ground that it is well reasoned as per provisions of Section 28 A of the Act and also placed reliance on Section 28A sub clause (3) of the Act to submit that there is an alternate remedy, as such, for re-determination before the reference Court by placing reliance upon the judgment of '**United Bank of India v. Satyawati Tondon and others, 2010 (8) SCC 110**'. Reliance has also been placed on the decision of the Apex Court in SLP No. 618/2018 titled '**M/s Model Economic Township Limited v. Land Acquisition Collector**' decided on 26.2.2019.

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 re-fixation 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 to 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.

(G.S. SANDHAWALIA)
JUDGE

14.3.2019

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No