

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.451 of 2018

Date of Decision: 15.05.2019

Nanhi & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. VD Sharma, Advocate for the petitioner(s)

Mr. Shivendra Swaroop, AAG Haryana

G.S. SANDHAWALIA, J. (Oral)

This order shall dispose of CWP Nos.451, 33431, 33437 & 33453 of 2018 as common questions of law are involved. The facts are being taken from CWP No.451 of 2018 as pleadings are complete in this case.

The present writ petition under Articles 226/227 of the Constitution of India challenges the order dated 20.07.2017 (P6) vide which respondent No.2 has dismissed the second application under Section 28-A of the Land Acquisition Act, 1894. The land in question situated in village Kheri Masania, Tehsil Narwana, District Jind was acquired for construction of Barsola Minor (Feeder), Ram Kali Minor and Kalva Kulana Drain vide notification under Section 4 dated 23.12.1997 and the award was announced on 23.07.1998.

The ground for dismissal mainly is that the second application is not maintainable since on an earlier occasion on 19.11.2008 (P3) the petitioner has got the benefit of enhancement as per the compensation awarded by the Reference Court on 24.01.2006 amounting to ₹ 3 lakhs. As per the counsel, it was an application under Section 28-A(3). The reasoning which is given by respondent No.2 on the face of it does not as such suffer

from any infirmity even though counsel for the petitioner has relied upon the judgment in case of '*Bharatsing v. The State of Maharashtra and others, (2018) 11 SCC 92*' in which itself it has been held that second application is not maintainable keeping in view the law laid down on an earlier occasion in **Union of India & Anr. vs. Pradeep Kumari & Ors. (1995) 2 SCC 736**.

However, the fact remains that the litigation was pending before this Court filed by another set of landowners and rather at the point of the decision of the earlier application, even State appeals were pending. This fact would be clear from the earlier remand order passed in **RFA No.2564 of 2005 Kailasho & Ors. vs. State of Haryana** decided on 19.01.2011 wherein both the appeals filed by the landowners and the State of Haryana were allowed and the matter was remanded to the Reference Court for afresh decision. At that point of time, the State had been aggrieved against the compensation of ₹ 3 lakhs per acre granted by the Reference Court on 24.01.2006. It is another matter that the State was under equal obligation to inform respondent No.2. The said respondent was also under an equal obligation to keep the matters pending as has been held in **Bharatsing** case (supra) which the said respondent as such did not do so and chose to decide the application and awarded the same amount of compensation of ₹ 3 lakhs.

The cause of action has arisen on account of the fact that on 23.04.2016 (P4) and 07.09.2016, the connected appeals were decided in the second round of litigation against the award dated 22.12.2011 pertaining to the same notification whereby the Reference Court declined to further enhance the compensation. This Court while allowing the appeal fixed the market value @ ₹ 3,78,467/- and on that basis the application as such was

filed as noticed under Section 28A though the heading is under Section 28-A(3). A perusal of the application would show that the application as such does not talk about the matter being referred to the Civil Court under the provisions of sub-section (3) but only talks about the enhancement which is to be given by the High Court. The prayer clause read as under:-

“It is, therefore, respectfully prayed that the amount of compensation be enhanced in view of the above mentioned order passed by the Hon’ble High Court dated 07.09.2016 and accordingly the enhanced amount of compensation be paid to the applicants/petitioners in the interest of justice.”

The said application as such was thus seeking the benefits which had been awarded by this Court on 23.04.2016 and 07.09.2016 which itself is not maintainable as an application under Section 28-A can only be filed for the benefits under Chapter-III and the amount which is granted by the Reference Court can be claimed and not what has been granted by this Court or by the Apex Court.

Reference can be made to the judgment of the Apex Court in ***Ramsinghbhai (Ramsangbhai) Jerambhai vs. The State of Gujarat & Anr. AIR 2018 SC 2629*** wherein this aspect was clarified that the benefit under Section 28A is only available regarding the enhancement made by the District Judge. The “court” referred to in Section 28A of the Act is the court as defined under Section 3(d) to mean “... a principal civil court of original jurisdiction ...”. The relevant portion reads as under:-

2. Whether an application under Section 28A of the Land Acquisition Act, 1894 (for short “the Act”) for redetermination of the compensation can be filed within a period of 3 months from the date of judgment of the High Court or Supreme Court

passed in appeal under Section 54 of the Act is the question that arises for consideration in this case.

3. Section 28A(1) of the Act reads as follows :-

“28A. Re-determination of the amount of compensation on the basis of the award of the Court. –(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.”

(Emphasis supplied)

It is clear from the opening words of the provision that the redetermination under Section 28A is available only in respect of an “Award” passed by the “court” under Part III of the Act, comprising Sections 18 to 28A (both inclusive). The “court” referred to in Section 28A of the Act is the court as defined under Section 3(d) to mean “... a principal civil court of original jurisdiction ...”. Thus, the judgment of the appellate court is not within the purview of Section 28A. It is also to be noted that the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the Award passed by the Reference Court under Part III of the

Act. (See Jose Antonio Cruz Dos R. Rodriguese & another v. Land Acquisition Collector & another.

In its recent judgment in Bharatsing and others v. The State of Maharashtra and others, this Court has surveyed the decisions on this issue and reiterated the legal principle.

4. However, if the State/authorities/claimants have approached the higher Courts for reduction/enhancement of quantum of compensation, as the case may be, the Collector, under Section 28A of the Act, shall wait till a decision is finally rendered and thereafter award the compensation as per the modified verdict of higher Courts.

5. What the appellant seeks is redetermination of compensation under the Act in terms of the judgment of the High Court passed under Section 54 of the Act. In view of the settled legal position which we have explained above, the appellant is not entitled to such a relief; his entitlement, if any, is only in terms of Section 28A of the Act based on the award of the Reference Court.

6. The appeal is accordingly dismissed. Pending application (s), if any, shall stand disposed of. No costs

Therefore no fault as such can be found in the order passed by the respondent on this ground, since the respondent No.2 had no jurisdiction to decide the said claim based on the strength of the order passed by this Court.

Counsel for the State is also well justified in holding out that provisions of Section 28-A(3) further provides that procedure prescribed under Sections 18 to 28 shall apply so far to such reference as they would apply to reference under Section 18 thus impliedly the issue of limitation under Section 18(2)(b) would also come into play when a matter is to be referred to the Civil Court once the application under Section 28-A(2) is dismissed.

The petitioner had never at that point of time filed an application under Section 28-A(3) within the prescribed period of limitation before the Collector since the Section 28-A application had been decided way back on 19.11.2008 (P3) for the first time and therefore it does not lie in the mouth of the counsel for the petitioners to submit that the application can be treated as under Section 28-A(3) for referring it to the Civil Court.

The only issue thus which detains this Court is whether a writ of mandamus is liable to be issued keeping in view the law laid down by the Apex Court in ***Bharatsingh*** (supra) and the judgment in ***Narendra & Ors. vs. State of UP (2017) 9 SCC 426*** that landowners are held entitled for an equal amount of compensation.

It is settled principle that all landowners are entitled for the same amount of compensation and for the State to contest such litigation and force the landowners to unnecessarily initiate this litigation is absolutely uncalled for. Reliance can be placed upon judgment in ***Narendra & Ors. vs. State of UP (2017) 9 SCC 426*** wherein it has been held as under:-

“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.

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.

It is also to be noticed that in the judgments of ***Imrat Lal &***

Dhiraj Singh (deceased) through LR's Vs. Haryana State & others 2015 (2) RCR (Civil) 507 and Samiyathal vs. Special Tehsildar, 2015(2) RCR (Civil) 441 the Apex Court has reiterated this. The basic principle being that a pedantic approach is not to be taken while deciding the cases pertaining to the land acquisition since the landowner is being deprived of his land and therefore is fighting against the might of the State who has acquired the land under the principle of *eminent domain*.

It is in such circumstances, this Court is of the opinion that to juggle the interests of both the parties, it would be appropriate if a writ of mandamus is allowed to this extent that the landowners will be entitled for the compensation @ ₹ 3,78,467/- per acre along with all statutory benefits except the benefit of interest on the enhanced compensation on account of delay in not challenging the order dated 19.11.2008 (P3) at the earliest. The said benefit of interest shall only be granted from 19.11.2008 and not from the date of the award i.e. 23.07.1998.

Ordered accordingly.

15.05.2019

vvishal

**(G.S. Sandhawalia)
Judge**

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

Yes/No
Yes/No