

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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(1) CWP No.29463 of 2019

Union of India & another ... Petitioners
Versus
Tripata Devi & others ... Respondents

(2) CWP No.29483 of 2019

Union of India & another ... Petitioners
Versus
Mohinder Singh & others ... Respondents

Date of decision : 14.10.2019

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

Present : Mr. Sunil Kumar Sharma, Sr.Panel Counsel, for the petitioners.

G.S. Sandhawalia, J. (Oral)

The Union of India, in the petitions filed under Article 226/227 of the Constitution of India, challenge the order dated 07.12.2017/03.01.2018 (Annexure P-3), passed by the Special Land Acquisition Collector, Pathankot, whereby it was directed that Rs.2300/- per marla be paid for the land which was acquired vide notification dated 22.02.1991/06.03.1991 and the award was passed by the LAC on 15.03.1993.

It is not disputed that on 08.09.2007, the Reference Court, Pathankot had fixed Rs.1400/- per marla in **LAC-1613-2001** titled **Pohlo Ram & others Vs. Union of India & others**. This Court, in a bunch of appeals, lead case being RFA-2902-1999, enhanced the compensation to Rs.2300/- per marla on 17.02.2016. The private-respondents, on the basis of the said decision, had approached the LAC, in applications filed under Section 28-A of the Land Acquisition Act,1894, for the same benefits as they had not filed petition under Section 18, for enhancement of

compensation. Resultantly, the said applications have been allowed.

The only argument which has been raised by counsel for the petitioners is that matter is pending before the Apex Court and the appeals filed by the Union of India have been admitted, as leave has been granted on 15.12.2017. It is, accordingly, submitted that since the matter is pending before the superior Courts, the applications should not have been decided by the LAC, keeping in view the settled principles of law. It is further submitted that the applications were not maintainable also, on the cause of action that this Court had decided the cases on 17.02.2016, though no such objection had been taken before the LAC.

There is no quarrel qua the proposition raised above. However, in the facts and circumstances of the present case, it is to be noticed that the impugned order was passed on 07.12.2017 and was duly endorsed and forwarded to the quarters concerned on 03.01.2018. A period of more than 1 year 9 months has gone by. The Apex Court has not granted stay to the Union of India in the appeals which have been admitted and decided by this Court. The market value was fixed @ Rs.2300/- per marla and similarly situated landowners, thus, would have got their amounts from the Union of India, in the absence of any stay having been granted. The private-respondents are similarly situated persons whose lands have been acquired way-back on 15.03.1993, when the award was passed 26 years down the line and they are clamoring for equal amount of compensation as granted to similarly situated landowners.

In such circumstances, this Court is of the opinion that the principle laid down in *V. Ramakrishna Rao Vs. The Singareni Collieries Company Ltd. and another, 2010(10) SCC 650* that Section 28A is only incorporated for the purpose of goal of equality and to remove the inequality in payment of compensation in lieu of acquisition of land under the principle of eminent domain would come into play. The relevant portion reads as under:

“9. The above reproduced provision represents the Legislature's determination to ensure that the goal of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof is translated into reality, at least in the matter of payment of compensation to those who are deprived of their land for the benefit of the State, its instrumentalities/agencies and even private persons. Section 28A also represents statutory embodiment of the doctrine of equality in matters relating to the acquisition of land. The Act which was enacted in 1894 and was amended after 90 years has the potential of depriving a large segment of the society i.e. the 'agriculturist' of their only source of livelihood. The scheme of [Section 28A](#) provide some solace to this segment of the society by ensuring that such of the land owners whose land was acquired under the same notification but who could not, on account of poverty, ignorance and other disabilities join others in seeking reference under [Section 18](#) get an opportunity to claim compensation at par with others. This section is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification. To put it differently, this section gives a chance to the land owner, who may not have applied under [Section 18](#) for determination of market value by the Court to seek re-determination of the amount of compensation, if any other similarly situated land owner succeeds in persuading the

Reference Court to fix higher market value of the acquired land. Therefore, [Section 28A](#) has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land owner who may have, due to variety of reasons not been able to move the Collector for making reference under [Section 18](#) of the Act to get higher compensation if market value is revised by the Reference Court at the instance of other land owners, whose land is acquired under the same notification. Of course, this opportunity can be availed by filing application within the prescribed period. In [Union of India v. Pradeep Kumari](#) (supra), a three-Judge Bench of this Court held that [Section 28A](#) is in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor land owners, who are not able to take advantage of the right of reference to the Civil Court under [Section 18](#) of the Act and such a provision should be interpreted in a manner which advances the policy of legislation.”

The Apex Court in **Narendra and others Vs. State of UP and others** (2017) 9 SCC 426 has held that Section 28-A has been incorporated for the purpose of removing the disqualification of inequality and to grant the same amount of compensation to the landowners. The relevant part 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. 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 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, 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”

In Union of India Vs. Munshi Ram (dead) by LRs (2006)

4 SCC 538, the Apex Court has held that if the amount of compensation is reduced, the landowners shall be entitled to pay the said amount back to the Union of India. The relevant portion reads as under:

“9. We hold that under Section 28-A 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 the superior Courts, the applicants under Section 28-A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded.”

In similar circumstances, an earlier order passed by the LAC on 27.10.2017 was upheld by this Court on 15.02.2018, which had been challenged in **CWP-3464-2018** titled *The Union of India through the Secretary, Ministry of Defence and another Vs. The Special Land Acquisition Collector-cum-Sub Divisional Magistrate & others*, pertaining to the same acquisition.

Keeping in view the overall discussion, as such and the fact that the writ petitions have been filed at a belated stage, after a period of 1 ½ years, this Court is of the opinion that the extraordinary writ jurisdiction is not liable to be exercised in the present set of cases. Accordingly, the present writ petitions stand dismissed in limine.

October 14th, 2019

sailesh

Whether speaking/reasoned:
Whether Reportable:

(G.S. SANDHAWALIA)
JUDGE

Yes/No
Yes/No