

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

**RFA No. 365 of 2019 (O & M)**

**Date of decision: 19.02.2020**

Ompati and others

....Appellant(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present: Mr. Sunil Chadha, Sr. Advocate,  
with Mr. Saurav Kambojia, Advocate,  
for the appellants.

Ms. Vibha Tewari, AAG, Haryana.

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

The appellants challenge the award of the Reference Court, Rohtak dated 09.05.2018 whereby, the petition under Section 28-A(3) of the Land Acquisition Act, 1894 (in short 'the Act') has been dismissed on the ground that the petition filed before the Land Acquisition Collector was the second application and was not maintainable. Thus, to sum up in substance, the order dated 16.04.2015 (Ex.P-5) of the Land Acquisition Collector as such was upheld. Resultantly, it was held that the petitioners were not entitled to receive the same amount of compensation as in the case of the other land owners as per decision of this Court in ***RFA No. 2250 of 2011 Risal Singh vs. State of Haryana and another*** decided on 01.09.2014 (Ex.P-3). The issue of limitation also was decided against the appellants on the ground that the same had to be filed within a period of 3 months from the date of the award of the Reference Court which was 30.11.2010.

The said order is not sustainable in view of the settled principles of law that firstly, the application filed under Section 28-A of the

Act had been wrongly decided on 19.08.2013 when admittedly the appeals were pending before this Court. Reliance can be placed upon the judgment of this Court in ***Babua Ram and others vs. State of U.P. and another, 1995 (2) SCC 698*** and recent decision of the Apex Court in ***Bharatsing vs. The State of Maharashtra and others, 2018 (11) SCC 92***, the relevant portion of which reads thus:-

*“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 whose land is acquired by the same notification are entitled for 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.”*

It is not disputed that on 30.11.2010, the Reference Court had enhanced the compensation to grant uniform sum of Rs.8,65,435/- per acre as compensation by enhancing what had been fixed by the Land Acquisition Collector in his award. The appellants initially had filed application on 15.02.2011 under Section 28-A of the Act. Instead of keeping the application pending in view of the law which has been cited above during the pendency of the issue of market rate before the higher courts, the application was decided and compensation was granted by the Land Acquisition Collector as awarded by the Reference Court. It is not disputed

that on 01.09.2014 *Risal Singh's case (supra)* was decided wherein, the market value had been enhanced to Rs.18,31,500/- upto the depth of two acres and the remaining land owners have been held entitled to compensation at Rs.15,00,000/-. The relevant portion reads thus:-

*“For the foregoing reasons, the landowners, whose land is abutting the main road are held entitled to compensation @ Rs.18,31,500/- per acre upto the depth of two acres and for the remaining land, the landowners are held entitled to compensation @ Rs.15,00,000/- per acre. The landowners shall also be entitled to all statutory benefits available to them under the Act.*

*The appeals stand disposed of.”*

Thus, the land owners as such cannot be faulted on account of the erroneous decision passed by the Land Acquisition Collect on the first occasion on 19.08.2013. Keeping in view the settled principles of law as laid down in *Narendra's case (supra)*, the land owners are entitled for the same amount of compensation which was acquired vide the same notification specially once acquired under the principle of eminent domain.

Resultantly, the award dated 09.05.2018 is set aside and the appeal stands allowed. The land owners will be entitled for the compensation as awarded by this Court in *Risal Singh's case (supra)*.

19.02.2020  
shivani

(G.S. SANDHAWALIA)  
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No