

109

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2089-2020

Date of decision: 27.01.2020

HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED (HSIIDC)

....PETITIONER

VERSUS

TARIF SINGH AND OTHERS

...RESPONDENTS

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

Present: Mr. Pritam Singh Saini, Advocate
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present petition filed under Article 226/227 of the Constitution of India, is to the order dated 14.11.2017 (Annexure P-4) passed in a petition filed under Section 28-A of the Land Acquisition Act, 1894 (for short 'the Act') after a period of more than 2 years. The Land Acquisition Collector (for short 'LAC') has enhanced the compensation in terms of the Award of the Reference Court dated 06.04.2015 and fix the market value of ₹50, 00,000/- per acre for the land which was acquired vide notification dated 25.07.2006 issued under Section 4 of the Act. The LAC had fixed the market value as ₹16,00,000/- per acre vide award dated 14.02.2008. So the argument as such which is now being raised to challenge the said order is that Special Leave Petition against the judgment passed in ***RFA-6066-2015*** titled as ***Bhagwat Sarup and others Versus State of Haryana and others*** decided on 31.07.2017 (Annexure P-5) filed by the Corporation are pending whereby this

Coordinate Bench has enhanced the compensation of ₹50,00,000/- to ₹ 61,94,097.45 Paise.

It is submitted that the notice on the issue of deduction as such is pending consideration before the Apex Court and therefore, during the pendency of the matter, the LAC should not have pass the order.

Perusal of the impugned order would go on to show that when the matter was decided before the LAC, it was not brought to the notice of said LAC that the matters had already been decided by this Court in enhancing the compensation by the Corporation and nothing as such would brought to the notice of the LAC that he should have stayed his hands.

Admittedly, the amount has further been enhanced as what has been granted by the LAC. The Apex Court in ***Union of India Versus Munshi Ram; 2006 (4) SCC 538*** has held that the claimants whose land has been acquired in the same notification should get the same award of compensation in accordance with the final decree passed and excess, if paid must be refunded, keeping in view the provisions of the Section 28-A of the Land Acquisition Act, 1894. The relevant portion of the said judgment reads 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. ”*

Keeping in view the above facts that the LAC has only granted the amount as awarded by the Reference Court. This Court is of the opinion that keeping in view of the fact that the award was passed way back 04.02.2008 and the landowners at that point of time have only got what the Reference Court had granted. The order as such which is being challenged at a belated stage by the Corporation does not require any interference. Keeping in view of the fact that in case, the amount is reduced below what has been granted by the Reference Court, the Corporation can always recover the amount, in view of what it is deserve. Therefore, finding no merits in the present petition, the same is dismissed *in limini*.

27th January, 2020
shabha

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking : Yes

Whether reportable : Yes