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

**CWP No.15945 of 2019
Decided on : 04.03.2020**

Sizar Pal ... Petitioner

Versus

State of Haryana & others ... Respondents

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

Present: Mr.Vaneet Soni, Advocate, for the petitioner.

Ms.Vibha Tewari, AAG, Haryana, for respondents No.1 & 2.

Mr.Sudeep Mahajan, Advocate, for respondent No.3.

G.S. Sandhawalia, J. (Oral) :-

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 17.08.2018 (Annexure P-7) whereby respondent No.2 has dismissed the application filed under Section 28-A of the Land Acquisition Act, 1894, for redetermination of the amount of compensation. Primarily the ground for the same is that Section 28-A does not give cause on the basis of an order passed by the High Court for redetermination and the petitioner is not entitled for higher compensation, according to the decision of the High Court dated 29.02.2016 (Annexure P-5). Reliance was also placed upon the judgment of the Apex Court in **Smt. Bhagti (deceased) through her LRs Vs. State of Haryana 1997 (1) SCR 576**, in this regard. Resultantly, a writ of mandamus is also sought to redetermine the compensation @ Rs.1511/- per sq.yard (Rs.73,13,240/- per acre) by modifying the earlier order dated 11.09.2015 (Annexure P-3) passed by the said respondent and to grant the same amount of compensation as granted by this Court in **RFA-9435-2014** titled *Amrik Singh Vs. State of Haryana & others,* decided on 29.02.2016

In order to appreciate the controversy, few necessary facts are required to be penned down. The land was acquired vide notification under Section 4 dated 06.09.2010 and the Land Acquisition Collector passed the award on 23.08.2012. In the petitions filed under Section 18 by the landowners, the Reference Court enhanced the market value @ Rs.30,00,000/- per acre for the land upto 2 acres from the main road and Rs.22,00,000/- per acre for the land beyond that, on 20.05.2014 (Annexure P-1).

It is not disputed that the petitioner filed his first application under Section 28-A, which was wrongly decided on 11.09.2015 (Annexure P-3) awarding the same amount of compensation as granted by the Reference Court, despite the fact that against the awards of the Reference Court, Regular First Appeals, filed by the other landowners in the year 2014, were pending. The State officials, as such, did not bring this fact to the notice of the LAC, to the detriment of the present petitioner that other landowners were seeking enhancement and therefore, the order was passed in violation of the mandate of the Apex Court in **Babua Ram & others Vs. State of UP & another 1995 (2) SCC 698**, which view has now been followed in **Bharatsing Vs. The State of Maharashtra & others (2018) 11 SCC 92**. In the said appeal Amrik Singh (supra), the market value was enhanced to Rs.73,13,240/- per acre.

It is not disputed that the said order has been upheld by the Apex Court, dismissing the appeals filed by the landowners along with **SLP (C) No.011777-011789/2018** titled *The State of Haryana Vs. Sunil*

Kumar, on 23.03.2018 (Annexure P-8).

Keeping in view the fact that the market value had been enhanced, the second application was filed under Section 28-A on 16.08.2016, which has now been dismissed, vide the impugned order on the ground that the same is not maintainable, on the strength of the enhancement granted by this Court. There is no dispute regarding this proposition that a second application is not maintainable, as has been held in Smt.Bhagti (supra) and recently by the Apex Court in **Ramsingbhai (Ramsangbhai) Jerambhai Vs. The State of Gujarat & another 2018 AIR (SC) 2629**.

However, the fact remains that similar landowners have got higher market value than the present petitioner and the law laid down by the Apex Court is that all landowners are entitled for the same amount of compensation for the same notification, keeping in view Article 14 of the Constitution of India. Reliance can be placed upon the judgment passed by the Apex Court in **Narendra and others v. State of UP and others, (2017) 9 SCC 426** wherein it has been 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 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."

In Bharatsing (supra), the principle has been settled that once the matter is pending before the superior Court, the LAC is to stay his hands. Relevant portion of the judgment 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 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 argument of the State Counsel that there is an alternative remedy available under Section 28-A(3), as such, would also not merit much consideration 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 of compensation as the litigation qua the fixation of market value has become final. 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 dated 17.08.2018 (Annexure P-7) cannot be held to be justified.

Accordingly, in view of the above discussion, the writ petition is allowed, order dated 17.08.2018 (Annexure P-7), passed by respondent No.2 is quashed and a writ of mandamus is issued, by modifying the order dated 11.09.2015 (Annexure P-3) by granting the same amount of compensation, to the tune of Rs.1511/- per sq.yard (Rs.73,13,240/- per acre) along with all statutory benefits. Payment of the same be made within 3 months from receipt of certified copy of this order, by complying with the terms of the Apex Court order in ***Haryana State Industrial Development Corporation Vs. Pran Sukh & others 2010 (11) SCC 175***.

March 4th, 2020 **(G.S. SANDHAWALIA)**
sailesh **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No