

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

CWP-4154-2021(O&M)

Date of decision:22.02.2021

Union of India

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Puneet Jindal, Sr. Advocate with
Mr. A.S.Meho, Advocate for the petitioner

Mr. Nikhil Chopra, Addl. AG, Punjab

ANIL KSHETARPAL, J.(ORAL)

Through this writ petition, the petitioner-UIO assails the correctness of an award dated 30.10.2020 passed by the Land Acquisition Collector in the exercise of its powers under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894').

Section 28-A provides that if a land owner do not apply for reference under Section 18 of the Act and in pursuance of reference to the court at the behest of other owners, the market value of the land has been assessed to be more than what has been assessed by the Land Acquisition Collector, then such land owner who did not seek reference u/s 18 can apply for re-determination claiming parity. In other words, if

on the application of the other land owners the court enhances the market value when compared with the assessment of the Land Acquisition Collector, then the land owner who did not apply for reference under Section 18 of the Act, can subsequently apply for re-determination, subject to the fulfilment of the conditions laid down under Section 28-A (1). In the considered view of the Court, any party aggrieved of such re-determination has a statutory remedy under Section 28-A of the 1894 Act. Section 28-A(3) provides that any person who has not accepted the award passed by the Land Acquisition Collector under sub-section (2) may by written application apply to the Collector to refer the matter to the Court.

Section 28-A is extracted as under:-

28-A. 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.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to reference under Section 18.

Thus, the petitioner has a statutory remedy of seeking reference under Section 28-A (3).

Learned senior counsel submits that Section 28-A is not applicable as the private respondents had applied for a reference under Section 18 of the Act of 1894 and therefore, the remedy under Section 28-A was available to the respondents. He further submits that the order in question has been passed pursuant to the direction issued by the Court in CWP-6009-2020. He further submits that the petitioner had objected to the award of the amount, however, those objections have not been

considered. The petitioner had also requested the Collector to direct the owners to produce the copies of the various applications filed by them seeking references under Section 18 of the 1894 Act. He in support thereof, relies upon a judgment passed in **Babua Ram vs.State of Uttar Pradesh'** (1995) 2 SCC 689.

Sub-section 3 of the Section 28 A enables any party to seek reference to the Court, if he/it is not satisfied with the award passed by the Collector under Section 28-A (2). In the present case, the award has been passed by the Collector in the aforesaid provision. Hence, the petitioner does have an effective alternative statutory remedy to apply to the Collector requiring him to make a reference to the Court. All the arguments of the learned counsel for the petitioner can be examined by the court once the Collector refers the matter to the competent Court. It is pertinent to note that in the order dated 04.03.2021, the High Court had only directed the respondent to take steps on the representation of the land owner. Hence, the aforesaid direction nowhere debars the petitioner from invoking the statutory remedy to apply for reference to the Collector under Section 28-A (3).

Learned senior counsel appearing for the petitioner has drawn the attention of the Court to the last 10 lines of para 42 of the judgment to contend that the remedy under Section 28-A (3) of the Act of 1894, is not an effective remedy and it is also not available in all the circumstances.

This Court has carefully read para 42 of the judgment. The Hon'ble Supreme Court has held that if the Collector awards

compensation in excess of the amount given under Section 26, the beneficiary or the State is left with no remedy under the Act. However, in this case, there are no allegations that the Collector has awarded compensation in excess of the amount given under Section 26 of the Act. Hence, the aforesaid judgment is not applicable.

Hence, the petitioner is relegated to the alternative remedy.

Disposed of.

22.02.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)

JUDGE