

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 18781 of 2021

Date of Decision: 21.09.2021

Ramesh Chand and Another

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. Through this writ petition, the petitioners pray for issuance of a writ in the nature of mandamus to direct the respondent to decide the application under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred as “the 1894 Act”) filed on 24.02.2021. This case has a vicissitudinous history. The petitioners claim that their land was acquired vide an award dated 08.02.1995. They did not file any application under Section 18 of the 1894 Act, whereas the various other owners filed the applications under the said section. The Additional District Judge (the Reference Court) has determined the market value of the land @ ₹ 325/- per square yard vide a judgment dated 12.01.1998. However, in appeal, the High Court, vide a judgment dated 07.07.1999, had reduced the market value to ₹90/- per square yard. The matter went to the Supreme Court. In the said appeals, the Supreme Court remanded the matter back to the Reference

Court vide an order dated 27.10.2004. On 12.01.2008, the Reference Court

determining the market value of the acquired land at ₹238/- per square yard. In the regular first appeals, the High Court on 01.09.2005 revised the market value of the acquired land to ₹280/- per square yard. The Supreme Court is stated to have further revised the rate @ ₹ 325/- per square yard while deciding the lead case in *Ashrafi and Others v. State of Haryana and Others (2013) 5 SCC 527*. There was an award passed by the Additional District Judge on 12.10.2007. The petitioners filed an application under Section 28-A of the 1894 Act, which was allowed by the Land Acquisition Collector on 17.10.2007. The petitioners were held entitled to the market value of the land @ ₹ 90/- per square yard. The petitioners, in place of filing an application under Section 28-A(3) of the 1894 Act, filed a revision petition under Article 227 of the Constitution of India, which remained pending for a period of 12 years. The revision petition was dismissed as withdrawn vide an order dated 14.02.2020. The order passed by the High Court is extracted as under:-

“During the course of hearing when posed with the question as to the maintainability of such a petition, counsel for the petitioner prayed for withdrawing the present petition. Allowed to do so. However, the petitioner reserve the right to invoke the jurisdiction of this Court under appropriate recourse available to him.

Dismissed as withdrawn with liberty as aforesaid”.

2. Thereafter, the petitioners have submitted a fresh representation/application on 24.02.2020, wherein they pray for granting the same amount as has been awarded to the various other land owners by the

3. The learned counsel representing the petitioners contends that the petitioners are entitled to the same compensation on the grounds of parity. He contends that due to the wrong legal advice, the petitioners have filed a revision petition, which was dismissed as withdrawn. Hence, the petitioners should not be discriminated in the payment of the compensation for the acquired land.

4. After having analyzed the arguments of the learned counsel representing the petitioners, this Bench is of the considered view that the writ petition is not maintainable for the following two reasons:-

1. If a landowner is not satisfied with the order passed by the Land Acquisition Collector under sub-Section 2 of Section 28-A of the 1894 Act, he has a remedy to request the Collector to refer the matter to the Court. Section 28-A of the 1894 Act is extracted as under:-

“28A. 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, required 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 a reference under section 18”.

The petitioners have never made any request to the Collector.

2. Sub Section 3 of Section 28-A refers to the procedure as prescribed under Section 18 of the 1894 Act. Section 18 of the 1894 Act prescribes a period of limitation for filing an application. The maximum period is six months from the date of the Collector's award. In the present case, the petitioners have filed an application after a period of more than 12 years.

5. Furthermore, it is well settled that the application under Section 28-A of the 1894 Act was filed only on the basis of the award passed by the Reference Court. No doubt, in some judgments, the Supreme Court has held that the Collector should wait for the final determination of the compensation by the Courts. However, it is also well settled that no application under Section 28-A of the 1894 Act is maintainable on the basis of the judgments passed by the Appellate Court.

6. Thus, examining the present case from all the possible angles, the petitioners, in the considered view of this Bench, cannot be granted any relief.

7. The learned counsel representing the petitioners relies upon the order passed in *Sunil Kumar and Others v. State of Haryana and Others* (Civil Writ Petition No. 11739 of 2019, decided on 30.05.2019). This Bench has gone through the aforesaid judgment. It is unfortunate that the attention of the Bench was not drawn to the limitation as provided under Section 28-

A(3) read with Section 18 of the 1894 Act.

8. Furthermore, the attention of the Court has not been drawn to the judgment passed by a larger Bench in *Union of India and Another v. Pardeep Kumari and Others (1995) 2 SCC 736*. In the aforesaid case, the Supreme Court held that the application under Section 28-A of the 1894 Act can be filed within a period of three months only on the basis of any award passed by the Reference Court. The same view was reiterated by another larger Bench in *Jose Antonio Cruz Dos R. Rodriguese and Another v. Land Acquisition Collector and Another (1996) 6 SCC 746*. Another five Judges Bench in *Union of India v. Hansoli Devi (2002) 7 SCC 273*, held that if an application under Section 18 of the 1894 Act is dismissed on the ground of delay, then the application under Section 28-A of the 1894 Act shall be maintainable and dismissal of an application under Section 18 of the 1894 Act on the ground of delay has the effect as if no application under Section 18 of the 1894 Act has been made. Moreover, the Land Acquisition Collector is not a Court and therefore, Section 5 of the Limitation Act, 1961, is not applicable.

9. Keeping in view the aforesaid facts, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

September 21, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No