

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11951-2021 (O&M)
Date of Order:07.07.2021

RAJIV SOOD

..Petitioner

Versus

STATE OF PUNJAB AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.L.Sharma, Advocate,
for the petitioner.

Ms. Kanika Sachdeva, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioner herein prays for issuance of a writ in the nature of mandamus directing the respondents to grant enhanced compensation for the land measuring 9 kanals 10 marlas situated in village Kotla Gaunspur, District Hoshiarpur, at par with other owners. The aforesaid land was acquired as per the provisions of the Land Acquisition Act, 1894 vide an award dated 25.11.2005.

It is an admitted fact that the petitioner neither sought reference under Section 18 nor applied under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act of 1894').

No doubt, other identically situated land owners did file applications under Section 18 of the Act of 1894. Consequently, the Court

redetermined and enhanced the market value of the acquired land. In appeal, the High Court further enhanced the amount.

As per the provisions of the Act of 1894, an owner whose land has been acquired is given two opportunities if he is not satisfied with the assessment of the market value of the land made by the Land Acquisition Collector. Firstly, if he has not accepted the award, he can file an application to the Land Acquisition Collector with a request to refer the matter to the Court for re-determination,. Section 18 of the Act of 1894, is extracted as under:-

“18 Reference to Court.

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.”

Secondly, those owners, who miss the opportunity to apply for reference under Section 18 of the Act of 1894 are granted another opportunity under Section 28-A of the Act of 1894, in order to mitigate their difficulties. The said provision is extracted as under:-

Section 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, 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 a reference under section 18.”

It is apparent from the reading of Section 28-A that an application in this regard has to be filed within a period of 3 months from the day the Court had determined the market value of the land.

As noticed above, the petitioner did not choose to avail both the opportunities.

Learned counsel representing the petitioner relies upon the judgment passed by the Hon'ble Supreme Court in **Samlyathal and others vs. Spl. Thesildar and others, 2015(2) RCR (Civil), 441**, to contend that the Hon'ble Supreme Court has directed the payment of uniform compensation to the land owners irrespective of the fact whether such land owners had filed an appeal or not.

This Bench has carefully read the above-mentioned judgment.

In the aforesaid case, the Court passed the order while exercising powers under Article 142 of the Constitution of India. In that case, the High Court in the appeal filed by the institution/organization for which the land was acquired, the amount of compensation was subsequently reduced from the amount determined by the reference Court. The Hon'ble Supreme Court while restoring the compensation assessed by the reference Court directed that it should be paid to all the land owners irrespective of the fact whether they had applied for reference under Section 18 of the Act of 1894 or not. The aforesaid judgment having been passed in the exercise of powers under Article 142 of the Constitution of India cannot be relied upon as a precedent in view of the judgment of the larger Bench in **State of Punjab and others vs. Rafiq Masih (White Washer), (2014) 8 SCC 883.**

Still further, learned counsel representing the petitioner fairly admits that he has no material to show that the petitioner did not accept the award announced by the Land Acquisition Collector which is a *sine-qua-non* for seeking reference under Section 18 of the Act of 1894

The Land Acquisition Act, 1894 was a complete code. The same has now been repealed. Once, if in the Act itself, sufficient opportunities are given to the interested persons to apply for redetermination of the acquired land from the Court, then it would not be appropriate for the High Court, to exercise its writ jurisdiction, on equitable grounds, to entertain the petition and pass an order which would be beyond the scope of what has been provided in the Act.

Keeping in view the aforesaid facts, no ground to issue the writ, as prayed for, is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

July 07, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No