

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

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CWP-13405-2018 (O&M)

Date of decision: 10.12.2021

GURMIT SINGH & ANR

..Petitioners

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Karan Gupta, Advocate for the petitioners.
Mr. Nikhil Chopra, Addl AG, Punjab.
Mr. Sunil K. Rana, Advocate for UOI.
Mr. Gurjinder S. Chahal, Advocate for respondent No.3.
Mr. MS Teji, Advocate for respondent No.4/applicant.

ANIL KSHETARPAL, J (Oral)

CM No.11070 of 2021

In view of the no objection of the learned counsel for the petitioners, the application for impleadment of Harpal Kaur as a respondent is allowed.

Main Case

Through this writ petition, the petitioners pray for issuance of a writ in the nature of certiorari to partly quash the order dated 15.03.2018, passed by the Land Acquisition Collector (hereinafter referred to as 'LAC') while deciding application under Section 28-A of the Land Acquisition Act, 1894 (in short '1894 Act').

Some facts are required to be noticed.

In order to utilise the land for construction of southern bypass for Patiala city, the State of Punjab initiated proceedings for the acquisition of the land vide a notification under Section 4 of the 1894 Act dated 09.04.2001 which was followed by a declaration under Section 6 on 06.04.2002. The LAC pronounced the award under Section 11 of the 1894 Act on 11.11.2002. At the time of issuance of notification under Section 4 of the 1894 Act, Babu Singh s/o Deva Singh, Gurmit Singh s/o Babu Singh and Jagjit Singh s/o Deva Singh were owners. The various other owners applied under Section 18 of the 1894 Act, whereas the abovementioned persons did not file the application under Section 18 of the 1894 Act. The Reference Court vide its award dated 30.03.2012 redetermined the market value of the acquired land @ Rs.24,20,000/-. The Reference Court inadvertently did not grant the benefit of interest under Section 28 of the 1894 Act, forcing the owners to file a review application which came to be allowed on 12.06.2012. The aforesaid three persons filed an application under Section 28-A of the 1894 Act, on 27.06.2012. The LAC kept the matter pending. In the meantime, the appeals filed under Section 54 of the 1894 Act were allowed by the High Court while redetermining the market value of the acquired land @ Rs.67,76,000/- per acre, vide a judgment dated 10.02.2016. Before the

a prayer to issue directions to the LAC to decide an application under Section 28-A of the 1894 Act. The High Court disposed of the writ petitions on 14.08.2013, directing the LAC to take a decision in a time bound manner. The LAC informed the petitioners that the decision on the application under Section 28-A of the 1894 Act has been deferred awaiting decision of the High Court. It may be noted here that the Hon'ble Supreme Court also upheld the assessment of the market value determined by the High Court. Thereafter, the petitioners once again submitted an application for decision of the LAC. The Collector has decided the matter on 15.03.2018. In the meantime, late Sh. Babu Singh son of Deva Singh died. He has left behind three class I heirs namely petitioner No.1-Gurmit Singh, respondent No.3-Manjit Singh and respondent No.4-Harpal Kaur (newly added). The LAC has allowed the application to the extent of independent share of Gurmit Singh and Jagjit Singh but dismissed the application qua the land owned by Babu Singh. The LAC has also declined to grant the amount of market value of the acquired land with respect to same notification assessed by the High Court @ Rs.67,76,000/- per acre.

Reply to the writ petition has been filed and it has been submitted that the second application filed by the petitioners was barred by the limitation. It has further been asserted that there was inter se dispute

certificate, the application has been dismissed.

Heard the learned counsel for the parties at length and with their able assistance perused the paper book.

At the outset, it is important to note that the class I heirs of late Sh. Babu Singh have entered into settlement and it has been decided that the amount of compensation shall be distributed amongst themselves in the following manner:-

29% to Manjit Singh

42% to Gurmit Singh

29% to Harpal Kaur

Learned counsels representing respondent No.3 and 4 accept that fact.

Now there are two following issues which arise for consideration:-

1. Whether the LAC was correct in declining to pay the same amount as determined by the High Court with regard to compulsory acquisition of the land arising from the same notification?

2. Whether the LAC correctly declined the application filed by Sh. Babu Singh on 27.06.2012 only because his legal heirs subsequently submitted a fresh application, after his death to carry forward the application?

As regards the first issue, the matter is not res integra. The Hon'ble Supreme Court in **Babua Ram vs. State of UP, 1995 (2) SSC 689** has already held that the assessment made by Reference Court merges in the judgment of the Appellate Court and therefore under Section 28-A of the 1894 Act the land owners are entitled to same amount which is payable to various other owners. This judgment has been subsequently followed in **Union of India vs. Munshi Ram (dead) by Lrs and ors., (2006) 4 SSC 538**. In **Munshi Ram (supra)**, the Court while considering the question in the context of reduction of the amount by the Appellate Court held that once the judgment passed by the Reference Court stands modified by the Appellate Court then the same amount as assessed by the Appellate Court is payable. Keeping in view the aforesaid facts, the petitioners are held entitled to the same amount as has been held payable to various other owners by the High Court vide a judgment dated 10.02.2016. The amount shall be payable along with the interest payable under the amended 1894 Act.

The second issue does not need much deliberation. Section 28-A of the 1894 Act enables the land owners who have not filed application under Section 18 of the 1894 Act, to apply before the LAC on the basis of an award passed by the Reference Court. It is not in dispute that such application was submitted. It has been held by the Hon'ble Supreme Court that LAC should

28-A of the 1894 Act. Obviously the intent is that the land owners who did not file an application under Section 18, but filed an application under Section 28-A are made entitled to the same amount as is finally determined by the Court. The subsequent application submitted by the petitioners was in continuation of the first one. On the careful reading of Section 28-A, it is evident that only one application is maintainable. Once an application has been filed and the LAC fails to decide the same, any subsequent application would be deemed to be in the continuation of the first one.

Keeping in view the aforesaid facts, the writ petition is allowed.

The petitioners as well as the private respondents are held entitled to the same amount as has been determined by the High Court vide a judgment dated 10.02.2016 while deciding the various appeals, filed by the various other owners arising from same notification, under Section 4.

With these observations, the writ petition is allowed.

All the pending miscellaneous application(s), if any, are also disposed of.

10.12.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE